Hays TX
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666

Instrument Number: 2016-16014688
As
OPR RECORDINGS

Recorded On: May 09, 2016

Parties: BLANCO RIVER INVESTMENTS LTD
To KYLE CITY OF

Billable Pages: 1163
Number of Pages: 1164

Comment:

(Parties listed above are for Clerks reference only)

**** THIS IS NOT A BILL ****

OPR RECORDINGS	4,674.00
Total Recording:	**4,674.00**

************** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT **************

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:
Document Number: 2016-16014688
Receipt Number: 428432
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User / Station: C Rodriguez - Cashiering #9

Record and Return To:
BLANCO RIVER INVESTMENTS LTD
ATTN: REID MCCOY
ORIG TO CUSTOMER
SAN MARCOS TX 78666

COUNTY COURT OF HAYS COUNTY, TEXAS

State of Texas |
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

Liz Q Gonzalez

Liz Q.Gonzalez, County CLerk

STATE OF TEXAS	§
	§
COUNTY OF HAYS	§

DEVELOPMENT AGREEMENT

BETWEEN CITY OF KYLE, TEXAS, AND

BLANCO RIVER INVESTMENTS, LTD.

This Development Agreement ("**Agreement**") is by and between the City of Kyle, Texas, a home rule city situated in Hays County, Texas (the "**City**"), Blanco River Investments, Ltd, ("**BRI**"), Miriam McCoy ("**McCoy**") and Robert Scott Nance ("**Nance**") (BRI, McCoy and Nance are collectively referred to as "**Owner**"). The term "Parties" or "Party" means the City and the Owner collectively or singularly.

RECITALS

A. BRI owns an approximately 2,898-acre parcel of real property (the "**BRI Property**") in Hays County, Texas, which is more particularly described in the attached **Exhibit "A-1"** and BRI and Nance, as tenants in common, jointly own an approximately 292-acre parcel of real property (the "**Co-Owned Property**") in Hays County, Texas, which is more particularly described in the attached **Exhibit "A-2"**. McCoy owns an approximately 13.5-acre parcel of real property (the "**McCoy Property**"), which is more particularly described in **Exhibit "A-3"**. The BRI Property, the McCoy Property and the Co-Owned Property are referred to collectively as the "**Property**");

B. The Property is located in the extra-territorial jurisdiction ("**ETJ**") of the City;

C. The City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

D. The City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area;

E. The Parties agree that the extension of centralized utilities to new development provides superior environmental protections to those available from individual water wells and septic systems;

F. In consideration for the City's agreement to enter this Agreement, the Owner has entered, or will soon enter, into a Roadway Alignment Agreement with Hays County, Texas, regarding the future alignment and right of way of FM 150 and the City finds that this Roadway Alignment Agreement promotes a substantial public benefit and purpose;

G. This Agreement, and future agreements anticipated by this Agreement, will facilitate the construction of a bridge crossing over the Blanco River, which will provide regional benefits far beyond the Property, including alternative access and evacuation routes in the event of emergencies;

H. The proposed development will be a master planned community, with mixed uses and a broad variety of housing types;

I. The City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public;

J. The City is interested and desirous of promoting economic development within its boundaries pursuant to a development agreement with Owner, therefore this Agreement is entered into pursuant to Chapter 380 of the Texas Local Government Code to promote state or local economic development and to stimulate business and commercial activity in accordance with § 380.001. This Agreement is further authorized by § 212.172 of the Texas Local Government Code, Chapter 312 of the Texas Tax Code, Chapter 43 of the Texas Local Government Code, Chapter 395 of the Texas Local Government Code and such other statutes as may be applicable;

K. On February 26, 2016 Owner submitted to the City a request for voluntary annexation with respect to the Property, attached as Exhibit "I", which request was conditioned on the execution of this Agreement.

L. The City Council approved this Agreement on May 3, 2016; and

M. For the above reasons Owner and the City desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

ARTICLE 1
DEFINITION OF PROJECT AND CONSENT TO ANNEXATION

1.01 Project Defined. The Project established by the Agreement includes a master-planned residential and mixed-use subdivision that may include single family lots, amenity area(s) with recreational facilities, and future commercial, multi-family or other mixed use development sites as depicted on the Concept Plan attached as **Exhibit "B."** No industrial uses are permitted in the Project without full compliance with the City Code of Ordinances and written approval by the City. The Project includes the subdivision of the Property, the construction of off-site and on-site

utility facilities and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, and other infrastructure adequate for the development of the Project consistent with this Agreement (the "**Project**"). The Project may include multiple phases for platting and construction purposes containing at least twenty (20) acres as designated from time to time by Owner (each a "**Phase**"). The City hereby approves the Project as it may be amended in accordance with the terms of this Agreement, subject to the terms of this Agreement.

1.02 Annexation. Owner agrees that the City may annex the Property at any time after the execution of this Agreement. The City agrees that this Agreement will remain in full force and effect following annexation of the Property.

1.03 Benefits. The City desires to enter into this Agreement to enhance the City's ability to plan for, coordinate and control development over the Property and adjacent Properties that are simultaneously being annexed by the City. The City acknowledges that such enhanced planning ability will stimulate economic growth in the future, provide for more efficient and cost effective extension of public utilities and serve a valuable public purpose for the citizens of the City.

1.04 Use of Property Prior to Development.

(a) Owner may continue to use the land and any structures, wells, amenities, roadways, tracks, passages, improvements or other appurtenances on or to the land, in a manner consistent with the manner in which the land and such structures, wells, amenities, roadways, tracks, passages, improvements or other appurtenances were being used on (or historically have been used prior to) the date the City annexes the Property, including but not limited to uses related to agricultural and wildlife management, river basin management, resource management or harvesting, hunting, using and discharging rifles or any other firearms allowed under State law (but no closer than within 500 feet of residential dwellings), fishing, water recreation, river access and crossings, fences and gates, cemetery, tree and brush removal and fire burning (collectively, the "**Grandfathered Uses**"). Except as allowed in this Agreement, Owner may not use the Property for any use other than the Grandfathered Uses, except for any now-existing single family residential use of the Property, without the prior written consent of the City.

(b) The City will not enforce any planning and development authority and regulations or other ordinances that interfere with the Grandfathered Uses. The City may enforce health and safety ordinances and the "**Permitted New Ordinances**" as defined in Section 2.01 upon the annexation of the property so long as they do not interfere with the Grandfathered Uses. All such uses of the Property by Owner shall be grandfathered for the Term of this Agreement until such grandfathering expires under the terms of this sub-paragraph. As between the Owner and the City, the City agrees to treat the Property as if it continued to be in the City's ETJ for so long as this sub-paragraph continues in effect with respect to the Property. Except as permitted in this sub-paragraph, Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit, subject to the exceptions set forth herein. The Owner reserves the right to construct, repair, or renovate buildings, roadways or other structures and improvements on the Property that are consistent with its agricultural use without obtaining a building permit. Further, the Owner may construct an accessory structure to, or remodel or renovate, an existing single-family dwelling or existing buildings used for agricultural use. Owner may construct and repair unpaved roadways for agricultural use or paved roadways for access to residential structures permitted under this Agreement without the consent of the City. Any paved

roadways constructed by Owner must be constructed in accordance with the City Code and this Agreement. This Section 1.04(b) expires for a Phase upon the approval of a subdivision application by the City for property located within the Phase and commencement of development activities pursuant to the recorded Final Plat.

1.05 Control of Timing of Development. Owner intends to develop the Property in a manner which results in enhancing the tax base of the City. Notwithstanding any provision of the Code (as defined below) or this Agreement to the contrary, the timing and sequencing of the development of the Property will be will be completed as and when Owner determines it to be feasible or otherwise appropriate, in Owner's sole discretion.

ARTICLE 2
DEVELOPMENT STANDARDS AND REVIEW PROCEDURES

2.01 Generally. All development applications and development of the Property will be governed by the code of Ordinance of the City in effect as of the date of this Agreement, which is attached as **Exhibit "C"** (the "**Code**"), the Development Standards (as defined below) and the Permitted New Ordinances (as defined below). The Code includes the City's Stormwater Management Program in effect as of the date of this Agreement. No other requirements, impact fees, land use regulations, impervious cover limits, dedication requirements, procedures or obligations will be imposed on development or development applications for the Property other than those contained in the Code or permitted under this Agreement, except for the "Permitted New Ordinances" as defined below. If there is any conflict between the terms of this Agreement and the Code, the specific terms of this Agreement will control. If there is any conflict between the terms of the Development Standards and the Code, the specific terms of the Development Standards will control. The City acknowledges and agrees that the Concept Plan and this Agreement (a) constitute a permit as defined § 245.001 of the Texas Local Government Code and (b) provide the City with fair notice of the Project for purposes of § 245.002 of the Texas Local Government Code.

For purposes of this Agreement, the term "**Permitted New Ordinances**" means:

(a) new City ordinances that enhance or protect the Project and that Owner agrees, by written notice to the City, to have govern the Property,

(b) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or local amendments to those codes enacted city-wide solely to address imminent threats of destruction of property or injury to persons;

(c) regulations for sexually oriented businesses;

(d) fees imposed in conjunction with applications for development permits that are charged to all applicants in the City;

(e) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(f) regulations governing design or engineering requirements for utility connections that do not diminish or modify the utility commitments set forth in this Agreement;

(g) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

(h) construction standards for public works located on public lands or easements; or

(i) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

(i) affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of the Project; or

(ii) change development permitted by this Agreement.

2.02 Development Standards. The City hereby approves the Development Standards attached as "**Exhibit D**" (the "**Development Standards**"), which shall be the standards applicable to all applications for development on the Property under this Agreement. In the case that the Development Standards do not address a specific City requirement, the Code shall apply. In the event of a conflict between this Agreement and the Base Zoning Districts for residential (set forth in Section 2.04) and RS for commercial (set forth in Section 2.05) established in this Agreement, this Agreement shall control. In the event Owner seeks to use innovative design standards to encourage "conservation development," "rural by design," "vertical mixed use" or other development standards, the City agrees to negotiate in good faith for PUD zoning or an amendment to this Agreement to permit such alternative design standards.

2.03 Vested Development Rights. The City acknowledges and agrees that Owner has the vested authority to develop the Property in accordance with the approved Concept Plan. It is the intent of the City that the vested development rights of Owner include, but are not limited to, the number of units, the general location of the roadways, the design standards for streets and roadways, the amount of impervious cover, the utility commitments and other matters set forth on the Concept Plan or in this Agreement. Prior to commencing development on the Property, the Owner shall be required to submit applications for zoning and subdivision plat approvals in accordance with the Code and state law. The City agrees that all zoning applications will go through the zoning process and will be considered and shall be subject to the reasonable discretion of the City Council. Council in good faith will consider all zoning application to determine that, such applications comply with this Agreement and the Concept Plan, as amended from time to time and the Code. The City agrees that all zoning requests shall be considered and reviewed in accordance with this Agreement, the Code and the Development Standards and the City shall not unreasonably delay consideration or withhold approval of the applications once submitted.

2.04 Residential.

(a) Single Family. The aproximately One Thousand Four Hundred and Sixty-Seven (1467) acres of the Property, as depicted on the attached **Exhibit "B,"** are hereby designated as within the City's R-1-2 zoning district. All uses permitted in the City's R-1-2 zoning District are permitted uses in the areas designated as Residential on Exhibit B, without the need for future zoning approvals by the City. The City further agrees that in areas designated "Residential" on **Exhibit "B"**, up to forty percent (40%) of the total dwellings may be townhomes. The location of areas designated as Residential on Exhibit B may be altered or moved into other portions of the Property not currently designated as Residential due to environmental, topographic, marketing or other reasons, so long as the total acreage designated as Residential is not increased.

Permitted development within the Residential district includes single family detached, as well as single family attached (townhome), units. Notwithstanding the requirements in Chart 1 in Chapter 53 of the Code and the Development Standards, the maximum number of fifty-five foot (55') wide single family detached residential lots allowed to be subdivided on the Property will be twenty-five percent (25%) of the total number of single family detached residential lots shown on the total of all preliminary plans approved for the Property. For purposes of clarifying the preceding sentence, there is no limit to the number of fifty-five foot (55') wide lots that may be contained in an individual final plat so long as the cumulative total of fifty-five foot (55') wide single family residential detached lots contained in all final plats ultimately recorded on the Property do not exceed twenty-five percent (25%) of all single family detached lots shown on all of the approved preliminary plans for the Property. A property owners' association ("**POA**") neighborhood park (one or more), trails, amenity centers, recreational facilities, gardens, sports fields, swimming pool or similar areas and facilities reserved for the residents living on all or a portion of the Property, is a permitted use of the Property.

(b) Multi-Family. The approximately Seventy and 6/10 (70.6) acres of the Property, as depicted in the attached **Exhibit "B,"** are hereby designated as within the City's R-3-3 zoning district. All uses permitted in the City's R-3-3 zoning District are permitted uses in the areas designated as Multi-Family on **Exhibit "B"**, without the need for future zoning approvals by the City. Mixed uses and vertical mixed uses incorporating residential and commercial uses are permitted uses in areas designated as Commercial or Multi-Family.

2.05 Commercial. The approximately One Hundred Sixty-Two and 5/10 (162.5) acres of the Property, as depicted on the attached **Exhibit "B,"** are hereby designated as within the City's RS zoning district. Except for the "Excluded Uses" set forth on **Exhibit "D"**, all uses permitted in the City's RS zoning District are permitted uses in the areas designated as Commercial on Exhibit B, without the need for future zoning approvals by the City. With respect to those areas designated on **Exhibit "B"** as Commercial at the intersection of two streets, if the location of the intersection changes due to environmental, marketing or other reasons, then the permitted uses and Commercial designation shall be moved to correspond to the actual intersection of the future streets, so long as the total acreage designated Commercial is not increased. Mixed uses and vertical mixed uses incorporating residential and commercial uses are permitted uses in areas designated as Commercial or Multi-Family.

2.06 Concept Plan. The City hereby confirms that the Concept Plan for the subdivision of the Property complies with the City's Subdivision Ordinance requirements for concept plans,

the zoning district regulations applicable to the Property as set forth in this Agreement, and the City's Comprehensive Master Plan. The Concept Plan constitutes a plan for the development of the Property that meets the requirements of § 245.002(2) of the Texas Local Government Code.

Subject to the allowable uses set forth in Sections 2.02 and 2.03, a) the total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents ("LUEs") as measured for water and wastewater service connections, and b) the intensity and timing of development within the Property will be determined solely by Owner; provided, however, that the intensity of development of the Property shall not exceed 8,200 LUEs (the "**Maximum LUEs**"). So long as Owner does not increase the total level of allowable development, as measured by water and wastewater service connections, Owner may amend the Concept Plan and may amend the layout of lots or uses and on-site infrastructure to serve the Project or interior streets by delivery of the revised Concept Plan to the City. Unless the City Planning Director or his or her designee (the "**Planning Director**") delivers notice to the Owner within thirty (30) days of receipt of the amended Concept Plan demonstrating that the amended Concept Plan increases the total level of allowable development such that the utility demands of the Project would exceed the Maximum LUE's (an "**Objection Notice**"), as measured by water and wastewater service connections, the amended Concept Plan shall be placed on the next City Council Agenda for approval. If the Planning Director delivers a valid Objection Notice to Owner, the Planning Director and the Owner shall work in good faith to resolve any differences and if they are unable to do so, Owner may seek approval of the amended Concept Plan by the City Council. The Planning Director may only issue an Objection Notice based on a good faith determination, based on sound engineering principles, that the amended Concept Plan would have utility demands in excess of the Maximum LUE's, as measured by water and wastewater service connections The Concept Plan will be effective for the Term of this Agreement.

2.07 Preliminary Plan. Owner may submit to the City an application for a preliminary plan for the Property, which may be submitted concurrently with a zoning application for the Property. The preliminary plan must comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth in Sections 2.04 and 2.05 of this Agreement. The preliminary plan may show lot layouts and street alignments different than shown in the Concept Plan so long as the total utility demands of the development, as measured by water and wastewater service connections, does not increase above the Maximum LUEs. Owner may request the City, including the City's Planning and Zoning Commission, to make a written determination that the preliminary plan complies with all applicable regulations; provided, however, that such determination shall not constitute the final approval of the preliminary plan. If the preliminary plan application complies with the terms of this Agreement and its Exhibits, the City will approve the preliminary plan upon the request of Owner.

2.08 Subdivision Plats. Subdivision plats may be approved and constructed in one or more Phases. Owner may submit to the City an application for a subdivision plat in one Phase without losing its rights under Section 1.04 of this Agreement as to other Phases. Owner may submit subdivision construction plans concurrently with a subdivision plat application.

2.09 City Review and Approval. This Agreement shall govern the review and approval of preliminary plans, subdivision plats, subdivision construction plans and other approvals, variances or other municipal authorizations hereafter required or requested by Owner. The City does not require Owner to submit any application to Hays County for review or approval. The

City will accept and review applications for preliminary plans, final plats, subdivision construction plans and site development permits for the Property if the final plats, subdivision construction plans and site development permits for the Property comply with the requirements of this Agreement and generally comply with the Concept Plan and the allowable uses set forth herein. The City will approve applications for preliminary plans, subdivision plats and site development permits for the Property if said applications are in accordance with the requirements of this Agreement and its Exhibits. Preliminary plans, subdivision plats, subdivision construction plans, and site development plans hereafter approved pursuant to this Agreement shall expire on the latter of the expiration of this Agreement or the date established by the Code.

2.10 Parkland Fees. A parkland dedication fee in the amount of Six Hundred Dollars ($600.00) and a parkland improvement fee in the amount of Six Hundred Dollars ($600.00) will be paid to the City for each dwelling unit in satisfaction of all parkland requirements in the Code. The City reserves the right to expend the funds as it deems appropriate. Owner shall make this payment to the City based on the number of residential lots in the final plat of each developed phase before the City records said final plat. If Owner seeks to dedicate parkland to the public or the POA in lieu of paying the parkland fee, the City agrees to negotiate in good faith a credit against future parkland fees for such dedication, in a mutually approved amendment to this Agreement. No other parkland requirements, fees or obligations may be imposed on the Project.

2.11 Other Fees and Future Adjustment to Fees. Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code. No fees not specified in the Code or this Agreement may be imposed or charged in connection with the Project or the development of the Project, except application development fees as permitted in the Permitted New Ordinances.

(a) Any fees specified by this Agreement or the Code shall remain fixed at the same level as in effect on the Effective Date for a period of five (5) years from the Effective Date. Thereafter, the level of the fees shall be adjusted on the fifth anniversary of the Effective Date to be the same level as in effect city-wide on the fifth anniversary of the Effective Date and shall be adjusted each subsequent 5th anniversary of the Effective Date to be the same level as in effect city-wide on such subsequent 5th anniversary of the Effective Date.

2.12 Impervious Coverage. No limits on Impervious Cover (as defined in **Exhibit "D"**) may be imposed on the Property other than what is set forth in this Agreement or the Code.

2.13 POA. Unless otherwise approved by the City, Owner shall establish one or more POA's for the Property pursuant to customary and reasonable Covenants, Conditions and Restrictions filed of record before the first sale of lots within the Property, which shall require the mandatory payment of dues by property owners to the POA.

ARTICLE 3
PUBLIC STREETS AND SUBDIVISON INFRASTRUCTURE

3.01 Traffic Improvement Fees. Owner will pay to the City a fee calculated in accordance with the Fee Schedule Table attached to Ordinance No. 894 adopted March 15, 2016 and included as a part of the Code. Fees for Residential Use categories are payable at the time of

final platting. Fees for Commercial Use and Multi-Family categories are payable at the time of development/building permit, and shall similarly have a note affixed to the final plat.

3.02 Third Class County Road. The City agrees that it is the intent of this Agreement that following annexation of the Property, the portion of Lime Kiln Road and the third class county roadway located on or adjacent to the BRI Property depicted on "**Exhibit G**" (the "**Abandoned Roadway**") shall no longer be a public roadway and shall be a private drive under the exclusive control of BRI. In order to provide BRI and Nance sufficient time following the execution of this Agreement to enter into necessary private easements regarding their shared use of the Abandoned Roadway after it becomes a private drive, the City agrees that as and when BRI and Nance jointly submit a written request to privatize the segment of the Abandoned Roadway, then the City Council shall adopt an ordinance authorizing the vacation and abandonment of such roadway with thirty (30) days of receipt of such request and such segment shall cease to be a public right of way. Following annexation, the gates currently existing on the Abandoned Roadways may remain, provided that the City shall have no obligation to maintain any portion of the Abandoned Roadway that is gated. BRI and Nance must have submitted such a request within one (1) year of the Effective Date or they shall have no further rights under this Paragraph.

3.03 Subdivision Infrastructure. All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property (collectively, the "**Subdivision Infrastructure**") will be constructed by Owner to meet Code standards and will be dedicated and conveyed to the City at no cost to the City. The City may not impose any traffic, roadway or Subdivision Infrastructure related requirements, fees or obligations other than those set forth in this Agreement or the Code.

3.04 Satisfactory Completion of Owner Improvements. The term "Owner Improvements" means the Subdivision Infrastructure and the Utility Improvements, as defined in this Agreement. Upon thirty (30) calendar days of completion of construction of each of Owner Improvements, Owner shall provide the City with final "record" drawings of the Owner Improvements, in both hard copy and digital (PDF or CAD, as requested by the City). Owner's engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of Owner Improvements within ten (10) business days. The City shall within ten (10) business days of conducting the final inspection provide a list of deficiencies found in the inspection so that when the deficiencies are corrected, Owner Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. Owner shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect Owner Improvement within ten (10) business days. If all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Owner stating that Owner Improvement has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept Owner Improvement for ownership, operation and maintenance.

3.05 City Acceptance of Owner Improvements.

(a) As a precondition to the City's final acceptance of an Owner Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings,

easements, project manuals and all other documentation related to Owner Improvement to be accepted required under the Code will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of Owner Improvement.

(b) Upon the City issuing a Letter of Satisfactory Completion, Owner shall dedicate the Owner Improvement to the City. The City shall accept each such completed Owner Improvement for ownership, operation and maintenance within twenty-one (21) business days of Owner's dedication of the Owner Improvement to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Owner Improvement.

3.06 City to Own, Operate and Maintain Owner Improvements. From and after the time of the City's final acceptance of an Owner Improvement, the City will own, operate, and maintain each Owner Improvement and shall be responsible for all costs associated with same; provided, however, Owner may elect to designate certain amenities, improvements, trails, parks or other facilities to be maintained by Owner and then the POA or the PID (as defined below). Unless otherwise approved by the City, in no event will the City be obligated to maintain trails or decorative lights. Upon the City's acceptance of all the Owner Improvements within a particular subdivision plat and the City's acceptance of water and wastewater service lines within said recorded final plat, Owner shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that the City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements. In conjunction with the conveyance of the Owner Improvements to the City the Owner shall execute easements allowing the City to own and maintain the Owner Improvements in accordance with the City's customary easement forms reasonably promulgated by the City in accordance with the Code.

3.07 Gated Communities. Owner may establish one or more gated communities within the Project in accordance with the Code. Any roads located behind the gates of the gated community shall be private drives, subject to customary public utility easements.

3.08 Construction Staging. No approvals will be required in connection with the location of customary construction staging areas, storage yards, construction hauls roads, use or storage of on-site stone, gravel or similar materials for construction on the Property, and temporary construction offices so long as they are not located on a public right of way or within two hundred fifty feet (250') of a residential home and Owner complies with all state and federal laws regarding storm water protection.

ARTICLE 4
WATER AND WASTEWATER SERVICE

4.01 Intent of the Parties Regarding Utility Services. The City represents that it has rights to sufficient raw water to meet its overall service obligations, including providing 8,200 LUEs of water service to the Property in accordance with the terms of this Agreement. The Parties acknowledge that the Property will build out over a number of years and that the City may decide to incrementally construct additional utility system improvements over time. The City shall be responsible for (a) determining if, how and when the City's utility system needs to be expanded

and how the City will expand its utility system to enable the City to meet its utility service obligations to Owner under this Agreement and (b) implementing such expansion or additions to its utility system improvements so that the City will timely meet its obligations to serve the Project as set forth in this Agreement. Owner further acknowledges the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Owner requires certainty regarding the City's plans for meeting the City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations in accordance with the terms of this Agreement. Upon request from Owner, but no more than once every six (6) months, the City agrees to meet with Owner to review the City's plans for expansion of its utility system to ensure that the City will be able to meet its requirements in this Agreement to serve the Property as and when development occurs on the Property. The City agrees to share information with Owner in good faith to allow Owner to determine with reasonable accuracy the likelihood that the City will meet its obligations under this Agreement. The Parties acknowledge that the design engineering and construction of an operational utility improvement can require two (2) or more years.

4.02 General Conditions For Connections to the City Utility System.

(a) The Parties acknowledge that the City cannot deliver water and wastewater services to the Property unless certain infrastructure as described in the attached **Exhibit "E"**, is constructed in accordance with City approved plans and specifications then accepted by the City (the "**Owner Required Infrastructure**"). The City acknowledges, in proceeding with the construction of the Owner Required Infrastructure, that Owner is relying on the City's performance of the City's obligation to timely provide 8,200 LUEs of water and wastewater service to the Property in accordance with the terms of this Agreement. For any Owner Required Infrastructure that does not serve the Property exclusively, Owner shall be entitled to reimbursement for the portion of the cost of the Owner Required Infrastructure not allocable to serving the Property (the "**Utility Infrastructure Reimbursement**") calculated by determining the percentage of the capacity of such infrastructure that serves the Property and the percentage of the capacity that serves development outside the Property. The City shall pay the Utility Infrastructure Reimbursement thirty (30) days after the City's acceptance of the improvement as provided for in this Agreement.

(b) The calculation of LUEs shall be in accordance with **Exhibit "H"**. If the City modifies: (i) the definition of an LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Property; (iii) fire flow requirements for the issuance of building permits and certificates of occupancy without the installation of a sprinkler system; (iv) a Utility or Owner Improvement required for the City to provide water and wastewater service to any portion of the Property; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to a request for more than 8,200 LUEs of water and wastewater service. If the modifications described in the preceding sentence are required by federal or state law or

regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

4.03 Service Commitment. Subject to the completion of the Owner Required Infrastructure by Owner, the City hereby commits 8,200 LUEs of water and wastewater service to the Property. Owner may record subdivision plats subject only to the construction of Subdivision Infrastructure for such plats and the Owner Required Infrastructure. The City has no obligation to provide water service to any area within the Property that is currently in the Certificate of Convenience and Necessity ("**CCN**") for water service of another municipality or utility service provider. The City has no obligation to provide waste water service to any area within the Property that is currently in the CCN for waste water service of another municipality or utility service provider. The City agrees to apply to the Texas Public Utility Commission to amend the boundaries of its water and wastewater CCNs to include all portions of the Property not within the CCN of another municipality or other utility service provider within one (1) year following the Effective Date. In the event Owner seeks to transfer to the City's CCN any portion of the Property that is currently within the CCN of another municipality or other utility service provider, the City agrees to cooperate with and support such transfer. Nothing in this Agreement, nor the inclusion of any part of the Property into the City's CCN, shall be construed to prohibit, modify or diminish Owner's current or future water rights associated with the Property or any wells now or in the future located on the Property. The City acknowledges and agrees that the Owner may use such water for purposes associated with the Grandfathered Uses or any other use allowed under state law, including but not limited to irrigation of common areas or land owned by the POA or PID, landscaping, amenities or similar uses ancillary to the development and stewardship of the Property. Owner acknowledges and agrees that the commitment of utility capacity by the City set forth in this Agreement may not be transferred to any other real property and that in the event the Project at full development requires less than the Maximum LUEs of water and/or wastewater capacity then the City need only provide the actual LUEs of capacity needed by the Project at full development and not the Maximum LUEs.

4.04 Service Connections. The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit or structure for another permitted use to the City's water and wastewater system upon payment of applicable fees and a Certificate of Occupancy being issued for the residential unit or structure and provide water and wastewater service for the residential unit or structure on the same terms and conditions as provided to all other areas of the City. The City agrees not to impose any requirements, fees or obligations relating to water and wastewater service or connections in relation to the Project other than those expressly contained in the Code and this Agreement.

4.05 Utility Improvement Construction Obligations.

(a) (a) **Owner.** Owner shall be solely responsible for the engineering and construction of all water and wastewater lines and related facilities within the Property and serving exclusively the Property (collectively, the "**Utility Improvements**"). In the event the City requests that any Utility Improvements be oversized and Owner pays for the costs associated with such oversizing, then Owner shall be entitled to a rebate against future impact fees otherwise payable under the Code equal to 100% of the Reimbursable Costs related to such oversizing. For purposes of this Agreement, Reimbursable Costs means the documented dollar amount actually expended

for oversizing the construction of the Utility Improvements, provided the bids and change orders are approved in advance by the Director, which approval may not be unreasonably denied, delayed or conditioned. The Reimbursable Costs shall also include the allocable portion of the following expenses:

(a) the surveying costs;

(b) the cost of soils and materials testing;

(c) the engineering fees relating to the Utility Improvements;

(d) advertising and other costs associated with public bidding and award of construction contracts;

(e) the documented cost of required easements, lots, sites and rights-of-way located outside of the Property, but not including any easement or right-of-way required on any land within the Property;

(f) Construction management fee equal to four percent (4%) of the total of the other components of the Reimbursable Costs; and

(g) any other necessary out-of-pocket costs expended in connection with constructing and installing the Utility Improvements;

provided that all such sums and amounts shall be reasonably required for the Utility Improvements and documented to and approved by the Director, which approval may not be unreasonably denied, delayed or conditioned.

4.06 Service Units Defined. The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on Chapter 50 ("**Utilities**"), Article VI, of the Code, which is incorporated into this Agreement for the limited purposes set forth in this Agreement.

4.07 Use of City Property and Easements. The City hereby consents, at no cost to Owner, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct an Owner Improvement, or for Owner to perform its obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the rights-of-way and easements and avoidance of utility facilities existing in such rights of way and easements. The City agrees to cooperate and support Owner's acquisition of necessary easements from third parties as determined by the city council.

4.08 Easement Acquisition. The Utility Improvements and related easements are necessary and required by the City for the City to provide water and wastewater service to the Property. The City further agrees that there exists a public necessity for the construction of the

Utility Improvements; therefore, the City agrees to cooperate and support Owner's acquisition of necessary easements from third parties.

4.09 Use of Condemnation. The city council has found that the development of the Property in compliance with this Agreement will benefit the economy of the City and serve the best interests and welfare of the public. Therefore, if Owner is unable to purchase property for public improvements, City may use its eminent domain powers to acquire property or an interest in property to install a Utility Improvement or Owner Required Infrastructure required by the City pursuant to this Agreement, Owner will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law. The City will act on such a request within sixty (60) calendar days. If the city council makes a finding that such requested easement is compliant with state law and is necessary to accomplish a public purpose, the city council may exercise its powers of eminent domain to attempt to acquire the requested easement. The Parties agree to work cooperatively toward allowing the initiation of construction of Owner Improvement on an easement being acquired by the City at the earliest time lawfully permitted. Owner shall reimburse the City for all costs incurred for the acquisition of the easement or land necessary for the construction of Utility Improvements outside of the Property, whether by condemnation or conveyance in lieu thereof, including the City's attorney's fees, legally-required bonds, and deposits required by the City, provided that if the Owner Required Infrastructure or Utility Improvement serves development outside the Property, the City or other property owners shall be responsible for its proportionate share of such costs, calculated by determining the percentage of the capacity of such infrastructure that serves the Property and the percentage of the capacity that serves development outside the Property.

4.10 No Moratoriums. In consideration for the voluntary annexation of the Property into the City by Owner, the City agrees that in no event shall a moratorium on development or development applications, or any limit on the granting of development approvals, including but not limited to platted lots or utility connections, be applicable to the Project unless such moratorium is (a) required directly by federal or state law or (b) imposed City-wide to prevent an imminent threat to public health, welfare or safety that could not reasonably have been anticipated or prevented by the City.

ARTICLE 5
PUBLIC IMPROVEMENT DISTRICT AND ABATEMENT OF TAXES

5.01 Public Improvement Districts or Tax Increment Districts. The City's current requirements for approving a Public Improvement District under Chapter 372 of the Texas Local Government Code ("**PID**") are attached as **Exhibit "F"** (the "**PID Requirements**"). In recognition of the regional benefits that will be derived by the City from the development of the Project, including but not limited to a bridge crossing over the Blanco River, the City agrees (a) in the event the Owner submits an application to establish a PID on all or a part of the Property that meets the PID Requirements, the City agrees to consider such PID application on the basis of the PID Requirements and no other conditions, limitations or requirements shall be imposed on such PID Application unless agreed by Owner, and (b) the City will cooperate in good faith with the Owner in establishing other tax increment financing districts as may be requested from time to time by the Owner.

5.02 Refund of Sales Tax. For purposes of this Agreement, the term "**Sales Tax**" refers to the one percent city sales tax that is remitted to the State of Texas by Owner and other occupants of the Property, for sales of taxable items on the Property, and that is actually paid to the City by the State of Texas. The City agrees to pay to Owner the following percentage of the Sales Taxes collected by the City from the Property for ten (10) years commencing on the date the City approved the first final plat for commercial development on the Property and expiring ten (10) years thereafter (the "**Tax Abatement Period**"):

Years 1 – 4	90%
Years 5 – 8	70%
Years 9 – 10	50%

5.03 Refund of Certain Property Taxes.

(a) City acknowledges that Owner has agreed to voluntary annexation of the Property at the request of the City and far in advance of the date that the Owner otherwise anticipated the Property would be annexed or expects to commence development on the Property. The City finds that such annexation fulfills a valuable public purpose by enhancing the City's ability to plan the future of the Property and surrounding areas and such annexation will provide for significant efficiency and reduction in costs in connection with the extension of utilities. The City finds that the Property is predominantly open and if the Property remained outside the corporate limits of the City it would substantially impair the sound growth of the City. The City further finds that if Owner had not voluntarily agreed to the City's request to annex the Property, the Owner would have had no obligation to pay City taxes until annexation and therefore the refund of 100% of ad valorem taxes collected by the City ("**Property Taxes**") for a period of time is fair and equitable.

(b) In consideration of the Owner's agreement to permit the annexation of the Property, the City agrees to refund to the Owner each of the following, each of which constitute a separate and distinct property tax abatement agreement:

(i) For any residences currently existing on the Property not currently taxed for agricultural or open space purposes the City will refund to Owner 100% of all property taxes collected by the City during the Tax Abatement Period; and

(ii) For any portion of the Property within the area designated for Commercial use on Exhibit "B", upon issuance of a Certificate of Occupancy by the City for a business operating in such portion of the Property, the City shall refund to Owner 75% of the property taxes collected within the areas of the Property actually used for Commercial purposes during the Tax Abatement Period. No tax abatement shall exceed ten (10) years.

(c) In further consideration of Owner's agreement to permit the annexation of the Property, the City agrees to reimburse to Owner one hundred percent (100%) of roll back taxes received by the City with respect to the Property during the Tax Abatement Period.

5.04 Tax Fund. The City will provide for the payment of the Sales Tax refunds and the Property Tax refunds (collectively, the "**Grant Payments**") to be made pursuant to this Agreement

by establishing a separate fund at the City, or a subaccount of any existing fund or account in the City treasury, into which the Sales Taxes and Property Taxes received by the City will be deposited during the term of this Agreement (the "**Tax Fund**"). As and when Sales Taxes and Real Property Taxes are received by the City from the relevant assessor-collector, the City shall make Grant Payments to the Owner within ten (10) business days to the extent that such Grant Payments are due hereunder. The City may maintain or abolish the Tax Fund in its sole discretion, after the term of this Agreement has ended. The City agrees that the Tax Fund shall remain a separate, unencumbered fund or account containing only the Sales Taxes and Property Taxes (plus any accumulated interest, if any) that are to be deposited into the Tax Fund for the purpose of making the Grant Payments.

ARTICLE 6
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

6.01 Assignment of Owner Rights. Owner upon notice to the City may assign in whole or part its rights and obligations under this Agreement to persons purchasing all of the Property or a part of the Property as set forth below but not to an individual purchaser of lots within a recorded final plat as an End User (as defined below)

(a) **Assignment to Subsequent Purchaser of a Portion of the Property**. Owner upon notice to the City may assign part of its rights under this Agreement to a purchaser of a portion of the Property upon delivery of written notice to the City, whereupon (a) the Owner shall be released of any further obligation relating to the sold portion of the Property, (b) the City shall respect and abide by any allocation of obligations, development rights or LUEs between Owner and such purchaser and (c) the purchaser of the portion of the Property shall be responsible for performing Owner's obligations with respect to the purchased portion of the Property.

(b) **Assignment to Purchaser of All of the Property**. In the event Owner assigns all of its respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of said rights must be filed of record in the Official Public Records of Hays County, Texas in order to be effective, whereupon Owner shall be released from any future obligations under this Agreement.

(c) **Assignment to an Affiliate**. All or part of the Property, along with the rights and obligations of Owner under this Agreement with respect to any transferred Property, may be assigned by Owner upon notice to the City without the consent of the City to any one or more of Owner's partners, Owner-affiliated or related entities, or entities affiliated with or owned in whole or in part by any of Owner's partners, provided that such assignee agrees to assume the obligations of Owner under this Agreement with respect to the transferred portion of the Property subject to this Agreement, and Owner will be released automatically from its obligations under this Agreement with respect to the transferred portion of the Property upon delivery of a notice of assignment to the City.

6.02 Lot Conveyance Not an Assignment. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Owner shall not be sufficient to constitute an assignment of the rights or obligations of Owner hereunder, unless specifically provided herein.

6.03 Agreement Binding on Assigns. This Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Owner, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Owner or City shall be deemed to and will include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

6.04 Special Provisions Regarding the Co-Owned Land. In the event BRI and Nance partition the Co-Owned Property then they may assign to each resulting parcel a portion of the water and wastewater LUEs allocated to the Property under this Agreement, subject to the reasonable approval of the Director of the City Utility System. Following such allocation of LUEs, Nance may, by delivery of written notice to the City, withdraw the portion of the Co-Owned Property solely owned by Nance (the "**Nance Parcel**") from this Development Agreement and thereafter (a) the Nance Parcel shall be governed exclusively by that certain Annexation and Development Agreement for Nance-Bradshaw Ranch, dated May 3, 2016 and (b) all references to Owner in this Agreement shall be construed to refer exclusively to BRI and Nance shall have no further rights or obligations under this Agreement.

ARTICLE 7
DEFAULT AND NOTICE

7.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

7.02 Remedies for Default. Whether in contract or tort or otherwise, Owner agrees to waive all claims to damages and other remedies, including specific or strict performance, lost profits, delay damages, or for any special incidental, liquidated or consequential loss or damage of any nature arising at any time or from any cause whatsoever; provided, however, Owner may enforce this Agreement as provided under §245.006 of the Texas Local Government Code. The City acknowledges and agrees that the obligations of the City set forth in the "**Non-Discretionary Obligation Sections**" of this Agreement (as defined below) are not discretionary and may be enforced by a mandamus order of a court. The Non-Discretionary Obligation Sections include Sections 2.01, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.09, 2.10, 2.11, 3.03, 4.02, 4.03, 4.04, 4.10, 5.01, and 5.02 of this Agreement. The City acknowledges and agrees that if the Owner seeks to enforce this Agreement as provided under §245.006 of the Texas Local Government Code, Owner may also seek injunctive or equitable remedies.

7.03 Enforcement. The Parties may enforce this Agreement by any proceeding at law or equity except the City is not waiving its right to sovereign immunity for a suit for money damages nor may this paragraph 7.03 be interpreted as or otherwise construed to be such a waiver. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

7.04 Third Party Litigation. In the event of any third-party lawsuit or other claim relating to the validity of this Agreement, Owner and the City intend to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The filing of any third-party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Project or the City's processing or issuance of any approvals for the Project, unless otherwise required by a court of competent jurisdiction.

7.05 Agreement to Disannex. If the City breaches or is for whatever reason unable to perform the Non-Discretionary Obligation Sections of this Agreement then the City will, within ninety (90) days of receipt of written notice from the Owner (a "**Dis-Annexation Notice**"), complete the dis-annexation of the portion(s) of the Property identified by Owner in the Dis-Annexation Notice (the "**Disannexed Property**") so long as the City has the legal authority to disannex the property and the Disannexed Property is configured in accordance with State law. Upon disannexation, the City agrees not to seek to annex the Disannexed Property until the earlier to occur of (a) fifteen (15) years from the date of the disannexation or (b) the date the Owner files a written petition for annexation. The City acknowledges and agrees that the obligations of the City set forth in this Section 7.05 are not discretionary and may be enforced by a mandamus order of a court without the necessity of posting a bond.

7.06 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address provided below.

Any notice to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any notice to BRI shall be addressed:

Blanco River Investments
Attn: Brian McCoy
P.O. Box 1028
San Marcos, Texas 78667-1028

With a copy to:

McGinnis Lochridge
Attn: Phillip Schmandt
600 Congress Avenue, Suite 2100
Austin Texas, 78701

Any notice to Miriam McCoy shall be addressed:

Miriam McCoy
P.O. Box 1028
San Marcos, Texas 78667-1028

With a copy to:

McGinnis Lochridge
Attn: Phillip Schmandt
600 Congress Avenue, Suite 2100
Austin Texas, 78701

Any notice to Nance shall be addressed

Scott and Lana Nance
205 Live Oak Drive
Mountain City, Texas 78610

With a copy to:

Sneed, Vine & Perry, PC
Attn: Robert Kleeman
900 Congress Avenue, Suite 300
Austin, Texas 78701

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 8
PROPERTY AND MORTGAGEE OBLIGATIONS

8.01 **Mortgagee Acceptance**. Owner shall assure that any mortgage financing obtained for the Property and the Project includes a provision that obligates the mortgagee to continue this Agreement in full force and effect subject to its terms and provisions in the event of a foreclosure or other action by such mortgagee, with a good and sufficient subordination provision, and any such mortgagee shall be deemed to have taken a security interest in the Property with notice of and subject to this Agreement. Owner shall provide the City with an executed copy of a subordination agreement that is consistent with the requirements of this Agreement.

8.02 Mortgagee Protection. This Agreement will not affect the right of Owner to encumber all or any portion of the Property by mortgage, deed of trust or other instrument to secure financing for the Project, subject to the terms and provisions of Section 8.01. The City understands that a lender providing financing of the development of the Property ("**Lender**") may require interpretations of or modifications to this Agreement and agrees to not unreasonably refuse to cooperate with Owner and its Lenders' representatives in connection with any requests for interpretations or modifications so long as such modifications are not substantially inconsistent with the terms of this Agreement. The City agrees not to unreasonably condition, withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City further agrees as follows:

(a) Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Property.

(b) The City will, upon written request of a Lender given to the City by certified mail, return receipt requested, at the addresses provided in Section 7.05, provide the Lender with a copy of any written notice of default given to Owner under this Agreement within ten (10) days of the date such notice is given to Owner.

(c) Upon default by Owner under this Agreement, a Lender may, but will not be obligated to, promptly cure any default during any cure period extended to Owner, either under this Agreement or under the notice of default.

(d) Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take that portion of the Property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Owner arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that portion of the Property until all delinquent fees and other obligations of Owner under this Agreement that relate to the Property have been paid or performed.

8.03 Certificate of Compliance. Within thirty (30) days of written request by either Party given to the other Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

(b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and

(c) any other information that may be reasonably requested. The City Manager or the Mayor will be authorized to execute any requested certificate on behalf of the City.

ARTICLE 9
TERM AND TERMINATION

9.01 **Term**. The term of this Agreement will commence on the Effective Date and continue for twenty (20) years (the "**Initial Term**"). After the Initial Term, this Agreement may be extended by Owner for one period of fifteen (15) years (the "**First Renewal Term**") by delivery of written notice by Owner to the City prior to the expiration of the Initial Term. After the First Renewal Term, this Agreement may be extended by Owner for one period of ten (10) years (the "**Second Renewal Term**") (for a total of up to forty-five years) by delivery of written notice by Owner to the City prior to the expiration of the First Renewal Term.

9.02 **Termination**. This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) the written agreement of the Parties; (b) the Agreement's Expiration Date; or (c) an uncured Default by the Owner in accordance with Section 7.01.

9.03 Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornados], labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay. The Party claiming delay of performance as a result of any foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Section.

9.04 **No Personal Liability of Public Officials**. No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE 10
MISCELLANEOUS

10.01 INDEMNIFICATION. OWNER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. OWNER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR

DEMAND AGAINST CITY, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT OWNER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING OWNER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

10.02 Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve the dispute through negotiation. All costs of negotiation and mediation, collectively known as alternate dispute resolution ("**ADR**") shall be assessed equally between the City and Owner with each Party bearing their own costs for attorney's fees, experts and other costs of ADR and any ensuing litigation.

10.03 Recitals. The facts and recitations contained in the preamble of this Agreement are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

10.04 Covenants Running With The Land. This Agreement is intended to, and hereby does, create covenants running with the land, binding on future owners of the Property, provided however, this Agreement does not impose any obligation on any End User. For purposes of this Agreement, an "**End User**" is the purchaser of a subdivided lot in a Final Plat approved by the City pursuant to this Agreement.

10.05 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

10.06 Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

10.07 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Hays County, Texas.

10.08 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

10.09 Termination or Amendment By Written Agreement. This Agreement may be terminated or amended as to any or all of the Property only by a written instrument executed by both the City and the Owner. In the event of an amendment that does not impact or affect the Co-

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Owned Property, then the City and BRI may execute such amendment, provided BRI shall deliver notice of the amendment to Nance. In the event of an amendment that impacts or affects the Co-Owned Property, then the City, BRI and Nance must execute the amendment. This Agreement, together with its Exhibits, constitutes the entire agreement between the Parties.

10.10 No Oral or Implied Waiver. The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

10.11 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

10.12 No Partnership. Nothing in this Agreement shall constitute a partnership between or joint venture by Nance and BRI or constitute either of BRI or Nance as the agent of the other.

10.13 Effective Date. This Agreement is legally effective and enforceable on the date it is approved by the City Council of Kyle. This Agreement was approved by the City Council of Kyle by Resolution No. _____ on May 3, 2016, which dates is referred to herein as the "**Effective Date**."

List of Attached Exhibits

Exhibit A – 1 – Description of BRI Property
Exhibit A – 2 – Description of Co-Owned Property
Exhibit A – 3 – Description of McCoy Property
Exhibit A – 4 – Depiction of Parcels Making up the BRI Property, McCoy Property and Co-Owned Property
Exhibit B – Concept Plan
Exhibit C – Kyle City Code as of Effective Date
Exhibit D – Development Standards
Exhibit E – Owner Required Infrastructure
Exhibit E – 1 – Depiction of General Location of Owner Required Infrastructure
Exhibit F – PID Requirements
Exhibit G – Depiction of Third Class Roadway to be Private Roadway Following Annexation
Exhibit H – LUE Calculation
Exhibit I – Request for Annexation

SIGNED and executed to be effective as of the Effective Date.

Blanco River Investments, Ltd.:

By: _____
Name: BRIAN McCOY
Title: GENERAL PARTNER

THE STATE OF TEXAS §
§
COUNTY OF Hays §

This instrument was acknowledged before me on May 4, 2016, by Brian McCoy, General Partner of Blanco River Investments, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Terri Boyd
Notary Public in and for the State of Texas

TERRI G BOYD
Notary Public, State of Texas
My Commission Expires
October 22, 2016

Miriam McCoy

THE STATE OF TEXAS §
§
COUNTY OF Hays §

This instrument was acknowledged before me on May 5, 2016, by Miriam McCoy.

Notary Public in and for the State of Texas

TERRI G BOYD
Notary Public, State of Texas
My Commission Expires
October 22, 2016

CITY OF KYLE, TEXAS

By: _____
R. Todd Webster, Mayor

ATTEST:

_____
Amelia Sanchez, City Secretary

THE STATE OF TEXAS §
§
COUNTY OF Hays §

This instrument was acknowledged before me on May 6, 2016, by R. T. Webster, Mayor of the City of Kyle, Texas on behalf of the City of Kyle, Texas

_____
Notary Public in and for the State of Texas

Robert Scott Nance

Robert Scott Nance

THE STATE OF TEXAS §
§
COUNTY OF Hays §

This instrument was acknowledged before me on May 6, 2016, by Robert Scott Nance.

Terri Boyd

Notary Public in and for the State of Texas

TERRI G BOYD
Notary Public, State of Texas
My Commission Expires
October 22, 2016

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EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT A-1

THE BRI PROPERTY

THOSE PORTIONS OF THE WILLIAM DUTY SURVEY NO. 4, F.M. STEUSSY SURVEY NO. 18, THE WILLIAM WARD SURVEY, AND Z. HINTON SURVEY, COMPRISING APPROXIMATELY 2,911.3224 ACRES AS DEPICTED ON EXHIBIT B AND A-4 HEREIN, AND AS MORE FULLY DESCRIBED IN THE FOLLOWING DEEDS RECORDED IN THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.) AND IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.):

HAYS COUNTY DEED/OFFICIAL PUBLIC RECORDS INFORMATION:

Tract A – Approximately 301.01 acres described in volume 804, page 181 D.R.H.C.T.

Tract AA – Approximately 20.9 acres described in volume 804, page 181 D.R.H.C.T.

Tract B – Approximately 861.26 acres described in volume 804, page 181 D.R.H.C.T.

Tract C – Approximately 42.16 acres described in volume 804, page 181 D.R.H.C.T.

Tract D – Approximately 92.737 acres described in volume 804, page 181 D.R.H.C.T.

Tract E – Approximately 290 acres described in volume 804, page 181 D.R.H.C.T.

Tract EE – Approximately 52.11 acres described in volume 804, page 181 D.R.H.C.T.

Tract F – Approximately 62.02 acres described in volume 804, page 181 D.R.H.C.T.

Tract FF – Approximately 2.06 acres described in volume 804, page 181 D.R.H.C.T.

Tract G – Approximately 49.70 acres described in volume 804, page 181 D.R.H.C.T.

Tract H – Approximately 111.0504 acres described in volume 804, page 181 D.R.H.C.T.

Tract I – Approximately 14.67 acres described in volume 804, page 181 D.R.H.C.T.

Tract J – Approximately 11.317 acres described in volume 804, page 181 D.R.H.C.T.

Tract L – Approximately 552 acres described in volume 231, page 227 D.R.H.C.T.

Tract N – approximately 0.831 acres described in volume 365, page 627 D.R.H.C.T.

Tract O – Approximately 45.856 acres described in volume 851, page 564 D.R.H.C.T.

Tract P – Approximately 37.574 acres described in volume 1310, page 452 D.R.H.C.T.

Tract Q – Approximately 8.261 acres described in Document No. 9926638 O.P.R.H.C.T.

Tract R – Approximately 9.00 acres described in volume 2833, page 472 D.R.H.C.T.

Tract S – Approximately 12.36 acres described in volume 3507, page 627 D.R.H.C.T.

Tract SS – Approximately 6.54 acres described in volume 3507, page 627 D.R.H.C.T.

Tract T – Approximately 4.61 acres described in volume 1855, page 263 D.R.H.C.T.

BR

Tract U – Approximately 11.037 acres described in volume 697, page 767 D.R.H.C.T.

Tract V – Approximately 4.659 acres described in volume 697, page 126 D.R.H.C.T.

Tract W – Approximately 2.00 acres described in volume 5225, page 610 D.R.H.C.T.

EXHIBIT A-2

THE CO-OWNED PROPERTY

THOSE PORTIONS OF THE WILLIAM DUTY SURVEY NO. 4, F.M. STEUSSY SURVEY NO. 18, THE WILLIAM WARD SURVEY, AND Z. HINTON SURVEY, COMPRISING APPROXIMATELY 292 ACRES AS DEPICTED ON EXHIBIT B AND A-3 HEREIN, AND AS MORE FULLY DESCRIBED IN THE FOLLOWING DEEDS RECORDED IN THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.) AND IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.):

HAYS COUNTY DEED/OFFICIAL PUBLIC RECORDS INFORMATION:

Tract M – Approximately 292.05 acres described in volume 804, page 205 D.R.H.C.T.

Exhibit A-3

THE MCCOY PROPERTY

THOSE PORTIONS OF THE WILLIAM DUTY SURVEY NO. 4, F.M. STEUSSY SURVEY NO. 18, THE WILLIAM WARD SURVEY, AND Z. HINTON SURVEY, COMPRISING APPROXIMATELY 292 ACRES AS DEPICTED ON EXHIBIT B AND A-4 HEREIN, AND AS MORE FULLY DESCRIBED IN THE FOLLOWING DEEDS RECORDED IN THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.) AND IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.):

HAYS COUNTY DEED/OFFICIAL PUBLIC RECORDS INFORMATION:

Tract K – Approximately 13.55 acres described in volume 804, page 181 D.R.H.C.T.

EXHIBIT A-4

Depiction of Parcels Making Up the BRI Property, McCoy Property and Co-Owned Property

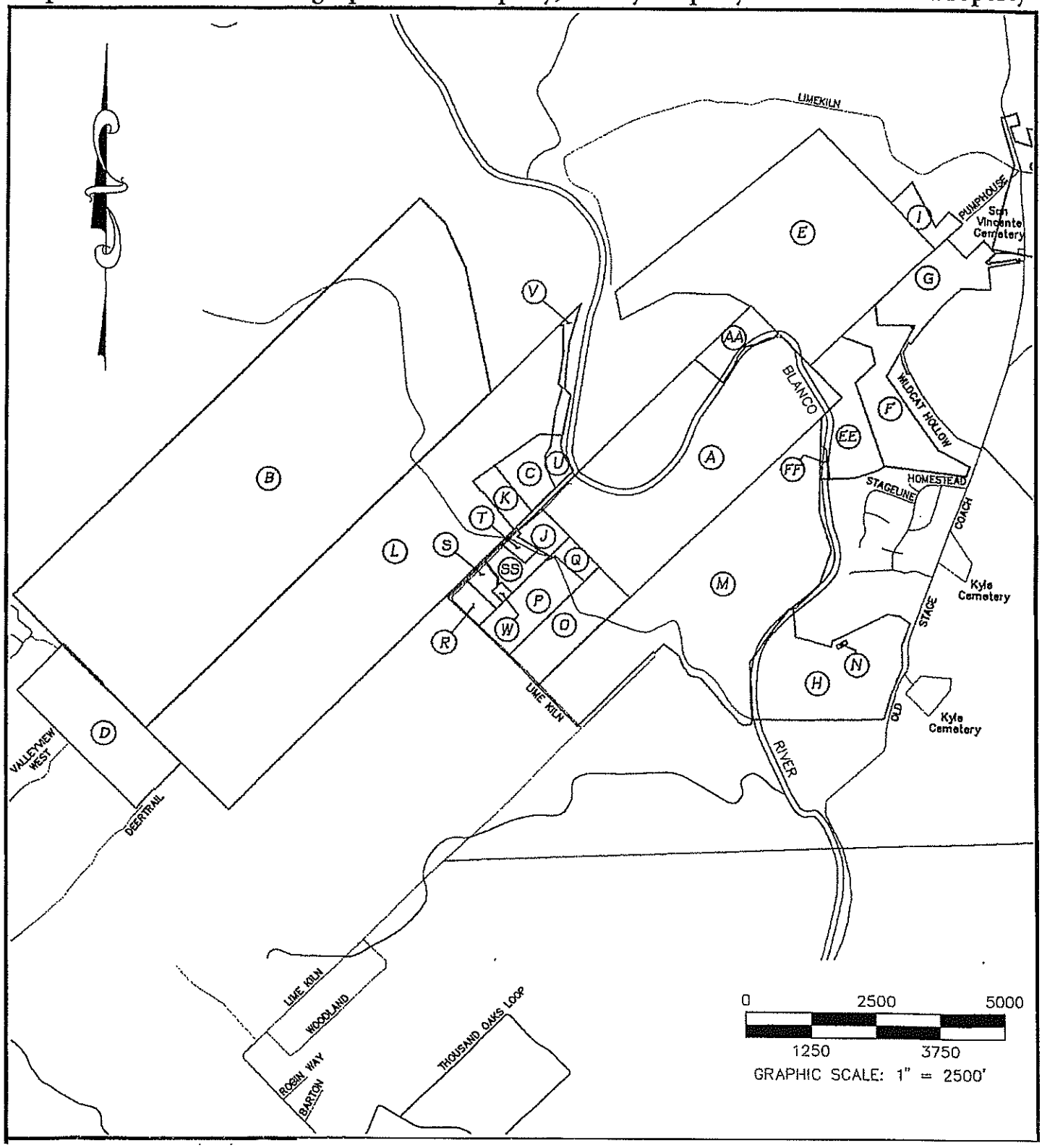
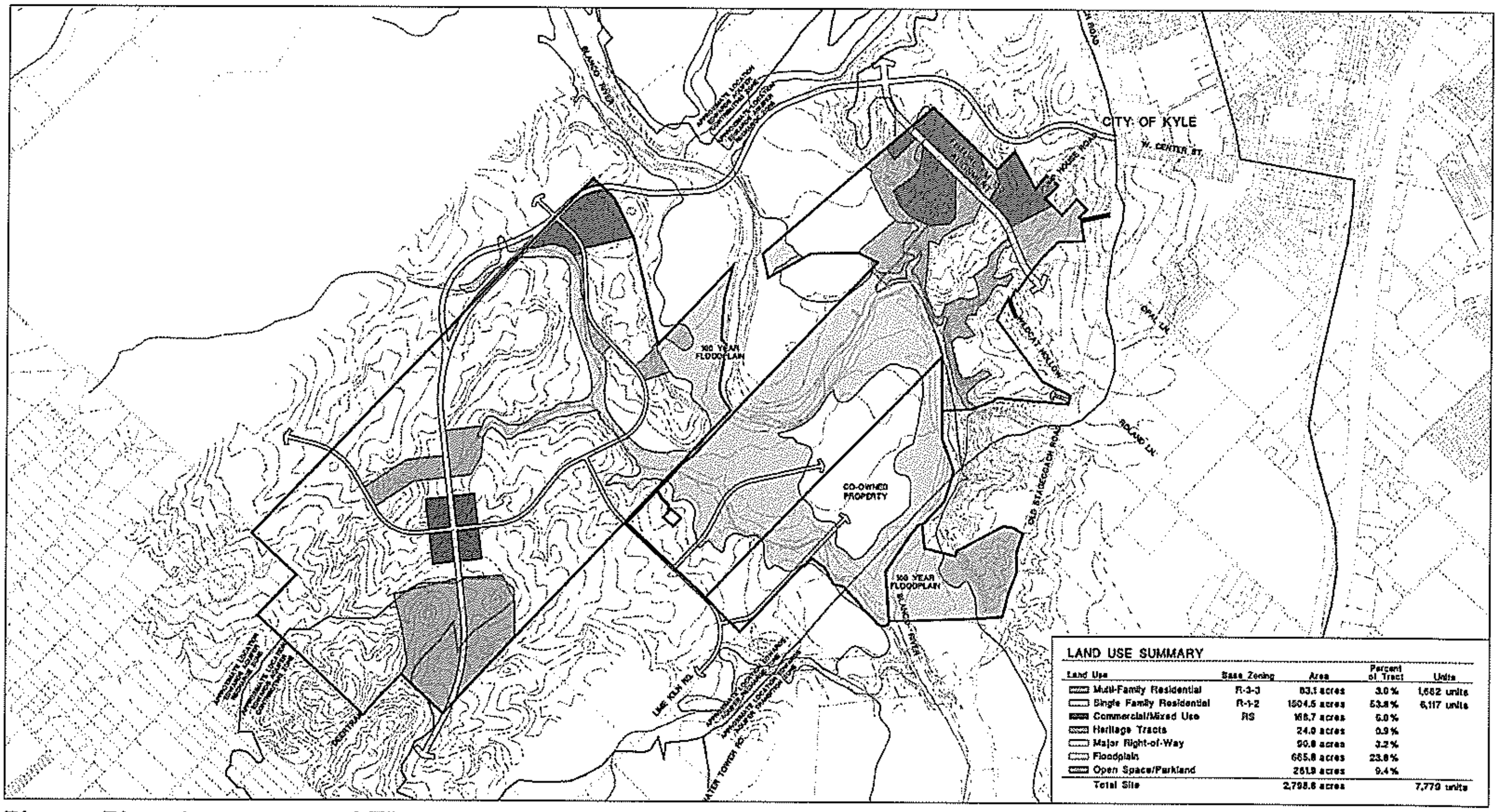


EXHIBIT B

CONCEPT PLAN



LAND USE SUMMARY

Land Use	Base Zoning	Area	Percent of Tract	Units
Multi-Family Residential	R-3-3	83.1 acres	3.0%	1,662 units
Single Family Residential	R-1-2	1504.5 acres	53.8%	6,117 units
Commercial/Mixed Use	RS	166.7 acres	6.0%	
Heritage Tracts		24.0 acres	0.9%	
Major Right-of-Way		90.8 acres	3.2%	
Floodplain		665.8 acres	23.8%	
Open Space/Parkland		261.9 acres	9.4%	
Total Site		2,798.8 acres		7,779 units

Blanco River Investments, LTD.
Development Agreement

Exhibit B
Concept Plan

North

0 1000 2000 3000

Scale: 1" = 2,000'
Date: April 14, 2016

SEC Planning, LLC
Land Planning • Landscape Architecture • Community Branding
AUSTIN, TEXAS

The developer has reserved the right, without notice, to make changes to this map and other aspects of the development to comply with governmental requirements and to fulfill its marketing objective.

EXHIBIT C

KYLE CITY CODE AS OF EFFECTIVE DATE

EXHIBIT C

KYLE CITY CODE AS OF EFFECTIVE DATE

ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT AND POWERS OF THE CITY

Sec. 1.01. - Incorporation.

The inhabitants of the City of Kyle, Texas, within the corporate limits as now and as hereafter established, extended and modified, shall continue to be and are hereby constituted a body politic and corporate in perpetuity under the name of the "City of Kyle," hereinafter referred to as the "city," with such powers, privileges, rights, duties, and immunities as herein provided.

Sec. 1.02. - Form of Government.

The municipal government shall be, and shall be known as, the "council-manager" form of government. Pursuant to the provisions of, and subject only to the limitations imposed by, the state constitution, state laws, and this charter, all powers of the city shall be vested in and exercised by an elective governing body, hereinafter referred to as the "city council" or "council". The council shall enact legislation, adopt budgets, determine policies, make appointments to positions as provided herein, and appoint the city manager who shall execute the laws and administer the government of the city.

Sec. 1.03. - Rights Reserved.

All suits, taxes, penalties, fines, forfeitures, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of the city shall belong to and vest in the city; shall not abate by reason of the adoption of this charter; shall be prosecuted and collected for the use and benefit of the city; and shall not be in any manner affected by the taking effect of this charter; but as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect. The budget and all ordinances, rules and regulations of the city shall be and remain in effect, subject to the terms of this charter and the future discretion and vote of the council. All present commissions, boards and officers of the city shall continue in office subject to the provisions of this charter, including, but not limited to, the provisions governing election and removal, and the council's exercise of the authority conferred by this charter.

Sec. 1.04. - General Powers.

The city shall possess and may exercise the full power of local self-government and shall have all powers possible and lawful for a home rule city to have under the constitution and laws of the State of Texas, as fully and completely as though each such power were specifically enumerated in this charter. The city shall not have any authority or power that conflicts with state law. It is specifically provided that:

(a) The powers and authority of the city shall include but shall not be limited to any power and authority necessary, useful or desirable to accomplish any public or lawful purpose, or to provide for the advancement of the interest, welfare, health, morals, comfort, safety, economic well being, or convenience of the city and its inhabitants; provided that all such powers, whether expressed or implied, shall be exercised and enforced in a manner that is not inconsistent with this charter or state law, and when not prescribed herein, in such manner as is provided by ordinance or resolution adopted by the city council.

(b) The enumeration of particular powers in this charter shall not be held or deemed to be exclusive, and, in addition to the powers enumerated herein, the city shall have all other powers which, under the constitution and laws of the State of Texas, it would be proper for this charter to specifically enumerate, including all powers of local government not clearly denied the city by state law. The city shall have and may exercise all the powers conferred upon cities of every class by the Texas Constitution or state and federal law, including all powers of local government that can be conferred on home rule cities pursuant to *Art. 11, Sec. 5, Tex. Const.*, or that are conferred by any existing or future law relating to the powers and authority of cities, together with all the implied powers necessary to carry into execution any such power.

(c) The city may exercise any of its powers and perform any of its functions by contract with, or in cooperation with, the state government or any agency or any political subdivision thereof, or with the federal government or any agency thereof, and, to the extent not inconsistent with state law or this charter, by contract with any person, firm or legal entity.

(d) Under the name of the city it shall be known in law and have succession and be capable of contracting and being contracted with; being sued and impleaded as authorized in this charter or by state law; suing and impleading at law or in equity and being answered to in all courts and tribunals; provided that the city shall have sovereign immunity and its officers and employees shall have qualified governmental immunity. The officers of the city are the members of the city council, the city manager, municipal judge, city attorney and members of all standing boards and commissions appointed by the city council, and the department heads and the sworn law enforcement personnel appointed by the city manger [manager].

Sec. 1.05. - Particular Powers.

In addition to the foregoing general powers and the other powers and authority set forth in this charter, the city may use a corporate seal; own, acquire, purchase, lease, hold, manage, control, convey and sell any character of property, whether real, personal or mixed, including any charitable or trust fund, situated within, or without, the limits of the city, as the purposes of the city may require for any public purpose in fee simple or in any lesser interest or estate by purchase, gift, devise, lease or condemnation; contract with, own, lease, operate and regulate public utilities and services; assess, levy and collect taxes for general and special purposes; borrow money on the revenues and/or the faith and credit of the city, by the issuance and sale of bonds, certificates of obligation, warrants, notes or any other evidence of indebtedness or obligation of the city; appropriate city funds and monies for any public purpose; regulate and control the use, for whatever purpose, of the streets and other public places; make and enforce regulations to protect the public safety, health, welfare, interests, comfort and well being; pass such ordinances as may be expedient for the protection and maintenance of good government, for the peace, safety, welfare, comfort and quality of life of the city and its citizens, for the performance of the functions of the city and for the order and security of the city and its residents; zone and regulate the development and use of land and all other property; provide suitable penalties for the violations of any ordinance; and exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

Sec. 1.06. - Power of Eminent Domain.

The city shall have full power and right to exercise the power of eminent domain for any public purpose or as necessary or desirable to carry out any power conferred by this charter. The city shall have and possess the power of condemnation for any such purpose even though such power of eminent domain is not otherwise specifically enumerated in this charter or in state law. The city may exercise the power of eminent domain in any manner authorized or permitted by state law and, in those instances in which state law does not authorize, permit or establish the procedures, method of establishing value, or other requirements for condemnation and the exercise of the power of eminent domain, the city council shall by ordinance establish the process, rules and procedures for valuing the property and property interests to be condemned.

Sec. 1.07. - Annexation and Disannexation.

The council may by ordinance unilaterally annex or disannex any land, property or territory upon its own initiative, or upon a petition submitted by a majority of the voters residing within the territory being annexed or disannexed, upon petition by the owners of property, or upon a petition signed by a majority of the property owners in a platted subdivision. The council may disannex or release extraterritorial jurisdiction when in the best interest of the city. The procedure for the establishment, modification or extension of the city boundaries, and the annexation or disannexation of territory, may not be inconsistent with any applicable requirements and limitations established by state law; provided that absent procedures being established by state law the action may be taken by ordinance adopted after two public hearings are held at least ten (10) but not more than twenty (20) days after notice of such public hearings are published in a newspaper of general circulation in the city. Upon final passage of an ordinance, fixing, establishing or

modifying the boundaries of the city, or annexing or disannexing any property by any method prescribed herein, the boundaries of the city shall be so extended or modified as provided in such ordinance. Upon an ordinance annexing property into the city, the territory described in the ordinance shall become a part of the city, and the said land and its residents and future residents shall be bound by the acts, ordinances, codes, resolutions and regulations of the city.

Sec. 1.08. - Streets and Public Property.

The city shall have exclusive dominion, control, and jurisdiction, in, upon, over, and under the public streets, sidewalks, alleys, highways, public squares, public ways and public property within the corporate limits of the city. With respect to all such facilities and public property, the city shall have the power to establish, maintain, alter, abandon, or vacate the same; to regulate, establish, or change the grade thereof; to control and regulate the use thereof; and to abate and remove in a summary manner any encroachment. The city may develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways, and other public ways within the city by laying out, opening, narrowing, widening, straightening, extending and establishing building lines along the same; by purchasing, condemning, and taking property therefor; by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvements; and may make or cause to be made any one or more of the kinds or classes of development and improvement authorized hereinabove, or any combination or parts thereof.

ARTICLE II. - BOUNDARIES OF THE CITY

Sec. 2.01. - Boundaries.

The boundaries and limits of the city shall, until changed in the manner herein provided, be the same as have heretofore been established and as exist[ed] on the date of the adoption of this charter. The boundaries and territorial limits of the city may from time to time by ordinance be fixed, decreased, modified or extended, and property may be annexed into the city or disannexed from the city, with or without the consent of any voter or of any landowner in the affected area.

ARTICLE III. - THE CITY COUNCIL

Sec. 3.01. - Governing Body.

The governing body of the city shall be a city council composed of six (6) councilmembers and a mayor, each elected for a term of three years. The council places shall be designated 1, 2, 3, 4, 5 and 6, and the mayor and councilmembers for Places 1, 3 and 5 shall be elected from the city at-large. Councilmembers for Places 2, 4 and 6 shall be elected from single member districts established by ordinance for the 2002 and subsequent elections. The terms of the members of the council shall be staggered, with two councilmembers being elected each year and the mayor being elected each third year.

Sec. 3.02. - Qualifications.

On the day prior to the date of the scheduled election to be held for such office, the mayor and councilmembers shall: (i) be at least eighteen years of age; (ii) be citizens of the United States; (iii) be qualified voters of the city; (iv) have been residents of the State of Texas for at least twelve consecutive months; (v) have been residents of the city and the district for which they seek election, or an area having been annexed into the city and/or the district, for twelve consecutive months; (vi) not be delinquent on any indebtedness to the city; and (vii) meet the other qualifications for eligibility set forth in the Texas Election Code. No city employee shall be eligible to file for election as a member of the council. Also, no candidate for or member of the council shall hold any other elective public office. If any member of the council ceases to possess any of the qualifications of office, including continuous residency within the City and, as applicable, the district from which elected during the term of office, his/her office shall, upon such fact being determined by the council, immediately become vacant; provided that if the residence of a member of the council is disannexed or located in another district as a result of redisricting, the member shall serve the remainder of his or her term of office.

(Ord. No. 646, § 1(Prop. 1), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

Section 3.03. - Term Limits.

No person elected to the council in 2011, or thereafter, shall be elected thereafter to serve more than three consecutive regular terms of office as a councilmember or as the mayor; provided that a person may serve up to three consecutive regular terms of office as a councilmember and thereafter be elected and serve up to three consecutive regular terms of office as the mayor. A person elected to fill an unexpired of one year or less will remain eligible to serve three regular terms of office.

(Ord. No. 646, § 1(Prop. 2), 3-1-2011)

Editor's note— Added by the voters at an election held on May 14, 2011.

Sec. 3.04. - Vacancies In Office.

The office of mayor or councilmember shall become vacant upon the death, resignation, or removal from office of the incumbent. Any vacancy or vacancies, whether in the office of mayor or councilmember, shall be filled by special election called for such purpose. The date for special elections to fill vacancies shall be the first uniform election date after the vacancy occurs and for which there is sufficient time to call and give notice of the election as required by law; provided that, if a vacancy occurs and no such election date falls within 120 days after the date of the vacancy, the council shall, without regard for the specified

uniform election dates, order such election to be held on a Saturday within 120 days from the date of the vacancy. All vacancies shall be filled by election for the remainder of the unexpired term of the office so filled. A special election is not required if the term of the vacated office expires with a general election that is held within 120 days after the date of the vacancy.

Sec. 3.05. - City Council Judge of its Members.

The council shall be the judge of the election and qualifications of its members, may determine the rules of its proceedings, and shall have power to compel the attendance of absent members and to punish members for disorderly conduct. After due notice and opportunity to be heard, upon not less than six affirmative votes the council shall have the power to remove any elected officer for conviction of a felony, gross immorality, habitual drunkenness, corruption, misconduct or malfeasance in office, or failing to continuously reside with the city and/or the district from which elected. Officers or employees of the city appointed directly by the council may be removed by majority vote of the council at any time after notice in compliance with the open meetings laws.

Sec. 3.06. - Quorum and Attendance.

Four members of the council shall constitute a quorum for transacting business and no action of the council shall be valid or binding unless taken in an open meeting with a quorum present. Less than a quorum may adjourn any meeting, or order and compel the attendance of absent members. It shall be the duty of each member of the council to attend each regular and special council meeting and the failure of any member to attend three consecutive council meetings, whether regular, special or workshop meetings, without good and sufficient cause, shall constitute misconduct in office.

(Ord. No. 646, § 1(Prop. 3), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

Sec. 3.07. - Meetings.

The council shall hold at least one regular meeting each month. Meetings shall be held on a schedule or dates established by the council, and as many regular or special meetings may be scheduled and held as the council deems necessary to transact the business of the city. The council shall fix the dates and times of the regular meetings, and special meetings shall be held on the call of the mayor or the city manager. If practicable no less than twelve (12) hours notice of special meetings shall be given to each member of the council. Meetings shall be open to the public and public notice shall be given in accordance with state law; provided that executive sessions closed to the public shall be permitted in accordance with the state law. The mayor or city manager shall approve meeting agendas and a councilmember may require any item related to city business to be placed on an agenda for which notice may be given.

Sec. 3.08. - Voting.

All members of the council present shall vote upon every issue, subject or matter properly before the council and requiring a council vote; provided that, if any member of the council has a conflict of interest that fact shall be stated in the minutes and such member shall abstain from discussion and voting on the issue. No ordinance, resolution, order, action, matter or issue, shall be passed, approved, adopted, taken or consented to except by a majority vote of the members of council present and voting, and not less than four affirmative votes shall be required to pass, approve, adopt, take action on, or consent to any ordinance, resolution, action, matter, issue, or motion.

Sec. 3.09. - Compensation.

The mayor shall be paid two hundred dollars per month and each other member of the council shall be paid one hundred dollars per month. The council may appoint a citizen committee not more often than every three years to review the monthly compensation and the committee may recommend the council

approve a reasonable adjustment to the monthly compensation of members of the council. A member of the council that is absent from one or more meetings in a calendar month shall forfeit an amount for each absence that is proportionate to the number of council meetings held in that month. A member of the council shall not receive an increase during the term of office in which the increase is authorized by the council. Members of the council shall also be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. No staff or assistant shall be provided for any member of the city council.

(Ord. No. 646, § 1(Prop. 4), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

ARTICLE IV. - THE AUTHORITY AND LIMITATIONS OF THE CITY COUNCIL

Sec. 4.01. - Mayor.

The mayor shall serve as the ceremonial head of the city, preside at all meetings of the council and provide the leadership necessary to good government. He or she shall work with the council to obtain legislation in the public interest and with the city manager to ensure that the same is enforced, and participate in the discussion and vote on all legislative and other matters coming before the council. The mayor shall have signatory authority for all legal contracts and commitments of the city; sign all ordinances and resolutions; recommend appointees for the boards and commissions; work and coordinate with the city manager and the council; and, to the extent provided by state law in time of declared emergency, may take command of the police and govern the city by proclamation, maintain order and enforce all laws.

Sec. 4.02. - Mayor Pro Tem.

At its first regular meeting after all the members of the council elected at a general election have taken office, or after a vacancy in the office of Mayor Pro Tem, the council shall elect one of its members to be mayor pro-tem for a one (1) year term, or to fill the unexpired term resulting from the vacancy. The mayor pro tem shall be the councilmember who receives a majority of the votes cast but not less than four votes. In the absence of the mayor, the mayor pro tem shall perform the duties of the mayor and in such capacity shall be vested with all powers conferred on such office. In the event of the failure, inability, or refusal of the mayor to act in respect to any matter or duty, the mayor pro tem shall act. In the event the office of mayor becomes vacant, the mayor pro-tem shall serve as mayor until an election is held to elect a mayor to serve the unexpired term.

Sec. 4.03. - The City Council.

The city council shall be the legislative and governing body of the city and shall have control of all the city finances, property, functions, services, affairs and programs subject only to the terms and provisions of this charter. The council shall have the power to ordain, alter, amend or repeal and enforce ordinances, resolutions, rules, orders, and regulations, for any public purpose, that are not in conflict with this charter, or federal or state law. The council shall have the power and authority to provide for any public purpose, including but not limited to recreation, the regulation and control of public property, municipal finances, the preservation of the public peace and good order, the security and protection of the public health, safety and welfare, the promotion of trade, commerce and economic development, the beautification and quality of life within the city, and any other governmental or proprietary service or program. The city, by and through its city council, shall have full and complete power of local self government to the fullest extent not in conflict with this charter and state law, including all such authorities and privileges that are now or hereafter provided to cities by state law and such power and authority both express and implied as necessary to accomplish and enforce any such duty, program or public purpose.

The council shall have all the powers necessary and incident to the proper discharge of the duties imposed upon it and is hereby vested with all powers necessary to carry out the terms and provisions of this charter; except where such powers are, by this charter, specifically reserved or conferred on some other officer.

The following powers and duties of the council are not exclusive but are enumerated for greater clarity:

(a) Appoint, supervise and remove the city manager, and confirm dismissal of the Director of Finance by majority vote of the entire council;

(b) Ensure enforcement of the provisions of this charter and the ordinances of the city, and compliance with policies and resolutions;

(c) Adopt and amend the budget of the city;

(d) Call bond elections, and authorize the issuance and sale of bonds, certificates of obligations, certificates of participation, warrants, notes and other evidences of indebtedness or obligation of the city pursuant to this charter and state law;

(e) Provide for and control of all city finances;

(f) Provide for boards and commissions as deemed necessary by the council, and as required by this charter, and appoint and remove all such boards and commissions upon the recommendation of the mayor provided that, if an appointment or removal has been considered at two regular meetings and no recommendation has been made the council may take action by motion and vote;

(g) Adopt, modify and carry out the plans proposed by the planning commission and other boards and commissions;

(h) Adopt, modify and cause the enforcement of building codes, fire codes, and health codes, public safety codes, and all other codes and regulations deemed reasonably necessary;

(i) Provide for all public utilities and serve as the primary regulatory agency for the rates thereof whether city owned or furnished by private utility companies;

(j) Pass ordinances and resolutions as necessary in its judgment for any public purpose not inconsistent with this charter;

(k) Exercise police powers for the safety of all citizens, and to protect their health, life and property, prevent and summarily abate and remove all nuisances, preserve and to enforce good government, order and security of the city;

(l) Control and regulate the use and occupancy of the public streets, rights-of-way and all property of the city;

(m) Make investigations into municipal affairs and subpoena persons, documents and records, and compel the attendance of witnesses and the production of records for such purpose;

(n) Require a fidelity bond to be provided at city expense for any officer or employee position;

(o) For good cause, order a recall election to be held for or with respect to any member of the city council;

(p) Appoint and remove the city attorney, the municipal judge, and the associate municipal judges;

(q) Confirm or reject the appointment of the officers required by this charter to be confirmed by the council;

(r) To govern the affairs of the city in conformance with this charter and the state and federal constitutions and laws, and to determine by majority vote the best and most appropriate method and manner of efficiently performing the functions and providing the services of the city, consistent with the council-manager form of government; and, except as provided in this charter with respect to certain departments that must be maintained in effect, the council may after hearing the city manager create, change, merge, or abolish offices, departments or agencies of the city, and may contract for services by interlocal agreement or otherwise as it deems advisable to improve the services or the efficiency of government; and

(s) Call and hold special elections useful to the accomplishment of the public purposes of the city, to the fullest extent not inconsistent with state law.

(Ord. No. 646, § 1(Props. 5, 6), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

Sec. 4.04. - Duties of Officers and Employees.

The council shall from time to time, after hearing the recommendations of the city manager, establish personnel policies and regulations and the duties, responsibilities and authority of each appointed officer and employee of the city, not inconsistent with this charter. The city shall be an equal opportunity employer and the service of each such officer and employee shall be at will. The council may, not inconsistent with this charter, require other and further duties of any appointed officer or employee whose duties are prescribed herein, and may define, prescribe and change the duties of any appointed officer or employee as in its judgment be best for the public interest. No person related within the second degree of consanguinity or affinity to a member of the council or the city manager, shall be or remain employed by the city; provided that such prohibition shall not apply to any person employed full-time for a period of twelve months or more prior to the member of the council or the city manager taking office. The council may require good and sufficient bond be given by appointed officers or employees handling funds of the city and may require bond of other officers or employees if considered proper or necessary. The expense of any such bond shall be paid by the city.

Sec. 4.05. - Prohibitions.

The council shall have powers only as a body meeting with a quorum present and no member shall have power to act individually except where that power may be conferred upon the member in this charter or by written council resolution; provided that each member is expected to serve his or her constituency and shall have the right to inquire through an officer appointed by the council into any matter whether or not such matter is brought before the council in order that he or she may so serve as an independent member of the council.

No member of the council shall hold any other city office or city employment during his or her term of office, and no former member of the council shall hold any city office with compensation until one (1) year after the expiration of the full term of office to which such member was appointed or elected.

No member of the council shall supervise or give orders directly to any city employee, except for officers appointed by the council and when empowered to do so by an emergency proclamation.

(Ord. No. 646, § 1(Prop. 7), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

Sec. 4.06. - Ordinances.

The council may adopt legislation by ordinance regarding any subject or matter relating to or dealing with any public purpose, including, but not limited to, the adoption of standardized codes and regulations. An ordinance must be enacted whenever the purpose is to regulate persons and property; whenever there is imposed a penalty, fine, forfeiture, or tax; whenever the purpose is to set a rate to be paid by consumers; whenever an ordinance is required by state law or this charter; or when an ordinance is amended. The authority of the council to legislate to accomplish any public purpose shall be subject only to the following:

(a) No ordinance or other action of the council may be inconsistent with this charter or in conflict with any applicable state or federal law;

(b) The enacting clause of every ordinance shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS;"

(c) Except for an emergency ordinance, an ordinance making an emergency appropriation, an ordinance authorizing bonds or any other indebtedness, or an ordinance approved by seven (7) affirmative votes, no ordinance shall be finally adopted until it has been read and approved by a majority vote of the city council at two meetings, one of which is a regular meeting;

(d) An emergency ordinance adopted at an emergency meeting held with less than 72 hours notice shall be and remain in effect only until the next regular meeting of the council, at which meeting it shall expire unless readopted by the council;

(e) The council may by ordinance amend the budget to transfer budgeted funds from one fund or department to another;

(f) An ordinance that does not receive a majority vote on first reading shall not advance for consideration on second reading;

(g) The general subject matter and caption of an ordinance shall be published prior to the second reading;

(h) All ordinances and proposed ordinances shall be available for public examination and review, and for copying, from and after being included on an agenda that is posted for any meeting of the council or any city board.

Sec. 4.07. - Emergency Ordinances.

The city council may adopt emergency ordinances to meet an emergency affecting life, health, property, the public peace, or to prevent a material financial loss to the City. Such ordinances shall not levy taxes, grant, renew or extend a franchise, or regulate the rates or fees charged by any public utility. An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance shall require the affirmative vote of at least five (5) members of the city council, and may be adopted with or without amendment or rejected at the meeting at which it is introduced. If adopted, the ordinance shall take effect immediately and the caption of the ordinance shall be published in two (2) successive issues of a newspaper of general circulation in the City. Every emergency ordinance shall automatically be repealed after sixty (60) days following the day on which it became effective. The ordinance may be reenacted.

Sec. 4.08. - Resolutions and Minute Orders.

The council may act by resolution regarding any subject or matter relating to or dealing with any public purpose or business except as provided in Section 4.06. The enacting clause of every resolution shall be "BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS." The council may further give instructions to the city manager, approve bids and contracts, and take other actions regarding the day to day business of the city by motion approved by majority vote and entered in the minutes of the council meeting.

ARTICLE IX. - REVENUE AND TAXATION

Sec. 9.01. - Taxation.

The city council may levy, assess and collect taxes of any type or character not prohibited by state law. The maximum ad valorem tax rate shall be as provided in the Texas Constitution and such tax rate shall be levied and assessed annually to provide for both operations and debt service.

Sec. 9.02. - Procedures.

The procedures, limitations and requirements for the levy, assessment and collection of any tax or lien therefor shall be as established by state law; provided that, if not established by state law, such procedures, limitations and requirements shall be established by ordinance.

Sec. 9.03. - Tax Assessor-Collector.

The finance director shall have the responsibility and duty for assessing and collecting taxes and the city manager may appoint an officer in such department to perform such duties; provided that the city may contract for such services at the discretion of the council.

Sec. 9.04. - Property Taxes.

All ad valorem property taxes shall be due and payable on or before the first day of February each year at the office of the director of finance, or on such other date and place as required by state law or authorized by the city council. Such taxes may be paid at any time after the tax rolls for the tax year have been approved and shall become delinquent and be subject to penalties and interest if not paid on or before the first day of February following the levy. The failure to levy or assess taxes does not relieve any owner or property from the tax liability on any taxable property.

Sec. 9.05. - Tax Liens and Claims.

All property within the city on the first day of January each year shall stand charged with a special lien in favor of the city, and the owner of such property on that date shall be personally liable therefor, until the tax and all related penalties and interest on that property are paid. All such taxes, penalties and interest may, if not voluntarily paid, be collected by the city by:

(a) Suit to recover personal judgment therefor without foreclosure, or by suit to foreclose its lien or liens, or to recover both by personal judgment and foreclosure; and if the property description on the assessment rolls is insufficient, the city may plead a good description of the property to prove the same, and have judgment foreclosing the tax lien or personal judgment or both, against the owners and property; or

(b) Withholding the payment of any debt or obligation owed to such owner or person by the city; by reducing the amount of any debt owed to such owner or person by the city by an amount equal to the unpaid taxes, penalties and interest; or otherwise by counter-claim and offset in any proceeding;

(c) No assignment or transfer of any such debt, claim, demand, account or property, after taxes are due, shall affect the right of the city to offset the said taxes, penalties and interest against the same; and

(d) Any other method, means or procedure authorized by state law.

ARTICLE V. - ELECTIONS

Sec. 5.01. - Notice and Order for Elections.

City elections shall be ordered and notice thereof given as provided in the Texas Election Code, and the council shall establish the procedures and order elections except as provided therein. If not otherwise provided for by state law, all elections shall be ordered at least thirty (30) days prior to the date of election and notice shall be given by publication not more than thirty (30) days and not less than twenty (20) days immediately preceding the date of election. Notice of election shall be published in a newspaper published within the city, and if there be no such publication notice shall be published in a newspaper of general circulation within the city.

Sec. 5.02. - General Elections.

The general city election shall be held annually on the first Saturday in May, or if such not be authorized the date nearest thereto as may be established by law. The mayor and councilmembers shall be elected by majority vote.

Sec. 5.03. - Special Elections.

The council may by ordinance call such special elections as are authorized by this charter or state law, fix the time of holding such elections, and provide all means for holding such special elections; provided that every special election shall be held on a Saturday, or a uniform election date, unless otherwise provided by law or this charter.

Sec. 5.04. - Conduct of Elections.

All elections shall be held in accordance with state law and the ordinances adopted by the council for the conduct of elections. The council shall appoint the election judges, provide for other election officials, and establish and alter the voting precincts by ordinance. In the absence of state law providing regulations for the conduct of any election the council shall provide such regulations by ordinance.

Sec. 5.05. - Filing for Office.

Candidates for office shall make application for a place on the ballot within the times prescribed by the Texas Election Code. In the absence of a filing deadline established by state law, applications for a place on the ballot shall be filed no later than 5 p.m. of the last business day that is 45 days before election day. All applications shall designate the position sought and applications for councilmember shall include the Place number. It shall be the duty of the city secretary to place the name of all qualified candidates, making timely application, on the official ballot. Each candidate for the council or any other elective office shall meet the following qualifications:

(a) Have all the qualifications for a councilmember as described in Section 3.02 of this charter.

(b) No candidate may file for more than one (1) office or place per election.

(c) A candidate for Place 2, 4 or 6 must meet the residency requirements for the district to which such Place number is assigned.

(d) Each candidate shall file such application as required by ordinance.

Sec. 5.06. - Polling Places.

The council shall establish one or more election precincts and provide polling places as necessary for city elections. Until established otherwise by ordinance, the entire city shall be one election precinct and the city hall or the city hall annex shall be the polling place for all city elections.

Sec. 5.07. - Official Ballots.

(a) Names on Ballot. The name of each qualified candidate for office, except those who withdraw, die or become ineligible two business days or more prior to the start of early voting, shall be printed on the official ballots without party designation or symbol in the form designated by the candidate. If two or more candidates have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be printed with their names on the ballot.

(b) Order of Listing. The order on the ballot of the names of the candidates shall be determined by lot in a drawing to be held under the supervision of the city secretary.

(c) Early Voting. Procedures for early voting shall be consistent with the Texas Election Code.

(d) Ballots On Measures. Ballots for ordinances, bond issues, and charter amendments shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title but shall be a clear, concise statement, approved by majority of the council, describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (bond issue) (amendment) be adopted?" Immediately below or to the left of such question shall appear, in the following order, the words "Yes" and "No" each with a square in which the voter may cast his or her vote by marking a cross (X) or other mark; provided the requirements of this section may be varied, not inconsistent with state law, as necessary for use of an electronic voting system.

(e) Write-In Votes. Procedures for write-in votes shall be consistent with the Texas Election Code.

Sec. 5.08. - Voters and Voting.

Every registered voter who has been a resident of the city for thirty days or more prior to the date of the election shall be entitled to vote in city elections. Early voting and the hours the polls are open shall be as established by state law, or, absent state law providing therefor, as established by ordinance. Write in votes shall be permitted only in compliance with the Texas Election Code.

Sec. 5.09. - Election by Majority.

The mayor and councilmembers shall be elected by majority vote. No measure shall be adopted except by a majority vote and a tie vote shall defeat the measure.

Sec. 5.10. - Canvassing.

The returns of every municipal election shall be delivered by the election judges to the city secretary at city hall not later than twelve hours after the closing of the polls. The city council shall canvass the returns in accordance with state law. The returns of every municipal election shall be recorded in the minutes of the council by totals for each candidate, or for and against each issue submitted.

Sec. 5.11. - Run-Off Election.

If no candidate for an elective office receives a majority of the votes cast for that position in the regular or special election, a run-off election shall be held between the two (2) candidates who received the greatest number of votes. Such run-off election shall be held in accordance with State election laws on the third Saturday following the election. The candidate receiving the highest number of votes cast for the office in the run-off election shall be declared elected and if the run-off results in a tie vote, the tie shall be broken in a manner that is not inconsistent with the Texas Election Code, or by lot or chance as agreed by and between the candidates.

Sec. 5.12. - Term of Office.

The mayor and each councilmember shall serve until his or her successor is elected or appointed and qualified to serve. The regular term of office of the mayor and the councilmembers shall commence on the first Tuesday following the canvass of the election at which they receive a majority vote. A member of the

council elected in a run-off election shall take office on the first Tuesday following the day on which the votes for the run-off election are canvassed. The remaining term of a member of council elected at a special election shall commence on the first Tuesday after the canvass of votes for the election at which they receive a majority of the votes cast for the office.

ARTICLE VI. - INITIATIVE, REFERENDUM AND RECALL

Sec. 6.01. - General.

The citizens reserve the powers of initiative, referendum and recall, which may be exercised in the manner and subject to the limitations provided in this Article.

Sec. 6.02. - Initiative.

Subject only to the limitations provided in this Article, the people of the city shall have the power to propose legislation on any local government issue, except legislation appropriating money, levying taxes, affecting zoning, annexing land, or setting rates, fees or charges, and, if the council fails to adopt an ordinance so proposed, to adopt or reject the proposed legislation at an election.

Sec. 6.03. - Referendum.

The people of the city shall have the power to require reconsideration by the council of any adopted ordinance regarding any issue that would be a proper subject for an initiative, and if the council fails to repeal an ordinance so reconsidered, to approve or reject the ordinance at an election. Such power shall not extend to the budget; capital expenditures; levy of taxes; any bonds, certificates of obligation or any similar obligations; zoning; annexation; or any rates, fees and charges; provided that tax increases shall be subject to petition as provided by state law.

Sec. 6.04. - Conflict.

No initiative or referendum action shall conflict with this charter, the constitution or any state statute.

Sec. 6.05. - Signatures.

Initiative and referendum petitions must be signed by registered voters residing within the city in number equal to twenty-five percent (25%) of the number of votes cast at the last general election of the city. The signatures to the initiative or referendum petition need not all be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil and shall add or cause to be added his or her place of residence within the city by street and number, printed name and date of signature. The signatures on a petition section shall not be considered unless there is attached to the petition section a signed, notarized and dated affidavit, executed by a resident of the city who circulated the petition section, which affidavit shall include his or her printed name, the address by street and number within the city, and the date he or she signed the affidavit; stating that he or she circulated each page and section of the attached petition; that each signature thereon was affixed in his or her presence; that each signature thereon is the signature of the person whose name it purports to be; and that to the best of his or her knowledge and belief each person signing the petition section was, at the time of signing, a registered voter residing within the City of Kyle.

Sec. 6.06. - Commencement of Proceedings.

A qualified voter may commence an initiative or referendum proceeding by filing with the city secretary the complete form of a petition proposed to be circulated, including signature pages, together with a copy of the full text of the initiative ordinance, or the ordinance to be reconsidered. The ordinance set forth with the petition shall be complete and in proper form including the caption.

The city secretary shall place the time and date on the petition and documents when filed, examine the filing for sufficiency as to form and place the time and date of the certification for circulation on such petition and documents. The city secretary shall provide a certified copy of such filing as certified for circulation to the person presenting same, the city manager and the city attorney, and file a copy of such certified documents and petition in the archives of the city.

The circulated petition must be returned and refiled with the city secretary within ninety (90) days after the date the petition is certified for circulation. Signatures obtained prior to the date of such certification shall be invalid and a petition returned after the expiration of ninety (90) days shall not be considered.

Sec. 6.07. - Examination and Sufficiency.

The city secretary shall examine each signature separately and disqualify any signature not having all of the information required, or not found to be that of a qualified voter of the city, determine whether the petition contains the requisite number of valid signatures, and complete a certification as to the sufficiency of the petition signatures within fourteen (14) days following the date the circulated petition is filed with the city secretary. The petitioner shall be notified by certified mail of the sufficiency of, or any insufficiencies in, the petition.

If the petition is certified as sufficient, the city secretary shall present a certificate to the city manager who shall cause the same to be placed on the agenda for the first council meeting that is three or more days after the date of the certification.

If the petition is certified as insufficient due to the disqualification or invalidity of signatures the petitioner shall have fourteen (14) days following the date the number of signatures is found insufficient to file a supplementary petition with additional signatures sufficient in number to equal the required number of signatures. Upon supplementary petitions being timely filed, the city secretary shall have seven (7) days from the date such supplementary petition is filed to certify the petition as sufficient or insufficient.

Sec. 6.08. - Referendum-Suspension of Ordinance.

When an authorized referendum petition is certified by the city secretary as sufficient, the ordinance sought to be reconsidered shall be suspended; and such suspension shall continue until the council repeals the ordinance or the ordinance is upheld by election.

Sec. 6.09. - Action on Petition.

Within thirty (30) days after the date an initiative petition has been certified to the council as sufficient, the council shall request a formal legal opinion from the city attorney on the legality of the proposed ordinance. If the city attorney issues a written opinion that the proposed ordinance is clearly and facially invalid, the council shall not be required to call an election on such initiative. Otherwise, within forty-five (45) days after an initiative or referendum petition has been certified to the council as sufficient, the council shall:

(a) Adopt the proposed initiative ordinance without any change in substance; or

(b) Repeal the referred ordinance; or

(c) Call an election on the proposed or referred ordinance.

The election on a proposed or referred ordinance shall be held on the next available uniform election date after the date of the council's action and for which notice may be timely given in compliance with state law and this charter. Such election may coincide with a regular city election should such election fall within the specified time. However, special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months and no ordinance substantially the same as a defeated initiative ordinance shall be adopted by the council or initiated within two (2) years after the date of the election. No referred ordinance repealed at an election may be readopted by the council within two (2) years from the date of the election at which such ordinance was repealed. Copies of the proposed or referred ordinances shall be made available at each polling place.

Sec. 6.10. - Procedure and Results of Election.

Not more than thirty (30) and not less than fifteen (15) days prior to the special election, the city secretary shall cause the proposed or referred ordinance to be published in its entirety at least once in a newspaper of general circulation in the city.

The ballots used when voting upon such proposed and referred ordinances shall set forth the nature of the ordinance sufficiently to identify the ordinance and shall also set forth a proposition as provided in this charter. If a majority of the qualified voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the council. If conflicting ordinances are approved at the same election, the ordinance receiving the greatest number of affirmative votes shall prevail.

An ordinance adopted by initiative may not be repealed or amended at any time prior to the expiration of two (2) years from the date of its adoption, except at an election held for such purpose or such amendment being approved by the council by not less than six (6) affirmative votes.

If a majority of the qualified voters on a referred ordinance vote against the ordinance, it shall be considered repealed upon certification of the election results. If a majority of the qualified voters voting on a referred ordinance vote for the ordinance, it shall be upheld and, in such event, may not again be the subject of a petition within twelve months following the date of such election.

Sec. 6.11. - Power of Recall.

The people of the city reserve the power to recall any elected city officer and may exercise the power by filing with the city secretary a petition signed by qualified voters of the city equal in number to at least fifteen percent (15%) of the number of registered voters within the city, demanding the removal of the elected officer. The petition shall be signed and verified as required for an initiative petition and a separate petition must be filed for each officer being recalled. If the council orders a recall election for any member, such election shall be held in the manner provided in this Article.

Sec. 6.12. - Recall Election.

The provisions regulating examination, certification, and amendment of initiative petitions shall apply to recall petitions. If the city secretary certifies the petition as sufficient, the city council shall, at the first meeting for which timely notice may be given, order a special election to be held at the earliest time permitted by this charter and state law, to determine whether the officer shall be recalled. If a majority of votes cast at a recall election be for the recall of the officer, the office shall be vacant.

Sec. 6.13. - Limitation on Recall.

No recall petition shall be filed against an officer within six (6) months after taking office; no officer shall be subjected to more than three (3) recall elections during the term of office; and no officer shall be recalled at an election held less than three (3) months prior to the expiration of the term of office being served by such officer.

Sec. 6.14. - Failure of City Council to Call an Election.

If the city secretary shall certify the petition as sufficient and the city council shall fail or refuse to order such recall election, or to discharge any other duty imposed upon the council with reference to the recall, then any citizen of the city may file suit in the district courts to compel the council to order the election.

ARTICLE VII. - ADMINISTRATIVE SERVICES

Sec. 7.01. - City Manager.

The council shall appoint and may remove the city manager upon the affirmative vote of five members of the council, and shall supervise the city manager by a majority vote. The city manager shall be chosen and compensated solely on the basis of his or her experience, education, training, ability and performance. The city manager may be bonded at city expense as determined by the council, and may require a bond be provided at city expense by any other employee. No member of the council shall, during the term of office for which he or she is elected or for one (1) year thereafter, be appointed city manager. The city manager need not reside in the city when appointed but shall thereafter, within a reasonable period of time established by council, reside within the City.

The city manager shall be the chief executive and administrative officer of the city and shall be responsible to the council for the proper administration of all the affairs and business of the city. The city manager shall be required to:

(a) Enforce all state laws and city ordinances, and require compliance with all policies and resolutions.

(b) Appoint, suspend or remove any officer or employee of the city, except those officers appointed by the council and as otherwise specifically provided in this charter.

(c) Attend all council meetings except when excused.

(d) Prepare and submit the proposed annual budget, and be responsible for the administration of the adopted budget.

(e) Keep the council advised of the financial condition and needs of the city and make such recommendations as seem desirable.

(f) Prepare and submit to the council at the end of each fiscal year a complete report on the finances and administrative activities of the city for such preceding fiscal year.

(g) Make such other reports as the council may require concerning the operations of the city.

(h) Meet, discuss and confer with and advise the mayor and or any member of the city council regarding the business of the city.

(i) Perform such other duties as may be prescribed in this charter or required by the council.

(Ord. No. 646, § 1(Props. 8, 9), 3-1-2011)

Editor's note— Amended by the voters at an election held on May 14, 2011.

Sec. 7.02. - Acting Manager.

The city manager may designate an officer or employee to act as city manager during the manager's absence or illness. The council may designate a qualified person to perform the duties of the office of city manager during his or her absence or disability, or when the position is vacant, and may set the compensation paid to such person during such time.

Sec. 7.03. - Administrative Departments.

There shall be such administrative departments as are required to be maintained by this charter, and as are established by ordinance, all of which shall be under the control and direction of the city manager except as herein provided. The council shall approve personnel policies and guidelines, and shall, by

ordinance, have the power to establish administrative offices or departments not provided for in this charter, and to discontinue, redesignate, or combine any of the departments and administrative offices established by ordinance. No change shall be made by the council in any personnel policy, guideline, department organization, or the city organization until the city manager's recommendations have been heard by the council.

Sec. 7.04. - Department Directors.

At the head of each department there shall be a director who shall be appointed by the city manager unless otherwise provided. Department heads may be appointed and removed by the city manager without council approval. Such directors shall supervise and control their respective departments, may serve as the head of any division within their department, and may, with the city manager's approval, appoint and remove all employees of their respective department. More than one department may be headed by the same person, the city manager may head one (1) or more such departments, and a provision in this charter for the appointment of a department head does not require the department to be created or maintained.

Sec. 7.05. - Departmental Organization.

The council may establish additional departments, and the work, duties, responsibilities and organization thereof, by ordinance; provided that no such ordinance shall be adopted until the city manager shall have been heard and have made his or her recommendations with respect thereto. Pending passage of ordinances establishing departmental divisions, the city manager may establish temporary divisions or sections in any department.

Sec. 7.06. - Police Department.

There shall be a police department to preserve order and protect the residents and property. The chief of police shall be responsible for the administration of the police department and shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the city manager.

Sec. 7.07. - Fire Department.

The council may establish a city fire department consisting of a fire chief and/or other salaried personnel. The fire chief shall be responsible for the management and administration of the fire department, including all contracts, functions, equipment and property. The fire chief shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the city manager.

A volunteer fire department is authorized. The authority of and relationship between the volunteer fire department and the city shall, subject to the above paragraph, be established by contract or ordinance. The chief and/or president of the volunteer fire department will participate with the city's fire chief and/or the city manager in the annual evaluation of the relationship and any contract between the volunteer fire department and the city. The working relationship between the volunteer fire department and the city shall be coordinated by the city's fire chief and/or the city manager with approval of the council.

Sec. 7.08. - City Secretary.

The office and department of [the] city secretary shall be established and maintained. The city secretary may appoint such assistant city secretaries as are authorized. The duties of the city secretary shall be as set forth in this charter and as established by ordinance. Such duties shall include, but not be limited to, the giving notice of all council meetings; keeping the minutes of the proceedings of council meetings and the archives of the city; authenticating by his or her signature, and recording in full in books kept and indexed for the purpose, all ordinances and resolutions; performing such other duties as shall be assigned to the position by state law; maintaining appropriate files of all contracts and other legal documents resulting from and/or having a bearing on actions of the council; and assisting the city manager in gathering of appropriate records, files and resources which pertain to city business or specific council meeting agenda items.

Sec. 7.09. - Public Works Department.

There shall be a public works department to administer, supervise and coordinate the construction and maintenance of the streets and thoroughfares, the drainage system, and all public property and equipment not the responsibility of another department. The department shall have and be responsible for other duties, projects and works as provided by ordinance or assigned by the city manager. The director of public works shall administer and manage the department.

Sec. 7.10. - City Attorney.

There shall be a city attorney who shall be appointed and may be removed by the council. The city attorney shall be a competent and duly licensed attorney and shall have not less than five (5) years experience practicing municipal law in Texas. He or she shall receive for his or her services such compensation as may be fixed by the council and shall advise the city on all legal matters and represent the city in all litigation and other legal matters. The city attorney may appoint assistant city attorneys, and the council may retain different or additional attorneys for specific matters when it deems same to be necessary.

Sec. 7.11. - Municipal Court.

There shall be established and maintained a court, designated as the "Municipal Court" of the City of Kyle, for the trial of misdemeanor offenses, with all such powers and duties as are now, or may hereafter be, prescribed by laws of the State of Texas relative to municipal courts. The Municipal Court shall be organized and supervised as follows:

(a) The municipal judge shall be appointed and may be removed by the council, and shall be responsible for the supervision and management of the court docket, cases and procedures. The municipal judge shall be entitled to compensation as fixed by the city council.

(b) The council shall have the power to appoint and remove additional associate judges. The municipal judge and associate judges need not be residents of the city but shall possess the requirements for office as are prescribed from time to time by the city council.

(c) There shall be a court clerk who shall be appointed and may be removed by the city manager.

(d) The clerk of the municipal court and deputies shall have the power to administer oaths and affidavits for court business, make certificates, affix the seal of said court thereto, and perform any and all acts usual and necessary to be performed by the clerks of courts and conducting the business thereof.

(e) All costs, fees, special expenses and fines imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city, except as required by state law.

ARTICLE VIII. - FINANCE

Sec. 8.01. - Finance Department.

The department of finance shall be established and maintained and the head of such department shall be the director of finance. The director of finance shall have knowledge of municipal accounting and experience in budgeting and financial control. Such director shall provide a bond with such surety and in such amount as the city manager may require. The premium on such bond shall be paid by the city.

Sec. 8.02. - Powers and Duties.

The director of finance shall administer all financial affairs of the city under the direction, control and supervision of the city manager. He or she shall have authority and be required to:

(a) Maintain a general accounting system for the city and exercise financial control over all offices, departments and agencies thereof;

(b) Certify the availability of funds for all proposed expenditures, and unless the director of finance shall certify that an unencumbered balance exists in the appropriations and funds available, no appropriation shall be encumbered and no expenditure shall be made;

(c) Submit to the council through the city manager, not less than quarterly, statements showing the financial condition of the city; the form and content of the statements and schedule for presentation shall be approved by the city council;

(d) Prepare, as of the end of the fiscal year, a complete financial statement and report.

Sec. 8.03. - Fiscal Year.

The fiscal year of the city shall begin on the first day of each October and end on the last day of September of the succeeding year. All funds collected by the City during any fiscal year including both current and delinquent revenues, shall be accounted for in such fiscal year; and except for funds derived to pay interest and create a sinking fund on the bonded indebtedness of the city, may be applied to the payment of expenses incurred during such fiscal year.

Sec. 8.04. - Annual Budget.

The budget shall provide a complete work and financial plan for the city, including all city funds and activities. A budget message explaining the budget both in fiscal terms and in terms of the work programs shall be submitted with the budget. It shall outline the proposed financial policies of the city for the ensuing fiscal year; describe the important features of the budget; indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes; summarize the city's debt position and include such other material as the city manager deems desirable or the council requires. The budget shall begin with a clear general summary of its contents; and shall show in detail all estimated revenues, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year. The proposed budget expenditures shall not exceed the total of estimated funds available from all sources. The budget shall be so arranged as to show comparative figures for estimated revenues and expenditures of the current fiscal year and the actual revenues and expenditures of the preceding two (2) fiscal years, compared to the estimate for the budgeted year. It shall include in separate sections:

(a) An itemized estimate of the expense of conducting each department, division and office.

(b) An estimate of the revenues of the city from taxes by category for the fiscal year.

(c) Tax levies, rates, and collections for the preceding two years.

(d) An itemization of all anticipated revenue from utilities and all sources other than the taxes.

(e) The amount required for interest on the City's debts, for sinking fund and for maturing bonds and other obligations.

(f) The amounts of the city debts and other obligations, with a schedule of payments and maturities.

(g) The total amount established for addition to reserve funds.

(h) A capital program, which may be revised and extended each year to indicate capital expenditures pending or in process of construction or acquisition.

(i) A provision regarding health coverage for retired employees. This provision may give consideration to the years of service of each retired employee but shall not obligate the city to any specific or continuing level of funding for such benefits.

(j) Such other information as may be required by the council.

Sec. 8.05. - Budget Process and Adoption.

The city manager shall be responsible for the timely preparation and presentation of the budget, and shall present his or her recommended budget to the city council no later than sixty (60) days prior to October 1st of each year. The proposed budget shall become a public document and record when presented to the council. From and after its receipt of the budget, the city council shall:

(a) At the first council meeting for which timely notice may be given, cause to be posted in city hall and published in a newspaper of general circulation in the city a general summary of the proposed budget and a notice stating the time and places where copies of the budget are available for public inspection; the time and place, not less than fifteen (15) days after such publication, of a public hearing on the budget; and such other public hearings as are necessary.

(b) After the first public hearing the council may adopt the budget with or without amendment. The council may amend the proposed budget to add, increase, decrease or delete any programs or amounts, except expenditures required by law or for debt service; provided that no amendment shall increase the authorized expenditures to an amount greater than the total of estimated funds available from all sources.

(c) The budget shall be finally adopted by ordinance not later than the third Thursday of September; provided that if the council takes no final action on or prior to such day, the budget as submitted by the city manager shall be deemed to have been finally adopted by the council.

Sec. 8.06. - Administration of Budget.

No payment shall be made or obligation incurred except in accordance with this charter and appropriation duly made, and unless the director of finance first certifies that a sufficient unencumbered balance and sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. If funds are not currently available to make an appropriate payment, but will become available within the fiscal year, the finance officer may request the council give authority to borrow money to make such payment provided that such money will be repaid by the end of the fiscal year or as provided by state law. Any authorization of payment or incurring of an obligation in violation of the provisions of this charter shall be void and any payment so made illegal; provided this shall not be construed to prevent the council by ordinance from making or authorizing payments or the making of contracts, for capital expenditures to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, certificates of obligation, lease-purchase, or other similar evidence of indebtedness or obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year.

Sec. 8.07. - Amendment and Supplemental Budgets.

To protect the public health, safety, welfare and resources of the city, budget amendments to fund and meet conditions not anticipated in the original budget may be authorized, upon the affirmative vote of four

members of the council. Supplements and amendments shall be approved by ordinance and shall be filed with the original budget.

Sec. 8.08. - Borrowing to Meet Funding Requirements.

In the absence of available funds to meet emergency conditions and requirements, the council may authorize the borrowing of funds. In any fiscal year in anticipation of the collection of the budgeted revenues or ad valorem property tax for such year, whether levied or to be levied in such year, the council may authorize the borrowing of money by the issuance of notes, warrants or tax anticipation notes. Notes and warrants issued under this section shall be limited to the funds required for the emergency or short-fall and mature and be payable not later than the end of the fiscal year in which issued, or as otherwise provided by statute.

Sec. 8.09. - Depository.

The council shall from time to time select a depository or depositories for city funds on the basis of bids received from such institutions; provided that the council may by resolution invest reserve funds in any state or federally chartered bank or savings institution. All monies received by any person, department or agency of the city for or in connection with affairs of the city shall be promptly deposited in the city depository or depositories. All checks, vouchers, or warrants for the withdrawal of money from the city depositories shall be signed by the city manager and the director of finance. The council may authorize the use of machine imprinted facsimile signatures of such persons on such checks, vouchers and warrants.

Sec. 8.10. - Purchase Procedure.

All purchases made and contracts executed by the city shall be pursuant to a requisition from the head of the office, department or agency whose appropriation will be charged; and no contract or order shall be binding upon the city unless the director of finance certifies there is to the credit of such office, department or agency, a sufficient unencumbered appropriation to pay for the supplies, materials, equipment, or contractual services for which the contract or order is to be issued. All contracts and purchases of every nature and kind shall be made in accordance with all applicable state law requirements for competitive bidding.

Sec. 8.11. - Bonds and Financial Obligations.

The council may by ordinance authorize the issuance of any tax or revenue bonds, refunding bonds, certificates of obligation, warrants, notes, certificates of participation, tax anticipation notes or other evidence of indebtedness or obligation, for any permanent public improvement or any emergency, or any other public purpose not prohibited by law, subject only to the following limitations:

(a) no general obligation bonds, other than refunding bonds, shall be issued except as approved by a majority vote at an election held for such purpose;

(b) no indebtedness or obligation shall be issued except in compliance with the requirements of state law;

(c) no form of indebtedness other than general obligation bonds approved by public vote may be issued without public notice and a public hearing being held in compliance with state law; the published notice shall clearly summarize the relevant statutory provisions providing for a petition and election, if any; and

(d) the authorization for bonds authorized but not issued shall expire ten years after the date of authorization.

Charter reference— Debt management policy, § 8.14

Cross reference— Debt management policy, § 2-531 et seq.

Sec. 8.12. - Reserve Fund.

A reserve fund shall be established. Except when expended only for an emergency, the reserve fund shall over time be funded in an amount equal to at least twenty-five percent of the annual operating budget. If expended the reserve fund shall be restored as soon thereafter as practicable.

Sec. 8.13. - Independent Audit.

At the close of each fiscal year, an independent audit shall be made of all accounts of the city by a certified public accountant experienced in auditing cities. The audit shall be completed on or before March 30th of each year and shall include an audit of all non-profit organizations receiving fifty percent (50%) or more of their income from the city. The audit shall be subject to the following:

(a) The city shall pay a percentage of the audit costs for all non-profit organizations audited, equal to the percentage of their respective total funding provided by the City;

(b) The independent auditor shall not otherwise maintain or keep any of the accounts of the city; act as financial advisor to the city; or have any financial interest whatsoever, direct or indirect, in any other financial affairs of the city, any member of the council, the city manager or any department head; provided that the auditor may be a resident or routinely utilize the utilities and services offered by the city, or be the owner of less than one percent (1%) of the total outstanding stock in a company contracting with the city;

(c) The council shall not select the same auditor for more than five (5) consecutive years and the auditor selected shall not be, or have been within the immediate preceding three (3) years, a business associate of the certified public accountant or firm that performed the audit prior to such selection;

(d) Upon acceptance of the audit, a summary thereof shall be published immediately in a newspaper of general circulation in the city and copies of the audit shall be placed on file in the city secretary's office as a public record. The summary shall include a balance sheet; an itemization of all income and expenditures by department; and an itemization of all investments and amounts of such investments pledged or encumbered for specific purposes;

(e) The auditor shall be available to the council throughout the budget year for special projects, audits, reviews and reports.

Section 8.14. - Debt Management Policy.

The city council shall adopt and implement a debt management policy prior to adoption of the 2011-2012 annual budget. The city council shall obtain and consider advice from such professional and financial advisory services as it deems appropriate in adopting, reviewing and implementing the policy. The policy shall be reviewed, modified and amended as appropriate not less often than every fifth year.

(Ord. No. 646, § 1(Prop. 10), 3-1-2011)

Editor's note— Added by the voters at an election held on May 14, 2011.

ARTICLE X. - PLANNING AND DEVELOPMENT

Sec. 10.01. - Purpose and Intent.

It is the purpose and intent of this article to provide for and require the development of the city be undertaken and accomplished pursuant to a comprehensive plan and that the council shall establish comprehensive planning as a continuous and ongoing governmental function to promote, guide, strengthen and assist the management of future development within the city and its extraterritorial jurisdiction, to assure the most appropriate and beneficial use of land, water, natural and community resources, consistent with the public interest. Through the process of comprehensive planning and the preparation, adoption and implementation of a comprehensive plan, the city shall preserve, promote, protect and improve the public health, safety, comfort, order, appearance, convenience, economic and general welfare; prevent the overcrowding of land and avoid undue concentration or diffusion of population or land uses; facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, recreational, housing and other facilities and services; conserve, develop, utilize and protect natural resources; and provide for and encourage economic growth.

Sec. 10.02. - Comprehensive Plan.

The council shall adopt a comprehensive plan within two years after the effective date of this charter and thereafter all public and private development shall conform with such adopted comprehensive plan, or the applicable elements or portions thereof. The comprehensive plan may be amended at anytime and shall be reviewed and considered for amendment or revision every five years.

The comprehensive plan adopted by ordinance shall constitute the master and general plan for the development of the city. The comprehensive plan shall contain the council's policies for growth, development and beautification of the land within the corporate limits and the extraterritorial jurisdiction of the city, or for geographic portions thereof including neighborhood, community or area wide plans. The comprehensive plan shall include the following elements: (1) a future land use element; (2) a traffic circulation and/or mass transit element; (3) a wastewater, solid waste, drainage and potable water element; (4) a conservation and environmental resources element with strong emphasis on water conservation; (5) a recreation and open space element; (6) a housing element; (7) a public services and facilities element, which shall include but not be limited to a capital improvement program; (8) a public buildings and related facilities element; (9) an economic element for commercial and industrial development and redevelopment; (10) a health and human service element; and such other elements as are necessary or desirable to establish and implement policies for growth, development and beautification within the city, its extraterritorial jurisdiction, or for geographic portions thereof, including neighborhood, community, or area wide plans. The council may provide for financing of all elements contained in the comprehensive plan.

The several elements of the comprehensive plan shall be coordinated and be internally consistent. Each element shall include policy recommendations for its implementation and shall be implemented, in part, by the adoption and enforcement of appropriate ordinances and regulations governing land development, and such ordinances and regulations governing the development and use of land may be as comprehensive and inclusive as the council may, in its discretion, from time to time determine necessary, desirable and not in conflict with state or federal law.

Sec. 10.03. - Comprehensive Plan Adoption and Amendment.

The comprehensive plan, or elements or portions thereof, shall be initially prepared and drafted by personnel and/or consultants authorized by the council, under the supervision of the city manager who shall coordinate development of the plan with the planning commission and the council. A draft of the comprehensive plan shall be submitted to the planning commission which shall hold a minimum of two public hearings on such plan and make recommendations for the approval of the plan, with or without amendments. The planning commission shall then forward the proposed comprehensive plan or element or portion thereof to the city manager, who shall thereupon submit such plan, or element or portion thereof,

to the council with the planning commission's and the city manager's recommendations thereon. If the proposed comprehensive plan has not been adopted within two years from the effective date of this charter, the proposed plan as it then exists will automatically become the City's comprehensive plan.

The council may adopt, or adopt with changes or amendments, the proposed comprehensive plan or any element or portion thereof, after one or more public hearings. The council shall act on such plan, element or portion thereof, within ninety (90) days following its submission. If such plan or element or portion thereof is not adopted by the council, the council shall, with policy direction, return such plan or element thereof to the planning commission, which may modify such plan or element or portion thereof, and again forward it to the city manager for submission in like manner to the council. Amendments to the comprehensive plan may be initiated by the council, the planning commission, or the city manager; provided that all amendments shall be reviewed, considered and recommended for adoption in the same manner as for the original adoption of the comprehensive plan.

Upon the adoption of a comprehensive plan or element or portion thereof by the council, all land development regulations including zoning and map, subdivision regulations, roadway plan, all public improvements, public facilities, public utilities projects and all city regulatory actions relating to land use, subdivision and development approval shall be consistent with the comprehensive plan, element or portion thereof as adopted, except to the extent, if any, as provided by law. For purposes of clarity, consistency and facilitation of comprehensive planning and land development process, the various types of local regulations or laws concerning the alteration, development and use of land may be combined in their totality in a single ordinance or code.

Sec. 10.04. - Planning Commission.

There shall be established and maintained a planning commission which shall consist of citizens of the city who must be qualified voters and have resided within the city for six months next preceding their appointment. The number of members of the planning commission shall be established by ordinance but the number shall not be less than five (5) members, and a minimum of two-thirds of the members shall be citizens not directly or indirectly connected with real estate or land development. The members of said commission shall be appointed by the council for a term of two (2) years, with a simple majority of the members being appointed in every odd numbered year and the remaining members being appointed in every even numbered year. The planning commission shall elect a chairperson from among its membership and shall meet not less than once each month. Vacancies in an unexpired term shall be filled by the council for the remainder of the term. No member of the commission shall serve more than five consecutive years.

Sec. 10.05. - Planning Commission Powers and Duties.

The planning commission shall serve as the planning and the zoning commission of the city, and:

(a) Review and make recommendations to the council regarding the adoption and implementation of a comprehensive plan or elements or portions thereof prepared under authorization of the city council and under the direction of the city manager and responsible staff;

(b) After a comprehensive plan or element or portion thereof has been adopted in conformity with this article:

    (i) Review and make recommendation to the council on all amendments to such plan or elements or portions thereof;

    (ii) Review and make recommendations to the council on all proposals to adopt or amend land development regulations for the purpose of establishing the relationship of such proposal to, and its consistency with, the adopted comprehensive plan or elements or portions thereof. For purposes of this article "land development regulations" includes zoning, subdivision, building and construction, environmental including water conservation, and other police power regulations controlling, regulating, or affecting the use or development of land;

(c) Pursuant to ordinances adopted by the council, exercise control over platting and subdividing land within the corporate limits and the extraterritorial jurisdiction of the city to insure the

consistency of any such plats or subdivision with the ordinances and comprehensive plan or element or portion thereof;

(d) Pursuant to ordinances adopted by the council make recommendations to the council regarding the zoning of land and land uses within the corporate limits of the city to insure the consistency of any such land use with the adopted comprehensive plan or element or portion thereof;

(e) May submit annually to the city manager, not less than one hundred fifty days prior to the beginning of the budget year, a list of recommended capital improvements, which in the opinion of the commission are necessary or desirable to implement the adopted comprehensive plan or element or portion thereof during the forthcoming five-year period;

(f) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend annually to the council any changes in or amendments to the comprehensive plan as may be desired or required;

(g) Prepare periodic evaluation and appraisal reports on the comprehensive plan, which shall be sent to the council at least once every five (5) years after the adoption of the comprehensive plan or element or portion thereof;

(h) Obtain information relative to its duties, from the city manager;

(i) Act as an advisory body to the council and perform such additional duties and exercise such additional powers as may be prescribed by ordinance of the council not inconsistent with the provisions and intent of this charter.

Sec. 10.06. - Duties.

The council shall prescribe the duties of the planning commission by ordinance. The duties so established shall not be inconsistent with this charter and such duties shall include, but not be limited to, those prescribed herein.

Sec. 10.07. - Planning and Development Department.

The city council may create by ordinance such department(s) as necessary to provide technical and administrative support in the areas of planning, growth management and land development, or the city manager may assign such duties to any other department or officer of the city. The director of such department shall be appointed and removed by the city manager.

Sec. 10.08. - Board of Adjustment.

The council shall by ordinance establish a board of adjustment which shall, to the extent provided by ordinance or state law, have the power to hear and determine appeals from the refusal of building permits, appeals resulting from administrative decisions and to permit an authorized exception to or variation from the zoning regulations. Members of such board shall hold no other city office and no former member of the council shall serve as a member of the board of adjustment until one (1) year after completion of his or her council term.

Sec. 10.09. - Capital Improvements Program.

The council shall adopt a capital improvements plan and thereafter the construction and capital projects of the city shall conform with such adopted plan, as amended. The capital improvements plan may be amended at anytime and shall be reviewed and considered for amendment by the council not less often than every two years.

The capital improvements plan, or elements or portions thereof, shall be initially prepared and drafted by personnel and/or consultants under the supervision of the city manager. A draft of the capital improvements plan shall be submitted to the planning commission which shall hold one or more public hearings on such plan and make recommendations for the approval of the plan, with or without amendments. The planning commission shall then forward the proposed capital improvements plan or

elements or portions thereof to the city manager, who shall thereupon submit such plan, or element or portion thereof, to the council with the recommendations of the city manager and planning commission. Not less frequently than every two years thereafter, the city manager shall cause the review and preparation of any proposed amendments to the capital improvements plan and submit such proposed amendments to the planning commission for its review, approval and recommendations as provided above for the initial plan.

Sec. 10.10. - Subdivisions and Developments.

The council shall adopt and maintain in full force and effect a comprehensive ordinance or ordinances regulating the development, subdivision and improvement of land within the city and its extraterritorial jurisdiction. To the extent not in conflict with state law, the council shall have the authority to require for all such land that:

(a) The owner of every tract of land who may divide the same into two (2) or more parts for the purposes of laying out any subdivision, or any addition to the City, shall comply with the provisions of the comprehensive ordinances governing the subdivision and development of land;

(b) The subdivision and development of land shall comply with all applicable elements of the comprehensive plan of the city; and

(c) A comprehensive site plan be required and approved for the development of or construction on any lot or parcel of land for which the owner or developer proposes a use higher than single family or two family residential.

ARTICLE XI. - PUBLIC UTILITIES, FRANCHISES AND CONTRACTS

Sec. 11.01. - Public Services and Utilities.

The city shall have the full power and authority to:

(a) Buy, own, construct, lease, maintain and operate within and without the limits of the city a system or systems of gas, electricity, telephone, sewage, sanitation, water, parks, airports, swimming pools, race tracks, transportation, communications, golf course, cemeteries, cable television, or any other public service or utility.

(b) Manufacture, produce or provide its own electricity, gas, water or any other product, good or commodity that may be required by the public for municipal purposes.

(c) Purchase gas, electricity, or any other commodity or article required by the public for municipal purposes and to contract with any person, entity or public utility for such purchase.

(d) Distribute and/or sell any utility, commodity or service.

(e) Mortgage and encumber such public utility or service systems.

(f) Regulate and control the distribution of utilities and services within the city and establish standards of service and quality of products.

(g) Establish and enforce the rates to be paid by consumers of any utility or users of any service provided within the city, and, if provided by the city, outside of the city.

These powers shall be vested in the council and the council may exercise the power of eminent domain to acquire all or part of the property of any public utility or public service provider within the city whenever found by the council to be in the public interest for carrying out the objectives of providing utilities or services within the city. Any such eminent domain or condemnation proceeding shall be according to the procedures and the methods of establishing the value of the property and facilities as provided by state law, and if such procedures or methods are not so provided by state law as reasonably provided by ordinance.

Sec. 11.02. - Franchises.

The council shall have the power and authority to grant franchises for the use and occupancy of streets, avenues, alleys and any and all public property belonging to or under the control of the city. Except as specifically authorized and provided otherwise by state law, no individual, organization, entity, political subdivision, corporation, public utility, or any provider of public service shall provide any service within the city requiring the use or occupancy of any street, public right-of-way or property without first being granted a franchise or permit to use such city facilities. The franchise ordinance or permit shall fully describe the terms of the agreement and, regardless of the title given, shall be subject to the terms of this Article. The terms of such agreements shall be explicit so as to protect the interests of the citizens and shall include but not be limited to the terms prescribed in this charter. No franchise ordinance or permit shall be passed except on two readings held after a public hearing for which ten (10) days notice is given.

Sec. 11.03. - Franchise Limitations.

No exclusive franchise shall ever be granted and franchises shall be transferrable only upon authorization of the council expressed by ordinance. A franchise may not be transferred except to a person, firm or entity taking all or substantially all of the franchise's business in the city. The expiration date of all franchises shall be specified and the term thereof may be extended or renewed only by ordinance.

Sec. 11.04. - Franchise for Public Utilities.

The council shall have the power to grant, amend, renew, or extend by ordinance, or to deny, the franchise of all public utilities of every character serving the city, including, but not limited to, persons or

entities providing electricity, gas, water, sewage, or telephone service, or any similar commodity or utility to the public. The effective period of public utility franchises may be set by the council but shall not exceed twenty (20) years unless a longer term is specifically approved by a majority of the qualified voters at an election held for that purpose.

Sec. 11.05. - Franchise for Public Services.

The council shall have the power to grant, amend, renew or extend by ordinance, or deny, the franchises of all providers of public services to the city. Public services include, but are not limited to, ambulance services, cable television services, transportation services, any communication services, sanitation services, and any other service or business using the public streets or property within the city to provide service. The effective period of public service franchises may be set by the council but shall not exceed ten (10) years.

Sec. 11.06. - Regulation of Franchises.

All grants of franchises as authorized in this charter shall be subject to the right of the council to:

(a) Determine, fix and regulate the charges, rates or compensation to be charged by the person or entity granted a franchise.

(b) Repeal the franchise by ordinance at any time upon the failure or refusal of the franchisee to comply with the terms of the franchise, this charter, or any applicable city ordinance or state law, or any valid rule of any regulatory body.

(c) Establish standards and quality of products or service.

(d) Require such expansion, extension and improvement of plants and facilities as are necessary to provide adequate service to all the public and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.

(e) Prescribe the method of accounting and reporting to the city so that the franchisee will accurately reflect the expenses, receipts, profits and property values used in rendering its service to the public. It shall be deemed sufficient compliance with this requirement if the franchisee keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service.

(f) Examine and audit at any time the accounts and other records of any franchisee and to require annual and other reports prescribed in the franchise ordinance.

(g) Require such compensation, regulatory, rental and franchise fees as may not be prohibited by law.

(h) Impose such regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public.

(i) Require the franchisee to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by the franchisee.

Sec. 11.07. - Penalty Authorized.

The council shall have the power and authority to review any franchise at anytime and to assess a penalty against the franchisee for its failure to comply with the franchise, this charter, the ordinances of the city or the laws of the State. If in the opinion of council the requirements of the franchise, charter, ordinances or state law are not being complied with, the council shall so notify the franchisee in writing stating the provisions the franchisee has failed to comply with and setting a time for a hearing and deadline for correction of the noncompliance. The council may assess and enforce a reasonable penalty based upon the facts, issues and circumstances determined at the hearing if noncompliance is found. If the franchisee does not correct the noncompliance within a reasonable time established by the council for correction, the council may repeal or cancel the franchise.

Sec. 11.08. - Franchise Value Not to be Allowed.

In determining the just compensation to be paid by the city for any public utility or public service property or facilities which the city may acquire by condemnation or otherwise, no value shall be assigned to any franchise granted by the city.

Sec. 11.09. - Extensions.

Unless provided otherwise in the franchise, or limited by a certificate of convenience and necessity held by the franchisee, franchisees shall be required to extend services to all parts and portions of the city. All extensions of any lines, conduit, pipe or systems shall become a part of the aggregate property of the public utility or service provider and shall be subject to all the obligations and rights prescribed in this charter and the franchise. The right to use and maintain any such extension shall terminate with the franchise.

Sec. 11.10. - Other Conditions.

All franchises heretofore granted are recognized as contracts between the city and the franchisee and the contractual rights as contained therein shall not be impaired by the provisions of this charter except:

(a) The power of the city to exercise the right of eminent domain to acquire the property and assets of the utility is reserved.

(b) The general power of the city to regulate the rates and services of a utility including the right to require adequate and reasonable extension of plant and service and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency shall be enforced.

(c) The council shall review each franchise at its first renewal date subsequent to the adoption of this charter and shall cause the franchise, if renewed, to meet the provisions of this charter; and no rights shall be vested in the franchisee with regard to any renewal based upon the terms, conditions or limitations expressed in any such existing franchise.

Sec. 11.11. - Election Required.

No city owned electric utility, gas, water, sewer, cable television, or telecommunications system, park, swimming pool or other utility shall ever be sold or leased without authorization by a majority vote of the qualified voters of the city voting at an election held for such purpose.

Sec. 11.12. - Contracts Concerning City Property.

The council shall have the power to grant, amend, renew or extend contracts concerning the operation and management of any city owned facility, such as a civic center, parks, golf course, swimming pools, water and wastewater treatment plants and any other such property; provided that no such contract shall be let except upon opportunity for competitive bids and proposals, nor exceed a term of ten (10) years unless approved at an election held for such purpose.

ARTICLE XII. - ETHICS AND CONFLICTS

Sec. 12.01. - Ethics Commission.

The city council shall adopt and from time to time modify and amend an ordinance providing an ethics policy and code of conduct applicable to the officers, employees, board and commission members of the city. An ethics commission composed of seven citizens of the city shall be established to advise the council on the content and requirements of the ethics policies and ordinance, and to hear and decide complaints filed pursuant to such policies and ordinance. Each member of the council shall appoint one member of the commission, subject to the approval by vote of the council. The members of such commission shall be appointed, supervised and removed by the city council and shall meet upon a complaint or grievance being filed and at the request of the council or the city manager. The commission shall have authority and power to investigate complaints, gather and hear evidence, issue and enforce subpoenas to compel the attendance of witnesses and any evidence or documents, to decide ethics complaints based on the information and facts submitted, to issue written opinions, verbal or written reprimands and to admonish, and, in appropriate circumstances, to recommend to the city council and/or the city manager as appropriate more severe disciplinary action, including recall, termination, civil litigation or criminal charges. The ethics commission shall be advised by independent legal counsel nominated by the city attorney and appointed by the council.

Sec. 12.02. - Acceptance of Gifts.

No officer or employee of the city shall accept directly or indirectly, any gift, favor or privilege exceeding a nominal value, or employment, from any utility, corporation, person or entity having or seeking a franchise or contract with, or doing business with, the city. If any utility, corporation, person or entity contracting with the city shall make any gift, or give any favor, privilege or employment to an officer or employee in violation of this section such action shall render the contract voidable.

Sec. 12.03. - Interest in City Contract.

No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the city, or be financially interested directly or indirectly in the sale to the city of any land, materials, supplies or services except on behalf of the city as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one percent of the total capital stock of the corporation. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the city shall render the contract voidable.

Sec. 12.04. - Conflict of Interest.

No officer or employee of the city shall participate in the deliberation or decision on any issue, subject or matter before the council or any board or commission, if the officer or employee has a personal financial or property interest, direct or indirect, in the issue, subject or matter, that is different from that of the public at large. An interest arising from job duties, compensation or benefits payable by the city shall not constitute a personal financial interest.

Sec. 12.05. - Political Contributions.

No elected or appointed city official or employee shall by any means whatsoever solicit or assist in soliciting any assessment, subscription, or contribution for any political party, candidate or any political purpose whatsoever from any non-elected city official or employee holding any compensated city position or employment.

ARTICLE XIII. - GENERAL PROVISIONS

Sec. 13.01. - Oath of Office.

All officers of the City shall, before entering upon the duties of their respective offices, take and subscribe to the official oath prescribed by the Constitution of the State of Texas. The oath shall be administered by the Mayor, the City Secretary, Notary Public, or other person authorized by law to administer oaths.

Sec. 13.02. - Notice of Claim Against City.

Except as provided for by the state constitution or a statute in conflict herewith, the city shall not be liable for any damages, attorneys fees, costs of court, or other monies regarding any matter whatsoever, unless notice shall have first been given the city in compliance with this section, as follows:

(a) Before the city shall be liable for any damage, claim or suit, attorney fees or costs of court, arising out of or for any personal injury, damage to property, or violation of any statutory right or duty, the person who is injured or whose property has been damaged, or someone on his or her behalf, shall give the city manager or the city secretary notice in writing duly certified within ninety (90) days after the date of the alleged damage, injury or violation of statutory duty or right, stating specifically in such notice when, where and how the injury or damage was sustained, setting forth the extent of the injury or damage as accurately as possible, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage. In case of injuries resulting in death, the person or persons claiming damage shall within ninety (90) days after the death of the injured person give notice as required above.

(b) Before the city shall be liable for any damages, attorney fees, court costs or monies whatsoever, whether arising out of any action authorized by statute, for declaratory judgment, or for equitable remedy, or for any damage, claim or suit arising out of contract, the person who seeks such remedy, relief or damage, or someone on his or her behalf, shall:

    (i) Give the city manager or the city secretary notice in writing not less than thirty (30) days prior to the filing of such claim, suit or cause of action, stating specifically the allegations of and basis for such claim, suit or request for remedy, the facts, contract provisions or circumstances supporting the same, the specific remedy or damages sought, the names of all city officers and employees complained of, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage; and

    (ii) Upon request of the city manager or the city council meet, confer and negotiate with the city for the purpose of reaching an acceptable compromise and settlement.

Sec. 13.03. - Reservation of Defenses.

Nothing contained in this charter or in any ordinance or contract of the city shall be construed to mean the city waives any rights, privileges, defenses or immunities provided under common law, or the Constitution and laws of the State of Texas. No such right, privilege, defense or immunity may be waived except by the city council acting in a public meeting to settle or compromise a claim, dispute or lawsuit.

Sec. 13.04. - Settlement of Claims.

The council shall have the authority to compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the city, except suits by the city to recover delinquent taxes; provided that the city attorney shall have the authority to settle on behalf of the city any and all matters pending in municipal court, or in the county courts on appeal from the municipal court.

Sec. 13.05. - Community Service Organizations.

A written contract for services shall be executed prior to any non-profit, community service organization receiving city funds. Such contracts shall establish the terms, conditions and services to be provided, and shall require an annual audit of the non-profit organization.

Sec. 13.06. - Public Records.

All public records of every office, department, or agency of the City shall be open to inspection by the public at all reasonable times in which such records are not subject to a privilege against disclosure that is recognized by state or federal law, provided that records that may be closed to the public pursuant to State law, are attorney client privileged, regard a competitive bid or proposal that has not been finally awarded, regard the active negotiation of a contract or pending acquisition of property, or that include information that is protected by a right of privacy established by statute or constitution, shall not be considered public records for the purpose of this section. During normal office hours, any person shall have the right to examine any such public records belonging to the City and shall have the right to make copies thereof under such reasonable rules and regulations as may be prescribed by the City Council or by this Charter. All written applications for public records shall be stamped with a city seal and a copy of the application shall be provided to the applicant.

Sec. 13.07. - Succession.

If four or more positions on the city council become vacant at any time due to disaster or an event that results in the death or inability to serve of four or more members, the mayor, mayor pro-tem, majority of the surviving members of council or, if there be but one, any surviving member, may call a special election to fill the vacant positions. In such event, pending the election, if there are three (3) surviving members of the city council they shall constitute a quorum. If there are not at least three surviving members the following officers of the city in the order listed shall serve with the surviving members of the council on an interim basis as necessary to result in a four member quorum: (1) the chair of the planning and zoning commission; (2) the vice chair of the planning and zoning commission; (3) the city manager; (4) the chief of police; (5) the city secretary; and (6) the director of public works. If such surviving officers not be sufficient in number to constitute a quorum, the remainder shall constitute a quorum until the officers elected at the special election take office.

Sec. 13.08. - Charter Review.

The council shall review the charter every two years to determine if any amendment should be considered. The council shall appoint a charter review commission, consisting of seven (7) qualified voters of the city, not less often than every fifth year. The term of each charter review commission shall be six (6) months and such commission shall review, hold hearings upon, and make recommendations for the amendment, if any, of this charter. Any resulting charter elections shall be noticed and held in compliance with state law.

Sec. 13.09. - Severability.

It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this charter are severable and, if any word, phrase, sentence, paragraph or section of this charter should be declared invalid by a final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of this charter, since the same would have been enacted without the incorporation of any such invalid word, phrase, clause, sentence, paragraph or section. If any provision of this charter shall be adjudged by a court of competent jurisdiction to be invalid or to conflict with state law, the invalidity or inconsistency shall not affect any other provision or application of this charter which can be given effect without the invalid or inconsistent provision, and to the fullest extent possible this charter shall be construed and read in a manner to give effect to the original intent and meaning of this charter as modified only by the deletion of such invalid word, phrase, clause, provision or section, and to this end the provisions of this charter are declared to be severable.

ORIGINAL CHARTER COMMISSION CERTIFICATION

TO THE CITY COUNCIL and CITIZENS OF THE CITY OF KYLE, TEXAS

The Charter Commission finds and decides it is impracticable to aggregate each subject so as to permit a vote of "YES" or "NO" on the same, for the reason that this Charter is so written that, for it to be workable and usable, it is necessary that it be adopted in its entirety.

For this reason the Charter Commission directs that this Charter be voted upon as a whole and that it be submitted to the qualified voters of the City of Kyle at an election to be held for that purpose on the 7th day of November 2000. If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Kyle and, after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall file an official copy of the Charter among the records of the City. The City Secretary shall furnish the Mayor a copy of said Charter so adopted, authenticated and certified by her signature and seal of the City, showing the approval of such Charter by a majority vote of the qualified voters voting at such election, which the Mayor shall forward to the Secretary of State of the State of Texas.

Not less than thirty (30) days prior to such election the City Council shall cause the City Secretary to mail a copy of this proposed Charter to each registered voter in the City as their names appear on the official records of the registered voters.

We, the undersigned members of the Charter Commission of the City of Kyle, having been heretofore duly appointed to prepare a Charter for the City of Kyle, Texas, DO HEREBY CERTIFY that the above and foregoing constitutes a true copy of the proposed Charter of the City of Kyle, Texas, which we have prepared. We the remaining members of the Charter Commission, completed the writing of this Charter, and, unanimously recommend this Charter to the citizens of the City of Kyle, Texas.

Respectfully submitted this 15th day of August 2000.

_____	_____
Janet Arsenault	Jean Bales
_____	_____
Bob Barton, Vice Chair	Ken Burks
_____	_____
Ray Herrera	Esther Hicks
_____	_____

Debbie Jimenez	J. Pete Krug, Chair
_____	_____
Crescencio Martinez	Bill Neukam
_____	_____
Day Ryan	D. J. "Red" Simon
_____	_____
Lon Taylor	Glen Whitaker

Chapter 1 - GENERAL PROVISIONS

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

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Kyle, Texas," and may be also cited as the "Kyle Code."

State Law reference— Authority to adopt a civil and criminal code of ordinances, V.T.C.A., Local Government Code § 53.001.

Sec. 1-2. - Catchlines of sections.

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

Sec. 1-3. - Definitions and rules of construction.

In the construction of this Code, and of all ordinances and resolutions passed by the city council, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council:

Generally. Words shall be construed in their common and usual significance unless the contrary is clearly indicated.

City. The term "city" means the City of Kyle in the County of Hays and State of Texas.

City boards, committees, commissions, officers, employees and departments. Any reference to boards, committees, commissions, officers, employees or departments shall be construed to mean the boards, committees, commissions, officers, employees or departments, respectively, of the City of Kyle, Texas.

City council. Whenever the term "city council" is used, the term means the city council of the City of Kyle, Texas.

Code. The term "Code" means this Code of Ordinances, City of Kyle, Texas.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given or such act is done shall not be counted in computing the time, but the day on which such proceeding is to be had shall be counted unless it is a Saturday, Sunday or legal holiday.

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

County. The term "county" means the County of Hays, Texas.

Delegation of authority. Whenever a section or provision appears requiring the head of a department or some other city officer or employee to do some act or perform some duty, it shall be construed to authorize the head of the department or other officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty, unless the terms of the provision or section specify otherwise.

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

Joint authority. Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

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

Number. Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

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

Official time standard. Whenever certain hours are named herein they shall mean standard time or daylight-saving time as may be in current use in the city.

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

Person. The term "person" extends and is applied to associations, corporations, firms, partnerships and bodies politic and corporate as well as to individuals.

Planning and zoning commission. The term "planning and zoning commission" means the planning commission created in Charter, § 10.04.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property, and life insurance policies and the effects thereof.

Shall. The term "shall" is always mandatory and not merely directory.

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

Signature or *subscription.* The term "signature" or "subscription" includes a mark when a person cannot write.

State. The term "state" shall be construed to mean the State of Texas.

Street. The term "street" includes any highway, alley, street, avenue, public place or square, bridge, underpass and overpass in the city, dedicated or devoted to public use.

Tense. Words used in the past or present tense include the future as well as the past and present.

Vernon's Ann. Civ. St. The abbreviation "Vernon's Ann. Civ. St." means the latest edition or supplement to Vernon's Annotated Civil Statutes.

State Law reference— Statutory references, V.T.C.A., Government Code § 312.008.

V.T.C.A. The abbreviation "V.T.C.A." means and refer to the latest edition or supplement of Vernon's Texas Code Annotated.

State Law reference— Statutory references, V.T.C.A., Government Code § 312.008.

Written or in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

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

State Law reference— Similar provisions, V.T.C.A., Government Code §§ 311.001 et seq., 312.001 et seq.

Sec. 1-4. - References to chapters, articles, divisions or sections.

All references in this Code to chapters, articles, divisions or sections are to the chapters, articles, divisions or sections of this Code, unless otherwise specified.

State Law reference— Construction of statutory references, V.T.C.A., Government Code § 311.007.

Sec. 1-5. - History notes.

The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-6. - References and editor's notes.

References and editor's notes following certain sections of this Code are inserted as an aid and guide to the reader and not controlling or meant to have any legal effect.

Sec. 1-7. - Continuation of existing ordinances.

The sections appearing in this Code, so far as they are the same as those of the ordinances of the city existing at the time of adoption of this Code, shall be considered as a continuation thereof and not new enactments.

Sec. 1-8. - Prior offenses, penalties and rights not affected by adoption of Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

(b) The adoption of this Code shall not be interpreted as permitting any use or the continuance of any use of a structure or premises in violation of any city ordinance in effect on the date of adoption of this Code.

Sec. 1-9. - Certain ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:

(1) Promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city.

(2) Granting any right or franchise.

(3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city.

(4) Making any appropriation or adopting the budget.

(5) Levying or imposing taxes not contained in this Code.

(6) Establishing or prescribing grades of streets in the city.

(7) Providing for local improvements and assessing taxes for such improvements.

(8) Regarding subdivisions.

(9) Extending or contracting the boundaries of the city.

(10) Prescribing the number, classification, benefits or compensation of any city officers or employees or any personnel policies and procedures or retirement programs.

(11) Prescribing through streets, parking and traffic regulations, speed limits, one-way traffic, limitations on loads of vehicles or loading zones.

(12) Calling an election.

(13) Authorizing street maintenance agreements.

(14) Which is temporary although general in effect.

(15) Which is special although permanent in effect.

(16) The purpose of which has been accomplished.

(b) All such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the city secretary's office.

Sec. 1-10. - Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect or any suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the ordinance repealed.

Sec. 1-11. - Amendments or additions to Code.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new code by the city council.

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

(c) In the event a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, City of Kyle, Texas, is hereby amended by adding a section, to be numbered _____, which said section reads as follows: . . .." The new section shall then be set out in full as desired.

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

Sec. 1-12. - Supplementation of Code.

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

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

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

(1) Organize the ordinance material into appropriate subdivisions;

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

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

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

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

Sec. 1-13. - Severability of parts of Code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the city council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

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

(a) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punishable by a fine of not more than $500.00. However, a fine or penalty for the violation of a rule, ordinance or police regulation that governs fire safety, zoning or public health and sanitation, including dumping of refuse, shall be punishable by a fine of not more than $2,000.00. Provided, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state.

(b) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and the specific penalty provided therefor is punishment by fine exceeding the jurisdictional limit authorized for a class C misdemeanor by the Texas Penal Code as defined by V.T.C.A., Penal Code § 12.23 and no specific mental culpability is otherwise required by the provisions of this Code or any such ordinance, it shall be required that the offense have been committed intentionally, knowingly, recklessly or with criminal negligence as defined by the Texas Penal Code.

(c) Each day or fractional part thereof any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

(Ord. No. 301, §§ 1, 2, 4-15-1997)

State Law reference— Authority of city to prescribe penalties for violation of Code of Ordinances. V.T.C.A., Local Government Code § 54.001.

ARTICLE I. - IN GENERAL

Sec. 2-1. - Disposal of surplus property.

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

Salvage property or *Junk property* means personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended and the cost of seeking competitive bid exceeds the value of the property or the property has been competitively bid without successful receipt of a response.

Surplus property means personal property that:

(1) Is not salvage property or items routinely discarded as waste; and

(2) Is not currently needed by the city; and

(3) Is not required for the City's foreseeable needs; and

(4) Possesses some usefulness for the purpose for which it was intended.

(b) *Applicability.* This section shall apply to personal property owned by the city that is either (a) salvage property or junk property; or (b) surplus property. Both herein collectively referred to as "excess property."

(c) *Duties of department heads.* Department heads shall periodically assess and determine the status of personal property within the possession and control of the department. Personal property requiring replacement shall be budgeted and scheduled for phasing out. Department heads shall account for all property in the possession and control of the department and, at least annually, provide the city manager with a list of personal property which has become excess property. The department shall maintain all property until proper authorization has been received to dispose of the excess property. Salvage property with an original value of $10.00 or less, such as pens, disposable office supplies, pool supplies, etc., which have become worn, damaged or fully utilized may be discarded without necessity of authorization from the city manager.

(d) *Authority of city manager.* The city manager shall review and evaluate the appropriateness of declaring personal property excess property at the recommendation of the department head. Excess property of one department which is needed in another department or branch of the city shall be transferred to such department without being deemed excess property. All other excess property shall be considered for disposal or conveyance pursuant to the procedures of this section.

(e) *Disposal of property.* Authorization herein to dispose of excess property is authorization to use best efforts to dispose of excess property for the highest price without costing the City more to dispose of such property.

(1) During the budget process, the city manager shall identify major equipment for which a title is held in the name of the city, such as cars, which will be replaced with new equipment or otherwise liquidated, and shall include such information in the budget. Items identified for replacement in the budget shall be authorized to be disposed of as surplus or, if qualifying, salvage property without further action of the city council, in a manner set forth in this section.

(2) Salvage or junk property may be utilized as a trade-in on new property of the same general type without further action by the city council. Surplus property may be utilized as a trade-in on new property of the same general type upon approval of the city council.

(3) Salvage or junk property constituting scrap, for which undertaking to sell the property under subsection 2-1(f) would likely result in no bids or a bid price that is less than the city's expenses

required for the bid process, may be destroyed or otherwise disposed of as worthless without further action of the city council, or may be offered to a qualifying non-profit or civic organization upon approval of the city council.

(4) Surplus property shall be offered for competitive bid as set forth in subsection 2-1(f) without further action of the city council, or may be offered to a qualifying non-profit or civic organization upon approval by the city council provided the organization services to the city are sufficient to authorize such transfer.

(5) A qualifying non-profit or civic organization receiving excess property from the city must provide the city with adequate compensation, such as relieving the city of transportation of disposal expenses related to the property.

(6) Excess property receiving no bids in an auction or competitive bids may be deemed salvage property and may be disposed of in a manner provided in this section.

(7) Property in the possession of the city police department subject to disposal standards of the Code of Criminal Procedure or other property in any departments possession for which another statute requires specific procedures for disposal shall follow the procedures set forth therein.

(f) *Competitive bidding.* Surplus property required to be bid shall be sold either through an approved auction facility or through competitive bid. Notice of a bid shall include a description of the surplus property to be sold, and the date and time sealed bids will no longer be accepted. The highest, qualifying, bidders shall be sold the surplus property. Notice shall be included in the official newspaper at least twice with the first notice being at least 14 days before the sale and the second being one week later. Notice shall also be posted on the city's official website.

(g) *Proceeds of sale or non-sale disposition.* Any and all proceeds of the sale shall be deposited in the treasury of the city and accounted for in the financial records of the city. Any excess property exchanged or traded for value shall be added to the appropriate inventory of property of the city.

(h) *Prohibited employee transfers or conversions.* Employees shall be strictly prohibited from purchasing surplus or salvage property from the city or benefiting from the sale or transfer of such property. Persons related in the first degree of affinity or consanguinity to an employee may not purchase or have property transferred to them, except for property sold at a competitive bid.

(Ord. No. 566, §§ 2—9, 4-21-2009)

Secs. 2-2—2-18. - Reserved.

ARTICLE II. - CITY COUNCIL

Secs. 2-19—2-39. - Reserved.

ARTICLE III. - BOARDS, COMMITTEES AND COMMISSIONS

DIVISION 1. - GENERALLY

Subdivision I. - Boards

Sec. 2-40. - Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning. The term "herein" means a reference included in this subdivision. Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices.

Board or *boards* means and refers to a formal body that is created by ordinance passed by majority vote of the city council. A board's members are appointed by the council and serve on a voluntary basis without compensation. Each board shall derive its authority, purpose, charge, and duties from the ordinance that creates such board. A board has no authority to act beyond the scope and requirements of the ordinance creating the board. A board is established, and may be dissolved, solely at the discretion of the city council or as called for under the ordinance creating the board. For purposes of the City Charter, this subdivision, any resolution, and state or federal law, a board shall not be considered a committee, commission, or agency.

Council board member means a member of the city council who is appointed to the board by the mayor as a regular member of the board.

Regular member means an individual who is appointed to a board by the city council.

(Ord. No. 852, § 2, 6-2-2015)

Sec. 2-41. - Quorum.

A board shall continue to meet and perform its duties if it has at a regular meeting enough members present to constitute a quorum. A quorum shall be a majority of a board's members appointed. Vacant positions shall not be included in determining a quorum.

(Ord. No. 852, § 3, 6-2-2015)

Sec. 2-42. - Appointment.

(a) The council shall appoint no more than seven persons as regular members to serve on a board unless explicitly defined per state statute or the city charter.

(b) The council may vote to appoint members to any board created and authorized by the city council under this subdivision. No person shall be appointed to a board except by a majority vote by the city council to approve such appointment. Members may be dismissed from a board by a majority vote of the city council, with or without cause.

(c) If no recommendation has been made for an appointment of a person at two regular council meetings, the council may take action by motion and by a majority vote appoint a member to a board.

(d) A vacancy shall automatically occur for a board position if an appointment, reappointment or replacement is not made during 60 days after a reappointment or replacement date expires. The mayor may appoint a council member to serve on the board in the event a vacancy exists within the board. The term for the council board member shall not exceed one year without reappointment by the mayor.

(e) If a vacancy occurs, the council may fill such vacancy. A person appointed to fill a vacancy shall serve until the term of the vacated position expires. If a vacancy has less than one-half of its term still remaining, the person appointed to fill the position may be appointed to two subsequent full terms. If a vacancy has more than one-half of its term still remaining, the person who is appointed may only be reappointed for one additional full term of two years.

(Ord. No. 852, § 4, 6-2-2015)

Sec. 2-43. - Term of appointment.

A person appointed as a regular member to a board shall serve one term of two years and may be reappointed for one more term. Regular members may serve past their appointed or reappointed terms until the council reappoints or replaces them, but in no event shall a regular member serve for longer than 60 days after their term expires unless authorized by state law or the Texas Constitution.

(Ord. No. 852, § 5, 6-2-2015)

Sec. 2-44. - Unexcused absences.

If a member of a board is absent for three regular consecutive meetings, the regular member office is considered vacant unless the member is sick or has first obtained a leave of absence from the majority of the board members present at a regular meeting. The board in question shall be the judge of whether the member has had three such consecutive unexcused absences.

(Ord. No. 852, § 5, 6-2-2015)

Sec. 2-45. - Qualifications.

An individual shall not be eligible for appointment to a board unless the individual meets the following qualifications on the day prior to the date of appointment: (1) be at least 18 years of age; (2) be a citizen of the United States; (3) have been a resident of the State of Texas and the city for at least 12 consecutive months or have significant presence in the community; and (4) not be delinquent on any indebtedness to the city. An appointee may not be a city employee. If any appointee ceases to possess any of these qualifications, such position to which the appointee was appointed shall, upon such fact being determined by the council, immediately become vacant.

(Ord. No. 852, § 6, 6-2-2015)

Sec. 2-46. - Meetings.

Boards shall meet at least once per quarter. Notice of meetings shall be posted in accordance with Texas Open Meetings Act.

(Ord. No. 852, § 7, 6-2-2015)

Sec. 2-47. - Committees within a board.

Any board with authority to create a committee must have approval of the city council to approve such committee. An approved committee shall be established by resolution, which shall define the purpose of the committee. The committee shall dissolve after one year, or when the purpose has been completed, or upon council majority vote to dissolve the committee.

(Ord. No. 852, § 8, 6-2-2015)

Sec. 2-48. - Application of Texas Open Meetings Act.

Any board or boards, including any committees within a board, that are created pursuant to this subdivision shall be subject to the requirements and limitations of the Texas Open Meetings Act, currently codified in V.T.C.A., Government Code ch. 551, and any subsequent amendments or recodifications of such act.

(Ord. No. 852, § 9, 6-2-2015)

Sec. 2-49. - Transition period.

Any currently appointed regular members shall complete their current terms.

(Ord. No. 852, § 10, 6-2-2015)

Secs. 2-50—2-54. - Reserved.

Subdivision II. - Committees

Sec. 2-55. - Establishment of committees.

The city council shall authorize the establishment of ad hoc committees by resolution passed by a majority vote of its members. The resolution, along with this subdivision, shall govern the committees established. The resolution will assign purpose, duties, and meeting requirements specific to the committee established. The council, by a majority vote of its members, shall have authority to abolish a committee after it has been established or to dismiss members of a committee with or without cause. The committee shall dissolve one year after its establishment, or upon completion of its purpose.

(Ord. No. 855, § 2, 6-2-2015)

Sec. 2-56. - Definitions.

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning. The term "herein" means a reference included in this subdivision. Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices.

Committee or *committees* means and refers to a formal body that is created by a resolution passed by majority vote of the city council. A committee's members are appointed by the council and serve on a voluntary basis without compensation. Unless otherwise granted by council resolution, a committee has no quasi-legislative or legislative powers and is strictly advisory in nature. Each committee shall derive its purpose, charge, and duties from the resolution that creates such committee or as otherwise directed in this subdivision. A committee has no authority to act beyond the scope and requirements of this subdivision or the resolution creating the committee. A committee is established, and may be dissolved, solely at the discretion of the city council or as called for under the resolution creating the committee. For purposes of the City Charter, this subdivision, any resolution, and state or federal law, a committee shall not be considered a commission, board, or agency.

Council committee member means a member of the city council who is appointed to the committee by the mayor as a regular member of the committee.

Regular member means an individual who is appointed to a committee by the city council.

(Ord. No. 855, § 3, 6-2-2015)

Sec. 2-57. - Membership; quorum.

The council shall appoint no more than seven persons as regular members to serve on a committee. A committee shall continue to meet and perform its duties with less than seven regular members if it has at a regular meeting enough members present to constitute a quorum. A quorum shall be four members. Each committee shall determine a chairperson and vice-chairperson at the first meeting of the committee.

(Ord. No. 855, § 4, 6-2-2015)

Sec. 2-58. - Term of appointment.

A person appointed as a regular member to a committee shall serve one year at which time the committee is dissolved.

(Ord. No. 855, § 5, 6-2-2015)

Sec. 2-59. - Unexcused absences.

If a member of a committee is absent for three regular consecutive meetings, the regular member office is considered vacant unless the member is sick or has first obtained a leave of absence at a regular meeting. The committee in question shall be the judge of whether the member has had three such consecutive unexcused absences.

(Ord. No. 855, § 5, 6-2-2015)

Sec. 2-60. - Appointment.

(a) The council may vote to appoint members to any committee created and authorized by the city council under this subdivision. No person shall be appointed to a committee except by a majority vote by the city council to approve such appointment.

(b) If no recommendation has been made of an appointment of a person at two regular council meetings, the council may take action by motion and by a majority vote appoint a member to a committee.

(Ord. No. 855, § 6, 6-2-2015)

Sec. 2-61. - Vacancy.

(a) A vacancy shall automatically occur for a committee position if an appointment, reappointment or replacement is not made during 60 days after a reappointment or replacement date expires. The mayor may appoint a council member to serve on the committee in the event a vacancy exists within the committee. The term for the council committee member shall not exceed one year without reappointment by the mayor.

(b) If a vacancy occurs, the council may fill such vacancy. A person appointed to fill a vacancy shall serve until the term of the vacated position expires. If a vacancy has less than one-half of its term still remaining, the person appointed to fill the position may be appointed to three subsequent full terms. If a vacancy has more than one-half of its term still remaining, the person who is appointed may only be reappointed for two full terms of two years.

(Ord. No. 855, § 6, 6-2-2015)

Sec. 2-62. - Qualifications.

An individual shall not be eligible for appointment to a committee unless the individual meets the following qualifications on the day prior to the date of appointment: (1) be at least 18 years of age; (2) be a citizen of the United States; (3) be a qualified voter of the city; (4) have been a resident of the State of Texas and the city for at least 12 consecutive months; and (5) not be delinquent on any indebtedness to the city. An appointee may not be a city employee. If any appointee ceases to possess any of these qualifications, including continuous residency within the city during the term of appointment, such position to which the appointee was appointed shall, upon such fact being determined by the council, immediately become vacant; provided that if the residence of an appointee is dis-annexed, the appointee shall serve the remainder of the appointee's term on the committee to which the appointee was appointed.

(Ord. No. 855, § 7, 6-2-2015)

Sec. 2-63. - Application of Texas Open Meetings Act.

Any committee that are created pursuant to this subdivision shall be subject to the requirements and limitations, including the posting of notice, of the Texas Open Meetings Act, currently codified in V.T.C.A., Government Code ch. 551, and any subsequent amendments or recodifications of such act.

(Ord. No. 855, § 8, 6-2-2015)

Secs. 2-64—2-66. - Reserved.

DIVISION 2. - PLANNING AND ZONING COMMISSION[1]

Footnotes:

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Charter reference— Planning commission established, § 10.04.

State Law reference— Planning commission, V.T.C.A., Local Government Code § 212.007.

Sec. 2-67. - Creation and purpose.

A planning and zoning commission is hereby created and established. It is the intent and purpose of the city Charter and this division that the planning and zoning commission shall perform the functions and accomplish the purposes and duties set forth in article X of the city Charter and V.T.C.A., Local Government Code chs. 211 and 212, to be accomplished by a planning or zoning commission. The planning and zoning commission shall perform the duties and functions set forth in this division, advise the city council, and perform any other, special or additional duties now or hereafter specified by the city council or state law to be accomplished by a planning or zoning commission. Except as specifically provided otherwise by state law, city Charter or city ordinance, the duties, authority and powers of the planning and zoning commission shall be advisory. The planning and zoning commission shall act as the planning and zoning commission as referenced in chapter 53, zoning.

(Ord. No. 440, § 1, 1-6-2004)

Sec. 2-68. - Membership.

The planning and zoning commission shall consist of citizens of the city who must be qualified voters that have resided within the city for six months prior to the date of their appointment. The number of members of the commission shall be seven, and a minimum of five of the members shall be citizens not directly or indirectly connected with real estate and land development.

(Ord. No. 440, § 2, 1-6-2004)

Sec. 2-69. - Appointment and terms of office.

The members of the planning and zoning commission shall be appointed by majority vote of the city council for a term of two years, with a simple majority of the members being appointed to a two-year term beginning October 1 in every odd-numbered year and the remaining members being appointed to a two-year term beginning October 1 in every even-numbered year. The members of the commission shall be identified by place numbers one through seven. The terms of office for the odd-numbered places shall expire on September 30 of odd-numbered years; and the term of office for the even-numbered places shall expire on September 30 of even-numbered years.

(Ord. No. 440, § 3, 1-6-2004)

Sec. 2-70. - Vacancies, appointments and service.

Vacancies shall be filled by majority vote of the city council to serve the remainder of the unexpired term. The planning and zoning commission members may be appointed to succeed themselves, but no member shall be appointed for any single term that is in excess of two years. Newly appointed members shall be installed at the beginning of the first regular commission meeting that is held after their appointment. The members of the commission shall be regular in their attendance of commission meetings, and shall serve without compensation except for the reimbursement of authorized expenses incurred by them. Members failing to attend four or more meetings during a single term may be removed from the commission by the city council prior to the expiration of the term.

(Ord. No. 440, § 4, 1-6-2004)

Sec. 2-71. - Organization.

The planning and zoning commission shall hold an organizational meeting in October of each year, or as soon thereafter as newly appointed and reappointed members take office. The first item of business at such annual meeting shall be the election of a chairperson and a vice-chairperson from among the membership of the commission. At such annual meeting, the commission may elect a secretary if deemed necessary from its membership or from city staff assigned to work with the commission. The commission shall designate the time and place of its regular meetings and provide that it shall meet at least once each calendar month. From time to time, the commission shall adopt its own rules of procedure.

(Ord. No. 440, § 5, 1-6-2004)

Sec. 2-72. - Quorum, vote and records.

Four members of the planning and zoning commission shall constitute a quorum, and the chair shall be counted for the purposes of a quorum. All members shall vote on matters presented for a vote of the commission, unless disqualified. All members of the planning and zoning commission may make motions, except for the chair. When the chair is necessary to establish and maintain a quorum the chair may make motions. Except as specifically provided otherwise by ordinance, Charter or state law, all actions by the commission shall be by a simple majority vote; provided that not less than three affirmative votes shall be

required for action on any matter or issue. If a matter is before the planning and zoning commission at a meeting for which only four members are present, and final action on the matter does not receive at least three votes, the matter will be tabled and reconsidered at the next meeting of the commission at which four or more members of the commission are present. The commission acting at a meeting at which four or more members are present may vote to recommend, deny or table the application or request; provided that if the application is for the approval of a subdivision plan or plat the commission may table the request only upon the request of the applicant. A request or application shall not be continued to the next regular meeting and shall be recorded in the minutes as a denial if all members are present for the vote and a motion fails to carry by a majority vote. The planning and zoning commission shall keep or cause to be kept records and minutes of its proceedings.

(Ord. No. 440, § 6, 1-6-2004)

Sec. 2-73. - Duties and powers.

(a) The planning and zoning commission is charged with the duty and invested with the authority to act as follows:

(1) Request the city manager to cause an inspection and report to the planning and zoning commission to be made of any property; view and observe any property; and, with the owners consent, inspect property and premises at reasonable hours, when required to discharge its responsibilities under the laws of the state and of the city;

(2) Review, monitor, oversee, and make recommendations to the city manager and the city council for adoption a comprehensive plan for the orderly growth and development of the city and its environs, and from time to time recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety, and general welfare of the citizens of the city;

(3) Review, monitor, oversee and make recommendation for a zoning plan as may be deemed best to carry out the goals of the comprehensive plan; hold public hearings and make recommendations to the city manager and the city council relating to the creation, amendment, and implementation of zoning regulations and districts as provided by the city Charter;

(4) Exercise all the powers of the commission as to approval or disapproval of plans, plats, or replats and vacations of plans, plats or replats, as provided for in chapter 41, subdivision and V.T.C.A., Local Government Code § 212.001 et seq.;

(5) Study and make recommendations on the location, extension, planning, vacating, and closing of public rights-of-way, parks, and other public places, as requested by the city manager or the city council;

(6) Study and make recommendations concerning the capital improvements program, including the design, construction and general location of public buildings, bridges, viaducts, street fixtures, and other structures and appurtenances; and make recommendations on the design or alteration and on the location or relocation of works of art which become city property;

(7) Initiate, in the name of the city as requested by the city manager or the city council, proposals for the opening, vacating, or closing of public rights-of-way, parks, or other public places; the original zoning of annexed areas; and for the change of zoning district boundaries on an areawide basis;

(8) Review, monitor, oversee, and make recommendations to the city council and city manager, policies and regulations consistent with the adopted comprehensive plan governing the location and/or operation of utilities, public facilities, and services owned or under the control of the city;

(9) As requested by the city council or the city manager, review and make recommendations concerning annexation of land into the city;

(10) Keep itself informed with references to the progress of urban planning in the United States and other countries and recommend improvements in the adopted plans of the city;

(11) Exercise the authority and perform the duties provided by state law and the city Charter to be exercised and performed by a city planning or a city zoning commission;

(12) Submit an annual report to the city manager and council each October that summarizes its activities, major accomplishments for the past year, and a proposed work program for the coming year. The report shall contain the attendance record of all members and the identity of commission officers for the following year.

(b) If any authority or duty set forth herein shall appear to conflict with or be inconsistent with any part or provision of the city Charter, the same shall be read and construed in a manner consistent with the city Charter.

(Ord. No. 440, § 7, 1-6-2004)

Charter reference— Powers and duties of the planning commission, § 10.05.

State Law reference— Powers and duties of the planning commission, V.T.C.A., Local Government Code § 212.007.

Sec. 2-74. - Disqualification from voting.

(a) A member shall disqualify himself from voting whenever he has a personal or monetary interest in the property at issue, or he or the property he owns will be substantially affected by the decision of the planning and zoning commission; provided that an interest that is in common with and not distinguishable from that of the general public shall not disqualify any member from voting or participating.

(b) A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on the application, other than in the public hearing.

(c) Members of the planning and zoning commission shall comply with V.T.C.A., Local Government Code § 171.001 et seq., the city Charter and article IV, division 2 of this chapter, pertaining to ethics.

(Ord. No. 440, § 8, 1-6-2004)

Secs. 2-75—2-91. - Reserved.

DIVISION 3. - TRAIN DEPOT BOARD

Sec. 2-92. - Established.

There is hereby established the city train depot board of directors (herein referred to as the "train depot board"). Except as specifically provided otherwise in this division, the authority and powers of the train depot board shall be advisory only. The train depot board shall consist of seven members serving without pay who shall be appointed by the mayor with consent of the city council. These seven members shall be residents within the city limits or the extraterritorial jurisdiction (ETJ) of the city.

(Ord. No. 445, § 2, 4-6-2004)

Sec. 2-93. - Term of office.

The term of office for the members of the train depot board shall be for two years or until their successor has been appointed and qualified, except that the members initially appointed to create the train depot board shall be appointed for such terms that two members' terms will expire after one year, two members' terms will expire after two years, and the other three members shall expire after three years. Members shall be eligible for reappointment at any time following the termination of their two-year term. Vacancies on the train depot board occurring other than by expiration of the term shall be filled by the city council for the remainder of that term.

(Ord. No. 445, § 3, 4-6-2004)

Sec. 2-94. - Duties and responsibilities.

The duties and responsibilities of the train depot board are as follows:

(1) The train depot board shall recommend to the city council rules, policies and procedures related to the operations and programs associated to the train depot and surrounding grounds, such rules, policies and procedures shall become in effect upon adoption of the city council as provided by law;

(2) The train depot board shall carry out and perform such functions and duties as the city council may assign it;

(3) The train depot board shall act as a public forum for citizens to address concerns with the train depot;

(4) The train depot board shall provide advisory oversight to the train depot and surrounding grounds;

(5) The train depot board may review request for permits and make a recommendation relative to said requests for use and/or reservations of the train depot and surrounding grounds.

(Ord. No. 445, § 4, 4-6-2004)

Sec. 2-95. - Officers.

Immediately after the members of the train depot board are first appointed, the train depot board shall meet and elect one member as chairperson, one as vice-chairperson and another as secretary. The train depot board shall hold annual officer elections during the first regular scheduled meeting in October of each year to select the presiding officers and such other officers, as the train depot board deems advisable. Officers shall perform the duties prescribed by the train depot board. No member shall serve as the same officer more than two consecutive terms.

(Ord. No. 445, § 5, 4-6-2004)

Sec. 2-96. - Meetings.

(a) *Regular meetings.* The train depot board shall endeavor to hold at least one regular meeting each month and shall prescribe by rule regular meeting dates at a regular meeting place.

(b) *Quorum.* A quorum shall consist of four voting members. A motion to approve any matter before the train depot board or to recommend approval of any request requiring city council action shall require a simple majority vote of the quorum members present. Any quorum member may make or second a motion. Roberts' Rules will be in affect during all meetings.

(c) *Open meetings.* The train depot board meetings will be open to the public and will follow all rules of the Open Meetings Act. The secretary will take minutes each meeting and have them approved at the next regular scheduled meeting. These minutes will be kept in accordance to Open Meetings Act.

(d) *Voting.* Voting shall be by roll call vote. The presiding officer shall be entitled to vote on matters before the train depot board.

(e) *Annual report.* The train depot board shall present an annual report on the status of the train depot to the city council at the end of each fiscal year, by October 1.

(Ord. No. 445, § 6, 4-6-2004)

Sec. 2-97. - Gifts and donations.

The train depot board is authorized to solicit gifts and bequests of money or other personal property, or donations to be applied, principle or income, for either temporary or permanent use in the train depot or surrounding grounds. All such gifts and bequests shall be made and received directly by the city treasurer and placed in a special account or fund established for such purposes.

(Ord. No. 445, § 7, 4-6-2004)

Secs. 2-98—2-110. - Reserved.

DIVISION 4. - ECONOMIC DEVELOPMENT AND TOURISM BOARD[2]

Footnotes:

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Editor's note— Ord. No. 851, § 2, adopted June 2, 2015, repealed the former div. 4, subdivs. I—III, §§ 2-101—2-105, 2-111—2-120, which pertained to strategic planning and finance, community relations, parks and recreation, public works and service, mobility and safety and emergency services committees; economic development and tourism committee; and long range planning committee, and derived from Ord. No. 550, §§ 2—6, adopted Oct. 7, 2008; Ord. No. 551, §§ 3—6, adopted Oct. 7, 2008; Ord. No. 649, § 2, adopted Apr. 5, 2011, as subsequently amended. See the Code Comparative Table for complete derivation. At the editor's discretion, Ord. No. 853, §§ 1—3, adopted June 2, 2015, establishing the economic development and tourism board, has been codified as set out herein in div. 4.

Sec. 2-111. - Establishment of economic development and tourism board.

The economic development and tourism board is hereby created.

(Ord. No. 853, § 2, 6-2-2015)

Sec. 2-112. - Renaming the economic development and tourism committee.

The economic development and tourism committee shall hereinafter be known as the economic development and tourism board. Any reference to the "economic development and tourism committee" that appears in the City of Kyle Code of Ordinances (the "Code") shall be amended to the economic development and tourism board.

(Ord. No. 853, § 3, 6-2-2015)

Sec. 2-113. - General duties.

The board shall function in an advisory capacity only to the council, and in such advisory capacity shall study and recommend options for the promotion of tourism and economic development; communicate/coordinate with city staff. The board shall report to the council once each quarter following the board's quarterly meeting.

(Ord. No. 853, § 4, 6-2-2015)

Secs. 2-114—2-122. - Reserved.

ARTICLE IV. - OFFICERS AND EMPLOYEES

DIVISION 1. - GENERALLY

Sec. 2-123. - Personnel manual.

The personnel manual of the city shall be on file in the office of the city secretary.

Secs. 2-124—2-141. - Reserved.

DIVISION 2. - CODE OF ETHICS[3]

Footnotes:

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Editor's note—Ord. No. 581, § 2(Exh. A, Parts A—I), adopted Aug. 18, 2009, amended former Div. 2, Subdivs. I—VII, in its entirety which pertained to similar subject matter and derived from Ord. No. 431, § 2(Exh. A, Parts A—I), adopted Sept. 2, 2003.

Charter reference— Ethics and conflicts, art. XII.

Subdivision I. - In General

Sec. 2-142. - Statement of purpose.

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to the conduct of public affairs. For the purpose of promoting confidence in the government of the City of Kyle and thereby enhancing the city's ability to function effectively, this code of ethics is adopted. The code establishes standards of conduct, disclosure requirements, and enforcement mechanisms relating to city officials and employees and other whose actions inevitably affect public faith in city government, such as former city officials and employees, candidates for public office, persons doing business with the city, and lobbyists. By prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety, this code of ethics furthers the legitimate interests of democracy.

Appearance of impropriety: Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of Kyle to enforce the City Charter and the associated ordinances and codes. The appearance of impropriety may itself be a conflict of interest. To ensure and enhance public confidence in city government, each city official must not only adhere to the principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

(Ord. No. 581, § 2(Exh. A, Pt. A, § 1), 8-18-2009)

Sec. 2-143. - Definitions.

As used in this code of ethics, the following words and phrases have the meaning ascribed to them in this Section, unless the context requires otherwise or more specific definitions set forth elsewhere in this code apply:

Acceptance. A written or verbal indication that someone agrees; "Acceptance" of an offer of subsequent employment or business opportunities includes legally binding contracts and all informal understandings that the parties expect to be carried out. An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.

Affiliated. Business entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent business entity.

Affinity. Relationship by "affinity" (by marriage) is defined in Section 573.024 and 573.025 of the Texas Government Code.

Before the city. Representation or appearance "before the city" means before the city council; before a board, commission, or other city entity; or before a city official or employee. Representation "before the city" does not include representation before a board where members of said board are not wholly appointed by the city council.

Benefit. "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity. "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

Candidate. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(1) The filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of automatic resignation provisions of Article XVI, Section 65, or Article XI, Section II of the Texas Constitution;

(2) The filing of an application for a place on a ballot;

(3) The making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(4) Before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication; and

(5) The soliciting or accepting of a campaign contribution or the making of a campaign expenditure.

City. "City" means the City of Kyle, Texas.

Code of ethics. "Code of ethics," "ethics code," or "this code" means this division 2 of article IV of chapter 2 of the Kyle Code of Ordinances, its amendment(s) and/or enhanced definitions.

Complainant. "Complainant" means an individual who has filed a sworn complaint with the city secretary as provided in section 2-274 (Complaints).

Confidential government information. "Confidential government information" includes all information held by the city that is not available to the public under the Texas Open Records Act and any information from a meeting closed to the public pursuant to the Texas Open Meetings Act, regardless of whether disclosure violates the Act.

Consanguinity. Relationship by "consanguinity" (by blood) is defined in Sections 573.022 and 573.023 of the Texas Government Code.

Discretionary contract. "Discretionary contract" means any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to Section 252.022(a)(7) of the Texas Local Government Code or those contracts not involving an exercise of judgment or choice.

Economic interest. "Economic interest" includes, but is not limited to, legal or equitable property interest in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a city official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund.

Employee. Except as provided in subsection 2-180 (Prohibited interests in contracts), subsection 2-204(c) (Discretionary contracts), and subdivision VI of this division (Financial Disclosure), the term "employee or "city employee" is any person listed on the City of Kyle payroll as an employee, whether part-time or full-time.

Former city official or employee. A "former city official" or "former city employee" is a person whose city duties terminate on or after the effective date of this code.

Gift. "Gift" means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

Indirect ownership. A person "indirectly owns" an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

Intentionally. A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

Knowingly. A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably to cause the result.

Official. The term "official" or city official" includes but is not limited to the following persons:

The mayor;

Members of the city council;

Municipal court judges and magistrates;

The city manager;

Deputy or assistant city managers;

Assistants to the city manager;

City secretary or assistant city secretary;

All department heads and assistant department heads;

Secretary to the city manager;

Executive secretaries;

Public utilities supervisor; and

Members of all boards, commissions, committees, and other bodies created by the city council pursuant to federal or state law or city ordinance, excluding entities that may advisory only in nature; and board members of any entity who are appointed by the city council to such board membership.

The term *officer*:is defined in subsection 2-180(c)(2) (Prohibited interests in contracts) and subsection 2-204(c)(2) (Discretionary contracts) and is not synonymous with any use of the term "official" in this code.

Official action. "Official action" include:

(1) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official or employee's duties; and

(2) Any failure to act, if the official or employee is under a duty to act and know that inaction is likely to affect substantially an economic interest of the official or employee or any person or entity listed in subsections 2-171(a)(2)—(9) (Improper economic benefit).

Official information. "Official information" includes information gathered pursuant to the power or authority of city government.

Ownership. Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund.

Partner. Someone who engages in an activity or undertaking with another; "Partner" includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially n a venture with shared benefits and shared risks.

Person. Means any individual, human being or business entity, excluding the City of Kyle.

Personally and substantially participated. "Personally and Substantially Participated" means to have taken action as an official or employee through decision, approval, disapproval, recommendation, giving advice investigation or similar action. The fact that the person had responsibility for a matter does not by itself establish that the person "personally and substantially participated" in the matter.

Recklessly. A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Representation. "Representation" is a presentation of fact - either by words or by conduct - made to induce someone to act. Representation does not include appearance as a witness in litigation or other official proceedings.

Respondent. "Respondent" means an individual identified in a sworn complaint to have allegedly violated the Ethic Code of the City of Kyle.

Solicitation. "Solicitation" of subsequent employment of business opportunities includes all forms of proposals and negotiations relating thereto.

Public servant(s). "Public servant(s)" means the elected and the appointed officers of the city, the members of boards, commissions and committees appointed or created by the city council, and all volunteer and paid employees of the city.

(Ord. No. 581, § 2(Exh. A, Pt. A, § 2), 8-18-2009)

Secs. 2-144—2-170. - Reserved.

Subdivision II. - Present City Officials and Employees

Sec. 2-171. - Improper economic benefit.

(a) *General rule.* To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:

(1) The official or employee;

(2) His or her part, child, spouse, or other family member within the second degree of consanguinity or affinity;

(3) His or her outside client;

(4) A member of his or her household;

(5) The outside employer of the official or employee or of his or her parent, child (unless the child is a minor), or spouse;

(6) A business entity in which the official or employee knows that any of the persons listed in subsections (a)(1) or (a)(2) holds an economic interest;

(7) A business entity which the official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in subsections (a)(1) or (a)(2) holds an economic interest;

(8) A business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; or

(9) A person or business entity:

a. Form whom, within the past twelve months, the official or employee, or his or her spouse, directly or indirectly has:

1. Solicited;

2. Received and not rejected; or

3. Accepted an offer of employment; or

b. With whom the official or employee, or his or her spouse, directly or indirectly is engaged in negotiations pertaining to business opportunities.

(b) *Recusal and disclosure.* A city official or employee whose conduct would otherwise violate Subsection (a) must recuse himself or herself. From the time that the conflict is or should have been recognized, he or she shall:

(1) Immediately refrain from further participation in the matter, including discussions with any person likely to consider the matter; and

(2) Promptly file with the city secretary the appropriate form from disclosing the nature and extent of the prohibited conduct.

In addition:

(3) A supervised employee shall promptly bring the conflict to the attention of this or her supervisor, who will than, if necessary, reassign responsibility for handling the matter to another person; and

(4) A member of a board shall promptly disclose the conflict to other members of the board and shall not vote on, the matter.

(c) *Definitions.* For purposes of this rule:

(1) An action is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof; and

(2) The term client includes business relationships of a highly personalized nature, but not ordinary business-customer relationships.

(d) *Non-profit board membership.* A member of the council who serves in an unpaid position with, or on the board of, a public or private non-profit organization shall have a voice but no vote on any funding request or contract with the city by that organization, unless the organization has a board of directors or trustees appointed in whole or in part by the city council; provided further that members of the council appointed to serve on the board of a non-profit corporation or other legal entity created by the City shall, unless another conflict exists, have the authority and duty to fully participate in any discussion and vote at the city council regarding the organization.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 1), 8-18-2009)

Sec. 2-172. - Unfair advancement of private interests

(a) *General rule.* Except when performing a duty or responsibility of the position held, to serve the health, welfare or public safety of the city, to accomplish a public purpose, or to benefit the public in general, a city official or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons. A city official who represents to a person that he or she may provide an advantage to that person based on the official's position on a board or commission violates this rule.

(b) *Special rules.* The following special rules apply in addition to the general rule:

(1) *Acquisition of interest in impending matters.* A city official or employee shall not acquire an interest in or affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will directly or indirectly affected by impending official action by the city.

(2) *Reciprocal favors.* A city official or employee may not enter into an agreement or understanding with any other person that official action by the official or employee will be rewarded or reciprocated by the other person, directly or indirectly.

(3) *Appointment of relatives.* A city official or employee shall not appoint or employ or vote to appoint or employ any relative within the third degree of consanguinity or affinity to any office or position of employment within the city.

(4) *Supervision of relatives.* No official or employee shall be permitted to be in the line of supervision of a relative with in the third degree of consanguinity or second degree of affinity. Department heads are responsible for enforcing this policy. If an employee, by reason of marriage, promotion, reorganization, or otherwise, is placed into the line of supervision of a relative, one of the employees will be reassigned or other appropriate arrangements will be made for supervision.

(c) *Recusal and disclosure.* A city official or employee whose conduct would otherwise violate subsection (b)(3) of this section shall adhere to the recusal and disclosure provisions provided in subsection 2-171(b) (Improper economic benefit).

(Ord. No. 581, § 2(Exh. A, Pt. B, § 2), 8-18-2009)

Sec. 2-173. - Gifts.

(a) *General rule.*

(1) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself of his or her business:

a. That reasonably tends to influence or reward official conduct; or

b. That the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

(2) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of $50.00 or less at any occurrence, or meals with no more than a cumulative value of $250.00 in a single calendar year, from a single source, from:

a. Any individual or business entity doing or seeking to do business with the city; or

b. Any registered lobbyist or public relations firm advocating on behalf of clients doing or seeking to business with the city; or

c. Any person seeking or advocating on zoning or platting matters before a city body. Doing business with the city includes, but is not limited to, individuals and business entities that are parties to a discretionary contract, individuals and business entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and business entities that are parties to a discretionary contract.

(b) *Special applications.* Subsections (a)(1) and (a)(2) do not include:

(1) A gift to a city official or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the fairly commensurate with the occasion and the relationship between the donor and recipient;

(2) Reimbursement of reasonable expenses for travel authorized in accordance with city policies;

(3) A public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion;

(4) A loan from a lending institution made in its regular course of business on the same terms generally available to the public;

(5) A scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;

(6) Admission to an event in which the city official or employee is participating in connection with official duties;

(7) Any solicitation for civic or charitable causes;

(8) Admission to an event in which the city official or employee is participating in connection with his or her spouse's position;

(9) Ceremonial and protocol gifts presented to city officials from a foreign government or international or multinational organization and accepted for the city;

(10) Admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the sponsor of the event, and unsolicited by the City official or employee, if:

a. The official or employee participates in the event as a speaker or panel participant by presenting information related to matters before the city; or

b. The official or employee perform a ceremonial function appropriate to that individual's position with the city; or

c. Attendance at the event is appropriate to the performance of the official duties or representative function of the official or employee;

(11) Admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the city official or employee;

(12) Admission to training or education program, including meals and refreshments furnished to all attendees, if such training is related to the official or employee accepts as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law, up to $500.00 from a single source in a calendar year.

(c) *Campaign contribution exception.* the general rule stated in subsection (a) does not apply to a campaign contribution made pursuant to the Texas Election Code.

(d) *Gifts to closely related persons.* A city official or employee shall take reasonable steps to persuade:

(1) A parent, spouse, child, or other relative within the second degree of consanguinity or affinity, or an outside business associate not to solicit, accept, or agree to accept any gift or benefit; that reasonably tends to influence or reward the city official's or employee's official conduct; or

(2) That the official or employee knows or should know is being offered with the intent to influence or reward the city official's or employee's discharge of official duties.

If a city official or employee required to file a financial disclosure report under subdivision VI (Financial Disclosure) knows that a gift or benefit meeting the requirements of subsection (d)(2) of this section has been accepted and retained by a person identified in subsection (d)(1) of this section, the official or employee shall promptly file a report with the city secretary's office disclosing the donor, the value of the gift or benefit, the recipient, and the recipient's relationship to the official or employee filing the report.

(e) *Definition.*

(1) For purposes of this rule, a person is an "outside business associate" if both that person and the city official or employee own, with respect to the same business entity:

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

b. Ten percent or more of the fair market value of the business entity.

(2) For purposes of this rule, a "sponsor" of an event is the person or persons primarily responsible for organizing the event. A person who simply contributes money or buys tickets to an event is not considered a sponsor.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 3), 8-18-2009)

Sec. 2-174. - Confidential information.

Public servants shall not disclose confidential or proprietary information, or any information they have acquired or obtained in the course of any fiduciary capacity or relationship, that could adversely influence the property, government, or affairs of the City, nor directly or indirectly use his or her position to secure official information about any person or entity, for the financial benefit or gain of such public servant or any third party. Public servants shall not release confidential, proprietary or privileged information for any purpose other than the performance of official responsibilities. It shall be a defense to any complaint under this section that the release of information served a legitimate public purpose, as opposed to the private financial or political interest of the public servant or any third party or group.

(1) *Improper access.* A city official or employee shall not use his or her position to obtain official information about any person or entity for any purpose other than the performance of official duties.

(2) *Improper disclosure or use.* A city official or employee shall not intentionally, knowingly, or recklessly disclose any confidential information gained by reason of said official's or employee's

position concerning the property, operations, policies or affairs of the city. This rule does not prohibit:

a. Any disclosure that is no longer confidential by law; or

b. The confidential reporting of illegal or unethical conduct to authorities designated by law.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 4), 8-18-2009)

Sec. 2-175. - Representation of private interests.

(a) *Representation by a member of the board.* A city official or employee who is a member of a board or other city body shall not represent any person, group, or entity:

(1) Before that board or body;

(2) Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or

(3) Before a board or other city body which has appellate jurisdiction over the board or body of which the city official or employee is a member, if any issue relates to the official's or employee's official duties.

(b) *Representation before the city.*

(1) *General rule.* A city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself or this or her spouse or minor children, before the city. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.

(2) *Exception for board members.* The rule stated in subsection (b)(1) does not apply to a person who is classified as a city official only because he or she is an appointed member of a board or other city body.

(3) *Prestige of office and improper influence.* In connection with the representation of private interests before the city, a city official or employee shall not:

a. Assert the prestige of the official's or employee's city position for the purpose of advancing private interests; or

b. State or imply that he or she is able to influence city action on any basis other than the merits.

(c) *Representation in litigation adverse to the city.*

(1) *Officials and employees (other than board members).* A city official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other city body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city.

(2) *Board member.* A person who is classified as a city official only because he or she is an appointed member of a board or other city body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to interests of the city and the matter is substantially related to the official's duties to the city.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 5), 8-18-2009)

Sec. 2-176. - Conflicting outside employment.

(a) *General rule.* A city official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.

(b) *Special application.* The following special rule applies in addition to the general rule: A city official or employee shall not provide services to an outside employer related to their official duties as a city official or employee. This special rule does not apply to law enforcement employees provided that the employees are the subject of a properly adopted personnel policy authorizing such employment.

(c) *Other rules.* The general rule stated above applies in addition to all other rules relating to outside employment of city officials and employees, including requirements for obtaining prior approval of outside employment as applicable.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 6), 8-18-2009)

Sec. 2-177. - Public property and resources.

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies for private purpose (including political purposes), except:

(a) Pursuant to duly adopted city policies; or

(b) To the extent and according to the terms that those resources are lawfully available to the public.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 7), 8-18-2009)

Sec. 2-178. - Political activity.

Limitations on the political activities of city officials and employees are imposed by state law, the City Charter, and city personnel rules and are incorporated into this provision by reference. In addition, the following ethical restrictions apply:

(1) *Influencing subordinates.* A city official or employee shall not, directly or indirectly, induce or attempt to induce any city subordinate of the official or employee:

a. To participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue, or

b. To refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this rule.

(2) *Paid campaigning.* A city official or employee shall not accept any thing of value, directly or indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. Any thing of value does not include a meal or other item of nominal value the city official or employee receives in return for providing information on an item pending on the ballot.

(3) *Official Vehicles.* A city official or employee shall not display or fail to remove campaign materials on any city vehicle under his or her control.

Limitations on the use of public property and resources for political purposes are imposed by section 2-177 (Public property and resources).

(Ord. No. 581, § 2(Exh. A, Pt. B, § 8), 8-18-2009)

Sec. 2-179. - Actions of others.

(a) *Violations by other persons.* A city official or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this code of ethics.

(b) *Using others to engage in forbidden conduct.* A city official or employee shall not violate the provisions of this code of ethics through the acts of another.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 9), 8-18-2009)

Sec. 2-180. - Prohibited interests in contracts.

(a) *Charter provision.* The Charter of the City of Kyle, in Section 12.03, states "No officer or employee of the city shall have a financial interest, direct or indirect, or by reason of ownership of stock in any corporation in any contract with the city, or be financially interested, directly or indirectly in the sale to the city of any land, materials, supplies, or service, except on behalf of the city as an officer or employee; provided however, that the provision of this section (section 12.03 of the Charter) shall only be applicable when the stock owned by the officer or employee exceed one percent of the total capital stock of the corporation. Any violation of this section with the knowledge, express or implied, of the person or corporation contacting with the city shall render the contract voidable."

(b) *Financial interest.* No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in a corporation, in a contract with the city, or be financially interested directly or indirectly in the sale to the city of land, materials, supplies or services except on behalf of the City as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock or interests owned by the officer or employee exceeds one percent of the total capital stock of the corporation, or the city is taking an interest in property by eminent domain. Any violation of this shall render the contract voidable.

This subsection does not permit any officer or employee to fail to comply with the requirements for giving notice of conflict, recusal and filing the required conflict forms with the city secretary.

(c) If an officer or employee has or may potentially have a presumed prohibited financial interest in a contract with the city, or in the sale to the city of land, materials, supplies or service under subsection (b), the officer or employee may apply to the ethics commission established under section 12.01 of the City Charter for determination and decision on whether the officer or employee has an actual direct or indirect financial interest in that contract or transaction.

The ethics commission will make this assessment using a standard of "clear and convincing" evidence at a hearing. A request for such a determination cannot be made confidentially. The hearing must be posted two weeks in advance clearly stating the officer or employee with the presumed prohibited financial interest, the contract or transaction at issue, and the individual or business entity that is the party to the contract or transaction at issue.

(d) Any contract or transaction already in place at the time the individual becomes an officer or employee subject to the prohibitions in section 12.03 of the City Charter or those ascribed in this section may remain in place until the contract expires or the transaction is completed without creating a prohibited financial interest for the officer or employee.

(e) Definitions. For purposes of enforcing section 12.03 of the City Charter and the provisions of this section:

(1) A city "employee" is any employee of the city who is required to file a financial disclosure statement pursuant to Section 1 (a) of Part F (Financial Disclosure Report).

(2) A city "officer" is:

a. The mayor or any council member;

b. A municipal court judge or magistrate;

c. A member of any board, committee or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.

(f) An officer or employee that has an interest prohibited by this section, shall give notice of the conflict, recuse himself or herself from participation in any discussions at any public meeting, or with the city staff concerning the interest or matter in which a conflict exists, and file the required disclosure with the city secretary; provided that, if the matter involves an eminent domain proceeding with respect to a property interest of the officer or employee, the officer or employee may announce the conflict, file the disclosure and thereafter in the same manner as any private citizen represent his/her property interests.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 10), 8-18-2009)

Sec. 2-181. - City council contract personnel.

(a) A member of the city council who, in the course of official duties, has direct supervisory authority over contract personnel shall make reasonable efforts to ensure that the conduct of contract personnel is compatible with the obligations imposed on city officials and employees by this code of ethics.

(b) Contract personnel employed by a member of the city council shall comply with all obligations imposed by this code of ethics on city employees, except for restrictions on political activity imposed on city employees by the City Charter or the City's Personnel Rules under section 2-178 of this Code. Contract personnel, though, may not engage in political activity using city resources or during duty hours.

(c) All contracts for administrative services between a member of the city council and independent contractors shall contain a provision requiring the independent contractor to comply with all requirements imposed by this code on city employees.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 11), 8-18-2009)

Sec. 2-182. - Persons required to report; time to report; place to report.

(a) A city official or employee who has knowledge of a violation of any of the provisions of this ethics code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A city official or employee shall not delegate to, or rely on, another person to make the report.

(b) Unless waived in writing by the person making the report, the identity of an individual making a report under this section is confidential and may be disclosed only to the proper authorities for the purposes of conducting an investigation of the report; provided that such confidentiality shall terminate if the matter is placed on an agenda of the ethics commission.

(c) A report made under this section shall be made to:

(1) The ethics compliance officer or his or her designee; or

(2) The ethics commission.

(d) A report shall state:

(1) The name of the city official or employee who believes that a violation of a provision of the ethics code has been or may have been committed;

(2) The identity of the person or persons who allegedly committed the violation;

(3) A statement of the facts on which the belief is made; and

(4) Any other pertinent information concerning the alleged violation.

(e) The city attorney is not a city official or employee for the purposes of this code of Ethics. The city attorney shall:

(1) Comply at all times with the Texas Rules of Professional Responsibility when representing the city, or any officer or employee of the city, including, but not limited to, the requirement to promptly disclose in writing any possible conflict when requested to participate in any matter in which he/she may have a conflict of interest;

(2) Avoid any and all conflicts of interest with the city;

(3) Place the interests of the city as an organization above all others when performing the duties of city attorney;

(4) Preserve and protect attorney client privilege;

(5) Conduct such civil and criminal investigations as appropriate to comply with the duties of the city attorney and the ethics compliance Officer; and

(6) Advise any official or employee that makes a report to the city attorney in confidence, of a possible violation of this code of ethics, to report the matter to the ethics commission.

(Ord. No. 581, § 2(Exh. A, Pt. B, § 12), 8-18-2009)

Secs. 2-183—2-200. - Reserved.

Subdivision III. - Former City Officials and Employees

Sec. 2-201. - Continuing confidentiality.

A former city official or employee shall not use or disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit:

(a) Any disclosure that is no longer confidential by law; or

(b) The confidential reporting of illegal or unethical conduct to authorities designated by law.

(Ord. No. 581, § 2(Exh. A, Pt. C, § 1), 8-18-2009)

Sec. 2-202. - Subsequent representation.

(a) *Representation by a former board member.* A person who was a member of a board or other city body shall not represent any person, group or entity for a period of two (2) years after the termination of his or her official duties:

(1) Before that board or body;

(2) Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or

(3) Before a board or other body which has appellate jurisdiction over the board or body of which the former city official or employee was a member, if any issue relates to his or her former duties.

(b) *Representation before the city.* A former city official or employee shall not represent for compensation any person, group, or entity, other than himself, or his or her spouse or minor children, before the city for a period two years after termination of his or her official duties. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body. For purposes of this subsection, the term compensation means money or

any other thing of value that is received, or is to be received, in return for or in connection with such representation.

(1) In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.

(c) *Representation in litigation adverse to the city.* A former city official or employee shall not, absent consent form the city, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is one in which the former city official or employee personally and substantially participated prior to termination of his or her official duties.

(Ord. No. 581, § 2(Exh. A, Pt. C, § 2), 8-18-2009)

Sec. 2-203. - Prior participation in negotiating or awarding of contracts.

(a) A former city official or employee may not, within two (2) years of the termination of official duties, perform work on a compensated basis relating to discretionary contract, if he or she personally and substantially participated in the negotiation or awarding of the contract. A former city official or employee, within two (2) years of termination of official duties, must disclose to the city secretary immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary contract for which he or she did not personally and substantially participate in its negotiation or award. This subsection does not apply to a person who was classified as city official only because he or she was an appointed member of a board or other city body.

(Ord. No. 581, § 2(Exh. A, Pt. C, § 3), 8-18-2009)

Sec. 2-204. - Discretionary contracts.

(a) *Impermissible interest in discretionary contract or sale.* This subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties, a former city officer or employee shall neither have a financial interest, direct or indirect, in any discretionary contract with the city, nor have a financial interest, direct or indirect, in the sale to the city of any land, materials, supplies, or service. Any violation of this section, with the knowledge, expressed or implied, of the individual or business entity contracting with the council shall render the contract involved voidable by the council. A former city officer or employee has a prohibited "financial interest" in a discretionary contract with the city, or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

(1) The former officer or employee;

(2) His or her parent, child, or spouse;

(3) A business entity in which the former officer or employee, or his or her parent, child or spouse directly or indirectly owns:

a. One percent or more of the capital stock of a corporation; or

b. Ten percent or more of the voting stock or shares of another business form; or

c. Ten percent or more of the fair market value of any business entity; or

(4) A business entity of which any individual or entity listed in subsection (1), (2) or (3) is:

a. A subcontractor on a city contract;

b. A partner; or

c. A parent or subsidiary business entity.

(b) *Exception: Prior employment or status.* Notwithstanding subsection 2-204(a) and section 2-203 (prior participation in negotiation or Awarding of contracts), a former city official or employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official city duties.

(c) *Definitions.* For purposes of this section:

(1) A "former city employee" is any person who, prior to termination of employee status, was required to file a financial disclosure statement pursuant to subsection 2-251(a) of subdivision VI (Financial Disclosure Report).

(2) A "former city officer" is any person who, immediately prior to termination of official duties, was:

a. The mayor or a member or city council;

b. A municipal court judge or magistrate; or

c. A member of any committee, board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.

(3) The term "contract" means any discretionary contract other than a contract for the personal services of the former city official or employee.

(4) The term "service" means any services other than the personal services of the former official or employee.

(Ord. No. 581, § 2(Exh. A, Pt. C, § 4), 8-18-2009)

Secs. 2-205—2-220. - Reserved.

Subdivision IV. - Persons Doing Business with the City

Sec. 2-221. - Vendors, suppliers and contractors.

All vendors, suppliers, contractors and persons contacting the city for the purpose of selling any product or service to the city, or bidding on any city works, whether by competitive bid process or a discretionary contract, shall comply with the requirements of Ch. 176, Texas Local Government Code.

(Ord. No. 581, § 2(Exh. A, Pt. D, § 1), 8-18-2009)

Sec. 2-222. - Persons seeking discretionary contracts.

(a) *Disclosure of parties, owners, and closely related persons.* For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and this code of ethics, an individual or business entity seeking a discretionary contract form the city is required to disclose in connection with a proposal for a discretionary contract on a form provided the city:

(1) The identity of any individual who would be a party to the discretionary contract;

(2) The identity of any business entity that would be a party to the discretionary contract and the name of:

a. Any individual or business entity that would be a subcontractor on the discretionary contract; and

b. Any individual or business entity that is known to be a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract; and

(3) The identity of any lobbyist or public firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

An individual or business entity seeking a discretionary contract is required to supplement this filing on a form provided by the city in the even there is any change in the information required of the individual or business entity under section 2-221, subsection 2-222(a)(1), (a)(2), (a)(2)a., (a)(2)b., or (a)(3). The individual or business entity seeking a discretionary contract must supplement this filing before the discretionary contract is the subject of council action, and no later than five business days after any change about which information is required to be filed.

(b) *Political contributions.* Any individual or business entity seeking a discretionary contract form the city must disclose in connection with a proposal for a discretionary contract, on a form provided by the city, all political contributions totaling $100.00 or more within the 24 months made directly or indirectly to any current or former member city council any candidate for city council, or to any political action committee that contributes to city Council elections, by any individual or business entity whose identity must be disclosed under subsection 2-222(a). Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

(c) *Briefing papers and open records.* Briefing papers prepared for the city council concerning any proposed discretionary contract to be considered for action shall reveal the information disclosed in compliance with subsections 2-222(a) and 2-222(b), and that information shall constitute an open record available to the public. Such briefing papers shall become a public record when the proposed contract is included on a posted agenda for a city council meeting.

(Ord. No. 581, § 2(Exh. A, Pt. D, § 2), 8-18-2009)

Sec. 2-223. - Disclosure of association with city official or employee.

(a) *Disclosure during appearances.* A person appearing before a city board or other city body shall disclose to it any known facts which, reasonably understood, raise a question as to whether any member of the board or body would violate section 2-171 (Improper economic benefit) by participating in official action relating to a matter pending before the board or body.

(b) *Disclosures in proposals.* Any individual or business entity seeking a discretionary contract with the city shall disclose, on a form provided by the city, any known facts which, reasonably understood, raise a question as to whether any city official would violate section 2-271 (Improper economic benefit) by participating in official action relating to the discretionary contract.

(c) *Definition.* For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

(Ord. No. 581, § 2(Exh. A, Pt. D, § 3), 8-18-2009)

Sec. 2-224. - Disclosure of benefit to city official or employee.

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any city official or employee that is distinguishable from the effect that the action will

have members of the public in general or a substantial segment thereof, he or she shall disclose that fact in a signed writing to the city official, employee, or body that has been requested to act in the matter, unless the interest of the city official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the city secretary.

(Ord. No. 581, § 2(Exh. A, Pt. D, § 4), 8-18-2009)

Secs. 2-225—2-240. - Reserved.

Subdivision V. - Members of the Public and Others

Sec. 2-241. - Applicability.

This subdivision (Members of the Public and Others) applies to current and former city officials and employees, persons doing business with the city, and lobbyists, as well as to members of the public and any other person (including business entities and nonprofit entities).

(Ord. No. 581, § 2(Exh. A, Pt. E), 8-18-2009)

Sec. 2-242. - Forms of responsibility.

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct violative of the obligations imposed by subdivision II (Present City Officials and Employees), subdivision III (Former City Officials and Employees), subdivision IV (Persons Doing Business with the City) of this ethics code.

Secs. 2-243—2-250. - Reserved.

Subdivision VI. - Financial Disclosure

Sec. 2-251. - Financial disclosure report.

(a) *Persons required to file disclosure form.*

(1) *City officials and designated city employees.* No later than 30 after accepting appointment or assuming the duties of office, and annually thereafter, the city officials defined in section 2-144A (Definitions), are required to file with the city secretary a complete sworn financial disclosure report.

(2) *Candidates for city council.* A non-incumbent candidate for a place on the city council shall file a sworn financial disclosure report with the city secretary containing all information required by subsections 2-252(1) through 2-252(13) (Contents of financial disclosure reports) within 15 days from the date of filing as a candidate.

(b) *Open records.* Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.

(c) *Annual filing date.* Annual financial disclosure reports filed by city officials who are city employees and by city employees who are required to report must be received by the city secretary by 4:30 p.m. on the 31st day of January. Annual financial disclosure reports filed by the city officials who are not city employees and who are required to report must be received by the city secretary by 4:30 p.m. on the

1st day of March. When the deadline falls on a Saturday or Sunday, or on an official city holiday as established by the city council, the deadline for receipt by the City Secretary is extended to 4:30 p.m. of the next day which is not a Saturday or Sunday or official city holiday. The city secretary shall grant an extension of time in which to file a report upon written request submitted in advance of the deadline. The extension shall not exceed 15 days.

Unforeseen circumstances. In the event of an unforeseen circumstance, including, but not limited to military service abroad or acute illness, the deadline for receipt by the City Secretary is extended until such time as the city official or employee resumes his city duties.

(d) *Reporting periods.* Each initial or annual financial disclosure filed by an individual designated in subsection 2-251(a)(1) (Financial Disclosure report), and each report filed by a candidate for city council, shall disclose information relating to the prior calendar year, as well as any material changes in that information which occurred between the end of the prior calendar year and the date filing.

(e) *City secretary.* The city secretary shall:

(1) Prior to January 15 of each year, notify city officials and employees specified in subsection (a)(1) of their obligation to file financial disclosure reports and those forms to be completed;

(2) Provide forms to all new city council appointees and those filing for elective office, and advise them of reporting requirements and deadlines;

(3) Provide guidance and assistance on the reporting requirements for persons required to fine financial disclosure reports and develop common standards, rules, and procedures for compliance with subdivision VI (Financial Disclosure):

(4) Review reports for completeness and timelines;

(5) Maintain filing, coding, and cross-indexing systems to carry out the purpose of subdivision VI (Financial Disclosure), including:

a. A publicly available list of all persons required to file; and

b. Computerized systems designed to minimize the burden of filing and maximize public access to materials filed under subdivision VI (Financial Disclosure);

(6) Make available for public inspection and copying at reasonable times the reports filed under subdivision VI (Financial Disclosure);

(7) Upon determining that such appointee who is required to file a financial disclosure report has failed to do so or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within 15 days after the original deadline constitutes an automatic resignation. At the same time, the city secretary shall publicly announce to the city council the names of those who have not filed and to whom this notification is being sent. If such an appointee fails to file a completed report within 15 days from the original deadline, the position shall be considered vacant, and a new appointment shall be made by the city council; and

(8) Upon determining that the mayor, a member of city council, a candidate for city council, the city manager, or a municipal court judge or magistrate has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing with 15 days after the original deadline will result in the matter being forwarded to the ethics commission (board). If the person in question fails to file a completed report within 15 days of the original deadline, a report of non-compliance shall be forwarded to the ethics commission (board) for appropriate action.

(9) Upon determining that a person other than as provided in subsections (7) or (8) above, has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within 15 days after the original deadline will result in the matter being forwarded to the city manager. If the person in question fails to file a completed report within 15 days of the original deadline, a report of non-compliance shall be forwarded to the city manager for appropriate action.

The failure of the city secretary to provide any notification required by this section does not bar appropriate remedial action, but may be considered on the issue of culpability.

(f) *Exception.* A city official who is a member of a board or commission created pursuant to federal or state law, may only be removed for failing to file a financial disclosure form if allowed under federal or state law.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 2), 8-18-2009)

Sec. 2-252. - Contents of financial disclosure reports.

Each initial or annual financial disclosure report shall disclose, on a form provided by the city, the following information:

(1) The reporting party's name;

(2) The name of any person related as parent, child, (except a child who is a minor), or spouse to the reporting party;

(3) The name of any member of the reporting party's household not disclosed under subsection 2-252(2) of this rule;

(4) The name of any employer of any person disclosed under subsections 2-252(1) or 2-252(2) of this rule;

(5) The name of any business entity (including self employment in the form of a sole proprietorship under a personal or assumed name) in which the reporting party or his or her spouse holds an economic interests;

(6) The name of any business which the reporting party knows is a partner, or a parent or subsidiary business entity, of a business entity owned, operated or managed by the reporting party or his or her spouse;

(7) The name of any person or business entity form whom the reporting party or his or her spouse, directly or indirectly:

   a. Has received and not rejected an unsolicited offer of subsequent employment; or

   b. Has accepted an offer of subsequent employment which is binding or expected by the parties to be carried out;

(8) The name of each nonprofit entity or business entity in which the reporting party serves as an officer or director, or in any other policy making position;

(9) The name of each business entity which has sought city business, has a current city contract or anticipates seeking city business in which any individual listed in Subsection (a) or (b) is known to directly or indirectly own:

   a. One percent or more of the capital sock of a corporation, or

   b. Ten percent or more of the voting stock or shares of the business entity; or

   c. Ten percent or more of the fair market value of the business entity;

(10) The name of any business entity of which any individual or entity disclosed under subsection 2-252(1) or 2-252(9) is known to be:

   a. A subcontractor on a city contract;

   b. A partner; or

   c. A parent or subsidiary business entity.

(11) The name of each source of income, other than dividends or interest, amounting to more than ($5,000.00) received during the reporting period by the reporting party or his or her spouse, unless that source has been disclosed under subsections 2-252(1) through 2-252(10) of this rule;

(12) The identification by street address, or legal or lot-and-block description, of all real property located in Hays County, Texas in which the reporting party or his or her spouse has a leasehold interest, a contractual right to purchase, or an interest as: fee simple owner; beneficial owner; partnership owner; joint owner with an individual or corporation; or owner of more than 25 percent of a corporation that has title to real property. There is no requirement to list any property:

a. Used as a personal residence of a peace officer;

b. Over which the reporting party has no decision power concerning acquisitions or sale;

c. Held through a real estate investment trust, mutual fund, or similar entity, unless the reporting party or his or her spouse participates in the management thereof.

(13) The name of persons or entities to whom the reporting party or spouse owes an unsecured debt of more than five thousand dollars ($5,000.00), other than debts for:

a. Money borrowed from a family member from his or her own resources; and

b. Revolving charge accounts.

(14) The name of each person, business entity, or other organization from whom the reporting party, or his or her spouse, received a gift with an estimated fair market value in excess of $100.00 during the reporting period and the estimated fair market value of each gift. Excluded from this requirement are:

a. Lawful campaign contributions which are reported as required by state statute;

b. Gifts received from family members within the second degree of affinity or consanguinity;

c. Gifts received among and between fellow city employees and officials; and

d. Admission to events in which the reporting party participated in connection with official duties.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 2), 8-18-2009)

Sec. 2-253. - Short form annual report.

A person who is required to file an annual financial disclosure report may fulfill his or her filing obligations by submitting a short sworn statement on a form provided by the city, if there have been few or no changes in the information disclosed by that person in a complete financial disclosure report filed within the past five years. The short statement shall indicate the date of the person's most recently filed complete financial disclosure report and shall state that there have been no material changes in that information or shall list any material changes that have occurred.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 3), 8-18-2009)

Sec. 2-254. - Travel reporting requirements.

(a) Any persons listed in subsection (b) who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the city secretary, before embarking on the travel, a disclosure statement identifying:

(1) The name of the sponsor;

(2) The places to be visited; and

(3) The purpose and dates of the travel.

(b) The following persons are required to report under this section: the mayor, members of the city council, municipal court judges and magistrates, city manager, deputy city manager, city secretary, assistant city secretary, assistant city managers, assistants to the city manager, and all department heads. Acceptance of a trip or excursion by an individual listed above other than the mayor or a member of the city council must receive prior written approval of the city manager.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 4), 8-18-2009)

Sec. 2-255. - Items received on behalf of the city.

A city official or employee who accepts any item by way of gift valued over $100.00 or loan on behalf of the city must promptly report that fact to the city manager, who shall have the item appropriately inventoried as city property.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 5), 8-18-2009)

Sec. 2-256. - Other persons required to report gifts.

In addition to the gift reporting requirements imposed by the financial disclosure rules stated in subsection 2-252(14) (Contents of financial disclosure reports), other city employees specified on a list complied annually by the city manager or the person(s) responsible for the human resource functions of the city and submitted to the city secretary, and contract administrative assistants to members of city council are also required during the previous year with a cumulative value of over $100.00. Excluded from this requirement are gifts received from family members within the second degree of affinity or consanguinity and gifts among and between city employees and city officials.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 6), 8-18-2009)

Sec. 2-257. - Violation of reporting requirements.

Failure to timely file a report required by the rule stated in subdivision VI (Financial Disclosure) is a violation hereof, as is the knowingly filing of a report with incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible.

(Ord. No. 581, § 2(Exh. A, Pt. F, § 7), 8-18-2009)

Secs. 2-258—2-270. - Reserved.

Subdivision VII. - Ethics Commission (Board)

Sec. 2-271. - Definitions.

As used in this subdivision (Ethics Commission (Board)), the term "ethics laws" include this code of ethics, Article 12 of the City Charter, and Section 171 of the Texas Local Government Code. The term "ethical violation" include violations of any of those enactments. Other terms used in this subdivision (Ethics Commission (Board)) are defined in section 2-144 (Definitions).

(Ord. No. 581, § 2(Exh. A, Pt. G, § 1), 8-18-2009)

Sec. 2-272. - Structure of the ethics commission (board).

(a) *Establishment.* There is hereby established an ethics commission (Board), which shall have the powers and duties specified in subdivision VII (Ethics Commission (Board)).

(b) *Composition.* The ethics commission (board) shall consist of seven members. The mayor and each member of the city council shall nominate one member of the board. Each nominee must be confirmed by a majority of city council members. Nomination and confirmation of board members shall be conducted at separate open meetings of the city council.

(c) *Terms of office.* Board members shall be appointed to three-year terms. Initial appointments shall be made that terms are staggered and run concurrent with council members' terms who are entitled to make appointments to the seat. No member shall severe for more than three three-year terms.

(d) *Qualifications.* Members of the board shall have good moral character and shall be residents of the city. No member of the Board shall be:

(1) A salaried city official or employee;

(2) An elected public official;

(3) A candidate for elected public office;

(4) An officer of a political party;

(e) *Removal.* Members of the ethics commission (board) may be removed from office for cause by a majority of the city council only after a public hearing at which the member was provided with the opportunity to be heard. Grounds for removal include: failure to satisfy, or to continue to satisfy, the qualifications set forth in subsection (d) of this section; substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision in the code of ethics.

(f) *Vacancies.* A vacancy shall be filled by a person who will serve for the remainder of the unexpired term. The appointment shall be made by the member of city council who is entitled to make appointments to the seat that was vacated, and must be confirmed by a majority of the city council.

(g) *Recusal.* A member of the ethics commission (board) shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A Board member may not participate in official action on any complaint:

(1) That the member initiated;

(2) That involves the member of city council who nominated him or her for a seat on the ethics commission (board); or

(3) During the pendency of an indictment or information charging the member with an offense, or after a finding of guilt of such an offense.

If the number of board members who are recused from a case is so large that an ethics panel cannot be constitute, as provided for in section 2-276 (Ethics panel), the mayor shall nominate a sufficient number of ad hoc members so that the case can be heard. Ad hoc members of the ethics commission (board) must be confirmed by a majority vote of the city council and serve only for the case in question.

(h) *Chair and vice-chair.* Each year, the board shall meet and elect a chair and a vice-chair from among its members, who will serve one-year terms and may be re-elected. The chair or a majority of the board my call a meeting of the Board. The chair shall preside at meetings of the ethics commission (board and perform other administrative duties. The vice-chair shall assume the duties of the chair in the event of a vacancy in that position.

(i) *Reimbursement.* The members of the ethics commission (board) shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 2), 8-18-2009)

Sec. 2-273. - Jurisdiction and powers.

(a) *Jurisdiction.* If a complaint is filed pursuant to section 2-274 (Complaints) within two years of the date of an alleged violation of the ethics laws, the ethics commission (board) shall have jurisdiction to investigate and make findings and recommendations concerning:

(1) Any alleged violation of this code of ethics or Article 12 of the City Charter by any person subject to those provisions, including, but not limited to current city officials and employees, former city officials and employees, persons doing business with the city, and persons required to register as lobbyists; or

(2) Any alleged violation by a Kyle city official of Section 171 of the Texas Local Government Code, the state conflict-of-interest law applicable to certain local public officials.

The board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint.

(b) *Termination of city official's or employee's duties.* The termination of a city official's or employee's duties does not affect the jurisdiction of the ethics commission (board) with respect to alleged violations occurring prior to the termination of official duties.

(c) *Powers.* The Ethics commission (board) has power:

(1) To establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with subdivision VII (Ethics Commission (Board) of this code;

(2) To meet as often as necessary to fulfill its responsibilities;

(3) To designate ethics panels with the power to render decisions on complaints or issue advisory opinions on behalf of the board;

(4) To request from the city manager through the city council the appointment or allocation of such staff as are necessary to carry out its duties;

(5) To review, index, maintain on file, and dispose of sworn complaints;

(6) To make notifications, extend deadlines, and conduct investigations both on complaint and as a result of an issue raised out of said complaint;

(7) To render, index, and maintain on file advisory opinions;

(8) To provide assistance to the Ethics Compliance Officer of the city in the training and education of city officials and employees with respect to their ethical responsibilities;

(9) To prepare an annual report and to recommend to the Mayor and City Council needed changes in ethical standards or procedures; and

(10) To take such other action as is necessary to perform its duties under subdivision VII (Ethics Commission (Board)) of this ethics code.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 3), 8-18-2009)

Sec. 2-274. - Complaints.

(a) *Filing.* Any person (including a member of the ethics commission (board) or its staff, acting personally or on behalf of the board) who believes that there has been a violation of the ethics laws may file a sworn complaint with the city secretary.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the ethics commission (Board), is subject to criminal prosecution for perjury [see section 2-304 (Prosecution for perjury)] or civil liability for the tort of abuse of process.

(b) *Form.* A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) The name of the complaints;

(2) The street or mailing address and the telephone number of the complainant;

(3) The name of each person complained about;

(4) The position or title of each person complaint about;

(5) The nature of the alleged violation, including, if possible, the specific rule or provision of law alleged to have been violated;

(6) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) All documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is base on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

The complaint must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforce by the Board.

(c) *Frivolous complaint.*

(1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

(2) By a vote of at least two-thirds of those present, the Board may order a complainant to show cause why the Board should not determine that he complaint filed by the complainant is a frivolous complaint.

(3) In deciding if a complaint is frivolous, the Board will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

a. The timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

b. The nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the board;

c. The existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

d. If respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

e. Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

f. Any evidence of the complainant's motives in filing the complaint.

(4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:

a. An explanation of why the complaint appears to be frivolous; and

b. The date, time, and place of the hearing to be held under this section.

(5) Before making a determination that a sworn complaint is a frivolous complaint, the board shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.

(6) By a record vote of at least two-thirds of those present after the hearing under subsection (c)(5) of this section, the Board may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(d) *Sanctions.*

(1) Before recommending a sanction for filing a frivolous complaint, the board shall consider the following factors:

a. The seriousness of the violation, including the nature, circumstance, consequences, extent, and gravity of the violation;

b. The sanction necessary to deter future violations; and

c. Any other matters that justice may require.

(2) The Board may recommend the following sanctions:

a. A civil penalty of not more than $500.00.

b. Prosecution for perjury.

c. Any other sanction permitted by law.

(3) The board may notify the appropriate regulatory or supervisory agency for their appropriate action.

(e) *Confidentiality*. No city official or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.

(1) All papers and evidence related to a pending complaint are confidential during the time any investigation is being conducted by the ethics compliance officer or the commission. If the investigation is completed and a complaint is included as an agenda item to be considered in an open meeting of the Ethics Commission, the papers and evidence become public documents when the related agenda item is opened for discussion by the ethics commission.

(2) If an investigation is closed and no complaint is filed, all related papers and evidence become public information when the investigation is closed; provided the commission may reopen any investigation previously closed by the ethics compliance officer.

(3) If the ethics commission decides to investigate any allegation or complaint, the papers, evidence and documents compiled thereafter with respect to the investigation shall be and remain confidential until such time as the Ethics Commission concludes the investigation.

(4) With the exception of an executive session held by the ethics commission with respect to an item being investigated by the ethics commission, all meetings of the ethics commission shall be posted and held as open meetings in compliance with the Open Meetings Act.

(5) When any complaint is included as an agenda item to be considered in an open meeting of the ethics commission, the complaint and all related papers and evidence become public documents when the related agenda item is opened for discussion by the ethics commission.

(f) *Notification.* A copy of a complaint shall be promptly forwarded by the city secretary to the ethics compliance officer and to the respondent(s), even if the complaint fails to meet the filing requirements of subsection 2-274(b) (Form) above. A compliant that is not sworn as required by subsection 2-274(b), shall not be forwarded by the city secretary to the ethics compliance officer, but shall be returned to the complainant. The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

(1) That, within 14 days of receipt of the complaint, he or she may file a sworn response with the city secretary;

(2) That failure to file a response does not preclude the ethics commission (board) from adjudicating the complaint;

(3) That a copy of any response filed by the respondent(s) will be provided by the city secretary to the complainant, who may, within seven days of receipt, respond by sworn writing filed with the city secretary, a copy of which shall be provided by the city secretary to the respondent(s);

(4) That the respondent(s) may request a hearing; and

(5) That city officials and employees have a duty to cooperate with the ethics commission (board), pursuant to subsection 2-276 (ethics panels).

(g) *Assistance.* The city secretary shall provide information to persons who inquire about the process for filing a complaint.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 4), 8-18-2009)

Sec. 2-275. - Ethics compliance officer.

(a) *City attorney's office.* The city attorney or an assistant city attorney designated by the city attorney shall serve as the ethics compliance officer for the city. The ethics compliance officer shall:

(1) Receive and promptly transmit to the ethics commission (board) complaints and responses filed with the city secretary;

(2) Investigate, marshal, and present to the ethics commission (board) the evidence bearing upon a complaint;

(3) Act as legal counsel to the ethics commission (Board);

(4) Issue advisory opinions to city officials and employees about the requirements imposed by the ethics laws; and

(5) Be responsible for the training and education of city officials and employee with respect to their ethical responsibilities;

(6) Review complaints for legal sufficiency;

(7) Recommend acceptance or rejection of complaint with 60 days of date made to the ethics commission (board); and

(8) Request additional information from complainant as needed.

At least once each year, the ethics compliance officer shall cause to be distributed to each city official and employee a notice setting forth the duties of the ethics commission (board) and the procedures for filing complaints. The ethics compliance officer shall also ensure that such notices are posted.

(b) *Outside independent counsel.* An independent outside attorney, who does not otherwise represent the city, shall be appointed at the recommendation of the city attorney, to serve as the ethics compliance officer for a particular case:

(1) When a complaint is filed relating to an alleged violation of the ethics laws by:

a. The mayor or a member of the city council; or

b. A city employee who is department head or of higher rank;

(2) When the ethics commission (board), at the recommendation of the city attorney, requests such an appointment; or

(3) When requested by the city attorney.

An independent outside attorney who is appointed has the same duties and authority as the ethics compliance officer under subsection 2-275(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), and (a)(8) of section 2-275 (Ethics compliance officer).

(c) *Exculpatory evidence.* The ethics compliance officer shall disclose to the ethics panel and provide to the person charged with violating the ethics law evidence known to the Ethics Compliance Officer tending to negate guilt or mitigate the seriousness of the offense.

(Ord. No. 581, § 2(Exh. A, Pt. 5, § 5), 8-18-2009)

Sec. 2-276. - Ethics panels.

(a) *Assignment to an ethics panel.* A complaint received by the ethics commission (board) from the ethics compliance officer shall be promptly assigned to an ethics panel consisting of three or more members of the board, who shall have full power to investigate and dispose of the compliant. Each ethics panel shall be constituted according to procedures established by the board. Any member of an assigned ethics panel who recuses himself or herself shall be replaced by another member of the board according to established procedures if that is necessary to ensure that the panel has at lease three members. The identity of the members of the ethics panel shall be revealed to the person charged in the complaint who, for good cause, may request the recusal of any member of the panel. Unless the commission votes and directs otherwise, all complaints and matters coming before the commission shall be automatically assigned to the ethics commission as an ethics panel of the entire commission.

(b) *Notice of charges.* The ethics panel shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. However, before the ethics panel my find that a violation of a particular rule, the respondent must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the compliant alleged that the rule was violated; if compliance with the rule is raised by the member of the board or the ethics compliance officer as a disputed issue at a hearing before the ethics panel; or if the board or the ethics compliance officer provides the respondent with written notice of the alleged violation and a fourteen-day period within which to respond in writing to the charge.

(c) *Scheduling of a hearing.* Regardless of whether the complainant or the respondent requests a hearing, the ethics panel has discretion to decide whether to hold a hearing.

(d) *Ex parte communications.* It is a violation of this code:

(1) For the complainant, the respondent, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the ethics panel, any other member of the ethics commission (Board), or any known witness to the complaint; or

(2) For a member of an ethics panel or any other member of the ethics commission (board) to:

a. Knowingly entertain an ex parte communication prohibited by Subsection (1) of this rule; or

b. Communicate directly or indirectly with any person, other than a member of the ethics commission (board), its staff, or the ethics compliance officer, about any issue of fact or law relating to the complaint.

(e) *Duty to cooperate.* All city officials and employees shall cooperate with the ethics commission (Board) and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this Subsection is a violation of this code of ethics.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 6), 8-18-2009)

Sec. 2-277. - Hearings.

At any hearing held by an ethics panel during the investigation or disposition of a complaint, the following rules apply:

(1) *General rules.* At least three members of the ethics panel must be present for the hearing. Any member of the ethics panel who is not present ceases to be a member of the ethics panel and may not participate in the disposition of the case. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the ethics panel or the ethics compliance officer. The ethics panel may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the ethics panel so finds by a preponderance of the evidence.

(2) *Evidence.* The ethics panel shall relay on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The ethics panel shall further abide by the following:

a. The panel shall hear evidence relevant to the allegations; and

b. The panel shall not consider hearsay unless it finds the nature of the information is reliable and useful.

(3) *The person charged.* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the ethics panel. The time permitted for presentation will be at the discretion of the board.

(4) *The complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. Only legal counsel to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the ethics panel. Witnesses may not be presented by the complainant, except with the permission of the ethics panel.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 7), 8-18-2009)

Sec. 2-278. - Disposition.

(a) *Written opinion.* The ethics panel shall issue a decision within 90 days after the filing of a complaint. The ethics panel shall state in a written opinion its finding of fact and conclusions of law. The written opinion shall either:

(1) Dismiss the complaint; or

(2) Upon finding that there has been a violation of the ethics laws:

a. A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the violation was made in reliance on a written opinion of the city

attorney. A letter of notification shall advise the person to whom it is directed of any steps to be taken to avoid future violations.

b. A letter of admonition shall be the appropriate sanction in those cases in which the commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.

c. A reprimand shall be the appropriate sanction when the Commission finds that a violation has been committed intentionally or through disregard of this division. A copy of a reprimand directed to an employee, city official, council member, or board or commission member shall be sent to the city manager and city council. A reprimand directed to an employee shall be included in the employee's personnel file. A letter of reprimand directed to an elected city official shall be transmitted to the city secretary and published in the official city newspaper.

d. A recommendation of removal from employment or a recommendation of suspension from employment, as well as a recommendation for length of suspension, shall be the appropriate sanction when the commission finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by city employees. Any such recommendation shall be made to the city manager, unless the city official or employee is in a position filled by council appointment.

e. A letter of censure shall be the appropriate sanction when the commission finds that a serious or repeated violation(s) of this division has been committed intentionally or through culpable disregard of this ordinance by an elected city official. A letter of censure directed to an elected city official shall be transmitted to the city secretary and thereafter published in the official newspaper of the city.

f. Recommend criminal prosecution and/or civil remedies, in accordance with this rule;

g. State why no remedial action is recommended; or

h. In appropriate cases the commission may recommend to the city council or city manager that action be taken under subsections 2-278(c) and 2-278(f) below.

If the ethics panel determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion. The failure of the Ethics Panel to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(b) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the compliant, the ethics compliance officer, and any member of the ethics commission (board) who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the city secretary, who shall make it available as authorized by law.

(c) *Recommendations.* A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency. A recommendation of civil remedies shall be forwarded through the ethics compliance officer to the city council for action.

(d) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the ethics commission (Board) shall not entertain any other similar complaint based on substantially the same evidence.

(e) *Factors relevant to sanctions.* In deciding whether to recommend, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the ethics panel shall take into account relevant considerations, including, but not limited to, the following:

(1) The culpability of the person charged in the complaint;

(2) The harm to public or private interests resulting from the violation;

(3) The necessity of preserving public confidence in the conduct of local government;

(4) Whether there is evidence of a pattern of disregard for ethical obligations; and

(5) Whether remedial action has been taken that will mitigate the adverse effect of the ethical violation.

(f) *Civil remedies.* The Following civil remedies may be recommended by an ethics panel which finds that the ethics laws have been violated:

(1) Review of the case by the city manager, or his or her designate, for disciplinary action;

(2) A suit by the city for damages or injunctive relief in accordance with section 2-303 (Damages and injunctive relief):

(3) Disqualification from contracting in accordance with section 2-307 (Disqualification from contracting);

(4) Voiding of a contract in accordance with section 2-306 (Voiding or ratification of contract); and

(5) A fine in accordance with section 2-304 (Civil fine).

(g) *Criminal prosecution.* An ethics panel may recommend to the appropriate law enforcement agency criminal prosecution under section 2-305 (Prosecution for perjury) or under Section 171 of the Texas Local Government Law. Prosecution of any person by the city attorney for a violation of this ethics code shall not be undertaken until a complaint is disposed of in accordance with section 2-278. However, the absence of a recommendation to prosecute from an ethics panel to the city attorney shall not preclude the city attorney from exercising his or her prosecutorial discretion to prosecute a violation of this ethics code.

(h) *Council action.* If the city council receives a recommendation pursuant to subsection (a)(2)d., or subsection (f) above, the city council shall dispose of a recommendation from the ethics commission (Board) within (90) days of receiving such recommendation. The recommendation(s) of the ethics commission (board) may be accepted, rejected, modified, or recommitted to said Board for further action or clarification. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 8), 8-18-2009)

Sec. 2-279. - Petition for declaratory ruling.

Any city official or employee against whom public allegations of ethics violations have been made in the media or elsewhere shall have the right to file a sworn statement with the city secretary affirming his or her innocence, and to request the ethics commission (board) to investigate and make known its findings, and make any relevant recommendations concerning the issue.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 9), 8-18-2009)

Sec. 2-280. - Advisory opinions.

(a) *Requests by persons other than officials and employees.*

(1) a. By writing filed with the city secretary, any person other than a city official or employee may request an advisory opinion with respect to the interpretation of the ethics laws, but only with respect to whether proposed action by that person would violate the ethics laws. The city secretary shall promptly transmit all requests for advisory opinions to the ethics compliance officer and the chair of the ethics commission (board). (City officials and employees may request advisory opinions from the city attorney pursuant to subsection 2-280(b)(1).

b. Within 30 days of receipt by the chair of the ethics commission (board) of a request for an advisory opinion the board, acting en banc or through a designated ethics panel, shall issue a written advisory opinion. During the preparation of the opinion, the Board may consult with the ethics compliance officer of the city and other appropriate persons. An advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. A copy of the opinion shall be indexed and kept by the ethics commission (board), or the ethics compliance officer, to the person who requested the opinion, to the members of the ethics commission (board), and to the city secretary. The city secretary shall make the opinion available as a public record in accordance with the Local Government Record Act. The ethics compliance officer shall promptly post the opinion for a period of no less than five years on the Internet via the City of Kyle homepage.

(2) *Opinions Initiated by the board.* On its own initiative, the ethics commission (board), acting as the fall board or through a designated ethics panel, may issue a written advisory opinion with respect to the interpretation of the ethics laws as they apply to persons other than city officials and employees of such person or persons subject to the provisions of the ethics laws. Such an opinion my not include the name of any individual who may be affected by the opinion. A copy of any such opinion shall be indexed and kept by the ethics commission (board) as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the ethics commission (board), or his or her designate, to the ethics compliance officer and to the city secretary. The city secretary shall make the opinion available as a public record in accordance with the Local Government Records Act. The ethics compliance officer shall promptly post the opinion for a period of no less than five years on the Internet via the City of Kyle homepage.

(3) *Reliance.* If a person reasonably and in good faith acts in reliance on an advisory opinion issued by the ethics commission (board), that fact may be considered by an ethics panel in adjudicating a complaint filed against that person, but does not by itself bar the finding of a violation.

(b) *Opinions issued by the ethics compliance officer.*

(1) *Requests by city officials and employees.*

a. By writing filed with the office of the city attorney, any city official or employee may request an advisory opinion with respect to whether proposed action by that person would violate the ethics laws.

b. Within 30 days of receipt of the request by the officer of the city attorney, the ethics compliance officer shall issue a written advisory opinion. The advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. Copies of the opinion shall be forwarded by the ethics compliance officer to the members of the ethics commission (board), to the person who requested the opinion, and to the city secretary, and promptly posted by the ethics compliance officer for a period of no less than five years on the Internet via the City of Kyle homepage. The city secretary shall make the opinion available as a public record in accordance with the Local Government Records Act.

(2) *Reliance.*

a. A person who reasonably and in good faith acts in accordance with an advisory opinion issued by the ethics compliance officer may not be found to have violated the ethics laws by engaging in conduct approved in the advisory opinion, provided that:

1. He or she requested the issuance of the opinion;

2. The request for an opinion fairly; and

3. Less than five years elapsed between the date the opinion was issued and the date of the conduct in question.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 10), 8-18-2009)

Sec. 2-281. - Annual report.

The ethics commission (board) shall prepare and submit an annual report to the mayor and city council detailing the activities of the board during the prior year. The format for the report shall be designed to maximize public and private understanding to the Board's operations, and shall include a summary of the content of ethics opinions issued by the board and a listing of current city lobbyists based on information gathered by the board from records on file with the city secretary. The report may recommend changes to the text or administration of this code of ethics. The ethics compliance officer of the city shall take reasonable steps to endure wide dissemination and availability of the annual report of the ethics commission (board).

(Ord. No. 581, § 2(Exh. A, Pt. G, § 11), 8-18-2009)

Sec. 2-282. - Public records and open meetings.

Papers, records and evidence relating to an alleged violation or complaint pursuant to this code of ethics shall be and become public records as provided in section 2-274. Meetings of the commission shall be open to the public, except as provided in 2-274 above. However, information that is included in any such records that is made confidential and privileged by federal or state law shall be deleted from any such records before being made available to the public. The commission may also convene into executive session for the purpose of hearing that part of any testimony or evidence that will include information made private, confidential or privileged information by federal or state law.

(Ord. No. 581, § 2(Exh. A, Pt. G, § 12), 8-18-2009)

Secs. 2-283—2-300. - Reserved.

Subdivision VIII. - Enforcement Mechanisms

Sec. 2-301. - Purpose and intent.

This code of ethics has been enacted to further the purposes stated in section 2-143, and to protect the city and the public from losses or increased costs incurred by the city that could result from violation of the standards provided in this code of ethics. It is the intent of the city council that this legislative enactment can and should be recognized by the courts as a proper basis for a civil cause of action by the city for damages or injunctive relief based upon a violation its provisions, and that such form of redress should be available in addition to any or penalty or remedy contained in this code of ethics or any other law. This code of ethics does not, however, create any claim or cause of action for or on behalf of any person, private party or legal entity other than the city. This code of ethics shall not be interpreted or construed as granting any cause of action to any third party, or the city waiving the defenses of sovereign immunity, qualified governmental immunity, or any other defense available to the city at law or in equity. In addition to other remedies provided by law, the following remedies are available with respect to violation of this code of ethics.

(Ord. No. 581, § 2(Exh. A, Pt. H), 8-18-2009)

Sec. 2-302. - Disciplinary action.

City officials and employees who engage in conduct that violates this code may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in this code of ethics or any other law. If a violation is an elected official and the applicable facts warrant consideration of removal the city council may order recall election for such an official.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 1), 8-18-2009)

Sec. 2-303. - Damages and injunctive relief.

This code of ethics has been enacted not only to further the purposes stated in section 2-143 (Statement of purpose), but to protect the city and any other person from any losses or increased costs incurred by the city or other person as a result of the violation of these provisions. It is the intent of the city that this legislative enactment can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this code of ethics or any other law.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 3), 8-18-2009)

Sec. 2-304. - Civil fine.

Any person, whether or not an official or employee of the city, who violates any provision of this division is subject to a fine not exceeding $500.00. Each day after any deadline imposed by subdivision VI of this division, pertaining to financial disclosure, for which any required statement has not been filed, or for which a statement on file is incorrect, misleading, or incomplete, constitutes a separate offense.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 3), 8-18-2009)

Sec. 2-305. - Prosecution for perjury.

Any person who files a false sworn statement under subdivision VI (Financial Disclosure) or subdivision VII (Ethics Commission (Board) is subject to criminal prosecution for perjury under the laws of the State of Texas.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 4), 8-18-2009)

Sec. 2-306. - Voiding or ratification of contract.

If an ethics panel finds that there has been a violation of any provision in section 2-171 through 2-179 of subdivision II (Present City Officials and Employees), section 2-201 or 2-202 of subdivision III (Former City Officials and Employees), the city council must vote on whether to ratify or void the contract. Such action shall not affect the imposition of any penalty or remedy contained in this code of ethics or any other law.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 6), 8-18-2009)

Sec. 2-307. - Disqualification from contracting.

(a) Any person (including business entities and non-profit entities) who intentionally or knowingly violates any provision of subdivision IV (Persons Doing Business with the City) may be prohibited by the city council from entering into any contract with the city for a period not to exceed three years.

(b) It is a violation of this code of ethics:

(1) For a person debarred from entering into a contract with the city to enter, or attempt to enter, into a contract with the city during the period of disqualification from contracting; or

(2) For a city official or employee to knowingly assist a violation of subsection (b)(1) of this rule.

(c) Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

(d) A business entity or nonprofit entity may be disqualified from contract based on the conduct of an employee or agent, if the conduct occurred within the scope of the employment agency.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 6), 8-18-2009)

Sec. 2-308. - Failure to report and penalty.

Any city official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation as provided in section 2-182 of this code (Persons required to report; time to Report) is subject to the penalties herein.

(Ord. No. 581, § 2(Exh. A, Pt. H, § 7), 8-18-2009)

Secs. 2-309—2-320. - Reserved.

Subdivision IX. - Administrative Provisions

Sec. 2-321. - Other obligations.

This code of ethics is cumulative of and supplemental to applicable stat and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve any persons from any obligation imposed by state or federal law regarding ethics, financial reporting, or any other issue addressed herein.

Even if a city official or employee is not prohibited from taking official action by this code of ethics, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

(Ord. No. 581, § 2(Exh. A, Pt. I, § 1), 8-18-2009)

Sec. 2-322. - Distribution and training.

(a) Prior to the effective date of this code of ethics, and periodically thereafter as appropriate, the city attorney or designated ethics compliance officer shall provide information about the code to every official and employee of the city, and copies of the code shall be made readily available to city official, employees, and the public. Within 30 days after entering upon the duties of his or her position, every new official or employee shall be furnished with information about this code of ethics. The failure of any person to receive a copy of this code shall have no effect on the person's duly to comply with this code or on the enforcement of its provisions. Upon appointment to a board or commission, such official shall be provided with a copy of the ethics code.

(b) The city attorney or designated ethics compliance officer, in consultation with the ethics commission (board), shall develop education al materials and conduct educational programs for the officials and employees of the city on the provisions of this code of ethics, Section 12.01 through 12.05 of the City Charter, and section 171 of the Texas Local Government Law. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.

(Ord. No. 581, § 2(Exh. A, Pt. I, § 2), 8-18-2009)

Sec. 2-323. - Severability.

If any provision of this code [of ethics] is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.

(Ord. No. 581, § 2(Exh. A, Pt. I, § 3), 8-18-2009)

Secs. 3-324—2-376. - Reserved.

DIVISION 3. - RETIREMENT[4]

Footnotes:

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State Law reference— Texas Municipal Retirement System, V.T.C.A., Government Code § 851.001 et seq.

Sec. 2-377. - Participation in system.

On behalf of the city, the city council hereby exercises its option and elects to have the city and all of the employees of all departments now existing or hereafter established participate in the Texas Municipal Retirement System as provided in V.T.C.A., Government Code § 851.001 et seq., and all of the benefits and obligations of such system are hereby accepted as to such employees.

(Ord. No. 88, § 1, 5-18-1976)

Sec. 2-378. - Notification of state.

The mayor is hereby directed to notify the board of trustees of the state municipal retirement system that the city has elected to participate and have the employees of the departments stated in section 2-377 participate in said system.

(Ord. No. 88, § 2, 5-18-1976)

Sec. 2-379. - Employee participation by department.

Each person who becomes an employee of any participating department on or after the effective date of participation of such department shall become a member of the state municipal retirement system as a condition of his employment. The city may in the future refuse to add new departments or new employees to such system but shall never discontinue as to any participants.

(Ord. No. 88, § 3, 5-18-1976)

Sec. 2-380. - Authorization.

The city secretary or other proper official is hereby directed to remit to the board of trustees of the Texas Municipal Retirement System, at its office in Austin, Texas, the city's contributions to the system and the amounts which shall be deducted from the compensation or payroll of employees, all as required by said board under the provisions of chapter 75, Acts of the 50th legislature of the state, as amended, and the official is hereby authorized and directed to ascertain and certify officially on behalf of the city the prior service rendered to the municipality by each of the employees of the participating departments, and the average prior service compensation received by each, and to make and execute all prior service certifications and all other reports and certifications which may be required of the city, under the provisions of chapter 75, Acts Regular Session, 50th Legislature, as amended, or in compliance with the rules and regulations of the board of trustees of the state municipal retirement system.

(Ord. No. 88, § 5, 5-18-1976)

Sec. 2-381. - Provisions of Texas Municipal Retirement System Act adopted.

V.T.C.A., Government Code § 851.001 et seq. shall herein be referred to as the "Texas Municipal Retirement System Act." Pursuant to the provisions of V.T.C.A., Government Code § 854.202(g), as amended, the city adopts the following provisions affecting participation of its employees in the Texas Municipal Retirement System, V.T.C.A., Government Code § 851.001 et seq., herein referred to as the "system":

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

(2) Prior to adopting the ordinance from which this division is derived, the city council has:

   a. Prepared an actuarial analysis of member retirement annuities at 20 years of service; and

   b. Held a public hearing pursuant to the notice provisions of the Texas Open Meetings Act, V.T.C.A., Government Code ch. 551.

(3) The rights authorized in this section shall be in addition to the plan provisions heretofore adopted and in force at the effective date of the ordinance from which this division is derived pursuant to the Texas Municipal Retirement System Act.

(Ord. No. 230, § 1, 4-19-1988; Ord. No. 283, § 1, 9-5-1995)

Sec. 2-382. - Authorization of updated service credits.

(a) On the terms and conditions set out in V.T.C.A., Government Code §§ 853.401—853.404 as amended, each member of the Texas Municipal Retirement System who has current service credit or prior service credit in the system in force and effect on January 1 of the calendar year preceding such allowance, by reason of service in the employment of the city and on such date had at least 36 months of credited service with the system, shall be and is hereby allowed "updated service credit" (as that term is defined in V.T.C.A., Government Code § 853.402(d)).

(b) On the terms and conditions set out in V.T.C.A., Government Code § 853.601 of the Texas Municipal Retirement System Act, any member of the system who is eligible for updated service credits on the basis of service with this city, who has unforfeited credit for prior service and/or current service with another participating municipality or municipalities by reason of previous service, and was a contributing member on January 1 of the calendar year preceding such allowance shall be credited with updated service credits pursuant to, calculated in accordance with, and subject to adjustment as set forth in V.T.C.A., Government Code § 853.601, both as to the initial grant thereunder and all future grants under this division.

(c) The updated service credit hereby allowed and provided for shall be 100 percent of the base updated service credit of the member (calculated as provided in V.T.C.A., Government Code § 853.402(c)).

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

(e) The initial allowance of updated service credit hereunder shall be effective on January 1, 1999, subject to approval by the board of trustees of the system. An allowance shall be made hereunder on January 1 of each subsequent year until the ordinance from which this division is derived ceases to be in effect under V.T.C.A., Government Code § 853.404(e) of the Texas Municipal Retirement System Act; provided that, as to such subsequent year, the actuary for the system has made the determination set forth in V.T.C.A., Government Code § 853.404(d).

(f) In accordance with the provisions of V.T.C.A., Government Code § 853.404(d), the deposits required to be made to the system by employees of the several participating departments on account of current service shall be calculated from and after the effective date of the ordinance from which this division is derived on the full amount of such person's compensation as an employee of the city.

(Ord. No. 202-A, § 1, 11-5-1985; Ord. No. 221, § 1, 8-4-1987; Ord. No. 235, § 1, 9-27-1988; Ord. No. 249, § 1, 11-21-1989; Ord. No. 260-A, § 1, 11-20-1990; Ord. No. 263, § 1, 8-6-1991; Ord. No. 273, § 1, 10-19-1993; Ord. No. 324, § 1, 9-1-1998)

Sec. 2-383. - Employee contributions.

All employees of the city, who are members of the state municipal retirement system, shall make deposits to the system at the rate of seven percent of their individual earnings effective October 1, 1998.

(Ord. No. 202-A, § 1, 11-5-1985; Ord. No. 221, § 1, 8-4-1987; Ord. No. 235, § 1, 9-27-1988; Ord. No. 249, § 1, 11-21-1989; Ord. No. 260-A, § 1, 11-20-1990; Ord. No. 263, § 1, 8-6-1991; Ord. No. 273, § 1, 10-19-1993; Ord. No. 324, § 1, 9-1-1998)

Sec. 2-384. - Supplemental death benefits fund.

The city hereby elects to participate in the supplemental death benefits fund of the state municipal retirement system for the purpose of providing in-service death benefits for each of the city's employees who are members of said system, and for the purpose of providing post-retirement death benefits for annuitants whose last covered employment was as an employee of the city, in the amounts and on the terms provided for in V.T.C.A., Government Code § 852.004, as amended.

(Ord. No. 202-A, § 1, 11-5-1985)

Sec. 2-385. - Benefits enumerated.

Pursuant to the provisions of V.T.C.A., Government Code §§ 854.202(f), 854.204, 854.405, 854.406 and 854.410, as amended the city adopts the following provisions affecting participation of its employees in the state municipal retirement system:

(1) Any employee of this city who is a member of the system is eligible to retire and receive a service retirement annuity, if the member has at least 25 years of credited service in that system performed for one or more municipalities that have participation dates after September 1, 1987, or have adopted a like provision.

(2) If a "vested member," as that term is defined in V.T.C.A., Government Code § 854.204(b), shall die before becoming eligible for service retirement and leaves surviving a lawful spouse whom the member has designated as beneficiary entitled to payment of the member's accumulated contributions in event of the member's death before retirement, the surviving spouse may by written notice filed with the system elect to leave the accumulated deposits on deposit with the system subject to the terms and conditions of said V.T.C.A., Government Code § 854.204(b). If the accumulated deposits have not been withdrawn before such time as the member, if living, would have become entitled to service retirement, the surviving spouse may elect to receive, in lieu of the accumulated deposits, an annuity payable monthly thereafter during the lifetime of the surviving spouse in such amount as would have been payable had the member lived and retired at that date under a joint and survivor annuity (option 1) payable during the lifetime of the member and continuing thereafter during the lifetime of the surviving spouse.

(3) At any time before payment of the first monthly benefit of an annuity, a surviving spouse to whom subsection (2) of this section applies may, upon written application filed with the system, receive payment of the accumulated contributions standing to the account of the member in lieu of any benefits otherwise payable under this section. In the event such a surviving spouse shall die before payment of the first monthly benefit of an annuity allowed under this section, the accumulated contributions credited to the account of the member shall be paid to the estate of such spouse.

(4) The rights, credits and benefits hereinabove authorized shall be in addition to the plan provisions heretofore adopted and in force at the effective date of the ordinance from which this section was derived pursuant to the Texas Municipal Retirement System Act.

(5) Any employee of this city who is a member of the system is eligible to retire and receive a "standard occupational disability annuity" under V.T.C.A., Government Code § 854.408 or an "optional occupational disability retirement annuity" under V.T.C.A., Government Code § 854.410 upon making application therefor on such form and in such manner as may be prescribed by the board of trustees of the system; provided that the system's medical board has certified to said board of trustees:

   a. The member is physically or mentally disabled for further performance of the duties of the member's employment;

   b. The disability is likely to be permanent; and

   c. The member should be retired.

   Any annuity granted under this subsection shall be subject to the provisions of V.T.C.A., Government Code § 64.409 of the Texas Municipal Retirement System Act.

(6) The provisions relating to the occupational disability program as set forth in subsection (5) of this section are in lieu of the disability program heretofore provided for under V.T.C.A., Government Code §§ 854.301—854.308.

(Ord. No. 220, § 1, 8-4-1987)

Sec. 2-386. - Increase in retirement annuities.

(a) On the terms and conditions set out in V.T.C.A., Government Code §§ 854.203 and 853.404, as amended, the city hereby elects to allow and provide for payment of the increases below stated in monthly benefits payable by the system to retired employees and to beneficiaries of deceased employees of the city under current service annuities and prior service annuities arising from service by such employees to the city. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

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

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

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

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

(f) Date of increase. The initial increase in retirement annuities hereunder shall be effective on January 1, 2000, subject to approval by the board of trustees of the system. An increase in retirement annuities shall be made hereunder on January 1 of each subsequent year until this section ceases to be in effect under V.T.C.A., Government Code § 853.404(e), provided that, as to such subsequent year, the actuary for the system has made the determination set forth in V.T.C.A., Government Code § 853.404 and provided further that, as to such subsequent year, the city has an ordinance in effect that provides for a is simultaneous increase in updated service credits as that term is used in the Texas Municipal Retirement System Act.

(Ord. No. 281-6, § 1, 7-4-2000)

Sec. 2-387. - Authorization of restricted prior service credit.

(a) On the terms and conditions set out in V.T.C.A., Government Code § 853.305, as amended, each member of the Texas Municipal Retirement System (hereinafter referred to as the "system") who is now or who hereafter becomes an employee of this city shall receive restricted prior service credit for service previously performed as an employee of any of the entities described in said V.T.C.A., Government Code § 853.305 provided that:

    (1) The person does not otherwise have credited service in the system for that service; and

    (2) The service meets the requirement of said V.T.C.A., Government Code § 853.305.

(b) The service credit hereby granted may be used only to satisfy length-of-service requirements for retirement eligibility, has no monetary value in computing the annuity payments allowable to the member, and may not be used in other computations, including computation of updated service credit.

(c) A member seeking to establish restricted prior service credit under this division must take the action required under V.T.C.A., Government Code § 853.305 while still an employee of this city.

(Ord. No. 281-7, § 1, 2-15-2000)

Sec. 2-388. - City elects not to provide five-year vesting.

The city council elects not to provide five-year vesting under V.T.C.A., Government Code § 854.205 of the Texas Municipal Retirement System Act, and the city is hereby authorized and directed to file notice of this election with the board of trustees of the system before December 31, 2001.

(Ord. No. 383, § 1, 11-20-2001)

Sec. 2-389. - Health benefits coverage for retirees.

(a) The city (employer) hereby elects to provide health benefits coverage to its retirees through TML Intergovernmental Employee Benefits Pool under the pool's interlocal agreement.

(b) The employer hereby adopts the following definitions of "retiree" for purposes of this section

(1) *Group 1 retirees.* All former full-time employees, who have retired from the city after 25 years or more of continuous service as an officer or employee of the city. (This includes all currently retired employees receiving benefits.) All current full-time employees, who have completed five or more years of continuous of service as a full-time employee of the city by April 1, 2009, and complete a total of two years or more of continuous service as an officer or employee of the city.

(2) *Group 2 retirees.* All current full-time employees, who have completed less than five years of continuous of service as a full-time employee of the city by April 1, 2009, and complete a total of 25 years or more of continuous service as an officer or employee of the city.

(3) *Group 3 retirees* Any full-time employee hired after April 1, 2009, and subsequently completes 25 continuous years of service as a full-time employee of the city.

(c) The interlocal agreement in effect between the employer and the TML Intergovernmental Employee Benefits Pool provides that the Board of trustees may adopt rules and regulations. The rules and regulations of the TML Intergovernmental Employee Benefits Pool allow the participating member entity to provide retiree medical coverage at the same contribution as charged to active employees, to select a contribution level which is an elevated percentage (150%, 160%, etc. which may change from time to time) of the active employee contribution or to offer over age 65 retirees a Medicare supplement. For retirees that fall into one of the groups listed above, the Employer elects provide a contribution level which is an elevated percentage (150%, 160%, etc. which may change from time to time) of the active employee contribution. The contribution shall be in the form of percentages of total cost or a fixed dollar amount that may be applied towards the costs of medical coverage for each retiree Group as specified and defined in Attachment A-1 to Ordinance No. 564, for as long as the TML Intergovernmental Employee Benefits Pool offers this rate structure for retiree medical coverage. The difference between the total cost of the benefit minus employer's contribution if any shall be borne by the retiree.

(d) The employer shall adopt on an annual basis any additional or alternative retiree benefit plans to be provided through TML Intergovernmental Employee Benefits Pool. For all retirees the Employer elects to contribute percentages of total cost or fixed dollar amounts towards the costs of other paid benefit coverages for each retiree Group as specified and defined in Attachment B-1 to Ordinance, No. 564 for as long as the TML Intergovernmental Employee Benefits Pool offers this rate structure for retirees and the City adopts each specific additional or alternative benefit plan. The difference between the total cost of the benefit minus Employer's contribution shall be borne by the retiree.

(e) This section will only apply to individuals retiring after its effective date [April 1, 2009] or to employees, which retired under a previous ordinance. For individuals retiring after the effective date of this section to qualify they must enroll for this coverage within thirty (30) days of their retirement.

(Ord. No. 564, §§ 2—6, 3-17-2009)

Secs. 2-390—2-419. - Reserved.

ARTICLE V. - LIBRARY[5]

Footnotes:

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Editor's note— Ord. No. 705, §§ 2—8, adopted Aug. 21, 2012, effective Oct. 1, 2000, amended Art. V as herein set out. Inclusion herein as superseding former Art. V was at the editor's discretion. The former Art. V pertained to similar subject matter and derived from Ord. No. 358, §§ 1—3, 5—8, 8-1-2000. See also the Code Comparative Table.

DIVISION 1. - GENERALLY

Sec. 2-420. - Definitions.

The following definitions shall apply in this article unless the context clearly indicates otherwise:

"Board" means the library board of directors created herein.

"Director" means the director/librarian of the city's public library.

"Library" means the City of Kyle Public Library.

"Member" means a voting member of the library board of directors.

(Ord. No. 705, § 2, 8-21-2012)

Sec. 2-421. - Creation of library department.

(a) *Created.* There is hereby established the Department of the Public Library of the City of Kyle.

(b) *Director, personnel and facilities.* The library department shall be headed by a director appointed by the city administrator, and confirmed by the city council, and the department shall have such personnel as may be authorized in the annual budget of the city.

(c) *Duties of the director of the library.* The director of the library shall, subject to the direction, supervision and oversight of the city administrator and within the funds appropriated, budgeted and available for such purposes:

(1) Supervise and manage the development, enlargement, improvement, acquisition of materials and equipment and operations of the City of Kyle Public Library, pursuant to policies and procedures approved by the city council;

(2) Maintain the city's buildings, grounds, materials and equipment at the library;

(3) Provide the day to day operations and management of the library;

(4) Enforce the rules and regulations adopted by the city council, for the use of the library;

(5) In consultation with the city administrator, suspend or restrict any or all library operations whenever he or she believes such action to be necessary and appropriate;

(6) Facilitate communications and serve as a liaison between the library board, the city administrator and the city council; and

(7) Perform other duties and responsibilities as directed by the city administrator.

(Ord. No. 705, § 4, 8-21-2012)

Sec. 2-422. - Department policies.

(a) *Generally.* A person shall not remove or borrow any books, articles, or library materials from the premises of the library unless or until the library consents to, records, and checks-out the removal of the books, articles, or materials through the circulation desk. It shall be unlawful for any person to retain or fail to return any books, articles, or materials beyond the date designated by the library.

(b) *Use of false identification or false name.* It shall be unlawful for any person to register or furnish a false name or address with the library, furnish identification or a library card not belonging to that person with the library, or forge a library card for the purpose of borrowing or removing any book, article, or other material from the library.

(c) *Rules.* The board shall pass rules, subject to council approval, regulating:

(1) The issuance and cost of library cards;

(2) The maximum checkout time limits for all library materials;

(3) The fine schedules for overdue library materials;

(4) The fine schedules for lost or severely damaged library materials;

(5) The fine schedules for other charges or administrative fees; and

(6) Other procedural areas of library operations.

(d) *Assessment of fines and late charges.*

(1) Any person failing to return any books, articles, or other materials on or before the designated date shall be liable for a fine or late charge for each day as provided by the board rules.

(2) If the person in violation of this article is under 18 years of age, then the parent or guardian of the person shall be notified by certified mail of the violation(s). If the parent or guardian fails to return or ensure the return of any books, articles, or other materials within ten days after receipt of notice, then the parent or guardian shall be liable for a fine or late charge, in addition to the minor's fines and charges, for each day of his or her failure to return or ensure the return of the books, articles, or other materials as provided by the board rules.

(e) *Filing complaints.* Persons shall not retain or damage library materials after the date such materials are due or fail to pay fines and assessments as required herein.

(1) The code enforcement officer, or any person authorized by the code enforcement officer, may file a complaint in the city municipal court against any person that violates the provisions of this article if:

a. Before filing the complaint, the code enforcement officer or authorized person sends a certified letter, return receipt requested, to the person in violation of this article stating that unless the person returns any overdue books, articles, or materials to the library and pays any overdue charges, fees, or administrative fines within ten days after receipt of the certified letter, the code enforcement officer or authorized person shall file a complaint against the person in city municipal court; and

b. The person in violation of this article does not comply with the requirements provided in the certified letter.

(2) In the event the person in violation of this article is a minor, then the code enforcement officer or authorized person shall also send a certified copy of the letter to the minor's parent or guardian.

(3) Postage costs incurred by the library under this subsection shall be charged against the person in violation of this article whether or not a complaint is filed or a hearing is held on the complaint

in city municipal court. In addition, the borrowing privileges of the person in violation of this article shall be suspended until such costs are paid in full.

(Ord. No. 705, § 5, 8-21-2012)

Sec. 2-423. - Prohibited conduct.

Conduct prohibited in this section shall be subject to citation with or without written notification of such violation. Any police officer of the city or employee of the library may file a complaint in municipal court for violations alleged under this section.

(1) It shall be unlawful for any person to willfully interfere with, disrupt, or prevent the orderly conduct of persons utilizing the library facilities.

(2) It shall be unlawful for any person to refuse to leave the library area after being advised by a city police officer or employee that his or her conduct is disruptive to others and being directed by such city officer or employee to leave the library area.

(3) It shall be unlawful for any person to possess, use or consume any alcoholic beverage, as defined in the Texas Alcoholic Beverage Code, as amended, on, or upon any public property within ten feet of, any property, owned or operated by the city for use as a public library.

(4) It shall be unlawful to ride a bicycle, adult-sized tricycle, roller skates, in-line skates, skateboard or any similar device or vehicle on any sidewalk, walkway, pavilion, or other area designed for pedestrian use within the library property.

(Ord. No. 705, § 7, 8-21-2012)

Sec. 2-424. - Penalty.

Any person who shall violate any of the provisions of this article, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of $500.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(Ord. No. 705, § 8, 8-21-2012)

Secs. 2-425—2-440. - Reserved.

DIVISION 2. - BOARD OF DIRECTORS

Sec. 2-441. - Library board of directors.

(a) *Established.* There is hereby established the public library board of directors (hereinafter referred to as the "board") for the City of Kyle. Except as specifically provided otherwise in this article the authority and powers of the board shall be advisory only.

(b) *Powers and duties.* The board shall have the following powers and duties:

(1) The board shall be responsible for providing the city council and the director with advice and recommendations on all policies, rules, and regulations relating to the administration of the library and library programs and operations.

(2) The board shall have the power to develop and propose to the city council rules and regulations for the proper conduct of the library. Such rules and regulations shall become in effect upon adoption of the city council as provided by law.

(3) The board shall carry out and perform such other functions and duties as the council may assign to it.

(4) The board shall promote the library's programs and services in the greater Kyle community.

(5) The board is authorized to solicit gifts and bequests of money or other personal property, or donations to be applied, principle or income, for library functions and to conduct fund-raisers for the library. All such funds, gifts and bequests shall be made and received directly the city treasurer and placed in a special account or fund established for such purposes.

(6) Hear all citizens' complaints, recommendations and discussions concerning the library and employees thereof.

(c) *Membership and officers of board.*

(1) The board shall consist of five members serving without pay. A minimum of three members shall be city residents or reside within the County of Hays.

(2) The board shall be appointed by the city council. The board, by majority vote, may recommend members to serve on the board.

(3) Any new member shall serve for a two-year term and thereafter until his or her successor has been appointed and the council determination of the successor's qualifications for the position completed.

(4) Vacancies on the board occurring otherwise than by expiration of the term shall be filled by the city council for the remainder of that term.

(5) Members shall be eligible for re-appointment at any time following the termination of their two-year term.

(6) Members shall serve without compensation, except for reimbursement of expenses as the council may authorize.

(7) The following persons shall be members of the first board:

_____, _____, _____, _____, and _____.

(d) *Officers.* Immediately after the members of the board are first appointed, the board shall meet and elect one member as chairperson, one as vice-chairperson, and another as secretary.

(1) The board shall decide by rule when it will hold annual officer elections to select a presiding officer, and such other officers as the board deems advisable.

(2) Each officer shall serve for one year and thereafter until their successor is selected and the board completes a determination of their qualifications for the position. The board shall fill all officer vacancies that occur at or before the next regular meeting that follows the vacancy.

(3) Officers shall perform the duties prescribed by the board.

(4) No member shall serve as an officer more than two consecutive terms.

(e) *Removal from the board.*

(1) *Dismissal.* The council shall have the authority to dismiss members with or without cause.

(2) *Absences.* Membership on the board shall automatically terminate if a member:

a. Fails to attend three consecutive regular board meetings, or

b. Moves outside the city limits and the County of Hays.

(f) *Board meetings.*

(1) *Regular meetings.* The board shall hold at least one regular meeting each month and shall prescribe by rule regular meeting dates at a regular meeting place.

(2) *Special meetings.* The board may hold special meetings upon the request of the presiding officer, mayor, city secretary, city attorney, or upon the written request of three members.

(3) *Quorum.* A quorum shall consist of three voting members. A motion to approve any matter before the board or to recommend approval of any request requiring city council action shall require a majority vote of the quorum members present.

(4) *Voting.* Voting shall be by role call vote, and the presiding officer shall be entitled to vote on any matter before the board.

(5) *Rules of conduct.* The board shall pass rules, subject to council approval, governing the conduct of meetings and other procedural matters. Board rules shall not be inconsistent with city ordinances, resolutions, or regulations.

(6) *Department report.* The board may not take any action on any matter involving a city department other than the public library department without first obtaining a report from the city department(s) concerned.

(Ord. No. 705, § 3, 8-21-2012)

Secs. 2-442—2-460. - Reserved.

DIVISION 3. - FUND

Sec. 2-461. - Library fund.

There is hereby created a "library fund" (the "fund") which shall be maintained and reported as a separate fund of the city. All funds, gifts and bequests offered to the library from private or public entities shall be deposited in the fund which shall be administered by the city council. No expenditures or withdrawals shall be made from the fund except to finance and purchase materials, equipment and property for the use and benefit of the library and to pay costs of library personnel, and as authorized by a majority vote of the city council for the benefit of the library.

(Ord. No. 705, § 6, 8-21-2012)

Secs. 2-462—2-480. - Reserved.

ARTICLE VI. - PUBLIC RECORDS[6]

Footnotes:

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State Law reference— Public records, V.T.C.A., Government Code § 552.001 et seq.; municipal records, V.T.C.A., Local Government Code § 191.001 et seq.

DIVISION 1. - GENERALLY

Secs. 2-481—2-498. - Reserved.

DIVISION 2. - RECORDS MANAGEMENT[7]

Footnotes:

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State Law reference— Management and preservation of local records, V.T.C.A., Local Government Code § 203.001 et seq.

Sec. 2-499. - Definitions.

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

Department head means the officer who by ordinance, order, or administrative policy is in charge of an office of the city that creates or receives records.

Essential record means any record of the city necessary to the resumption or continuation of operations of the city in an emergency or disaster, to the re-creation of the legal and financial status of the city, or to the protection and fulfillment of the obligations to the people of the state.

Local government record means all documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the city or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the city and shall be created, maintained, and disposed of in accordance with the provisions of this division or procedures authorized by it and in no other manner. The term "local government record" does not include:

(1) Extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;

(2) Notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;

(3) Blank forms;

(4) Stocks of publications;

(5) Library and museum materials acquired solely for the purposes of reference or display;

(6) Copies of documents in any media furnished to members of the public to which they are entitled under V.T.C.A., Local Government Code ch. 552 or other state law; or

(7) Any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by V.T.C.A., Government Code § 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

Permanent record means any record of the city for which the retention period on a records control schedule is given as permanent.

Records control schedule means a document prepared by or under the authority of the records management officer listing the records maintained by the city, their retention periods, and other records disposition information that the records management program may require.

Records liaison officer means the person designated under section 2-507.

Records management means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing costs and improving the efficiency of recordkeeping. The term "records management" includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

Records management officer means the person designated in section 2-502.

Records management plan means the plan developed under section 2-503.

Retention period means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

(Ord. No. 508, §§ 1, 2, 8-7-2007)

State Law reference— Definitions, V.T.C.A., Local Government Code § 201.003.

Sec. 2-500. - City records declared public property.

All city records as defined in section 2-499 are hereby declared to be the property of the city. No city official or employee has, by virtue of his position, any personal or property right to such records even though he may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

(Ord. No. 508, § 3, 8-7-2007)

Sec. 2-501. - Policy.

It is hereby declared to be the policy of the city to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all city records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act and accepted records management practice.

(Ord. No. 508, § 4, 8-7-2007)

Sec. 2-502. - Designation of records management officer.

The city manager shall designate a records management officer for the city. As provided by state law, the holder of this designation shall file his name with director and librarian of the state library within 30 days of the initial designation or of taking up the office, as applicable.

(Ord. No. 508, § 5, 8-7-2007)

Sec. 2-503. - Records management plan to be developed; approval of plan; authority of plan.

(a) The records management officer shall develop a records management plan for the city for submission to the city council. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the city, and to properly preserve those records of the city that are of historical value. The plan must be designed to enable the records management officer to carry out his duties prescribed by state law and this division effectively.

(b) Once approved by the city council the records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees or similar entities of the city and records shall be created, maintained, stored, microfilmed, or disposed of in accordance with the plan.

(c) State law relating to the duties, other responsibilities, of recordkeeping requirements of a department head do not exempt the department head or the records in the departments head's care from the application of this division and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program of the city.

(Ord. No. 508, § 6, 8-7-2007)

Sec. 2-504. - Duties of records management officer.

In addition to other duties assigned in this division, the records management officer shall:

(1) Administer the records management program and provide assistance to department heads in its implementation;

(2) Plan, formulate, and prescribe records disposition policies, systems, standards, and procedures;

(3) In cooperation with department heads, identify essential records and establish a disaster plan for each city office and department to ensure maximum availability of the records in order to reestablish operations quickly and with minimum disruption and expense;

(4) Develop procedures to ensure the permanent preservation of the historically valuable records of the city;

(5) Establish standards for filing and storage equipment and for recordkeeping supplies;

(6) Study the feasibility of and, if appropriate, establish a uniform filing system and a forms design and control system for the city;

(7) Provide records management advice and assistance to all city departments by preparation of a manual or manuals of procedure and policy and by on-site consultation;

(8) Monitor records retention schedules and administrative rules issued by the state library and archives commission to determine if the records management program and the city's record control schedules are in compliance with state regulation;

(9) Disseminate to the city council and department heads information concerning state laws and administrative rules relating to local government records;

(10) Instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;

(11) Direct record liaison officers or other personnel in the conduct of records inventories in preparation for the development of records control schedules as required by state law and this division;

(12) Ensure that the maintenance, preservation, microfilming, destruction, or other disposition of the city is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;

(13) Maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as the result of such disposal or disposition;

(14) Report annually to the city council on the implementation of the records management plan in each department of the city, including summaries of the statistical and fiscal data complied under subsection (13) of this section;

(15) Bring to the attention of the city manger noncompliance by department heads or other city personnel with the policies and procedures of the records management program or the Local Government Records Act.

(Ord. No. 508, § 7, 8-7-2007)

Sec. 2-505. - Duties and responsibilities of department heads.

In addition to other duties assigned in the division, department heads shall:

(1) Cooperate with the records management officer in carrying out the policies and procedures established in the city for the efficient and economical management of records and in carrying out the requirements of this division;

(2) Adequately document the transaction of government business and the services, programs, and duties for which the department head and his staff are responsible;

(3) Maintain the records in his care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the records management program of the city and the requirements of this division.

(Ord. No. 508, § 8, 8-7-2007)

Sec. 2-506. - Designation of records liaison officers.

Each department head shall designate a member of his staff to serve as records liaison officer for the implementation of the records management program in the department. If the records management officer determines that in the best interests of the records management program more than one records liaison officer should be designated for a department, the department head shall designate the number of records liaison officer specified by the records management officer. Persons designated as records liaison officers shall be thoroughly familiar with all the records created and maintained by the department and shall have full access to all records of the city maintained by the department. In the event of the resignation, retirement, dismissal, or removal by action of the department head of a person designated as a records liaison officer, the department head shall promptly designate another person to fill the vacancy. A department head may serve as records liaison officer for his department.

(Ord. No. 508, § 9, 8-7-2007)

Sec. 2-507. - Duties and responsibilities of records liaison officers.

In addition to other duties assigned in this division, records liaison officers shall:

(1) Conduct or supervise the conduct of inventories of the records of the department in preparation for the development of records control schedules;

(2) In cooperation with the records management officer, coordinate and implement the policies and procedures of the records management program in their departments;

(3) Disseminate information to department staff concerning the records management program.

(Ord. No. 508, § 10, 8-7-2007)

Sec. 2-508. - Records control schedules to be developed; approval; filing with state.

(a) The records management officer, in cooperation with department heads and records liaison officers, shall prepare records control schedules on a department-by-department basis listing all records created or received by the department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of city records as the records management plan may require.

(b) Each records control schedule shall be monitored and amended as needed by the records management officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the department and records management program of the city.

(c) Before its adoption, a records control schedule of amended schedule for a department must be approved by the department head and the records management officer.

(d) Before its adoption, a records control schedule must be submitted to and accepted for filing by the director and librarian as provided by state law. If a schedule is not accepted for filing, the schedule shall be amended to make it acceptable for filing. The records management officer shall submit the records control schedules to the director and librarian of the state library.

(Ord. No. 508, § 11, 8-7-2007)

Sec. 2-509. - Implementation of records control schedules; destruction of records under schedule.

(a) A records control schedule for a department that has been approved and adopted under section 2-508 shall be implemented by department heads and records liaison officers according to the policies and procedures of the records management plan.

(b) A record whose retention period has expired on a records control schedule shall be destroyed unless open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the records management officer that the record be retained for an additional period.

(Ord. No. 508, § 12, 8-7-2007)

Sec. 2-510. - Destruction of unscheduled records.

A record that has not yet been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the records management officer has submitted to and received back from the director and librarian of the state library an approved destruction authorization request.

(Ord. No. 508, § 13, 8-7-2007)

Sec. 2-511. - Records center.

A records center, should one be established by the city, developed pursuant to the plan required by section 2-503, shall be under the direct control and supervision of the records management officer, policies and procedures regulating the operations and use of the records center shall be contained in the records management plan developed under section 2-503.

(Ord. No. 508, § 14, 8-7-2007)

Sec. 2-512. - Micrographics.

Unless a micrographics program in a department is specifically exempted by order of the city, all microfilming of records will be centralized and under the direct supervision of the records management officer. The records management plan will establish policies and procedures for the microfilming of city records, including policies to ensure that all microfilming is done in accordance with standards and procedures for the microfilming of local government records established in rules of the state library and archives commission. The plan will also establish criteria for determining the eligibility of records for microfilming, and protocols for ensuring that a microfilming program that is exempted from the centralized operations is, nevertheless, subject to periodic review by the records management officer as to cost effectiveness, administrative efficiency, and compliance with commission rules.

(Ord. No. 508, § 15, 8-7-2007)

Secs. 2-513—2-530. - Reserved.

ARTICLE VII. - DEBT ISSUANCE AND MANAGEMENT POLICY

Sec. 2-531. - Purpose.

The city establishes the following policy concerning the issuance and management of the city's debt. This debt policy, as presented to city council and the citizens, is established to improve the quality of decisions in relation to the city's financing activities, provide a comprehensive view of the city's long term debt picture and make it easier for decision makers to understand issues concerning debt issuance and management.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-532. - Conditions of debt issuance.

(a) *Community needs.* Debt should be issued for the purpose of meeting the needs of the community through funding of capital projects and equipment but without constituting an unreasonable burden to taxpayers.

(2) *Qualified projects.* Long term debt is only to be issued to finance the acquisition and/or construction of capital improvements with an economic or useful life greater than five years and the term of the debt. Additionally, only capital needs identified in the capital improvement program will be considered. Refunding bonds will only be issued if the present value of debt service savings exceeds three percent of the par value of the refunded bonds, unless the refunding is intended for tax rate management purposes. Debt for other purposes, such as acquisition of capital assets, is covered separately in this policy.

(3) *Emergency purposes.* Debt may be issued in compliance with state law to repair or replace an essential public asset, e.g. wastewater trunk line, that has suffered catastrophic damages, or for other purposes if there is immediate risk to the health and/or general safety of the general population of the

city. The issuance of debt under this subsection requires an affirmative vote by a majority of the members of the city council present and voting, provided not less than four affirmative votes shall be required to authorize the issuance of debt under this subsection.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-533. - Types of debt.

(a) *General obligation bonds.* General obligation bonds may only be issued with a majority approval of a popular vote. The use of the proceeds from GO bonds is limited to the acquisition or improvement of real property and other uses allowed by law and applicable bond ordinances. Libraries, parks and public safety facilities are all types of facilities that can be financed with GO bonds. To the extent that property tax revenues are used to fund debt service, a separate property tax will be levied.

(b) *Enterprise revenue bonds.* Enterprise revenue bonds finance facilities for a revenue producing enterprise, and are payable from revenue sources within that enterprise. Municipal water and sewer and solid waste are examples of revenue producing enterprises within the city.

(c) *Certificates of obligation (COs) and limited tax notes (notes).* Notes will be used in order to fund capital requirements where the useful life does not exceed seven years as authorized by state law or where expedient issuance is required. Debt service for COs or notes may be either from general revenues or backed by a specific revenue stream or streams or by a combination of both. The term of the COs will not exceed the useful life of the major capital projects funded by the certificate issuances and will generally be limited to no more than 20 years. Unless provided otherwise by state law neither COs nor notes require a vote of the citizens of the city.

(d) *Refunding obligations.* Pursuant to the Government Code and various other financing statutes applicable in particular situations, the city council is authorized to provide for the issuance of bonds for the purpose of refunding any long term obligation of the city. Absent any significant noneconomic factors (such as tax rate management), a refunding should produce minimum debt service savings (net of reserve fund earnings and other offsets) of at least three percent of the par value of the refunded bonds on a net present value basis, using the refunding issue's true interest cost (TIC) as the discount rate, unless the finance department determines that a lower savings percentage is acceptable for issues or maturities with short maturity dates.

(e) *Tax anticipation notes.* Proceeds from tax anticipation notes are used to fund projects whose source of payment is future tax revenues. These instruments have a term of one to three years and are for a specific purpose such as temporary financing for capital improvements, cash flow needs and major equipment leasing.

(f) *Tax increment financing bonds (TIF).* The city may use these bonds to finance capital improvements within the tax increment reinvestment zone. Repayment is from property taxes generated on the incremental increases in tax values within the zone.

(g) *Leases and lease purchase.* Financing leases and lease purchase agreements may be used to finance major capital purchases, including infrastructure, fleet, major system upgrades and large equipment purchases. The useful life of the asset should not exceed the term of the lease.

(h) *Assessment bonds.* Proceeds from assessment bonds may be used to finance local public improvements, provided that said improvements benefit the parcels of land to be assessed. Local street lights, landscaping, sidewalks and sanitary sewers are some of the examples of local improvements commonly financed by assessment bonds.

(i) *Other obligations.* There may be special circumstances when other forms of debt are appropriate and may be evaluated on a case by case basis. Such other forms include, but are not limited to limited tax notes, non-enterprise revenue bonds, bond anticipation notes, grant anticipation notes and judgment or settlement obligation bonds.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-534. - Restrictions on debt issuance.

(a) The city will not use long term debt to finance current operations or normal maintenance.

(b) Derivative products will not be used by the city.

(c) Variable rate debt will not be used to refinance fixed-rate, long term debt.

(d) All debt issuances shall be approved by the city council.

(e) Before any debt may be issued, the city will perform an analysis of the requirements to determine the impact on future budgets, the sufficiency of revenues to fund the debt service requirements and additional operating costs of the capital asset acquired. The analysis will ensure that debt service payments not tied to a specific revenue source shall be not greater than 40 percent of budgeted general fund revenue for the current fiscal year. For calculation purposes, general fund revenue shall include revenue in both community development and recreation funds of the city.

Payments on bonds that are tied to a specified revenue stream such as waterworks bonds or TIF supported bonds are not subject to this 40-percent limit. This percentage restriction may be waived on a case-by-case basis for emergency purposes.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-535. - Limitations on outstanding debt.

(a) Limitations on the city's outstanding bonded debt include:

(1) The total of gross bonded debt payable from the general fund of the city (to include principal portion only) will not exceed six percent of the assessed valuation of the city for the same year.

(2) Certificates of obligation payable from the general fund shall not exceed three percent of the assessed valuation of the city.

(b) These limitations shall not apply to utility-supported or TIF-supported debt and shall be periodically compared with other cities to determine if the city is still within the norm for comparably sized cities.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-536. - Characteristics of debt issuance.

When the city finances capital projects by issuing bonds, it will pay back the bonds in a period not exceeding the expected life of those projects. Other standard terms shall include the following:

(1) Term may be up to 30 years depending on cash flow assumptions, and useful life of asset being financed.

(2) Call provisions will be shortest possible optional call consistent with optimal pricing.

(3) The city will seek to retire at least 25 percent of the total general fund supported principal outstanding within the next ten fiscal years.

(4) The city will seek level or declining overall debt repayment schedules and will avoid issuing debt that provides for balloon principal payments reserved at the end of the term of the issue, unless such debt issue is originally intended to be refinanced to produce level or declining overall debt repayment.

(5) The city will avoid variable rate debt due to the potential volatility of such instruments. Therefore, the city will avoid the use of variable rate debt for its general obligation bond issues.

(6) Debt service reserves will be in conformity with bond covenants, if applicable.

(7) Commercial insurance or other credit enhancements to the bond rating shall be considered when cost effective.

(8) Repayment of debt shall be made with revenues derived from the projects that benefitted from the bond issuance when possible.

(Ord. No. 648, § 2, 4-5-2011; Ord. No. 826, § 6, 9-16-2014)

Sec. 2-537. - Review of debt policy.

To ensure the city is meeting the expectations of this policy, the city council is to review this policy annually, at least three months prior to the beginning of the budget process.

(Ord. No. 648, § 2, 4-5-2011; Ord. No. 851, § 3, 6-2-2015)

Sec. 2-538. - Debt issuance process.

(a) The city will strive continually achieve a higher Standard and Poor's rating. The city will maintain good communications with bond rating agencies about its financial condition and will follow a policy of full disclosure on every financial report and bond prospectus. The city will also comply with all federal tax law provisions, including arbitrage requirements.

(b) The city shall utilize the services of independent financial advisor(s) on debt financing when deemed prudent. Although not required, the city may utilize an RFP selected pool of underwriters for any negotiated bond sale. Bond counsel will be used for each transaction.

(c) The finance department shall review each debt issuance transaction on a case-by-case basis to determine the most appropriate method of sale.

(d) Competitive sale. In a competitive sale, bids for the purchase of the bonds are opened at a specified place and time and are awarded to the underwriter (or syndicate) whose conforming bid represents the lowest true interest cost to the city (TIC). This method is most advantageous when the debt to be issued is less complex, the municipal bond market for high grade credits is stable, and the sale of the city's bonds is assured.

(1) Bond sales shall be cancelable at any time prior to the time bids are to be received.

(2) Upon award to the bidder whose conforming bid represents the lowest true interest cost, the city may restructure the bonds in accordance with the official notice of sale. The city shall reserve the unfettered right to reject all bids or waive bid irregularities.

(e) Negotiated sale. In a negotiated sale, the city chooses the initial buyer of the bonds in advance of the sale date. The initial buyer is usually an investment banking firm, or a syndicate of investment banking firms interested in reoffering the bonds to investors through an underwriting process. This type of sale allows the city to discuss different financing techniques with the underwriter in advance of the sale date. This method is most advantageous when the debt issue is complex, debt structuring flexibility is required (as would be the case in a bond refunding) or the municipal bond market is unstable or uncertain.

(f) Private placement. In a private placement, the city may select a private purchaser willing to bid a below market rate. Such placements often allow debt to be issued more efficiently by eliminating the need for bond ratings and other associated issuance costs. Such financing will be analyzed on a case by case basis, depending primarily on rates prevailing in the placement market from time to time.

(g) Professional services used in conjunction with a bond issuance may be obtained using a request for proposal (RFP). If an RFP is used, selection will be based on experience in the type of issuance and

municipal bond activities, ability to perform needed services, conflicts of interest, fees and fee structure.

(Ord. No. 648, § 2, 4-5-2011)

Sec. 2-539. - Permitted investments of debt proceeds.

(a) All investments of debt proceeds shall adhere to the city's investment policy. Accordingly, the investment of proceeds is limited to:

(1) Securities guaranteed for both principal and interest by the federal government. All securities held in the city's name prior to the effective date of this ordinance are exempt until such securities mature and funds become available for reinvestment;

(2) Collateralized certificates of deposit from banks whose collateral consists of securities of the United States or secured by a letter of credit from the Federal Home Loan Bank Board that guarantee both principal and interest;

(3) Local government investments pools; or

(4) Collateralized certificates of deposit from banks secured by a combination of collateral and guarantees as provided in (1) and (2), and/or bonds and debt obligations of the State of Texas and other instruments as authorized by state law.

(b) A financial advisor may be used to assist in investing bond proceeds. However, the advisor must be independent of the underwriter or financial advisor involved with the sale of the bonds. Bond proceeds may not be commingled with operating funds.

(c) To ensure adequate liquidity and safety of principal, investment maturities shall precede debt service requirements.

(Ord. No. 648, § 2, 4-5-2011)

ARTICLE I. - IN GENERAL

Sec. 5-1. - Definitions.

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

Abuse means to mistreat through intent abuse or reckless neglect of any animal in a manner that causes or is likely to cause stress or physical injury or as otherwise stated in this chapter.

Animal means any living creature other than hominids. Unless indicated otherwise, the term shall include livestock, miniature livestock, fowl, reptiles, amphibians, and wildlife, as well as dogs, cats and other creatures commonly owned as pets. The term shall exclude fish and other small aquarium-maintained creatures, not herein prohibited or restricted, where the owner only maintains no more than three aquariums having a total capacity of 90 gallons. The term also means a domesticated living creature and wild living creature previously captured, other than a dog.

Animal control division, animal control authority or *animal control officer* means the animal control division of the city police department, its animal control officers and/or peace officers.

Animal shelter or city kennel means a facility designated by the city council to be used for the impoundment of animals taken up by the animal control officers or other similar facility that may be temporarily contracted or designated by the chief of police for animal impoundment under the provisions of this chapter.

Animal welfare group means an association or nonprofit corporation who has as one of its purposes the providing for the welfare and/or protection of animals of any kind.

Apiary means a place where a bee colony is kept.

Authority means the local rabies control authority as defined in this section.

Bee means any stage of the common domestic honey bee, *Apis mellifera* species.

Brand means a mark made on the skin of any animal which indicates the ownership of the animal; typically used with livestock.

Cat means the male and the female of any domesticated member of the feline species of animal.

Chapter or *this chapter* means chapter 5 of the Kyle, Texas, Code of Ordinances.

Chief of police means the chief of police or the chief of police's designee responsible for the administration of this chapter.

Circus means a commercial variety show featuring animal acts for the public at a fee or a part of a charity.

Code means the Kyle, Texas, Code of Ordinances.

Colony means a hive and related equipment and appurtenances including bees, comb, honey, pollen, and brood.

Commercial animal enterprise means and includes, but [may] not be limited to, enterprises operating in public places where hens, other fowl, and rabbits are offered for sale to the public, enterprises such as kennels, pet shops, riding stables, animal actions, performing animal exhibitions, animal training services, grooming shops, petting zoos, aviaries or any similar entrepreneurial relationship regarding animals.

Constrictor means a snake that kills its prey by coiling tightly around it, causing suffocation.

Dangerous wild animal shall have the same meaning as defined in V.T.C.A., Health and Safety Code §§ 822.101—822.116, as amended.

Day means a workday including Saturday and excluding Sunday and city holidays.

Distance between structures, where a minimum setback or distance between any enclosure for an animal from a residence is required, means the most direct line distance between the two structures, unless otherwise provided.

Dog means the male and the female of any domesticated member of the canine species of animal.

Domestic animal means any animal whose physiology has been determined or manipulated through selective breeding and does not occur naturally in the wild; any animal which can be vaccinated against rabies with an approved rabies vaccine; and any animal which has an established rabies quarantine observation period.

Estray has the same meaning as defined in V.T.C.A., Agriculture Code ch. 142 as amended, defining estray as stray livestock, stray exotic livestock, and stray exotic fowl.

Exotic species means any animal or reptile, fish, or bird, born or whose natural habitat is considered to be outside the continental United States, including nonvenomous reptiles and fish.

Fish means any of the cold-blooded animals that extract oxygen from water through the use of gills.

Fowl means and includes all birds, e.g., chickens, turkeys, pheasants, quail, guineas, geese, ducks, peafowl and other domestic feathered creatures and nondomestic feathered creatures, regardless of age or sex.

Governmental entity means an agency or political subdivision of the state or an agency or department of the federal government.

Habitual offender or habitually means or refers to, an owner who has received two or more final convictions of this chapter or the owner of an animal who has been the subject of impoundment in the animal shelter three or more times during a 12-month period or any combination of convictions and impoundment totaling three incidents.

Harbor means to possess while in the act of keeping and caring for an animal; or of providing a premises to which the animal returns for food, shelter or care for a period of three days or longer.

Hen means a female chicken.

Hive means a structure intended to house a colony.

Keep or *keeping* or *kept* means the care and control of animals for a period of longer than five days.

Kennel means an establishment designed or used for the selling, breeding, or overnight boarding of animals where more than three dogs and two cats or three cats and two dogs or a combination of five other animals are to be boarded, sold, or bred.

Livestock means and includes, regardless of age, sex or breed, horses and all equine species, including mules, donkeys and jackasses; cows and all bovine species; sheep and all ovine species; llamas; goats and all caprine species; and pigs and all swine species.

Local rabies control authority means the senior animal control officer, or an officer he designates to act in his place when he is temporarily unable to act for any reason.

Marine animal means any animal, other than a mammal or bird, that lives in a marine environment.

Miniature livestock means a dwarfed variety or a species bred to be smaller than its standard counterpart, excluding uncastrated males. Whether a particular variety or species is miniature livestock may be validated by reference to the published breed definition for registration by a nationally recognized breeding association of a particular variety or species.

Multi-pet owner means a person who keeps or harbors five or more cats or dogs or any combination of five or more cats and dogs. Puppies and kittens under four months of age shall not be counted for purposes of this definition.

Neutered means any animal, male or female, rendered incapable of breeding or being bred, i.e., castration in the male and spaying or ovariohysterectomy in the female.

Nonregisterable dangerous dog means any dog which:

(1) When unprovoked, severely attacked or inflicts serious injury or death to a person, whether on public or private property; or

(2) Has been deemed nonregisterable by the animal control officer and upheld or unchallenged by any court of jurisdiction.

Owner or presumed owner means any person who has purchased or who owns, keeps, maintains, harbors or has care, custody or control of one or more animals. Ownership may be determined by identifying an adult resident of the premises upon which the animal is kept, maintained, harbored or otherwise resides and such adult shall constitute the owner of the animal upon such premises. Each actual resident of the premises shall be the owner or presumed owner and charged with responsibility for the animals thereon maintained or harbored.

Performing animals means any spectacle, display, act or event in which animals perform.

Person means and includes an individual human, partnership, copartnership firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, trust, estate, governmental entity, association or corporation or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

Poison means a substance having an inherent harmful property which renders it, when taken into the system, capable of destroying animal life.

Policy means the policies and procedures adopted consistent with this chapter and applicable to the animal control division of the city police department.

Premises means a definite portion of a legal lot of real estate or land, together with any appurtenances or buildings.

Prepackaged outlet means a store, shop or other retailer that sells prepackaged fowl and rabbits to the public from an established storefront or retail location, such as supermarkets, grocery stores, butcher shops, etc.

Prohibited animals means any animal prohibited by state or federal law and including any individual species and/or subspecies of the following animals: antelope, lions, tigers, ocelots, bobcats, lynx, cougars, leopards, cheetahs, jaguars, hyenas, bears, lesser pandas, ferrets born in natural habitats, binturong, ostriches, emus, elephants, Vietnamese pot belly pigs, miniature pigs, apes or such other nondomestic species of animal not common to this area.

Proper enclosure for a registered dangerous dog means a house or a building, or in the case of a fence or structure/pen, the fence or structure/pen must be at least six feet in height. The structure/pen must also have minimum dimensions of 150 square feet. The fence or structure/pen must form an enclosure suitable to prevent entry of young children and must be locked and secured such that an animal cannot climb, dig, jump or otherwise escape of its own volition. The enclosure shall be securely locked at all times and have secured sides to prevent a dangerous animal or registered dangerous dog from escaping from the enclosure. The structure/pen shall provide protection from the elements for the animal. The structure must have a secure top and a concrete floor. Invisible fences or similar technology shall not constitute proper enclosure.

Proper outdoor enclosure for a dog means a fence or structure must be at least four feet in height. The structure/pen must also have a minimum dimension of 150 square feet. The fence or structure/pen must form an enclosure secured such that an animal cannot climb, dig, jump, or otherwise escape of its own volition. The structure shall provide protection from the elements for the animal. Invisible fences or similar technology shall not constitute proper enclosure.

Public place means any place open to the public and to which the public has access. It shall include, but is not limited to, shops, stores, outdoor locations and markets and flea markets. A commercial animal enterprise open to the public or to which the public has access is a public place under this definition.

Qualified residence means for purposes of this chapter an R-1-1 single-family residence as defined and regulated by article II, division 2 of the zoning ordinance.

Qualified zone property means all classifications of zoning under the zoning ordinance except all residential districts, hospital services district, and recreational vehicle park district.

Quarantine means a period of ten days used for observation of a domestic or pet animal to determine the health status of that animal in relation to the rabies virus.

Quarantine by owner means an animal owner who quarantines with animal control officer's permission under the following conditions:

(1) Animal must have current rabies vaccination and be registered with animal control;

(2) Animal must be inside an enclosed structure, i.e., house or garage, and must remain there for ten days;

(3) If maintained outside, animal must be behind a fence from which it cannot escape and on a chain from which it cannot break loose or inside a covered pen or kennel from which it cannot escape. The length of the chain must prevent the animal from making contact with the fence in which it is kept;

(4) Animal must be kept away from other animals and people except those in the immediate household;

(5) Animal may not be removed from the corporate city limits while under quarantine;

(6) Owner shall notify animal control officer immediately if animal becomes sick or displays any behavioral changes;

(7) Owner shall not subject the animal to any medical procedure without first notifying the animal control officer. This includes any vaccination;

(8) Animal must be examined by the local rabies control authority or designee by the first day of home quarantine and again on the final day of quarantine. Upon final examination the authority may declare the animal to be free of the rabies virus or under questionable circumstance differ such examinations to a licensed veterinarian. In such instances, owner shall be responsible for all associated costs and when required produce proof of such veterinarian examinations;

(9) Owners who are deemed habitual offenders as defined herein shall not be allowed home quarantine;

(10) Owner must allow animal control, with reasonable notice, to view and confirm the health of the animal during the rabies quarantine period.

Rabies vaccination means the vaccination of a dog, cat or other domestic animal with an antirabies vaccine approved by the state department of health and administered by a veterinarian licensed by the state.

Registered dangerous dog means any dog registered with the city in compliance with V.T.C.A., Health and Safety Code §§ 822.041—822.047, and with article IV of this chapter, pertaining to registered dangerous dogs.

Residence means any place of human habitation at any time, day or night, including, but not limited to, any single-family or multifamily dwelling, church, school, convalescent center or nursing home.

Restrained means:

(1) With respect to a dog:

a. Kept under direct physical control of the animal's owner or handler by a tether, leash, cord, chain, or similar direct physical control; or

b. Confinement through fencing or similar enclosed structure within the property limits of its owner.

(2) With respect to any other animal:

a. Secured by a tether, leash, rope, or chain of some sort; or

b. Confinement through fencing or similar structure within the property limits of its owner.

Restricted animals means any individual species and/or subspecies defined herein as prohibited animals that have been registered and permitted in compliance with the procedures set out in section 5-132.

Running at large or animals at large means:

(1) *Off premises.* Off-premises as follows:

a. Any animal, except pet cats, which is not restrained by means of a leash, chain, or other physical apparatus of sufficient strength and length to control the actions of such animal while off-premises;

b. Any cat which is creating a nuisance off the owner's property.

(2) *On-premises.* On-premises as follows:

a. Any animal, except pet cats, not confined to the premises of the owner by a substantial fence of sufficient strength and height to prevent the animal from escaping;

b. Any animal, except dogs, secured on the premises by a tether, chain, or leash sufficient in strength to prevent the animal from escaping from premises and so arranged that the animal will remain upon the premises when the tether, leash, or chain is stretched to full length;

c. An animal intruding upon the property of another person other than the owner's shall be termed "at large;"

d. Any animal within a vehicle in a manner that would prevent that animal's escape or contact with other persons or animals shall not be deemed "at large."

Seller means a person who offers for sale and sells live hens, other fowl, and rabbits in a public place to the public, but this definition does not include or apply to a prepackaged outlet.

Serious injury means bodily injury resulting from severe attack or severe bite from an animal which produces severe pain, trauma, loss of blood or tissue, and which requires medical treatment of wounds inflicted by the animal.

Severe attack means an attack in which the animal repeatedly bites or vigorously shakes its victim, and the victim, or a person intervening, has extreme difficulty terminating the attack.

Severe bite means a puncture or laceration made by an animal's teeth which breaks the skin, resulting in a degree of trauma which would cause most prudent and reasonable people to seek medical care for treatment to the wound, without considerations of rabies prevention alone.

Stray animal (including estray) means any animal, of which there is no identifiable owner or harborer, which is found to be at large within the corporate limits of the city.

Tag means a vaccination tag attached to a collar as required by this chapter or some other permanent identifying device attached to a collar or to an animal and also means implanting or placement of a microchip or similar device for purposes of identification of an animal, except that the procedure of implanting or placing a microchip or similar device for said purposes shall be performed only by a licensed veterinarian, by a person duly authorized and supervised by a licensed veterinarian, or by a person duly and professionally trained in said procedure.

Tattoo means a permanent mark which is made on the skin of an animal by puncturing the skin and inserting indelible color, and which is used to show ownership.

Tract means a contiguous parcel of land under common ownership.

Undeveloped property means any property that is not improved or under improvement for human use or occupancy, including property developed as a street or highway, or used for a commercial agricultural purpose.

Unprovoked attack means that the animal was not hit, kicked, teased, molested or struck by a person with an object or part of a person's body, nor was any part of the animal's body pulled, pinched or squeezed by a person.

Vaccination means an injection of a rabies vaccine which is approved by the U.S. Department of Agriculture, Veterinary Biologics Division, state veterinarian and administered by a licensed veterinarian or at an approved antirabies clinic.

Veterinarian means any person duly licensed to practice veterinary medicine by the state board of veterinary examiners, or who is exempt from such licensing.

Wild animal or wildlife means any nondomestic creature (mammal, amphibian, reptile or fowl) which is of a species which is wild by nature, which can normally be found in a wild state, and which is not naturally tame or gentle, or which, because of its size, vicious nature and other characteristics, constitutes a danger to human life or property including all animals identified herein as prohibited.

Workday means a day from Monday through Saturday, excluding city holidays, with each respective day's work hours beginning at 8:00 a.m. and continuously operating until 8:00 p.m.; defining the public's routine access to administrative fees and impound release transactions authorized by this chapter.

Zoning ordinance means the Kyle, Texas, Code of Ordinances, chapter 53.

Zoological park or zoo means any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of animals, operated by a person or under the auspices of a governmental entity.

(Ord. No. 287-1, § 1, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 2, 8-19-2014; Ord. No. 822, § 2, 10-8-2014)

Sec. 5-2. - Penalty.

(a) Any person who shall violate any of the provisions of this chapter, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of $500.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(b) A person commits an offense if, with intent to deceive, he knowingly makes a false report or statement, either verbal or written, that is material to an investigation of an alleged violation of this chapter to an animal control officer or other person authorized to enforce provisions of this chapter.

(c) A person commits an offense if he reports to a person authorized to enforce provisions of this chapter an offense or incident within that person's concern knowing that the offense or incident did not occur.

(Ord. No. 287-1, § 5, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-3. - Purpose.

It is the intent and purpose of this chapter to provide a safe and healthy environment within the city for both animals and people. While a person may own and keep animals within the city, the conduct of those animals and the conditions that the animals are kept in should be safe and healthy and should not infringe on the surrounding homes and their inhabitants.

(Ord. No. 287-1, § 2, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-4. - Enforcement and policy.

(a) The provisions of this chapter may be enforced by animal control officers, police officers, and such other persons as are designated by the city. Nothing herein is intended to or shall preempt any statutory duty or authority of any federal, state, or local entity or official charged with animal control, estray, control or impoundment, or other animal related matters.

(b) It shall be unlawful for any person to interfere with, obstruct, resist or oppose any animal control officer or other person authorized to enforce the provisions of this chapter while such person is apprehending an animal or performing any other duties or investigation. It shall be unlawful to take or attempt to take any animal from any animal control officer or from any vehicle used by the officer to transport any animal or to take or attempt to take any animal from the animal shelter or other kennel or confinement area used to impound an animal.

(c) In all instances of a violation of any provision of this chapter, whether the animal is impounded or not, the owner or keeper of such animal may be cited by an officer who has the authority to enforce this chapter for any violation of this chapter. The animal control division may also by policy establish a conditional written warning procedure relating to registrations, displaying of tags, and general "at large" violations. The receipt of such written warnings does not preclude the animal control division from citing the recipient if the conditions of the written warning are not met in a timely fashion.

(d) In the enforcement of this chapter, animal control officers and police officers shall have the authority to utilize firearms to kill or otherwise disable any animal to protect themselves, to protect a third person or to protect another animal from attack or threat of imminent injury or to prevent such animal from enduring further pain or suffering as a result of disease or injury. They shall also have the authority to tranquilize or trap any animal, fowl, livestock or wildlife consistent with humane policies adopted by the animal control division.

(e) Unless specifically provided in this chapter, an offense under this chapter shall not require a culpable mental state. It is the intent of this chapter to impose strict liability for violation of the requirements of this chapter.

(f) To aid in the administration of this chapter, the animal control division shall by policy making authority of the chief of police, adopt administrative policies and operational procedures consistent with the purpose and intent of this chapter.

(Ord. No. 287-1, § 3, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-5. - Powers and duties of citizens.

Any person who finds an animal which he does not own on property that he owns or exercises control over or on public property may take control of said animal if it is running at large (as provided in section 5-38) and may deliver the animal to an animal control officer, the animal shelter, or an animal emergency medical facility. If the animal is not delivered to an animal control officer, the animal shelter, or an animal emergency medical facility, the person must report that he had taken control of the animal to an animal control officer or the animal shelter within 72 hours. If the animal is wearing a tag of any kind or has a tattoo, brand, or other identifying mark, that information shall be included in the report to the animal control officer or animal shelter.

(Ord. No. 287-1, § 4, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-6. - Prima facie evidence.

In any prosecution charging a violation of this chapter, governing the abuse, neglect or ownership of an animal or failure to license an animal as herein required, proof that the particular property described in the complaint was the premises upon which the animal resided, was harbored or maintained and a violation of any section of this chapter occurred involving said animal, together with proof that the defendant named in the complaint was, at the time of such complaint or at the time when the animal was in violation of this chapter, the registered owner of such animal or the person with legal rights to reside on said property, shall constitute in evidence a prima facie presumption that the registered owner of such animal or the person with legal rights to reside on said property was the owner of the animal and the person who failed to comply with this chapter.

(Ord. No. 287-1, § 6, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-7. - Abatement of conditions not complying with chapter.

Whenever any premises where animals are kept in an unsanitary conditions, or the facilities are not in keeping with provisions of this chapter or any other regulations herein, the animal control division, by written notice on a form provided by police department policy clearly stating the intent of this section, to the person responsible for the condition of the premises, may order the abatement of the conditions which are not in accordance with the ordinance or other regulations, or conditions which constitute a nuisance. Failure to comply with such order shall, in addition to any criminal or administrative proceedings, be grounds for and entitle the city to obtain relief by injunction. Nothing herein precludes the city's use of any public health ordinance or law in lieu of nuisance abatement or injunctive relief herein provided.

(Ord. No. 287-1, § 7, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-8. - Compliance with chapter not relief from compliance with other regulations.

The keeping of any animal in accordance with provisions of this chapter shall not be construed to authorize the keeping of the same in violation of the zoning ordinance or any other ordinance of the city.

(Ord. No. 287-1, § 8, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 3, 8-19-2014)

Sec. 5-9. - Fees.

The fee schedule attached as Appendix A to this Code shall apply to all animals within the city limits. It shall not be construed that the city be required to bear the costs of any animal that has an owner. The owner shall reimburse the city for any actual expenses and shall be responsible for all fees set forth in Appendix A to this Code. The city may recover all fees, costs and damages incurred as a result of the animal as restitution in a criminal proceeding under the provisions of this chapter or the state statute in addition to a fine being charged. In extraordinary circumstances, certain fees related to redemption of impounded animals may be administratively waived for owners with supervisory approval; or pay agreements reached between owners and animal control supervisors. Such administrative actions shall be guided by animal control's adopted policies and procedures.

(Ord. No. 287-1, § 9, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Secs. 5-10—5-36. - Reserved.

ARTICLE II. - GENERAL REGULATIONS

Sec. 5-37. - Identification for animals.

Except as provided herein, all animals within the city shall be marked by some type of identifying license, tag, band, tattoo or brand by which the animal's owner can be identified. Animals exempted from this requirement are mice, rats, rabbits, guineas, hamsters, gerbils, ferrets, fowl and snakes.

(Ord. No. 287-1, § 31, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-38. - Running at large.

(a) *Responsible party.* It shall be unlawful for any person who owns, keeps, harbors or otherwise has control over any animal within the city to allow or permit such animal to run or be at large within the city.

(b) *Cats.* The prohibition against an animal running at large shall not apply to a domestic cat which has been vaccinated as required by this chapter and which is wearing the required vaccination tags. The prohibition shall apply to all other cats.

(c) *Restraint required.* An animal shall be considered to be at large if it is:

(1) Not under the control of its owner either by a tether, leash, chain, cord, or other suitable material attached to a collar or harness;

(2) In the case of an animal other than a dog, not restrained on the property of the owner by a tether, leash, chain, cord; or

(3) Not restrained on the property of the owner by a fence.

(4) An animal inside a vehicle parked in a public place or in the open bed of a moving or parked vehicle in a public place shall be considered to be at large unless it is restrained in such a manner that it cannot exit the vehicle of its own volition.

(d) *Snakes.* It shall be unlawful for any person to have a snake in any park or other public place unless it is within some type of cage, pen or enclosure.

(e) *Impoundment.* The animal control officer for the city may impound any animal observed to be at large, whether the animal is on public or private property, subject to the applicable provisions of the law. If the animal control officer observes an animal on property which is owned by a person other than the owner of the animal, and observes the animal return to property of its owner, the animal control officer may impound the animal or issue a citation for the animal running at large. In the event the animal is on private property or property of the animal's owner, the animal control officer, his agent, or peace officer may enter the property, other than a private dwelling for the purpose of impoundment or issuance of a citation, or both, subject to the applicable provisions of the chapter and law.

(f) *Prima facie evidence.* Proof that an animal was found at large in violation of this section, together with proof that the defendant was the owner of such animal at the time, shall constitute prima facie evidence that the defendant allowed or permitted the animal to be at large.

(Ord. No. 287-1, § 32, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-39. - Confinement during estrus.

(a) *Secured enclosure required.* Any unspayed female dog or cat in the state of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure and the area of enclosure shall be so constructed that no other dog or cat may gain access to the confined animals except for controlled breeding permitted by the owner of the female.

(b) *Chaining or tethering.* Additionally, if the dog's owner or handler remains outside within visual range of the dog throughout the period of restraint, the female dog or cat shall not be chained or tethered,

except in a secured enclosure, and if chained or tethered within a secured enclosure, the female dog or cat may not be chained or tethered in a manner that prevents her from defending herself or from avoiding a male.

(c) *Removal of the animal.* Owners who do not comply shall be ordered to immediately remove the animal in heat to a veterinary hospital or the animal shelter. Failure to comply with the removal order of the animal control officer shall be a violation of this chapter and the dog or cat will then be impounded as prescribed herein. All expenses incurred, as a result of this confinement, shall be paid by the owner.

(Ord. No. 287-1, § 33, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-40. - Animal defecation in certain areas.

(a) *Prohibited.* It is unlawful for the owner or person in control of an animal to intentionally, knowingly, recklessly or with criminal negligence allow or permit such animal to defecate on any public property or improved private property other than that of the owner of the animal. That the animal was at large at the time it defecated on any property shall constitute a prima facie evidence that the owner or person in control of the animal allowed or permitted the animal to so act.

(b) *Exception.* It is an exception to the application of this section that the owner or person in control of the animal immediately removed and cleaned up such animal's feces from public or private property.

(Ord. No. 287-1, § 34, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-41. - Wild animals or wildlife.

(a) No person shall possess, keep or have care, custody or control of a prohibited animal, wild animal or wildlife within the city except as provided herein.

(b) All persons shall be prohibited from selling, giving, transferring or importing into the city any wild animal.

(c) This section shall not apply to approved zoological parks or circuses. Nor shall this section apply to primary and secondary schools, colleges and universities, zoological parks owned or operated by a governmental entity or any animal assisting physically handicapped persons.

(d) It shall be a defense to prosecution under this section that the animal being kept was an infant or injured animal which was not capable of surviving on its own and that such animal was kept for three days or less, or for such reasonable time as was necessary before giving the animal to a licensed wildlife rehabilitator.

(Ord. No. 287-1, § 35, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-42. - Nuisance animals.

(a) As used in this article, a nuisance animal shall be defined as any animal that commits any of the acts listed herein:

(1) Molests or chases pedestrians, passersby or passing vehicles, including bicycles, or molests, attacks or interferes with other animals or persons on public property or private property other than the owners;

(2) Makes unprovoked attacks on other animals of any kind or engages in conduct which establishes such animal as a "dangerous animal";

(3) Is repeatedly at large; specifically, three or more times per 12-month period (excluding domestic cats);

(4) Damages, soils or defiles public property or private property, other than property belonging to or under the control of the owner;

(5) Repeatedly defecates on property not belonging to or under the control of its owner, unless such waste is immediately removed and properly disposed of by the owner of the animal (including domestic cats);

(6) Barks, whines, howls, crows, crackles or makes any noise excessively and continuously, and such noise disturbs a person of ordinary sensibilities;

(7) Produce odors or unclean conditions sufficient to annoy persons living in the vicinity; or

(8) Is unconfined when in heat.

a. If the animal control officer determines that any animal is a nuisance, the animal control officer may issue an order requiring that the owner meet certain remedial requirements to correct the conduct of the animal. The order, the form of which shall be provided for by policy, shall be given to the owner by personal service or by certified mail, return receipt requested. The owner may file a written appeal to this order clearly stating the reasons for the appeal, to the chief of police within ten days of service. The chief of police or designee shall conduct a hearing to determine the issues stated in the written appeal. At the hearing the formal rules of evidence do not apply. The chief shall make his decision on the basis of preponderance of the evidence presented. The decision of the chief shall be rendered within 30 days from receipt of the appeal and the decision of the chief shall be final. Nothing herein precludes the city from seeking other remedies if owners fail to comply with the remedial requirements stated or the decisions rendered in the appeal process.

b. Persons residing within 600 feet of a person who harbors or keeps an animal that they believe to be a nuisance may initiate a written, signed complaint, the form of which shall be provided for by policy, with the animal control division. The animal control division shall investigate the merits of such complaints to determine if the stated animal is a nuisance as defined herein this section. If the animal is determined to be a nuisance animal the procedure set forth in subsection (a) of this section shall apply.

(Ord. No. 287-1, § 36, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-43. - Honeybees—General provisions.

(a) *Restrictions.*

(1) A person may not keep a colony that causes a threat to human or animal health, or interferes with normal use and enjoyment of public or private property.

(b) *Apiary maintenance.*

(1) A person shall keep a colony in a Langstroth-type hive with removable frames that is maintained in sound and usable condition.

(2) A person shall provide a source of water to a colony to prevent the bees from congregating at a water source used by a human, bird, or domestic pet.

(3) A person shall store or dispose of bee comb or other material removed from a hive in a sealed container, building, or other bee-proof enclosure.

(c) *Construction of flyway barrier.*

(1) Except as provided in subsection (b), a person who keeps a colony within 25 feet of the property line of a tract, as measured from the nearest point of a hive to the property line, shall establish and maintain a flyway barrier parallel to the property line.

(2) A person is not required to construct a flyway barrier if the aviary tract is adjoined by undeveloped property for a distance of at least 25 feet from the property line of the tract that is closest to location of the colony.

(3) A flyway barrier created under this section must:

a. Consist of a solid wall, fence, dense vegetation, or combination of these materials at least six feet high; and

b. Extend at least ten feet beyond the hives on each end of the colony.

(d) *Control of aggressive colony.*

(1) A person shall immediately replace the queen in a colony that exhibits aggressive characteristics, including stinging or attempting to sting without provocation, or a disposition towards swarming. A person required to replace a queen under this subsection shall select the replacement from bee stock bred for gentleness and non-swarming characteristics.

(2) As required for swarm management, a person may maintain a nucleus colony for each two colonies allowed under this chapter. A person may house a nucleus colony in a structure not exceeding a standard 95/8-inch depth ten-frame hive body with no supers attached. A person shall dispose of or combine a nucleus colony with an authorized colony not later than the 30th day after the date the nucleus colony is acquired.

(e) *Colony density.*

(1) Except as provided in subsection (b), a person may not keep more than:

a. Two colonies on a tract one-quarter acre or smaller.

b. Four colonies on a tract larger than one-quarter acre but smaller than one-half acre.

c. Six colonies on a tract one-half acre or more but smaller than one acre.

d. Eight colonies on a tract one acre or more.

(2) A person may keep an unlimited number of colonies on a tract:

a. On which all hives are located at least 200 feet from each property line of the tract; or

b. Adjacent to undeveloped property for at least 200 feet from any hive.

(f) *Hive identification and ownership.*

(1) Except as provided in subsection (f)(2), a person shall:

a. Brand, paint, or otherwise clearly mark the apiary owner's name or telephone number on at least two hives placed at opposite ends of an apiary; or

b. Post a conspicuous sign displaying the apiary owner's name and telephone number at the entrance to the apiary tract.

(2) A person is not required to place owner identification on or near a colony located on a tract on which the owner resides.

(Ord. No. 287-1, § 37, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-43.1. - Same—Enforcement and penalties.

(a) *Inspection or enforcement by animal control authority.*

(1) The animal control authority may inspect an apiary between the hours of 8:00 a.m. and 5:00 p.m. If the owner of the apiary resides on the tract or the owner's name is marked on the colony, the animal control authority shall attempt to give the owner notice of inspection.

(2) The animal control authority may investigate a complaint of a violation of this chapter.

(3) For enforcement actions under this chapter, the animal control authority may presume that the person who owns or has a present right of possession or control of a tract on which an unidentified colony is located is the owner of the colony. A person may rebut the presumption of ownership by presenting the animal control authority with a written agreement indentifying the name, address, and telephone number of the owner of the unidentified colony.

(b) *Destruction of wild or abandoned bees.*

(1) The animal control authority will order relocation of bees described in subsection (b)(2)a.—c. if the relocation of the bees can be done without threatening human or animal health or interfering with the normal use and enjoyment of public or private property.

(2) If relocation of bees under subsection (b)(1) in not possible then, without notice and a hearing, the animal control authority may order destruction of:

a. A colony not residing in a hive;

b. A swarm of bees; or

c. A colony residing in an abandoned standard or man-made hive.

(c) *Notice of violation or hearing.*

(1) Except as provided in subsection (b) (destruction of wild or abandoned bees), the animal control authority shall issue written notice to a person the animal control officer believes to be in violation of this chapter. Notice of violation issued under this section must include:

a. A description of the alleged violation;

b. A description of the required corrective action;

c. A statement that compliance is required within ten days of the date of the notice; and

d. A statement that the person may request a hearing to determine if a violation of this chapter exists.

(2) If a person requests a hearing or fails to correct an alleged violation within ten days of the date a notice of violation is issued, the animal control authority shall issue a notice of hearing to the person. Notice of hearing issued under this section must include:

a. The date, time and place of the hearing;

b. A description of the alleged violation;

c. A statement that the person may appear in person or through counsel, present evidence, cross examine witnesses, and request that the proceeding be recorded; and

d. A statement that the bees may be ordered relocated, destroyed or removed if the animal control authority finds a violation of this chapter has occurred.

(3) Except as provided in subsection (c)(4), the animal control authority shall send notice under this section by certified mail.

(4) If the animal control authority is unable to locate the owner of a colony, notice under this chapter may be given by:

a. A single publication in a newspaper of general circulation at least five days before the date of the hearing; and

b. Posting a notice on the tract where the colony is located.

(d) *Enforcement procedure.*

(1) The animal control authority shall conduct a hearing requested under this chapter under the preponderance of credible evidence standard of proof.

(2) If the animal control authority finds that a person has committed a violation of this chapter, the animal control authority may:

a. Issue an enforcement order;

b. Order that the person's bees be relocated, destroyed or removed not later than the 20th day after the date of the decision; and

c. Prohibit the person from locating a colony on the same tract for a period of two years following the date of the decision.

(3) The animal control authority may issue a warning if the animal control authority determines that a person did not intentionally commit a violation and that the person has implemented corrective action sufficient to cure the alleged violation.

(4) If a person fails to comply with an enforcement order issued under this chapter, the animal control authority may destroy or relocate the colony subject to the order.

(5) After destruction or relocation of a colony by the animal control authority, a person shall pay all related expenses and request that the animal control authority return all usable components of the hive structure that are not damaged or unsafe for use.

(6) In issuing orders under this section, the animal control authority will order the relocation of bees, instead of their destruction, if relocation can be done without threatening human or animal health or interfering with the normal use and enjoyment of public or private property.

(e) *Appeal.*

(1) A person may appeal the animal control authority's decision under this chapter to a court of competent jurisdiction. An appeal under this section shall stay the animal control authority's decision.

(2) The animal control authority may not require a person to remove a colony subject to a decision under appeal pending the determination of the appeal.

(Ord. No. 713, § 1, 11-20-2012)

Sec. 5-44. - Hens, other fowl and rabbits.

(a) No more than six hens and/or two other fowl and/or two rabbits may be kept at a qualified residence.

(b) All hens, other fowl, and rabbits kept at a qualified residence shall be kept in a pen, coop or hutch constructed so as to securely confine such hens, other fowl and rabbits. A fenced yard or other fenced-off area shall not qualify as a pen, coop or hutch.

(c) No hens, other fowl, or rabbits may be kept at a residence that is not a qualified residence as defined herein.

(d) No more than six hens and/or two fowl and/or two rabbits may be kept at qualified zone property as defined herein unless the property operates as and qualifies as a commercial animal enterprise.

(e) The keeping of roosters at a residence, qualified residence or qualified zone property, including a commercial animal enterprise, is prohibited.

(Ord. No. 287-1, § 38, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 4, 8-19-2014)

Editor's note— Ord. No. 818, § 4, adopted Aug. 19, 2014, amended the catchline of § 5-44 from "Pens and coops; location" to "Hens, other fowl and rabbits."

Sec. 5-45. - Livestock.

(a) It shall be unlawful for any owner of livestock, except the horses used by the city police department, to:

(1) Cause or permit any livestock to be pastured, herded, stacked or tied in any street, lane, alley, park or other public place;

(2) Tie, stake or pasture or permit the tying, staking or pasturing of any animal upon any private property within the city without the consent of the owner or occupant of such property, or in such a way as to permit any livestock to trespass upon any street or other public place or upon any private property; or

(3) Permit any livestock to be or remain during the nighttime secured by a stake, or secured in any manner other than by enclosing such animal in a pen, corral or barn sufficient and adequate to restrain such livestock.

(b) It shall be unlawful for any person to keep or harbor any livestock within the city unless the property is zoned agriculture.

(c) It shall be unlawful for any person to keep or harbor any livestock within the city in a pen or other enclosure which has less than one acre of area for each livestock.

(Ord. No. 287-1, § 39, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 5, 8-19-2014)

Sec. 5-45.1. - Miniature livestock—General provisions.

(a) An owner of miniature livestock may keep or harbor no more than two head of miniature livestock at an owner's qualified residence or qualified zone property if the following conditions are met by the owner:

(1) The miniature livestock are not used as performing animals nor part of a commercial animal enterprise operated at the owner's qualified residence or qualified zone property unless the qualified zone property is permitted as a commercial animal enterprise.

(2) All miniature livestock shall be secured from dawn to dusk in a pen, corral, barn or other enclosure sufficient and adequate to restrain such miniature livestock.

(3) Two head of miniature livestock shall be pastured in no less than one-third acre of land per head.

(4) Acreage that serves as pasture shall be enclosed by fencing or other security structures along the pasture perimeter in order to prevent miniature livestock from straying or otherwise leaving an owner's pasture acreage.

(b) It shall be unlawful for any owner of miniature livestock to:

(1) Cause or permit any miniature livestock to be pastured, herded, stacked or tied in any street, lane, alley, park or other public place; or

(2) Tie, stake or pasture or permit the tying, staking or pasturing of any miniature livestock upon any private property within the city without the consent of the owner or occupant of such property, or in such a way as to permit any miniature livestock to trespass upon any street or other public place or upon any private property.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.2. - Same—Status as a commercial animal enterprise; multi-animal owner.

Miniature livestock used as part of a commercial animal enterprise or as performing animals shall be governed by article VII of this chapter.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.3. - Same—In qualified residential area; restrictions.

Miniature livestock shall not be kept or harbored at a qualified residence if restricted or prohibited by a qualified residence's deed restrictions, covenants running with the land, or regulations of a homeowners' association or neighborhood association governing the location of the qualified residence. An association may adopt regulations addressing the keeping and harboring of miniature livestock after the adoption of this ordinance.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.4. - Same—In qualified zone property; restrictions.

No more than two miniature livestock may be kept or harbored at qualified zone property unless the keeping or harboring of miniature livestock is restricted or prohibited by deed restrictions, covenants running with the land, lease restrictions, or other contractual restrictions governing the qualified zone property.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.5. - Same—Permit required.

Permits shall be required for the keeping or harboring of miniature livestock at a qualified residence or at qualified zone property. A permit shall be required for each head of miniature livestock. The permit fee shall be a one-time charge paid pursuant to the fee schedule in Appendix A to this Code.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.6. - Same—Status as a dangerous animal; potentially dangerous animal.

Miniature livestock shall not be presumed to be a dangerous animal pursuant to section 5-108(a) of this chapter or a potentially dangerous animal pursuant to section 5-109 of this chapter unless and until the miniature livestock exhibits one or more of the behaviors set forth in subsection (a) of section 5-108 or subsection (b) of section 5-109 of this chapter.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-45.7. - Same—No presumption of creating a health hazard.

No person who keeps or harbors miniature livestock shall be presumed to be creating a health hazard in violation of section 5-89 of this chapter by the mere fact the person pastures, keeps or harbors miniature livestock at the person's qualified residence, qualified zone property, or used in a commercial animal enterprise.

(Ord. No. 818, § 6, 8-19-2014)

Sec. 5-46. - Storage of feed.

All feed provided for animals, other than hay, shall be kept in an enclosed building or container except when being used to feed an animal.

(Ord. No. 287-1, § 40, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-47. - Other restrictions.

(a) *Hogs.* The keeping of hogs is prohibited.

(b) *Keeping of animals near city water supply.* It is unlawful and constitutes an offense for any person, whether for himself or as the agent or servant of another or others, to keep or to participate in keeping any horse, hog, cattle, sheep, goat, other livestock and/or fowl in any pen or lot used to confine any such multiple animal operation within 500 feet of any water supply wells from which the city obtains its principal water supply as specified in the official Texas Administrative Code published under authority of the secretary of state, title 31, Natural Resources and Conservation § 290.41(c)(1)(C)(D)(F).

(c) *Keeping of animals and fowl restricted.* Except as this chapter allows miniature livestock, hens, other fowl, and rabbits, it is unlawful and constitutes a nuisance to keep livestock at any place within the city, when the place where the same are kept is within 200 feet of any private residence or dwelling place or within 500 feet of any building or establishment open to the public, with the exception of park land, or if livestock is kept in a manner and under conditions wherein by reason of the odors emanating therefrom, the noise made by it or from any other case pertaining to it or pertaining to the manner or to the place at which it is kept is reasonably calculated to annoy, offend or disturb the reasonable sensibilities of inhabitants of a private residence, or persons occupying or visiting an establishment open to the public. The distance provisions do not apply to park land; however, other requirements of this section relating to the manner in which livestock are kept shall apply to such park land.

(d) *Prima facie case.* Proof that livestock as prohibited herein are being kept at any one time at a place within the city that is within 200 feet of the private residence of another, or within 500 feet of any building or establishment open to the public, shall be sufficient to make out a prima facie case, and unless such prima facie case is overcome by sufficient evidence, it shall warrant a conviction under the provisions of this section.

(e) *Same—Exceptions to distance restrictions.* The distance restrictions and livestock prohibitions of this section do not apply to property zoned as agricultural district A according to the zoning ordinance. The distance restrictions of this section do not apply to property zoned as urban estate (UE) according to the zoning ordinance or to property properly zoned or used (as in continuing use) as veterinary clinics or facilities or established kennels that are for the purposes of care or boarding animals or existing shipping pens utilized for temporary holding before shipment or sale.

(f) *Dead animals and fowl.* It is unlawful for any person in the city to cause to be placed or place, or allow to remain in or near the person's premises or the premises of any other person, or in any of the streets or other public roadways, any dead animal, either wild or domesticated, or any dead fowl, either wild or domesticated.

(Ord. No. 287-1, § 41, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 7, 8-19-2014)

Sec. 5-48. - Animals held on complaint.

If a complaint has been filed in municipal court of the city against the owner of an impounded animal for a violation of this chapter, the animal may be held on the order of the municipal judge who may also direct the owner to pay any penalties for violation of this chapter in addition to all impoundment fees. Surrender of an animal by the owner thereof to the animal control officer does not relieve or render the owner immune from the decision of the court nor from the fees and fines which may result from a violation of this chapter.

(Ord. No. 287-1, § 42, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-49. - Removal of animals from confinement.

(a) *Removal prohibited.* It shall be unlawful for any person to remove or allow to escape from any place of confinement any animal which has been confined or ordered to be confined by the city, without the consent of the animal control division.

(b) *Release prohibited of confined animals.* It shall be unlawful for any person to knowingly or intentionally enter upon the property of another person for which the person is not given specific permission to enter for the purpose of releasing a confined, chained or tethered animal.

(c) *Interfering with officers during impounding.* It shall be unlawful for any person to interfere or attempt to interfere with the animal control officer or to interfere or attempt to interfere with any person acting for the city in the taking up and impounding of animals in the city.

(Ord. No. 287-1, § 43, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 8, 8-19-2014)

Secs. 5-50—5-71. - Reserved.

ARTICLE III. - ANIMAL PROTECTION

Sec. 5-72. - Animals in motor vehicles.

(a) It shall be unlawful for any person to leave any animal in any standing or parked vehicle in such a way as to intentionally, knowingly, recklessly, or with criminal negligence endanger the animal's health, safety or welfare. An animal control officer or police officer is authorized to use reasonable force to remove the animal from the vehicle whenever it appears that the animal's health, safety or welfare is or will be endangered if the owner of the vehicle cannot be located after reasonable attempts. The animal shall be taken to the animal shelter or to a veterinarian if the animal is in distress. A written notice bearing the name of the officer removing the animal, a telephone number where the officer can be contacted and the location where the animal may be claimed by the owner shall be attached to the vehicle. Any person violating this section shall bear the full cost and expense incurred by the city in the care, medical treatment, impoundment cost and disposal of the animal, including the removal from a vehicle in addition to any criminal penalty that may be imposed under this section.

(b) Instances where occupants of motor vehicles are involved in a traffic accident or other vehicle-related incidents which result in animals being left uncontrolled or unattended, animal control or police officers of the city are authorized to take welfare custody of such unattended animals. In the interest of the health, safety or welfare of such animals, officers are authorized to transport such animals to the city's kennel facility, a veterinarian, humane shelter, or an animal emergency clinic. Information shall be provided to the animal's owner as to the animal's disposition. Animal owners shall bear full cost and expense incurred by the city in the care, medical treatment, impoundment costs or other associated costs.

(Ord. No. 287-1, § 61, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 9, 8-19-2014)

Sec. 5-73. - Duty of motor vehicle operator to report accident involving animals.

(a) Any person who, as the operator of a motor vehicle within the city, strikes any animal shall report the accident to the police department within a reasonable time if the animal stricken is on or near the roadway so that it constitutes a potential traffic hazard. It shall be an affirmative defense to any violation under this section that the incident occurred while the operator was responding to an emergency and that the incident was reported as soon as possible.

(b) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located,

such operator shall at once report the accident to the police department or an animal control officer or the local humane society.

(Ord. No. 287-1, § 62, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 10, 8-19-2014)

Sec. 5-74. - Tethered animals.

Restraint of dogs shall be governed by Chapter 821 of the Texas Health and Safety Code. Any amendments to the Texas Health and Safety Code, Subchapter D, by the Texas Legislature will be automatically adopted and enforced by the city without any further city council approval. The Texas Health and Safety Code, specifically §§ 821.076 to 821.081, as of November 1, 2012, reads as follows:

SUBCHAPTER D. UNLAWFUL RESTRAINT OF DOG

Sec. 821.076. DEFINITIONS.

In this subchapter:

(1) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.

(2) "Owner" means a person who owns or has custody or control of a dog.

(3) "Properly fitted" means, with respect to a collar, a collar that measures the circumference of a dog's neck plus at least one inch.

(4) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.

Sec. 821.077. UNLAWFUL RESTRAINT OF DOG.

(a) An owner may not leave a dog outside and unattended by use of a restraint that unreasonably limits the dog's movement:

(1) between the hours of 10 p.m. and 6 a.m.;

(2) within 500 feet of the premises of a school; or

(3) in the case of extreme weather conditions, including conditions in which:

(A) the actual or effective outdoor temperature is below 32 degrees Fahrenheit;

(B) a heat advisory has been issued by a local or state authority or jurisdiction; or

(C) a hurricane, tropical storm, or tornado warning has been issued for the jurisdiction by the National Weather Service.

(b) In this section, a restraint unreasonably limits a dog's movement if the restraint:

(1) uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;

(2) is a length shorter than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet;

(3) is in an unsafe condition; or

(4) causes injury to the dog.

Sec. 821.078. EXCEPTIONS.

Section 821.077 does not apply to:

(1) a dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;

(2) a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(3) a dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;

(4) a dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog;

(5) a dog restrained while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or

(6) a dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

Sec. 821.079. PENALTY.

(a) A person commits an offense if the person knowingly violates this subchapter.

(b) A peace officer or animal control officer who has probable cause to believe that an owner is violating this subchapter shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.

(c) A person commits an offense if the person is provided a statement described by Subsection (b) and fails to comply with this subchapter within 24 hours of the time the owner is provided the statement. An offense under this subsection is a Class C misdemeanor.

(d) A person commits an offense if the person violates this subchapter and previously has been convicted of an offense under this subchapter. An offense under this subsection is a Class B misdemeanor.

(e) If a person fails to comply with this subchapter with respect to more than one dog, the person's conduct with respect to each dog constitutes a separate offense.

(f) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Sec. 821.080. DISPOSITION OF PENALTY. Notwithstanding any other law, the clerk of a court that collects a penalty under this subchapter shall remit the penalty collected for deposit in the general fund of the county.

Sec. 821.081. HAND-HELD LEASHES. This subchapter does not prohibit a person from walking a dog with a hand-held leash.

(Ord. No. 287-1, § 63, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-75. - Selling dyed animals.

It shall be unlawful for any person to sell or offer for sale, raffle, offer or give as a prize, premium or an advertising device or cause to be displayed in any store, shop, carnival or other public place an animal or fowl of any kind that has been dyed or otherwise colored artificially.

(Ord. No. 287-1, § 64, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-76. - Giving animals as prizes or inducements.

(a) No person shall give away any live animal, reptile, fowl, livestock or wildlife as the following:

(1) A prize for or as an inducement to enter any contest, game or other competition;

(2) An inducement to enter a place of amusement; or

(3) An incentive to enter into any business agreement whereby the offer is for the purpose of attracting trade.

(b) This prohibition shall apply to carnivals, fairs and circuses.

(c) The prohibition contained in this section shall not apply to fish or to animals given as prizes at a rodeo contest or livestock show or as part of a Future Farmers of America, 4-H or similar project.

(Ord. No. 287-1, § 65, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 11, 8-19-2014)

Sec. 5-77. - Trapping and shooting.

(a) *General prohibition.* It shall be unlawful to set, trigger, activate or otherwise use, or cause to be set, triggered, activated or used, any steel-jawed, leghold trap or for any person, other than animal control officers, to set or otherwise use other trapping devices including "live traps" used for the capture of any animal. Consistent with the provisions herein, the animal control division is authorized to utilize humane "live traps" and may conduct trapping operations or provide or authorize such devices' use to property owners as may be needed throughout the city. This subsection is not intended to prohibit the prudent use of traps on one's own property to control rodents.

(b) *Hunting prohibited.* It shall be unlawful for any person to hunt, shoot, intentionally injure or kill any wild bird, animal, mammal or reptile within the corporate limits of the city. It shall be unlawful for any person to hunt, shoot or kill, within the city, any domestic bird, animal, mammal, reptile or pet that is not owned by such person. Except this subsection shall not be construed or interpreted to prohibit the destruction of poisonous snakes or to prohibit the animal control division from utilizing certain firearms in emergency field conditions where such actions are provided for by law or policy.

(c) *Domestic animals.* It shall be unlawful for any person to shoot a domestic animal within the corporate limits of the city. It shall be a defense to prosecution that the domestic animal shot was a vicious animal and presenting an immediate threat to personal or public safety. Except this subsection shall not be construed or interpreted to prohibit the animal control division from utilizing certain firearms in emergency field conditions where such actions are provided for by law or policy.

(Ord. No. 287-1, § 66, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-78. - Molesting animals.

It shall be unlawful for any person to in any manner tease, annoy, disturb, molest or irritate an animal that is confined to the owner's premises.

(Ord. No. 287-1, § 67, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-79. - Enclosure requirements.

(a) The owners of any animal shall maintain and keep all pens, coops, kennels, fenced areas and enclosures of any kind in a sanitary condition.

(b) Cages, pens or enclosures used to confine animals shall be of sufficient size to maintain all of the animals within such pen or enclosures comfortably and in good health.

(c) An outdoor enclosure used as the primary living area for a dog or used as an area for a dog to regularly eat, sleep, drink, and eliminate must have at least 150 square feet of space for each dog six months of age or older.

(Ord. No. 287-1, § 68, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 12, 8-19-2014)

Editor's note— Ord. No. 818, § 12, adopted Aug. 19, 2014, amended the catchline of § 5-79 from "Pens and enclosure requirements" to "Enclosure requirements."

Sec. 5-80. - Negligent care.

(a) It is unlawful for any person to fail, refuse or neglect to provide any animal in his charge or custody, as owner or otherwise, with proper food, water, shade, adequate shelter, veterinary care when needed to prevent suffering, grooming when lack thereof would adversely affect the health of the animal, and with humane care and treatment.

(b) To provide adequate shelter for a dog or cat kept outdoors, a person must provide a shelter accessible to the dog or cat meeting the following standards:

(1) The shelter must provide protection from the weather, i.e., sun, wind, precipitation (in whatever form), or other inclement weather conditions.

(2) If there are no artificial heat sources, the structure shall be small enough to allow the dog or cat to warm the interior of the structure and maintain its body heat, but large enough to permit normal postural adjustments, or standing.

(3) Plastic air shipping containers and/or pet carriers shall not be used as outdoor shelters.

(Ord. No. 287-1, § 69, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-81. - Animal in state of pain or suffering.

(a) If any animal without a license tag or other identifying marker is found in a state of pain and suffering or becomes so during confinement, the animal control division may dispose of the animal in any humane manner without complying with the three-day (72-hour) waiting period as set out herein.

(b) If the owner or keeper of an animal found in a state of pain or suffering refuses to assume responsibility to care for the animal, the animal control officer may dispose of the animal in a humane manner.

(Ord. No. 287-1, § 70, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-82. - Treatment of animals for sale in public place.

(a) If an animal is offered for sale in a public place within the city, the person offering the animal for sale, the owner of the animal, the manager of the property which is the public place on which the offer is being made, and the owner of the property which is the public place on which the offer is being made, shall be responsible for ensuring that the animal protections of this section are complied with in regard to the animal offered for sale in a public place during the time the animal is in the public place.

(b) If an animal offered for sale in a public place is kept within a cage or pen of any type, such cage or pen shall comply with the following requirements:

(1) The cage or pen must be large enough for the animal to stand on all of its legs and hold its head in a natural position and not be in a crouched position. The cage or pen must also have enough

room for the animal to turn around or move without stepping on another animal, animal feces or food or water provided for the animal.

(2) The cage or pen must either have room for water and food or have water and food situated so that the animal has access to it through the cage.

(3) The cage or pen must be situated so that air may circulate through it, so that any animal kept within the cage or pen is not exposed to extreme heat. During cold or inclement weather, cages or pens should be situated so that animals contained therein may stay warm and stay dry.

(Ord. No. 287-1, § 71, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 13, 8-19-2014)

Editor's note— Ord. No. 818, § 13, adopted Aug. 19, 2014, amended the catchline of § 5-82 from "Sale of animals in public place" to "Treatment of animals for sale in public place."

Sec. 5-83. - Sale of fowl, including hens, and rabbits.

(a) If in compliance with the other provisions of this section 5-83, a seller may offer for sale and sell to the public in a public place live hens, other fowl, and rabbits.

(b) A seller offering for sale live hens, other fowl, and rabbits shall be considered operating a commercial animal enterprise and shall be governed and regulated as such pursuant to this chapter.

(c) A seller may offer for sale or sell live hens, other fowl, and rabbits only from a location the seller occupies that is open to the public during designated hours and is not the residence or temporary domicile of the seller, and said location must be permitted as the location of a commercial animal enterprise. A seller is prohibited from offering for sale live hens, other fowl, or rabbits from a qualified zone property unless the qualified zone property is permitted as a commercial animal enterprise pursuant to this chapter. Notwithstanding this requirement, the planning and zoning commission may grant a nonconforming use classification to said public place if the commission rules that the public place qualifies for a nonconforming use classification.

(d) The offering for sale of live hens, other fowl, and rabbits from any type of residence, including a qualified residence, is prohibited.

(e) A seller must be in compliance with the Code, this chapter, and all applicable health and safety codes, ordinances and statutes before operating a commercial animal enterprise.

(f) The inventory of hens of a seller operating a commercial animal enterprise shall not exceed 25 hens and/or 25 other fowl and/or 25 rabbits at any given time.

(g) A seller is prohibited from offering for sale or selling rooster chicks.

(h) This section shall not apply to prepackaged outlets.

(Ord. No. 818, § 14, 8-19-2014)

Sec. 5-84. - Animal fights and fighting paraphernalia.

(a) It shall be unlawful for any person to intentionally, knowingly, recklessly, or with criminal negligence use, or allow or permit to be used, property that he owns or has control over for the purpose of conducting animal fights.

(b) It shall be unlawful for any person to possess animal fighting equipment within the city.

(Ord. No. 287-1, § 72, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 15, 8-19-2014)

Editor's note— Ord. No. 818, § 15, adopted Aug. 19, 2014, renumbered former § 5-83, pertaining to animal fights and fighting paraphernalia, as § 5-84.

Sec. 5-85. - Slaughtering of animals.

Animals may be slaughtered for human or animal consumption within the city, provided it is done at a location that is shielded from sensory perception of the general public, and provided it is done in a manner designed to cause the animal's death as quickly as possible without needless suffering.

(Ord. No. 287-1, § 73, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 16, 8-19-2014)

Editor's note— Ord. No. 818, § 16, adopted Aug. 19, 2014, renumbered former § 5-84, pertaining to slaughtering of animals, as § 5-85.

Sec. 5-86. - Use of poisonous substances.

(a) It shall be unlawful for any person to administer poison to an animal belonging to another without legal authority or the owner's effective consent. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any domestic animal or person.

(b) It shall be unlawful for any person to recklessly or with criminal negligence injure another's animal by leaving a poisonous substance of any kind in any place within the city.

(c) The provisions of subsections (a) and (b) of this section shall not apply to an exterminator using poisons as part of a pest control program, nor shall it apply to persons using commercial insecticides and rodent baits used to control insects and wild rodents.

(Ord. No. 287-1, § 74, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 17, 8-19-2014)

Editor's note— Ord. No. 818, § 17, adopted Aug. 19, 2014, renumbered former § 5-85, pertaining to use of poisonous substances, as § 5-86.

Sec. 5-87. - Cruel treatment.

No person shall beat, cruelly ill treat, torment, mentally abuse, overload, overwork or otherwise abuse an animal or cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans.

(Ord. No. 287-1, § 75, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 18(1), 8-19-2014)

Editor's note— Ord. No. 818, § 18(1), adopted Aug. 19, 2014, renumbered former § 5-86, pertaining to cruel treatment, as § 5-87.

Sec. 5-88. - Abandonment.

No person shall abandon an animal in the person's custody.

(Ord. No. 287-1, § 76, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 18(2), 8-19-2014)

Editor's note— Ord. No. 818, § 18(2), adopted Aug. 19, 2014, renumbered former § 5-87, pertaining to abandonment, as § 5-88.

Sec. 5-89. - Creating a health hazard.

Any person who shall harbor or keep animals on his premises, or in or about a premises under his control, and who allows such premises to become a hazard to the general health and welfare of the community, or who shall allow such premises to give off obnoxious or offensive odors due to the activity or presence of such animals, shall be guilty of a class C misdemeanor.

(Ord. No. 287-1, § 77, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 19, 8-19-2014)

Editor's note— Ord. No. 818, § 19, adopted Aug. 19, 2014, renumbered former § 5-88, pertaining to creating a health hazard, as § 5-89.

Sec. 5-90. - Tampering with traps and equipment.

No person shall remove, alter, damage or otherwise tamper with a trap or equipment belonging to or set out by the animal control officer.

(Ord. No. 287-1, § 78, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 19, 8-19-2014)

Editor's note— Ord. No. 818, § 19, adopted Aug. 19, 2014, renumbered former § 5-89, pertaining to tampering with traps and equipment, as § 5-90.

Secs. 5-91—5-106. - Reserved.

ARTICLE IV. - DANGEROUS ANIMALS[1]

Footnotes:

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State Law reference— Dangerous dogs, V.T.C.A., Health and Safety Code § 822.041 et seq.

Sec. 5-107. - Purpose.

It is the intention of this article to provide a means of dealing with an animal that is dangerous or, by its conduct, has indicated that it may represent a danger in the future. In interpreting the definitions contained in this article and in implementing its provisions, the animal control officer shall recognize the right of a person to use an animal as a protector or as a guard; however, the animal control officer shall also take into consideration the right of a neighborhood to be free from fear that an animal may leave the premises of its owner or keeper and attack and injure a person or other domestic animal. It is also the intention of this article to provide public safety regarding dangerous wild animals and other potentially dangerous nondomestic animals, as well as, providing avenues for permitting the safe exhibition of certain animals for public entertainment.

(Ord. No. 287-1, § 101, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-108. - Dangerous animals.

(a) A dangerous animal shall be defined as an animal which:

(1) Has inflicted injury on a human being without provocation on public or private property;

(2) Has killed or severely injured a domestic animal without provocation while off the owner's property;

(3) Is trained or harbored for fighting which may be determined based on whether the animal exhibits behavior and/or bears physical scars or injuries which indicate that the animal has been trained or used for the purpose of fighting;

(4) Is a warm-blooded mammal which is known to carry or be susceptible to the rabies virus and which can not be effectively vaccinated against that virus with any vaccine approved by the state department of health;

(5) Is a hybrid animal or any pet wildlife which has attacked a human or which is apprehended or observed unrestrained; or

(6) Is a venomous or carnivorous fish or reptile or any fish or reptile that grows over six feet in length.

(b) If an animal acts as stated in subsection (a) of this section, the animal control officer shall impound the animal immediately if it is at large; or, if it is in the possession of some person, the animal control officer may issue a notice requiring that the animal be taken to a designated location for impoundment. The form of such notice shall be provided for by policy. An animal which is impounded shall not be released until a final determination is made on the disposition of the animal.

(c) Notice shall be given to the owner that the animal control officer has determined that the animal is a dangerous animal. This notice shall also set out the remedial requirements which the owner must comply with. This notice shall be given to the owner by personal service or by certified mail, return receipt requested. The owner shall have five working days from receipt of the notice to file a letter with the chief of police stating that he shall comply with the remedial requirements as stated in the notice or that he disagrees with the determination that the animal is dangerous or the remedial requirements and that he requests a hearing before the chief of police or designee. Such hearing shall be conducted as provided for in section 5-42, pertaining to nuisance animals.

(d) If the owner of a dangerous animal cannot be determined after reasonable efforts to do so and after holding the animal for 72 hours, the animal may be disposed of in a humane manner. If the owner of a dangerous animal which has been impounded cannot be located for the delivery service of the notice required herein either in person or by mail, the animal may be disposed of in a humane manner after all reasonable effort has been made to locate such owner.

(e) If the animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the chief of police or designee may again review the situation and prescribe additional or different remedial requirements.

(Ord. No. 287-1, § 102, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-109. - Potentially dangerous animals.

(a) If the animal control officer believes that an animal has exhibited behavior indicating that it represents a potential danger, the animal control officer may initiate an investigation to determine whether or not the animal is potentially dangerous.

(b) An animal may be defined as potentially dangerous if it has engaged in the following conduct:

(1) When unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack; or

(2) Has a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise threaten the safety of human beings or domestic animals.

(c) If upon investigation the animal control officer determines that the animal is indeed a potentially dangerous animal, remedial requirements may be prescribed subject to the same processes, including appeals, addressed under this chapter for dangerous animals.

(d) If an animal's behavior creates a more dangerous situation even though the owner is complying with the remedial requirements, the officer or chief, depending upon previous action, may again review the situation and prescribe additional or different remedial requirements.

(Ord. No. 287-1, § 103, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-110. - Exceptions.

(a) No animal may be declared dangerous or potentially dangerous if the threat, injury or damage was sustained by a person who at the time:

(1) Was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;

(2) Was tormenting, abusing or assaulting the animal or has in the past been observed or reported to have tormented, abused or assaulted the animal and the animal was not at large at the time of the offense;

(3) Was committing or attempting to commit a crime;

(4) If the dog was protecting or defending a person while in that person's control from an unjustified attack or assault; or

(5) If the dog was injured and responding to pain.

(b) The provisions of this article shall not apply to animals under the control of a governmental law enforcement, correctional, or military agency.

(c) The provisions of this article shall not apply to a dog whose conduct has brought it within the coverage of the V.T.C.A., Health and Safety Code ch. 822, to the extent that said chapter preempts local regulation of the dog's conduct.

(Ord. No. 287-1, § 104, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-111. - Nonregisterable dangerous dogs.

No person shall own or harbor a nonregisterable dangerous dog within the city. Such an animal may be impounded as a public nuisance. If impoundment of such nonregisterable dangerous dog is being attempted away from the premises of the owner and the impoundment cannot be made with safety, the animal may be destroyed without notice to the owner or harborer. If an attempt is made to impound a nonregisterable dangerous dog from the premises of the owner or harborer and the impoundment cannot be made with safety, the owner or harborer will be given 24 hours' notice that if the animal is not surrendered to the animal control officer for impoundment within said 24-hour period, then the animal will be destroyed wherever it is found. After this notice, the nonregisterable dangerous dog may be destroyed during an attempt to impound, if impoundment cannot be made with safety, wherever the impoundment is attempted. Notice under this chapter may be verbal or in writing on a form provided for by policy. A written notice left at the entrance to the premises where the nonregisterable dangerous dog is harbored will be considered valid notice under this chapter.

(Ord. No. 287-1, § 105, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-112. - Determination of nonregisterable dangerous dog.

A dog is determined to be a nonregisterable dangerous dog if:

(1) A dog is automatically determined to be nonregisterable if it commits acts as set forth under the definition of the term "nonregisterable dangerous dog" in section 5-1.

(2) The animal control officer may find and determine a dog to be nonregisterable if:

a. Upon receipt of an affidavit of complaint signed by one or more individuals, made under oath before an individual authorized by law to take sworn statements or made at the animal shelter before the animal control officer, setting forth an act described in section 5-1 and referenced in subsection (1) of this section, and setting forth the:

1. Nature and the date of the act described in section 5-1;

2. The location of the event;

3. The name and address of the owner of the animal in question; and

4. The description of the animal in question;

b. The animal control officer investigates the complaint and may determine that an animal is nonregisterable under this section and/or state law;

(3) The dog has been registered as, or finally determined or declared to be, a dangerous dog, either in the city or in another city or county, or has made an unprovoked attack on another person outside the dog's enclosure, or causes injury to such person or a person assisting or intervening on behalf of such person; or

(4) The owner of a dog determined to be a registerable dangerous dog under this chapter, or any previous or other ordinance of this city or any other city or state law, cannot or will not comply with the requirements set out in this chapter for the keeping of a registerable dangerous dog.

(Ord. No. 287-1, § 106, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-113. - Notification of determination of a nonregisterable dangerous dog.

(a) Within five working days of determining an animal is nonregisterable, the animal control officer will notify, by certified mail, return receipt requested, the person owning the animal of its designation as a nonregisterable animal. In the event that certified mail, return receipt requested, cannot be delivered, the animal control officer may then give notice by ordinary mail to the last known address of the owner. For the purposes of this section, written notice may be delivered by the animal control officer in person to the owner/harborer of the dog in question.

(b) If the animal is determined to be nonregisterable under this chapter, the owner may appeal to the municipal court within 15 days of notification. Failure to appeal the determination of a nonregisterable dangerous dog shall result in the animal control officer's determination as becoming final.

(Ord. No. 287-1, § 107, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-114. - Status of dog pending appeal.

Pending any appeal to municipal court, the animal must be confined at the animal shelter or licensed veterinary facility, and the cost of such confinement shall be borne by the owner. If the dog in question is not in the possession of the animal shelter at the time of the declaration, the owner must surrender the dog to the animal control officer when ordered to do so. If the owner fails to immediately surrender the dog, the

animal control officer shall take the dog into his possession from the premises of the owner or elsewhere, wherever the dog may be found within the city limits. If the dog cannot be taken into custody by the animal control officer, it may be taken into custody under a search warrant pursuant to Vernon's Ann. C.C.P. art. 18.01, the grounds for issuance shall conform to Vernon's Ann. C.C.P. art. 18.02 and shall be issued by the municipal judge.

(Ord. No. 287-1, § 108, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-115. - Defense to determination.

It is a defense to the determination that a dog as a nonregisterable dangerous dog, dangerous dog or should be destroy and to the prosecution of the owner of that dog:

(1) If the threat, injury or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal and was older than eight years of age at the time of the attack;

(2) If the person was testing, tormenting, abusing or assaulting the animal or has, in the past, been reported to have leased [teased], tormented, abused or assaulted the animal and is older than eight years of age at the time of the attack;

(3) If the person was committing or attempting to commit a crime;

(4) If the dog was protecting or defending a person while in that person's control from an unjustified attack or assault; or

(5) If the dog was injured and responding to pain.

(Ord. No. 287-1, § 109, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-116. - Disposition of a nonregisterable dangerous dog.

(a) If the municipal court upholds the determination by the animal control officer, the court shall, subject to any rights of appeal, order the dog to be euthanized in a safe and humane manner.

(b) In the event the municipal court reverses that determination, the dog in question shall be returned to or released to its owner provided the owner reimburses the city for any veterinary medical treatment administered to the dog while in the custody of the animal control officer.

(Ord. No. 287-1, § 110, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-117. - Registerable dangerous dog.

This designation shall refer to a dog determined dangerous under this chapter and in compliance with state law and that meets any of the following criteria:

(1) Any dog which, when unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property in an apparent attitude of attack such that the person reasonably believes that the animal will cause physical injury to the person;

(2) Any dog that commits an unprovoked act in a place other than an enclosure in which the dog was being kept and which enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and the act causes a person to reasonably believe that the dog will attack and cause bodily injury to any person; or

(3) Any animal that has killed or seriously injured a domestic animal without provocation while off the owner's property.

(Ord. No. 287-1, § 111, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-118. - Determination of a registerable dangerous dog.

A dog is determined to be a registerable dangerous dog if it meets the requirements set out in section 5-117, and:

(1) The owner of the dog in question knows of such an attack as defined in this chapter; or

(2) The owner is notified by the animal control officer that the dog in question is a registerable dangerous dog. The animal control officer may find and determine a dog to be a registerable dangerous dog if:

a. Upon receipt of an affidavit of complaint signed by one or more individuals made under oath before an individual authorized by law to take sworn statements, setting forth an act described in section 5-117 and set forth as follows:

1. Nature and the date of the act described in section 5-117;

2. The location of the event;

3. The name and address of the owner of the animal in question; and

4. The description of the animal in question.

b. The animal control officer has been notified by another agency that the dog has been determined to be dangerous under state law.

(Ord. No. 287-1, § 112, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-119. - Notification of declaration of registered dangerous dog.

(a) Within five working days of determining a dog to be a registered dangerous dog, if written notification cannot be given personally to the owner of the dog, the animal control officer will notify, by certified mail, return receipt requested, the person owning the animal of its designation as a registerable dangerous dog. In the event that certified mail, return receipt requested, can not be delivered, the animal control officer may then give notice by ordinary mail.

(b) If the dog is determined to be registerable under this chapter, the notice shall inform the owner of the dog that he may appeal the determination to municipal court no later than 15 days after the date the owner is notified of the determination. Failure to appeal the determination of registerable dangerous dog within the 15-day period shall result in the animal control officer's determination becoming final.

(c) Upon determination by the animal control officer, that the dog is dangerous, the owners shall be required to secure the animal immediately within an enclosure that meets the requirements of this chapter. If the owner fails to do so, the animal control officer shall impound the dog until such enclosure is provided.

(d) The animal control officer shall immediately notify, in writing, adjacent and contiguous property owners of such determination.

(Ord. No. 287-1, § 113, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-120. - Status of dog on appeal.

Pending the outcome of the appeal, the animal must be confined at a licensed veterinary clinic or at the animal shelter, the cost of which shall be borne by the owner of the dog in question. If the dog in question is not in the possession of the animal shelter or a veterinary clinic at the time of the determination, the owner must surrender the dog to the animal control officer when ordered to do so. If the owner fails to

immediately surrender the dog, the animal control officer shall have the right to take the dog into its possession from the premises of the owner or elsewhere, wherever the dog may be found within the city limits. If the dog cannot be taken into custody by the animal control officer, it may be taken into custody under a search warrant for contraband issued by the municipal judge.

(Ord. No. 287-1, § 114, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-121. - Defense to determination of registerable dangerous dog.

The defenses identified in section 5-115 shall serve as defenses to the determination of a dog as a registerable dangerous dog and to the prosecution of the owner of that dog.

(Ord. No. 287-1, § 115, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-122. - Disposition of a registerable dangerous dog.

(a) If the municipal court upholds the determination by the animal control officer, the owner shall, no later than ten days after the hearing, comply with the provisions of this chapter for the keeping of a registered dangerous dog in the city and the dog shall be returned to the owner provided all costs involved in the impoundment, holding and medical treatment of the dog are paid.

(b) In the event the municipal court reverses that determination, the dog in question shall be returned to or released to its owner provided the owner has paid all veterinary medical costs administered to such dog while in the custody of the animal control officer.

(c) The municipal court may order make any reasonable orders for the dog consistent with this chapter and V.T.C.A., Health and Safety Code ch. 822.

(d) If the animal control officer has information or belief, or has determined that a court of competent jurisdiction has ever made or upheld a determination or declaration that a dog is dangerous, or if the animal control officer has determined that a declaration or determination of dangerous dog became final for failure to appeal or any other reason, under previous or other ordinances of this city or other cities or state law, the animal control officer shall notify the person owning or keeping such dog in writing that the owner shall no later than ten days after the date of the notice comply with the provisions of this title for the keeping of a registered dangerous dog in the city.

(Ord. No. 287-1, § 116, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-123. - Requirements for registration and possession of registered dangerous dog.

The owner must register the dog with the animal control officer, and pay the fees as required by state law not later than 30 days after the owner is notified that the dog is dangerous. The registration shall not be transferable and shall expire one year from date of issuance. The animal control officer shall provide to the owner of the registered dangerous dog a tag which must be placed on the dog's collar and worn at all times.

(1) The owner must comply with the following to register the dog:

a. Present proof of liability insurance or financial responsibility in the amount of at least $250,000.00 to cover damages resulting from an attack by the dangerous dog;

b. Present proof of current rabies vaccination of the registerable dangerous dog;

c. Present proof that the dog has been altered so as to prevent reproduction and proof of the dog having a microchip implanted;

d. Provide a proper enclosure as defined in this chapter and that proper enclosure must be inspected and approved by the animal control officer;

e. Post a sign on his premises warning that there is a dangerous dog on the property. This sign shall be visible and capable of being read from the public street or highway. In addition, the owner shall conspicuously display a sign with a symbol warning, understandable by small children, of the presence of a dangerous dog; and

f. Further identification may be required and designated by the order of the city.

(2) When the registered dangerous dog is taken outside the approved proper enclosure, the animal must be securely muzzled in a manner that will not cause injury to the dog nor interfere with its vision or respiration but shall prevent it from biting a person or other animal, and the dog must be restrained by a substantial chain or cable leash having a minimum tensile strength of 1,000 pounds and not to exceed six feet in length.

(3) Prior to selling or moving the registered dangerous dog either inside or outside the city limits, the owner must notify the animal control officer of his intentions. In the event the dog is moved permanently outside the city limits, the owner must comply with state law in notifying the animal control division in control of the area into which the dog has been moved.

(4) Anyone bringing a dog into the city limits that has been declared dangerous by another animal control authority must notify the animal control officer of the new address where the dog will be kept and upon presentation of the dog's prior registration tag that has not expired shall pay a fee set by the city council, and the animal control officer shall issue a new tag to be placed on the dog's collar. This owner must also comply with all requirements set out in this chapter.

(Ord. No. 287-1, § 117, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-124. - Attack by registered dangerous dog.

The owner of a dangerous dog shall notify the animal control officer of any attacks the dog makes on people or animals.

(Ord. No. 287-1, § 118, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-125. - Appeal from municipal court.

Any appeal of the decision or order of the municipal court of this city shall be made within ten days in the same manner as appeal from civil cases originating in the justice of the peace courts of this state. The municipal court shall order the appellant to post a supersedeas bond payable to the city in an amount not less than $10,000.00. The form of the bond shall be as prescribed in the laws pertaining to civil appeals originating in the justice of the peace courts in this state. The appellant shall be responsible for the cost of appeal.

(Ord. No. 287-1, § 119, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-126. - Defense to prosecution for violation of registered dangerous dog.

It is a defense to prosecution that the person possessing a dangerous dog is:

(1) A veterinarian, peace officer, or an employee of the city, and the harboring of the dog was in the performance of his duties;

(2) An employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dog for law enforcement or corrections purposes; or

(3) A dog trainer or an employee of a guard dog company, while in the performance of his duties, under the Private Investigators and Private Security Agencies Act.

(Ord. No. 287-1, § 120, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-127. - Penalties for violation of this article relating to dangerous dog.

(a) It shall be a violation of this article if the person is the owner of a registered dangerous dog and the dog makes an unprovoked attack on another person outside the dog's proper enclosure and causes bodily injury to the other person whether or not the dog was on a leash and securely muzzled or whether or not the dog escaped without fault of the owner.

(b) It shall be a violation of this article if the person is the owner of a registered dangerous dog and that dog kills or wounds a domestic animal while outside the dog's proper enclosure whether or not the dog was on a leash and securely muzzled or whether or not the dog escaped without fault of the owner.

(c) It shall be a violation of this article if the person is the owner of a registered dangerous dog and that dog attacks a person who gains access to the proper enclosure due to negligence on the part of the owner or the owner's agent. This negligence shall include a failure to comply with the notification of ownership of a dangerous dog through posting of warning signs in accordance with this article.

(d) In addition to criminal prosecution, a person who commits an offense under this article is liable for a civil penalty not to exceed $10,000.00. The city attorney may file suit in a court of competent jurisdiction to collect the penalty. Penalties collected under this subsection shall be retained by the city.

(Ord. No. 287-1, § 121, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-128. - Exhibitions of certain animals prohibited.

No person shall keep, or permit to be kept, on his premises any wild or dangerous animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed so as to apply to a zoo or circus, as defined in section 5-1.

(Ord. No. 287-1, § 122, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-129. - Prohibited animals.

No person may possess a prohibited animal within the city limits. Such prohibited animals shall include, but are not limited to, all animals prohibited by the state or federal law and shall include, but are not limited to, the following animals or any hybrid of these animals or such other class of animals as may be determined to be dangerous by animal control officer or any other dangerous animal which may be added in the future to the list as a high risk animal in the Texas Rabies Control Act, as amended:

(1) Class mammalian.

a. Family Canidae (such as wolves, coyotes, fox, and hybrids) except domesticated dogs;

b. Family Mustelidae (such as weasels, martins, fishers, skunks, wolverines, mink and badgers) except ferrets;

c. Family Procyonidae (such as raccoons);

d. Family Ursidae (such as bears); and

e. Order Chiroptera (such as bats).

(2) Poisonous reptiles, cobras and their allies (Elapidae, Hydrophiidae); vipers and their allies (Crotiladae, Viperidae); Boonslang and Kirtland's tree snakes; Gila monsters (Helodermatidae); and crocodiles, alligators and their allies (order Loricata) and constrictors.

(3) Any venomous spiders.

(Ord. No. 287-1, § 123, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-130. - Dangerous wild and other nondomestic animals—Prohibited.

(a) The animals specified in this section as dangerous wild animals shall be deemed as contraband and no person may possess any individual species and/or subspecies of the following dangerous wild animals:

(1) Order Carnivora, family felidae (such as lions, tigers, jaguars, leopards and cougars, ocelot, lynx, bob cat, cheetahs, jaguars);

(2) Hyenas;

(3) Bears;

(4) Lesser pandas;

(5) Ferrets from natural habitats;

(6) Order Primata (such as monkeys, chimpanzees, apes).

(b) No person may possess any individual species of the following animals:

(1) Antelope;

(2) Binturong;

(3) Miniature pigs;

(4) Elephants;

(5) Vietnamese pot belly pigs; or

(6) Such other nondomestic species of animal not common to this area.

(Ord. No. 287-1, § 124, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-131. - Same—Certificate of registration; issuance of permit to operate circus or zoo.

(a) Notwithstanding the provisions of sections 5-128 through 5-130, special certificates of registration of dangerous wild animals and other nondomestic animals noted in such sections may be issued in conjunction with the issuance process of permitting circus or nonaccredited zoo operations within the city. The issuance of such permits shall provide an exception to said sections and classify such animals as restricted and subject to the terms set out in the application and agreement processes provided herein. The application for certificate and permit shall be made to the animal control authority on a form provided for by department policy. Such form shall contain a formal agreement between the city and the applicant relating to routine permitting criteria and specifically, general business practices as these relate to the type of permit required (circus or zoo), hours of operation, and covenants to observe approved safety and escape prevention procedures. Approved permits and related certificates of registration shall be issued under the authority of the chief of police. Applications shall be investigated for reputation for historical compliance with similar laws in this jurisdiction and others, and the applicant shall provide the following information and documentation:

(1) A health certificate from a licensed veterinarian stating that the animal is free from symptoms of infectious disease or is under treatment. A new health certificate is required each time the permit is renewed. A copy will remain with the animal control officer;

(2) Copies of applicable state or federal permits or licenses as required by either of those entities for the keeping of the particular animal in question. These copies will be retained by the animal control officer;

(3) Information relating to the owner including emergency telephone numbers and telephone numbers for their veterinarian in case of emergencies;

(4) Present proof of liability insurance or financial responsibility in the amount of $250,000.00 to cover the damages resulting from an escape and/or attack by any one individual animal listed in sections 5-129 and 5-130 to be registered and permitted;

(5) Agreement to allow reasonable access for inspection by animal officer; and

(6) Enter into an agreement with the city that safety and escape prevention be maintained on a 24-hour basis, the failure of which shall be grounds for permit revocation and documentation of compliance with all other applicable city ordinances, including, but not limited to, building, planning and zoning.

The negligent escape of any animal subject to permitting under this article shall be prima facie evidence of a breach of the safety and escape prevention covenants required herein. Failure to provide required information or documentation, or an unsatisfactory investigative finding shall be grounds for denial of permit. An appeal of denial of permit shall be made in writing within ten days of the notice of denial to the city manager. The city manager may review the issues leading to the denial or conduct an administrative hearing, and decide the issue, in either, the decision of the city manager is final.

(b) Before a certificate and permit is issued the animal control officer shall inspect the facility where the animals is/are to be kept, which must meet the following criteria:

(1) Each enclosure must provide adequate exercise area and sleeping quarters;

(2) Proper temperature control and ventilation for the particular species must be provided in both areas;

(3) Each enclosure must be kept locked and designed so that no one can enter or place appendages in the enclosure;

(4) Each enclosure must be constructed so as to prevent the animal from escaping;

(5) Each enclosure must be kept in good repair to prevent both escape and injury to the animal;

(6) Each enclosure must have a water container which is secured so as to prevent its being overturned; and

(7) Each enclosure must be cleaned daily.

(c) Animal control officer may, when deemed necessary, employ the services of a licensed veterinarian to assist in this application process and applicant shall be responsible for the reasonable costs associated with such service in addition to any permit fees required under this chapter.

(d) Each animal must be provided with continuous clean water and must be fed a diet approved by a licensed veterinarian.

(e) Any animal which has bitten or scratched someone must be immediately surrendered to the animal control officer for euthanasia and testing by the state department of health. A live test approved by the state department of health may be substituted for euthanasia.

(f) Fee for circus/zoo registration and permit shall be according to the schedule established in Appendix A to this Code, and the permit shall expire one year from date of issuance and shall not be transferable. Major modifications or additions to such facilities' animal containment areas shall require a

reinspection and/or repermitting of the circus or zoo. In such instances, original application fee shall be collected.

(Ord. No. 287-1, § 125, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-132. - Violation of sections 5-128—5-131 relating to various prohibited animals.

(a) It shall be a violation of this article if a person keeps or permits to be kept on his premises any wild or dangerous animal for display or exhibition purposes and each day of noncompliance shall constitute a separate offense.

(b) It shall be a violation of this article if a person possesses an animal prohibited under section 5-129 and each day of violation shall constitute a separate offense.

(c) It shall be a violation of this article if a person possesses an animal prohibited under section 5-130 and each day of violation shall constitute a separate offense. In addition to any criminal penalty, if a person possesses an animal classified in section 5-130 as a dangerous wild animal in violation of this article, that person is liable for a civil penalty of not less than $200.00 and not more than $2,000.00 for each dangerous wild animal in violation and for each day the violation continues. The city attorney may bring suit to collect said penalty and costs allowed by statute and such penalty shall be retained by the city.

(d) It shall be a violation of this article to operate a circus or zoo without a valid permit issued pursuant to this article and each day of operation shall constitute a separate offense. In addition to any criminal penalty, if the circus or zoo at the time of the violation is in possession of any dangerous wild animal, the liability for the civil penalty detailed in subsection (c) of this section, may be imposed for each dangerous wild animal possessed.

(Ord. No. 287-1, § 126, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-133. - Nonapplicability.

(a) This article does not apply to:

(1) Zoological parks accredited by the American Association of Zoological Parks and Aquariums;

(2) Federally licensed research institutions;

(3) Any government agency or its employee who uses the animals for an agency related to education, propagation, or behavior program;

(4) Anyone holding a valid rehabilitation permit from the state parks and wildlife department but only for animals which are in rehabilitation and scheduled to be released to the wild;

(5) A research facility as defined by Animal Welfare Act (7 USC 2132) and licensed by the U.S. Secretary of Agriculture;

(6) A dangerous wild animal in the custody and control of a circus company or other similar entity not based in this city and the animal is in transit;

(7) An animal subject to this article in the temporary custody and control of a television or motion picture production company during production activities;

(8) Any federal, state, or local governmental entity acting in official capacity and engaging in zoological activities.

(b) This chapter does not apply to an animal that is an FFA or 4-H project and that is and remains in good standing and on an official list of such authorized projects filed with the city by the authorized sponsor of such FFA or 4-H program; provided that such exemption shall be withdrawn upon the sponsor of the applicable FFA or 4-H program notifying the mayor that such animal is not being maintained and

cared for in compliance with the standards of such FFA or 4-H program, or is, otherwise, no longer an authorized FFA or 4-H project.

(Ord. No. 287-1, § 127, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-134. - Guard dogs.

(a) All dogs which are trained by a certified professional and kept solely for the protection of persons and property, residential, commercial or personal, shall obtain a permit from the animal control officer. The fee for this permit shall be according to the schedule established in Appendix A to this Code. The area or premises in which such dog is confined shall be conspicuously posted with warning signs bearing letters not less than two inches high, stating "Guard Dog On Premises."

(b) The area of premises shall be subject to inspection by the animal control officer to determine that the animal in question is maintained and secured at all times in such a manner so as to prevent its coming in contact with the public.

(c) This section does not apply to dogs used by federal, state, county, or municipal law enforcement agencies or correctional institutions.

(Ord. No. 287-1, § 128, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Secs. 5-135—5-151. - Reserved.

ARTICLE V. - IMPOUNDMENT

Sec. 5-152. - Generally.

(a) Animals owned or harbored in violation of this chapter or law of the state or those safekeeping or humane situations provided herein this article, shall be taken into custody by an animal control officer or other designated official and impounded under the chapter.

(b) Owners of impounded pets are required to pay all fees related to the impoundment as set by the city's impound facility.

(Ord. No. 287-1, § 141, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-153. - Tampering with animal shelter or impoundment vehicle.

It shall be unlawful for any person in the city without proper authority to break into, open, pull down the enclosure of or make any opening into the animal shelter or any enclosure belonging to or used by the city to impound or keep animals. It shall also be unlawful for any person to turn out or release, or cause to be turned out or released, or aid or abet the turning out or release of any animal from the animal shelter, from an impoundment vehicle or from any enclosure used by the city for the impoundment of animals.

(Ord. No. 287-1, § 142, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-154. - Redemption of impounded animal.

(a) Except as may be provided elsewhere in this chapter, the owner of any animal impounded in accordance with this chapter may reclaim, on any workday, such animal upon showing satisfactory

proof of ownership and paying all impoundment fees and any other expenses incurred by the city or its agent in keeping the animal or attempting to locate the owner of the animal. If the owner does not pay such fees, or some alternate fee satisfaction as provided for in section 5-9, the animal may be sold or otherwise disposed of by the city or its agent.

(b) If a dog or cat has been impounded on one prior occasions, the dog or cat must be spayed or neutered before being released to the owner if impounded on a second occasion. The dog or cat must also have a microchip implanted at the shelter if the owner can not show proof of the animal having been previously microchipped. The fee for the microchip is to be paid by the owner to the shelter. The owner of the dog or cat will be responsible for arranging for the spay or neuter surgery. The dog or cat will be transported to the veterinarian by an animal control officer or an employee or agent of the animal shelter. The cost to spay or neuter the dog or cat shall be paid by the owner, along with the impoundment fees, either to the animal shelter or to the veterinarian in advance of transporting the animal for the surgery. After the surgery is performed, the veterinarian may release the dog or cat to the owner.

(Ord. No. 287-1, § 143, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-155. - Disposition of dogs and cats.

(a) *With no identification.* All dogs and cats impounded by the animal control officer or brought to the animal shelter by a person other than the harborer or owner of that animal shall be held for a minimum of 72 hours during which time period the owner may present proof of ownership at the shelter. After paying all applicable fees, that owner may reclaim the dog/cat. In the event that the dog/cat is not claimed after 72 hours in the shelter, the dog/cat shall become the property of the city.

(b) *With identification.* Unless earlier claimed by the owner, all dogs and cats impounded by the animal control officer, or brought to the animal shelter by a person other than the harborer or owner of that animal, that are wearing traceable identification, or where an owner is known, shall be held in the shelter for a minimum of five complete days from the time the animal enters the facility, during which time the animal control officer will notify the owner, when known, of the impoundment. Unless the owner has notified the animal control officer in writing of his intentions to claim the dog/cat after that date, listing a date by which time that owner will reclaim the dog/cat and satisfy all applicable fees and this arrangement has been approved by the animal control supervisor, the animal shall become the property of the city on the sixth day.

(c) *Surrendered by the owner/harborer.* All animals surrendered by the owner/harborer to the animal control officer shall become the property of the city immediately upon completion of the owner/harborer surrender form.

(d) *Animals other than dogs, cats or estrays impounded.* All animals other than dogs, cats, estrays or animals holding current restricted animal permits that are impounded by the animal control officer or brought to the animal shelter by a person other than the owner/harborer shall become the property of the city unless such ownership is prohibited by state or federal law.

(e) *Disposition.* Any animal that cannot be adopted or transferred to a proper and appropriate agency shall be euthanized by an injection of substances approved for euthanasia by the American Veterinary Medical Association and/or the state veterinary medical association to be administered in compliance with policy and the laws of the state. All animals listed as endangered or protected shall be transferred to the proper authority at the earliest possible date.

(Ord. No. 287-1, § 144, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-156. - Reserved.

Editor's note— Ord. No. 713, § 1, adopted Nov. 20, 2012, repealed § 5-156, which pertained to adoption of animals and derived from Ord. No. 287-1, § 145, 2-1-2005.

Sec. 5-157. - Estray; other livestock; fowl.

(a) It is unlawful for any owner or person in control of any miniature livestock, horse, mule, jack, jenny, cattle, hog, goat or sheep (estray) to permit any such animal to run at large on land not owned or under control of the owner or person, or on any street, alley or other public place in the city.

(b) It is unlawful for the owner or person in control of any chicken or other fowl to permit the same to run at large on any land not his own or under his control, or on any street, alley or other public place in the city.

(c) It is unlawful and constitutes a nuisance for the owner or any person in charge or control of any pigeons in the city, or the owner or any person in charge or control of any out building or barn in the city upon which pigeons nest, to allow such pigeons to run or fly at large in the city.

(Ord. No. 287-1, § 146, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 20, 8-19-2014)

Editor's note— Ord. No. 818, § 20, adopted Aug. 19, 2014, amended the catchline of § 5-157 from "Estray and other livestock" to "Estray; other livestock; fowl."

Sec. 5-158. - Impoundment of estray and livestock [and miniature livestock.]

The animal control authority, upon receipt of a report or upon discovery of an estray within the city, shall as soon as possible notify the sheriff of the county and report the presence of the estray and the location where the estray can be found. If circumstances permit, the animal control officer shall refer the matter in its entirety to the sheriff. If circumstances do not permit or the sheriff seeks the assistance of the animal control authority, the animal control officer may cause the impoundment of any and all estray and other livestock and miniature livestock that may be found in and upon any street, alley or upon any unenclosed lot in the city, or otherwise to be found at large, and to confine such estray or other livestock or miniature livestock for safe keeping. Upon impounding, the animal control officer shall prepare a file to be located in the animal control division offices. Each entry shall include the following:

(1) The name and address of the person who notified the animal control officer of the estray or other livestock or miniature livestock;

(2) The date, time and location of the estray or other livestock or miniature livestock when found;

(3) The location of the estray or other livestock or miniature livestock until disposition; and

(4) A description of the estray, livestock, or miniature livestock, including its breed, color, sex, age, size, all markings of any kind and other identifying characteristics.

(Ord. No. 287-1, § 147, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 21, 8-19-2014)

Editor's note— Ord. No. 818, § 21, adopted Aug. 19, 2014, amended the provisions of § 5-157 to include miniature livestock. Therefore, the catchline of said section has been amended to read "Impoundment of estray and livestock [and miniature livestock]" at the editor's discretion.

Sec. 5-159. - Impounded estray and livestock and miniature livestock—Advertisement of.

When an estray or other livestock or miniature livestock has been impounded by the animal control authority, the animal control officer shall make a diligent search of the register of recorded brands in the county for the owner of the estray or other livestock or miniature livestock. If the search does not reveal the

owner, the animal control officer shall advertise the impoundment of the estray or other livestock or miniature livestock in a newspaper of general circulation in the county at least twice during the next 15 days following impoundment and post a notice of the impoundment of the estray or other livestock or miniature livestock on the public notice board of city hall.

(Ord. No. 287-1, § 148, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 22(5-158.2), 8-19-2014)

Sec. 5-160. - Same—Recovery by owner.

The owner of an estray or other livestock or miniature livestock may recover possession of the animal at any time before the animal is sold under the terms of this chapter if:

(1) The owner has provided the animal control officer with an affidavit of ownership of the estray or other livestock or miniature livestock containing at least the following information:

a. The name and address of the owner;

b. The date the owner discovered that the animal was missing;

c. The property from which the animal strayed;

d. A description of the animal including its breed, color, sex, size, all markings of any kind and any other identifying characteristics;

(2) The animal control officer has approved the affidavit; and

(3) The owner has paid all handling fees to those entitled to receive them.

(Ord. No. 287-1, § 149, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 23(5-158.3), 8-19-2014)

Sec. 5-161. - Same—Sale of.

(a) If the ownership of an estray or other livestock or miniature livestock is not determined within 14 days following the final advertisement required by this chapter, ownership of the estray or other livestock or miniature livestock rests with the city and the animal control officer shall then cause the estray or other livestock or miniature livestock to be sold at a public auction. If there are not any bidders, ownership is forfeited to the city.

(b) Title shall be deemed vested in the animal control officer for purposes of passing a good title, free and clear of all claims to the purchaser at the sale. The disposition of the proceeds derived from the sale at public auction will be as follows:

(1) Pay all handling fees to those entitled to receive them;

(2) Execute a report of sale of impounded estray or other livestock or miniature livestock;

(3) The net proceeds remaining from the sale of the estray or other livestock or miniature livestock after the handling fees have been paid shall be delivered by the animal control officer to the finance department. Such net proceeds shall be subject to claim by the original owner of the estray or other livestock or miniature livestock as provided herein;

(4) If the bids are too low, the animal control officer shall have the right to refuse all bids and arrange for another public auction or sealed bidding procedure.

(Ord. No. 287-1, § 150, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 24(5-158.4), 8-19-2014)

Sec. 5-162. - Same—Recovery by owner of sale proceeds.

(a) Within 12 months after the sale of an estray or other livestock or miniature livestock under the provisions of this chapter, the original owner of the estray or other livestock or miniature livestock may recover the net proceeds of the sale that were delivered to the finance department, if:

    (1) The owner has provided the animal control officer with an affidavit of ownership; and

    (2) The animal control officer has accepted the affidavit of ownership.

(b) After the expiration of 12 months from the sale of an estray or other livestock or miniature livestock as provided by this chapter, the sale proceeds shall escheat to the city. If an estray or other livestock or miniature livestock was forfeited to the city due to no bidders at auction, then the city is not to be liable to the owner for any proceeds of sale, since no proceeds were received.

(Ord. No. 287-1, § 151, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 25(5-158.5), 8-19-2014)

Sec. 5-163. - Same—Use of.

During the period of time an estray or other livestock or miniature livestock is held by one who impounded the estray or other livestock or miniature livestock, it may not be used by any person for any purpose.

(Ord. No. 287-1, § 152, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 26(5-158.6), 8-19-2014)

Sec. 5-164. - Same—Death or escape of.

If the estray or other livestock or miniature livestock dies or escapes while held by the person who impounded it, the person shall report the death or escape to the animal control officer. The report shall be filed in the record regarding the impoundment.

(Ord. No. 287-1, § 153, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 27(5-158.7), 8-19-2014)

Secs. 5-165—5-181. - Reserved.

ARTICLE VI. - RABIES CONTROL[2]

Footnotes:

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State Law reference— Rabies control, V.T.C.A., Health and Safety Code § 826.001 et seq.

Sec. 5-182. - Vaccinations.

(a) All dogs or cats four months of age or older within the city shall be vaccinated against rabies. Such vaccinations shall be repeated at the intervals prescribed by rule of the state department of health, or its successor.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of such dog or cat a vaccination certificate on a form approved by the state department of health. The veterinarian shall also issue a metal tag with the veterinarian's address and the year of the vaccination stamped thereon. Upon vaccination, the veterinarian shall execute and furnish to the owner of the dog or cat as evidence thereof, a certificate of vaccination. The veterinarian shall retain a duplicate copy of the certificate and one copy shall be filed with the owner. Such certificate shall contain the following information:

(1) The name, address and telephone number of the owner of the vaccinated dog or cat;

(2) The date of vaccination;

(3) The type of rabies vaccine used;

(4) The year and number of the rabies tag; and

(5) The breed, age, color and sex of the vaccinated dog or cat.

(c) Concurrent with the issuance and delivery of the certificate of vaccination, the owner of the dog or cat shall cause to be attached to the collar or harness of the vaccinated animal a metal tag, serially numbered to correspond with the vaccination certificate number and bearing the year of issuance.

(d) It shall be unlawful for any person within the city to own, keep, possess, harbor or allow to remain upon premises under his control any dog or cat which has not been vaccinated as required herein. Any person establishing residence within the city shall comply with this article within ten days of establishing such residency.

(Ord. No. 287-1, § 161, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-183. - Vaccination of impounded animals.

(a) After impoundment, all animals which are required to be vaccinated by this article which are redeemed by an owner from the animal shelter must be vaccinated against rabies in accordance with the requirements of this article, or the owner thereof must present a veterinarian's certificate showing a current vaccination.

(b) In order for an animal not vaccinated in accordance with the requirements of this article to be released, such owner must sign a statement giving the name of the owner and the address where the animal is to be immediately taken and confined and stating that the owner will have the animal vaccinated in accordance with the requirements of this article. Within seven days of the release of the animal, a certificate of vaccination shall be presented to the animal control officer. Failure to present the vaccination certificate to the animal control officer within the stated time shall be grounds for the immediate return of the animal to the animal shelter, and such animal may be destroyed immediately or otherwise disposed of. Such failure shall also constitute a misdemeanor punishable as set out in section 5-2, except that the minimum fine shall be $200.00.

(Ord. No. 287-1, § 162, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-184. - Proof of vaccination; dismissal; fine.

The failure of a dog or cat to wear a vaccination tag on a collar shall be prima facie evidence of the failure to vaccinate the animal as required by this article. To prove that a dog or cat was vaccinated at the time of the offense, the owner of the dog or cat must present a copy of the vaccination certificate issued by the veterinarian that shows the date the vaccination was administered. The offense shall be dismissed upon

verification that the animal alleged in the offense was vaccinated on the date of the offense with the payment of an administrative fee.

(Ord. No. 287-1, § 163, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-185. - License required.

(a) *License issuance.* All animals four months of age or older which are kept, harbored or maintained within the corporate limits of the city shall be licensed. Licenses shall be provided by the animal control officer or his agent upon payment of the required fee for each animal. Before a city license will be issued for a cat or dog, the owner must present a current certificate from a licensed veterinarian showing that such cat or dog has been vaccinated for rabies. The owner shall state his name and address, and the breed, color and sex of the animal to be licensed. Such license shall be valid for one year from date of issuance. Any owner previously found to be a habitual offender and having previously had their license revoked under section 5-186 may be deemed not eligible for current licensure. Appeals of such ineligibility shall be those procedures set out under section 5-186 for revocations.

(b) *Tag and collar.* Upon payment of the license fee, where applicable, the city shall issue to the owner a license certificate and metal tag having stamped thereon the number corresponding with the number of the certificate. Such tag shall at all times be securely attached to a collar or harness around the neck of the animal. In case a tag is lost, a duplicate will be issued by the animal control officer or his agent upon presentation of the receipt showing the payment of license fee for the calendar year. Tags shall not be transferable from one animal to another, and no refunds shall be made.

(c) *Livestock; miniature livestock.* All livestock and miniature livestock shall be tagged or tattooed and the tag or tattoo will be the identifying tag required to be worn and will be shown on the license.

(Ord. No. 287-1, § 164, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 28, 8-19-2014)

Sec. 5-186. - Revocation of license, notice of hearing and appeals.

(a) The chief of police may revoke any license after a hearing where an affirmative finding on any one or more of the following fact issues:

  (1) That impoundment of the animal by the city more than two times during a 12-month period has occurred;

  (2) That more than two final convictions of a person for violating this chapter when such convictions relate to the animal being considered for revocation of its license certificate have been entered into the official court docket;

  (3) Any combination of subsections (a)(1) and (2) of this section, totaling three incidents; or

  (4) Upon a determination that the animal is a nonregisterable dangerous animal, as defined in section 5-112.

(b) Notice of revocation hearing setting the hearing date no sooner than ten days from the service or certified mailing shall be served in person to the owner or such notice deemed served when made by certified letter, return receipt requested, and addressed to the last known mailing address of the animal's owner and deposited in the U.S. mail.

(c) Upon revoking the license of any animal, the animal control officer shall notify the owner of the animal of such action in writing. Written notification shall be deemed made when a certified letter, return receipt requested, addressed to the last known mailing address of the animal's owner and deposited in the U.S. mail.

(d) Upon the expiration of ten days after written notification of revocation is deposited in the U.S. mail, as provided in subsection (c) of this section, no animal which has had its license revoked shall be kept,

maintained or harbored within the city limits and each 24-hour period shall constitute a separate violation.

(e) Upon revocation of a license, owner of animal with revoked license shall notify the animal control officer of the location to which the animal is being removed.

(f) Appeals of revocation hearing findings must be filed with the city manager within ten days of receiving notice of the action. Such notices shall be written without want of form but must include the statement "notice of appeal of decision of the chief of police in revocation hearing," contain a statement of the reasons for the appeal, and signed by the animal owner making the appeal. The city manager or designee shall hear the appeal. At the hearing the formal rules of evidence do not apply. The hearing officer shall make his decision on the basis of preponderance of the evidence presented. The hearing officer may affirm, reverse, or modify the action of the chief, however a decision must be rendered within 60 days after the appeal. The decision of the hearing officer is final.

(Ord. No. 287-1, § 165, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-187. - Counterfeiting; destruction of tags, certificates.

It shall be unlawful for any person to intentionally or knowingly:

(1) Counterfeit a rabies vaccination tag or certificate or a license.

(2) Destroy a rabies vaccination tag or certificate.

(Ord. No. 287-1, § 166, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-188. - Reporting rabid animals or rabies exposure.

(a) It shall be the duty of all animal owners, veterinarians, physicians or any other person to report to the animal control officer all cases of rabies with which he comes in contact or to which his attention has been directed. This report shall be made immediately upon diagnosis or suspicion of a case of rabies.

(b) Any person having knowledge of an animal bite or scratch to an individual or to another animal by an animal which the person suspects is rabid shall report that incident to the animal control officer within 24 hours.

(c) Every physician or other medical practitioner who treats a person for any animal bite/scratch that occurred within the city shall within 12 hours report such treatment to the animal control officer giving the name, age, sex and precise location of the bitten/scratched person and such other information as the officer or agency may require.

(d) Any veterinarian who clinically diagnoses rabies or any person who suspects rabies in a dog, cat or other domestic or wild animal shall immediately report the incident to the animal control officer stating precisely where such animal may be found.

(e) If a known suspected rabid animal bites or scratches a domestic animal, such incident shall also be reported immediately to the animal control officer.

(Ord. No. 287-1, § 167, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-189. - Animal bites and scratch reports; submission to quarantine.

(a) *Report of victim.* Any person who is bitten or scratched by an animal shall report that fact to the animal control officer within 24 hours. If the person bitten or scratched is a minor under the age of 17 years, the parent or guardian of such minor, if he has knowledge of the incident, shall report that fact to the animal control officer within 24 hours.

(b) *Report of owner.* A person who owns, keeps, harbors or allows an animal to remain on premises under his control and who has knowledge of a bite shall report to the animal control officer within 24 hours any incident where such animal bit or scratched any person.

(c) *Custody.* The animal committing the act shall be submitted to the animal control officer for quarantine. When the local rabies control authority goes to the premises where the animal that bit or scratched any person is being kept, the animal control officer may take immediate custody of the animal. Where suitable arrangements are made, the local rabies control authority may permit the animal to be transferred to another location for the remainder of the quarantine period. This duty to submit the animal to quarantine shall apply to any person who owns, keeps, harbors, has possession of or allows an animal to remain on premises under his control. If convicted of violating this section, a minimum fine of $100.00 shall be imposed by the municipal court.

(d) *Observation.* Any owned dog or cat having bitten or scratched a person shall be observed for a period of ten days from the date of the bite. The procedure and place of observation shall be designated by the investigating officer or responsible agency in compliance with state law. If the dog or cat is not confined on the owner's premises for owner's quarantine, confinement shall be by impoundment in the animal shelter, or at a veterinary hospital of the owner's choice. Such confinement shall be at the owner's expense.

(e) *Strays.* Stray dogs and cats, or those animals whose owners cannot be located shall be confined in the animal shelter for a period of 96 hours and if unclaimed may be destroyed and the brain of such animal immediately submitted to a qualified laboratory for rabies examination at the victim's expense.

(f) *Surrender of animal.* The owner of any dog or cat that has been reported to have inflicted a bite on any person shall on demand produce the dog or cat for impoundment, as prescribed in this chapter.

(g) *Home quarantine.* Home quarantine may be allowed only in those incidents where permitted by state law and agreed to by the animal control officer. Refusal to produce such dog or cat constitutes a violation of this section, and each day of such refusal shall constitute a separate and individual violation.

(h) *Wild, exotic or dangerous animals.* Any wild, exotic or dangerous animal that is considered high risk by state law or regulation and which has bitten or scratched a person shall be caught and humanely killed and the brain submitted for rabies examination. Those wild animals which are classified as low risk animals shall be handled as dictated by state law.

(Ord. No. 287-1, § 168, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-190. - Contents of required reports.

When an individual is placed under a duty to report an incident in which an animal has bitten or scratched some person or some animal or to report an animal known or suspected to be rabid, that report to the animal control officer shall include, if the person making the report knows, the following information:

(1) The location where the bite or scratch occurred.

(2) The location where the animal which committed the act or which is known or suspected to have rabies or have been exposed to rabies can be located.

(3) The name and address of any person who was bitten or scratched.

(4) The name and address of the person who owns, keeps, harbors or has control over the premises where the animal committing the act normally can be found.

(5) The names and addresses of the persons who own, keep or harbor any other animal exposed to rabies can be found.

(Ord. No. 287-1, § 169, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-191. - Quarantine and release.

(a) When an animal is required to be placed in quarantine, the animal shall be submitted for quarantine at the animal shelter. Only with the prior approval of the local rabies control authority may be animal be held in quarantine at any other location.

(b) Any animal quarantined shall be held for a period of ten days from the date of the bite. The animal shall not be released from quarantine until such release has been approved by the local rabies control authority.

(c) Upon release of an animal from quarantine, if the ownership of the animal is known, such owner has five days to claim the animal. If the ownership of the animal is unknown, the animal may be disposed of as provided herein this article without waiting for an additional 72 hours.

(Ord. No. 287-1, § 170, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-192. - Submission of head for rabies diagnosis.

(a) If the animal biting or scratching a person is a wild animal, the animal shall be humanely destroyed in such a manner that the brain is not mutilated. The head shall then be submitted to a laboratory certified by the state department of health for rabies diagnosis.

(b) If an animal being quarantined becomes ill, it may be humanely destroyed in such a manner that the head is not mutilated. The head shall then be submitted to a laboratory certified by the state department of health for rabies diagnosis. The head of each animal dying while in quarantine shall also be submitted for rabies diagnosis.

(Ord. No. 287-1, § 171, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-193. - Cost of quarantine or rabies diagnosis.

(a) If, at the end of the required quarantine period, a quarantined animal is found to be free of rabies, the local rabies control authority shall order the release of the animal to the owner if the rabies vaccination provisions of this article have been complied with and any impoundment fees have been paid by such owner.

(b) If a head is submitted to the state department of health for rabies diagnosis, the cost of removing the head and shipping it shall be paid by the owner of the animal.

(c) The local rabies control authority may order that all impoundment fees for the quarantine be paid by the person bitten or scratched if:

(1) The animal has a rabies vaccination certificate;

(2) The animal was on property under the control of the animal's owner when the bite or scratch occurred; and

(3) The bite or scratch occurred when the animal was acting to defend its owner or the property, or after provocation.

If the animal is a wild animal, the local rabies control authority may order that all fees be paid by the person who was bitten or scratched.

(Ord. No. 287-1, § 172, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Sec. 5-194. - Enforcement.

For the purposes of discharging the duties imposed by this article and to enforce its provisions, any peace officer or animal control officer is empowered to enter upon any premises upon which an animal is kept or harbored and to demand the exhibition by the owner of such animal or the license for such animal in accordance with the provisions of this article, to include random citywide canvassing and checks for compliance with the article. The owner of any animal is required to produce the license and vaccination information for each animal in his ownership upon demand by an animal control officer or peace officer.

(Ord. No. 287-1, § 173, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Secs. 5-195—5-211. - Reserved.

ARTICLE VII. - COMMERCIAL ANIMAL ENTERPRISES AND MULTIPLE ANIMAL OWNERSHIP

Sec. 5-212. - Miniature livestock.

The keeping or harboring of two or fewer miniature livestock shall not be considered a commercial animal enterprise under this chapter unless the owner of such miniature livestock sells, rents, leases or uses miniature livestock as performing animals for purposes of an entrepreneurial activity or commercial enterprise, or charges admission, solicits donations for personal gain or otherwise requires a fee to ride, view, feed, touch or otherwise come into physical contact with the miniature livestock.

(Ord. No. 818, § 29, 8-19-2014)

Sec. 5-213. - Permit required.

(a) Permits shall be required for all commercial animal enterprises, multi-animal owners, and miniature livestock used as performing animals or as a commercial animal enterprise. Commercial animal enterprises shall include but not be limited to enterprises such as kennels, breeders, pet shops, riding stables, animal auctions, performing animal exhibition, animal training services, grooming shops, petting zoos, aviaries or any similar entrepreneurial relationships regarding animals. Five or more animals maintained on any one lot shall be considered a multi-animal owner. No person shall maintain, harbor or care for more than five animals of any species without having obtained a multi-animal owner permit, excluding fish.

(b) All such permits shall be considered commercial except multi-animal owner and miniature livestock that is not operated as a commercial animal enterprise. Multi-animal owner permits shall be considered as relative only to private multiple animal ownership, with no relationship to any commercial animal enterprise. All multi-animal owners shall be required to spay or neuter all dogs and cats greater than six months of age. Each dog must have a minimum of 150 square feet per dog six months of age or older in its outdoor enclosure or fence. Multiple animal ownership permits shall not be required for residences with common household pets having "litters" which remain at such residences for a period of time not exceeding three months.

(Ord. No. 287-1, § 181, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 30, 8-19-2014)

Editor's note— Ord. No. 818, § 30, adopted Aug. 19, 2014, renumbered former § 5-212, pertaining to permit required, as § 5-213.

Sec. 5-213.1. - Permit duration and fee; revocation.

(a) Permits for commercial animal enterprises shall be valid for one year from date of issuance. Other permits are not required to be renewed. The permit fee shall be according to the schedule established in Appendix A to this Code.

(b) The animal control officer upon an inspection finding inconsistent with the permit requirements of this article, may file an application with the municipal judge to revoke any permit issued under this article. In addition to conducting a full revocation hearing, the municipal judge may temporarily suspend any permit pending a full hearing if such immediate action is determined reasonably necessary to protect the public health or the safety of any animal.

(Ord. No. 287-1, § 182, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 31, 8-19-2014)

Editor's note— Ord. No. 818, § 31, adopted Aug. 19, 2014, renumbered former § 5-213, pertaining to permit required, as § 5-213.1.

Sec. 5-214. - Facility requirements for permits to keep animals.

(a) Upon inspection of the premises by the animal control officer, the permit shall be issued if the following conditions are met:

(1) The facility must be adequate for the number and type of animals to be kept.

a. The facility must be of sufficient size as to allow animals to move about freely. This shall apply to each animal kept. The size of a facility shall be in proportion to the size of the individual animal's height and weight unless otherwise determined by this chapter.

b. Adequate food and water must be provided so that each and all animals kept shall be maintained in good health and free of malnutrition and dehydration.

c. The premises shall be kept in a sanitary condition and reasonably free of animal waste, parasites, insects and flies that could be harmful to the animal's health and/or to the health of the general public.

(2) The animals and the facility must be kept free of odor or stench which is offensive to a person of ordinary sensibilities.

(3) The animals must be maintained in a manner which does not pose a danger to the health of the animals themselves or to adjacent animals.

(4) The animals must not cause noise which is offensive or disturbing to a person of ordinary sensibilities on adjoining, adjacent or neighboring premises.

(5) The applicant or holder of the permit shall not have been issued citations for violation of this chapter on two or more separate occasions, or animals covered by or to be covered by the permit have not been impounded on two or more separate occasions.

(6) The chief of police shall adopt standard operational procedures for the animal control division consistent with this article in providing guidelines and standards for the inspection of such facilities for permitting and for the periodic monitoring of such facilities.

(b) The permitted facilities of commercial animal enterprises may be randomly inspected during regular business hours for compliance with the basic requirements stated herein. Refusal to allow such inspections shall be grounds for permit revocation. Random inspection of the permitted residence of any multiple-animal owner or miniature livestock owner for compliance with the basic requirements stated herein may be conducted upon consent of the owner, exigent circumstances, or pursuant to a warrant issued by a court of competent jurisdiction.

(Ord. No. 287-1, § 183, 2-1-2005; Ord. No. 713, § 1, 11-20-2012; Ord. No. 818, § 32, 8-19-2014)

Editor's note— Ord. No. 818, § 32, adopted Aug. 19, 2014, amended the catchline of § 5-214 from "Facility requirements for permits to board, house or otherwise keep animals" to "Facility requirements for permits to keep animals."

Sec. 5-215. - Revocation or suspension of commercial animal enterprise or multi-pet ownership permits.

Any commercial animal enterprise or multi-pet owner permit may be revoked if the owner's facility is found to be in violation of this chapter, any zoning law, health law or any other applicable ordinance of the city or of the state, or the facility is maintained in such a manner as to be detrimental to the health, safety or peace of mind of persons residing in the immediate vicinity.

(Ord. No. 287-1, § 184, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Secs. 5-216—5-238. - Reserved.

ARTICLE VIII. - FEES AND CHARGES

Sec. 5-239. - Assessed.

(a) *Management cost.* There is hereby fixed and assessed fees to defray the cost of managing an animal control program and for the protection of the public health, against the owner or keeper of every animal kept in the city; at such time that fee adjustments may be required to maintain a neutral at cost relationship which fees are in Appendix A of this Code and such fees may be amended by ordinance of the city council.

(b) *Expenses of animal.* In addition to other fees, the owner shall also pay for any veterinarian or drug fees incurred for the animals while in the custody of the animal control officer or animal shelter.

(Ord. No. 287-1, app. A, 2-1-2005; Ord. No. 713, § 1, 11-20-2012)

Chapter 8 - BUILDING REGULATIONS[1]

Footnotes:

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State Law reference— Regulation of housing and other structures, V.T.C.A., Local Government Code § 214.001 et seq.

ARTICLE I. - IN GENERAL

Sec. 8-1. - Penalty.

(a) Any person who shall violate any of the provisions of this chapter or the technical codes adopted herein, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of $2,000.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(b) Any person who shall remove a notice of violation or a placard posted pursuant to this chapter from a property prior to correction of the deficiencies indicated thereon shall be deemed guilty of a misdemeanor offense.

(c) Any person who shall knowingly or intentionally provide false information on any application required pursuant to this chapter shall be deemed guilty of a misdemeanor offense.

(d) Any person who shall occupy a building, or any part thereof, without having received a certificate of occupancy in compliance with herewith, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of $2,000.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(e) On motion of the city or the judge of municipal court, any person convicted under this chapter or placed on deferred adjudication or other form of deferral who is assessed a penalty and who does not pay the penalty in full as ordered by the court may be assessed the penalty against the defendant's property in the same manner as a judgment in a civil suit by order of the municipal judge pursuant to the state code of criminal procedures, Vernon's Ann. C.C.P. § 45.047, as amended.

Sec. 8-2. - Enforcement of regulations.

(a) No building permit, certificate of occupancy, plumbing permit, electrical permit, or utility tap shall be issued by the city for or with respect to any lot, tract or parcel of land within the city limits, except in compliance with all applicable requirements of this chapter, the city zoning provisions applicable to the property and the city subdivision provisions applicable to the property.

(b) This chapter and any code or provision adopted by this chapter may be further enforced by civil injunction and other civil and criminal judicial proceedings, either at law or in equity; and, in lieu of or in addition to any other authorized enforcement or action taken. Any person who violates any term or provision of this article, with respect to any land, property, building or development within the city, may also be fined as well as charged all other penalties, civil and criminal as provided herein and by state law.

(c) Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this chapter, or to obtain declaratory

judgment, and to seek and recover court costs and attorney fees, and/or recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter.

Secs. 8-3—8-22. - Reserved.

ARTICLE II. - TECHNICAL CODES[2]

Footnotes:

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State Law reference— Building and rehabilitation codes, V.T.C.A., Local Government Code § 214.001 et seq.

Sec. 8-23. - International Building Code.

(a) *Adoption.*

(1) The International Building Code, 2009 edition, including Appendix Chapters C, E, F, G, I, J and K as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Building Code, marked Exhibit "A," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Building Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

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IBC CHAPTER 1, ADMINISTRATION.

Section 101.1; insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *Building Code* of City of Kyle, hereinafter referred to as "this code."

Section 101.4; change to read as follows:

101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code, when specifically adopted, shall be considered part of the requirements of this code to the prescribed extend of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the *National Electrical Code* as adopted.

Section 101.4.7; add the following:

101.4.7 Electrical. The provisions of the Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

Section 105.1.1, 105.1.2; delete the sections

Section 105.1.3; add subsection as follows:

105.1.3 Toilet Facilities. Every construction project requiring a building permit within the City limits of the City of Kyle shall have adequate toilet facilities for workers associated with the project.

At least one permanent or temporary toilet facility shall be maintained at every site where a building permit has been issued, as long as a building permit is active for the project.

Permanent toilet facility is defined as a room in an existing building or in the building being constructed with a water closet installed in such as room that conforms to the *International Plumbing Code* and is continuously available to all workers involved in a construction project.

Temporary toilet facility is defined as a portable, fully enclosed, chemically sanitized toilet, which is serviced and cleaned at least once each week.

Whenever the *building official* finds any work being performed in a manner contrary to the provisions of this section, the *building official* is authorized to issue a stop work order.

Section 105.2, Work exempt from permit. Delete items #1, #2, and #6.

Section 109.4; change to read as follows:

109.4 Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to doubled fees and charges.

Section 109.6; change to read as follows:

109.6 Refunds. The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder that was erroneously paid or collected.
2. Not more than 70 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 30 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

Section 109.7; add Section 109.7 to read as follows:

109.7 Re-inspection Fee. A fee as established by the city's fee schedule may be charged when:

- The inspection called for is not ready when the inspector arrives;
- No building address or permit is clearly posted;
- City approved plans are not on the job site available to the inspector;
- The building is locked or work otherwise not available for inspection when called;
- The job site is disapproved twice for the same item;
- The original disapproved inspection has been removed from the job site.
- Failure to maintain erosion control, trash control or tree protection.

Any re-inspection fees assessed shall be paid before final inspection.

Section 110.3.5; Lath and gypsum board inspection. Delete exception.

Section 113; Delete entire section and insert the following:

113 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

Section 115.4; add the following subsection:

115.4 Construction debris. Whenever work is being done that is authorized by a permit, and construction debris from that work is not confined to a container or to a site on the property approved by the *building official* or his designee, and such construction debris poses a threat to public health, safety and comfort so that it constitutes a nuisance, the *building official* or his designee may order the work stopped and the contractor shall clean up the construction debris within thirty-six (36) hour period, contractor shall pay City a re-inspection fee to offset costs incurred by City due to the necessary re-inspection before the stop work order is lifted.

As used herein, the term "construction debris" shall include all materials utilized in the construction process, including all litter and debris deposited and left remaining upon the premises of a job site by a contractor, subcontractor, and their employees, agents, and assigns.

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IBC CHAPTER 2, DEFINITIONS.

Section 202; amend definition of "High-rise building" and "Ambulatory health care facility."

High-rise building. A Building having any floor used for human occupancy located more than 55 feet (16,764 mm) above the lowest level of fire department vehicle access.

Ambulatory health care facility. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less than 24-hour basis to individuals who are rendered incapable of self-preservation. This group may include but not be limited to the following:

- Dialysis centers
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

———

IBC CHAPTER 3, USE AND OCCUPANCY CLASSIFICATION.

Section 304.1; add the following to the list of occupancies:

Fire stations

Police stations with detention facilities for 5 or less

Section 307.1; add the following to Exception 4:

4. Cleaning establishments… {language unchanged}. See also IFC chapter 12, Dry Cleaning Plant provisions.

Section 310.1; amend second paragraph under R-3 as follows:

Adult care and child care facilities with 5 or fewer unrelated persons that are within a single-family home are permitted to comply with the *International Residential Code.*

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IBC CHAPTER 4, SPECIAL DETAILED REQUIREMENTS.

Section 403.1, exception #3; change to read as follows:

3. Open air portions of buildings with a Group A-5 occupancy in accordance with Section 303.1.

Section 403.3, exception #2; delete the exception.

Section 404.1.1; change definition of "Atrium" as follows:

ATRIUM. An opening connecting three or more stories … *{Balance remains unchanged)*

Section 404.5; delete exception.

Section 406.1.2; add item #3 to read as follows:

3. A separation is not required between a Group R-2 and U carport provided that the carport is entirely open on all sides and that the distance between the two is at least 10 feet (3048 mm)

Section 406.6.1; add a second paragraph to read as follows:

This occupancy shall also include garages involved in minor repair, modification and servicing of motor vehicles for items such as lube changes, inspections, windshield repair or replacement, shocks, minor part replacement and other such minor repairs.

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IBC CHAPTER 5, GENERAL BUILDING HEIGHTS & AREAS

Section 506.2.2; add a sentence to read as follows:

In order to be considered as accessible, if not in direct contact with a street or *fire lane*, a minimum 10-foot wide pathway meeting fire department access from the street or *approved fire lane* shall be provided.

Section 508.2.5; add a sentence at the end of paragraph:

508.2.5 Separation of Incidental accessory occupancies. (Sentence remains unchanged.) An incidental accessory occupancy shall be classified in accordance with the occupancy of that portion of the building in which it is located.

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IBC CHAPTER 7, FIRE & SMOKE PROTECTION

Section 706.3; add the following:

Materials. Fire walls shall be indentified with labels. Such labels shall read "FIRE WALL: DO NOT PENETRATE OR DAMAGE" and be placed not more than ten (10) lineal feet along the wall and shall be placed in such a manner as to be obvious to workers in the attic or concealed space.

Section 708.2, Exception 7; amend subsection 7.2 & 7.3 and delete subsections 7.4 and 7.5 and renumber as follows:

7.1. Does not connect more than two stories.

7.2. Is not part of the required means of egress system except as permitted in Section 1022.1.

7.3. Is not concealed within the building construction of a wall or a floor/ceiling assemble.

7.4 Is separated from floor openings and air transfer openings serving other floors by construction conforming to required shaft enclosures.

7.5 Is limited to the same smoke compartment.

———

IBC CHAPTER 9, FIRE PROTECTION SYSTEMS.

Section 903.1.1; amend to read as follows:

[F] 903.1.1 Alternative protection. Alternative automatic fire-extinguishing systems complying with Section 904 shall be permitted in addition to automatic sprinkler protection where recognized by the applicable standard and approved by the *fire code official.*

Section 903.2; add the following to the end of the paragraph:

903.2 Where required. {*Language unchanged*} Automatic Sprinklers shall not be installed in elevator machine rooms, elevator machine spaces, and elevator hoistways. Storage shall not be allowed within the elevator machine room. Signage shall be provided at the entry doors to the elevator machine room indicating "ELEVATOR MACHINERY - NO STORAGE ALLOWED."

Section 903.2; delete the exception.

Section 903.2.1.1, 903.2.1.3, 903.2.1.4, 903.2.2.1, 903.2.3, 903.2.4, 903.2.7, 903.2.9, and 903.2.9.1 are amended to read as follows:

[F] 903.2.1.1 Group A-1. An *automatic sprinkler system* shall be provided for Group A-1 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more;
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies; or
4. The *fire area* contains a multitheater complex.

[F] 903.2.1.3 Group A-3. An *automatic sprinkler system* shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more.
3. The *fire area* is located on a floor other than the *level of exit discharge.*

[F] 903.2.1.4 Group A-4. An *automatic sprinkler system* shall be provided for Group A-4 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2).
2. The *fire area* has an *occupant load* of 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies.

Add Section 903.2.2.1 to read as follows:

903.2.2.1 Group B. An *automatic sprinkler system* shall be provided for Group B occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies.

[F] 903.2.3 Group E. An *automatic sprinkler system* shall be provided for Group E occupancies where one of the following conditions exists:

1. Throughout all Group E *fire areas* greater than 6,000 square feet (557.4m^2) in area.
2. Throughout every portion of educational buildings below the lowest *level of exit discharge* serving that portion of the building.

   Exception: An *automatic sprinkler system* is not required in any area below the lowest *level of exit discharge* serving that area where every classroom throughout the building has at least one exterior *exit* door at ground level.

[F] 903.2.4 Group F-1. An *automatic sprinkler system* shall be provided throughout all buildings containing Group F-1 occupancy where one of the following conditions exists:

1. A Group F-1 fire area exceeds 6,000 square feet (557.4m^2).
2. A Group F-1 fire area is located more than three stories above *grade plane.*
3. The combined area of all Group F-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).

[F] 903.2.7 Group M. An *automatic sprinkler system* shall be provided throughout all buildings containing Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 6,000 square feet (557.4m^2).
2. A Group M fire area is located more than three stories above *grade plane.*
3. The combined area of all Group *Mfire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).
4. A Group M occupancy is used for the display and sale of upholstered furniture.

[F] 903.2.9 Group S-1. An *automatic sprinkler system* shall be provided throughout all buildings containing Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 6,000 square feet (557.4m^2).
2. A Group S-1 fire area is located more than three stories above *grade plane.*
3. The combined area of all Group S-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).
4. A Group S-1 *fire area* used for the storage of commercial trucks or buses where the fire area exceeds 5,000 square feet (464m^2).

[F] 903.2.9.1 Repair garages. An *automatic sprinkler system* shall be provided throughout all buildings used as repair garages in accordance with Section 406, where one of the following conditions exists:

1. Buildings having two or more *stories above grade plane*, including basements, with *afire area* containing a repair garage exceeding 6,000 square feet (557.4m^2).

2. Buildings no more than one *story above grade plane*, with *afire area* containing a repair garage exceeding 6,000 square feet (557.4m^2).

3. Buildings with repair garages servicing vehicles parked in basements.

Add Section 903.2.9.3 to read as follows:

[F] 903.2.9.3 Self-service storage facility. An *automatic sprinkler system* shall be installed throughout all self-service storage facilities. A screen shall be installed at eighteen (18) inches below the level of the sprinkler heads to restrict storage above that level. This screen shall be a mesh of not less than one (1) inch nor greater than six (6) inches in size. The screen and its supports shall be installed such that all elements are at least eighteen (18) inches below any sprinkler heads.

Exception: One-story self-service storage facilities that have no interior corridors, with a one-hour fire barrier separation wall installed between every storage compartment.

Section 903.2.11; amend 903.2.11.3 and add 903.2.11.7, 903.2.11.8, and 903.2.11.9 as follows:

903.2.11.3 Buildings more than 35 feet in height. An automatic sprinkler system shall be installed throughout buildings with a floor level, other than penthouses in compliance with Section 1509 of the *International Building Code*, that is located 35 feet (10 668mm) or more above the lowest level of fire department vehicle access.

Exception:
Open parking structures in compliance with Section 406.3.

903.2.11.7 High-Piled Combustible Storage. For any building with a clear height exceeding 12 feet (4572 mm), see Chapter 23 to determine if those provisions apply.

903.2.11.8 Spray Booths and Rooms. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

903.2.11.9 Buildings Over 6,000 sq.ft. An automatic sprinkler system shall be installed throughout all buildings with a building area over 6,000 sq.ft. For the purpose of this provision, fire walls shall not define separate buildings.

Exception: Open parking garages in compliance with Section 406.3 of the *International Building Code. Section 903.3.1.1.1; change to read as follows:*

903.3.1.1.1 Exempt locations. When approved by the *fire code official*, automatic Sprinklers shall not be required in the following rooms or areas where such … *{language unchanged}* … because it is damp, of fire-resistance-rated construction or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard.

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the code official.

3. Generator and transformer rooms, under the direct control of a public utility, separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

Section 903.3.1.3; add the following:

[F] 903.3.1.3 NFPA 13D sprinkler systems. Where allowed, *automatic sprinkler systems* installed in one- and two-family *dwellings* and *townhouses* shall be installed throughout in accordance with NFPA 13D or in accordance with state law.

Section 903.3.5; add a second paragraph to read as follows:

Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10 psi safety factor.

Section 903.4; add a second paragraph after the exceptions to read as follows:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 903.4.2; add second paragraph to read as follows:

The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

Section 903.6.3; add Section 903.6.3 to read as follows:

[F] 903.6.3 Spray booths and rooms. New and existing spray booths and spray rooms shall be protected by an approved automatic fire-extinguishing system in accordance with Section 1504.

Section 905.2; change to read as follows:

905.2 Installation standard. Standpipe systems shall be installed in accordance with this section and NFPA 14. Manual dry standpipe systems shall be supervised with a minimum of 10 psig and a maximum of 40 psig air pressure with a high/low alarm.

Add Section 905.3.8 and exception to read as follows:

905.3.8 Building Area. In buildings exceeding 10,000 square feet in area per story, Class I automatic wet or manual wet standpipes shall be provided where any portion of the building's interior area is more than 200 feet (60960 mm) of travel, vertically and horizontally, from the nearest point of fire department vehicle access.

Exception: Automatic dry and semi-automatic dry standpipes are allowed as provided for in NFPA 14.

Section 905.4, item #5; change to read as follows:

5. Where the roof has a slope less than four units vertical in 12 units horizontal (33.3-percent slope), each standpipe shall be provided with a two-way hose connection located either … *{remainder of language unchanged}.*

905.4; add the following item #7:

7. Class I standpipes shall also be required in all occupancies in which the distance from accessible points for Fire Department ingress to any point in the structure exceeds two hundred fifty feet (250') along the route that a fire hose is laid as measured from the fire lane. When required by this Chapter, standpipe connections shall be placed adjacent to all required exits to the structure and at two hundred feet (200') intervals along major corridors thereafter.

Section 905.9; add a second paragraph after the exceptions to read as follows:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 906.1 {Where required}; change exception to item 1 as follows:

Exception: In R-2 occupancies, portable fire extinguishers shall be required only in locations specified in items 2. through 6. where each dwelling unit is provided with a portable fire extinguisher having a minimum rating of 1-A:10-B:C.

Add Section 907.1.4 to read as follows:

[F] 907.1.4 Design Standards. All alarm systems new or replacement shall be addressable. Alarm systems serving more than 20 smoke detectors shall be analog addressable.

Exception: Existing systems need not comply unless the total building remodel or expansion initiated after the effective date of this code, as adopted, exceeds 30% of the building. When cumulative building remodel or expansion exceeds 50% of the building must comply within 18 months of permit application.

Section 907.2.1; change to read as follows:

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies having an occupant load of 300 or more persons or more than 100 persons above or below the lowest level of exit discharge. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy. Activation of fire alarm notification appliances shall:

1. Cause illumination of the *means of egress* with light of not less than 1 footcandle (11 lux) at the walking surface level;
2. Stop any conflicting or confusing sounds and visual distractions.

Section 907.2.3; change to read as follows:

907.2.3 Group E. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group E educational occupancies. When *automatic sprinkler systems* or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100' open space, all buildings, whether portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

Exceptions:

1. A manual fire alarm system is not required in Group E educational and day care occupancies with an occupant load of less than 50 when provided with an approved automatic sprinkler system.

1.1 Residential In-Home day care with not more than 12 children may use interconnected single station detectors in all habitable rooms. (For care of more than five children 2 1/2 or less years of age, see Section 907.2.6.)

{Remainder of exceptions unchanged}

Section 907.2.13; change to read as follows:

907.2.13 High-rise buildings. Buildings with a floor used for human occupancy located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access shall be provided with an automatic smoke detection system in accordance with Section 907.2.13.1, a fire department communication system in accordance with Section 907.2.13.2 and an emergency voice/alarm communication system in accordance with Section 907.6.2.2.

Section 907.2.13, exception #3; change to read as follows:

3. Buildings with an occupancy in Group A-5 in accordance with Section 303.1 when used for open air seating; however, this exception does not apply to accessory uses including but not limited to sky boxes, restaurants and similarly enclosed areas.

Section [F] 907.4.2.6; add new Section 907.4.2.6; to read as follows:

[F] 907.4.2.6 Type. Manual alarm initiating devices shall be an approved double action type.

Section [F] 907.6.1.1; add Section [F] 907.6.1.1 to read as follows:

[F] 907.6.1.1 Installation. All fire alarm systems shall be installed in such a manner that a failure of any single initiating device or single open in an initiating circuit conductor will not interfere with the normal operation of other such devices. All initiating circuit conductors shall be Class "A" wired with a minimum of six feet separation between supply and return circuit conductors. IDC - Class "A" Style D; SLC - Class "A" Style 6; NAC - Class "B" Style Y. The IDC from an addressable device used to monitor the status of a suppression system may be wired Class B, Style B provided the distance from the addressable device is within 10-feet of the suppression system device.

Section [F] 907.6.5.2; add new Section 907.6.5.2 to read as follows:

[F] 907.6 .5.2 Communication Requirements. All alarm systems, new or replacement, shall transmit alarm, supervisory and trouble signals descriptively to the approved central station, remote supervisory station or proprietary supervising station as defined in NFPA 72, with the correct device designation and location of addressable device identification. Alarms shall not be permitted to be transmitted as a General Alarm or Zone condition.

Section 910.1; amend exception 2 to read as follows:

2. Where areas of buildings are equipped with early suppression fast-response (ESFR) sprinklers, only manual smoke and heat vents shall be required within these areas. Automatic smoke and heat vents are prohibited.

Section 910.2; add subsections 910.2.3 with exceptions and 910.2.4 to read as follows:

910.2.3 Group H. Buildings and portions thereof used as a Group H occupancy as follows:

1. In occupancies classified as Group H-2 or H-3, any of which are more than 15,000 square feet (1394 m^2) in single floor area.

   Exceptions:

   1. Buildings of noncombustible construction containing only noncombustible materials.
   2. In areas of buildings in Group H used for storing Class 2, 3 and 4 liquid and solid oxidizers, Class 1 and unclassified detonable organic peroxides, Class 3 and 4 unstable (reactive) materials, or Class 2 or 3 water-reactive materials as required for a high-hazard commodity classification.

910.2.4 Exit access travel distance increase. Buildings and portions thereof used as a Group F-1 or S-1 occupancy where the maximum exit access travel distance is increased in accordance with Section 1016.3.

Table 910.3; change the title of the first row of the table to read as follows:

[F] TABLE 910.3
REQUIREMENTS FOR DRAFT CURTAINS AND SMOKE AND HEAT VENTSa

OCCUPANCY GROUP AND COMMODITY CLASSIFICATION	DESIGNATED STORAGE HEIGHT (feet)	MINIMUM DRAFT CURTAIN DEPTH (feet)	MAXIMUM AREA FORMED BY DRAFT CURTAINS (square feet)	VENT-AREA TO FLOOR-AREA RATIOc	MAXIMUM SPACING OF VENT CENTERS (feet)	MAXIMUM DISTANCE TO VENTS FROM WALL OR DRAFT CURTAINSb (feet)
Group F-1, H and S-1	—	0.2 × Hd but ≥ 4	50,000	1:100	120	60
{Balance of table remains unchanged}						

Section 910.3.2.2; add second paragraph to read as follows:

The automatic operating mechanism of the smoke and heat vents shall operate at a temperature rating at least 100 degrees F (approximately 38 degrees Celsius) greater than the temperature rating of the sprinklers installed.

[F] 912.2.3 Hydrant distance. An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lays.

Section 913.1; Add second paragraph and exception to read as follows:

When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than 3 ft. in width and 6 ft. - 8 in. in height, regardless of any interior doors that are provided. A key box shall be provided at this door, as required by Section 506.1.

Exception: When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the fire code official. Access keys shall be provided in the key box as required by IFC Section 506.1.

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IBC CHAPTER 10, MEANS OF EGRESS.

Section 1004.1.1; delete exception:

1004.1.1 Areas without fixed seating. The number of occupants shall be computed at the rate of one occupant per unit of area as prescribed in Table 1004.1.1. For areas without fixed seating, the occupant load shall not be less than that number determined by dividing the floor area under consideration by the occupant per unit of area factor assigned to the occupancy as set forth in Table 1004.1.1. Where an intended use is not listed in Table 1004.1.1, the building official shall establish a use based on a listed use that most nearly resembles the intended use.

Section 1007.1; add the following exception #4:

Exceptions:

4. Buildings regulated under State Law and built in accordance with State registered plans, including any variances or waivers granted by the State, shall be deemed to be in compliance with the requirements of Section 1007.

Section 1008.1.9.3; Locks and Latches; add section as follows:

1008.1.9.3, Locks and latches.

(3.1) Where egress doors are used in pairs and positive latching is required, approved automatic flush bolts shall be permitted to be used, provided that both leaves achieve positive latching regardless of the closing sequence and the door leaf having the automatic flush bolts has no doorknobs or surface mounted hardware.

Section 1008.1.9.4; amend exceptions #3 and #4 as follows:

Exceptions: {*Text of Exceptions 1 and 2 unchanged}*

3. Where a pair of doors serves an *occupant load* of less than 50 persons in a Group B, F, M or S occupancy, *[remaining text unchanged]*
4. Where a pair of doors serves a Group B, F, M or S occupancy, *[remaining text unchanged]*

Section 1008.1.9.8; change to read as follows:

1008.1.9.8. Electromagnetically locked egress doors. Doors in the *means of egress* that are not otherwise required to have panic hardware in buildings with an occupancy in Group A, B, E, I-1, I-2, M, R-1 or R-2 and doors to tenant spaces in Group A, B, E, I-1, I-2, M, R-1 or R-2 shall be permitted to be electromagnetically locked if equipped with *listed* hardware that incorporates a built-in switch and meet the requirements below: *[remaining text unchanged]*

Section 1015.7; add new section 1015.7 to read as follows:

1015.7 Electrical Rooms. For electrical rooms, special exiting requirements may apply. Reference the electrical code as adopted.

Section 1016.3; add new section 1016.3 to read as follows:

1016.3. Roof Vent Increase. In buildings that are one story in height, equipped with automatic heat and smoke roof vents complying with Section 910 and equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, the maximum exit access travel distance shall be 400 feet for occupancies in Group F-1 or S-1.

Section 1018.1; add exception #5 to read as follows:

(5.) In Group B office buildings, corridor walls and ceilings need not be of fire-resistive construction within office spaces of a single tenant when the space is equipped with an approved automatic fire alarm system within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor.

Section 1018.6; amend to read as follows:

1018.6, Corridor Continuity. All corridors shall be continuous from the point of entry to an *exit,* and shall not be interrupted by intervening rooms.

…*{Exception unchanged}*…

Section 1022.1; add exceptions #8 and #9 to read as follows:

8. In other than occupancy Groups H and I, a maximum of 50 percent of egress stairways serving one adjacent floor are not required to be enclosed, provided at least two means of egress are

provided from both floors served by the unenclosed stairways. Any two such interconnected floors shall not be open to other floors.

9. In other than occupancy Groups H and I, interior egress stairways serving only the first and second stories of a building equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 are not required to be enclosed, provided at least two means of egress are provided from both floors served by the unenclosed stairways. Such interconnected stories shall not be open to other stories.

Section 1022.9; amend section to read as follows:

1022.9. Smokeproof enclosures and pressurized stairways. In buildings required to comply with Section 403 or 405, each of the exit enclosures serving a story with a floor service not more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access or more than 30 feet (9 144 mm) below… *{remaining language unchanged}*

Section 1024.1; change to read as follows:

1024.1; General. *Approved* luminous egress path markings delineating the exit path shall be provided in buildings of Groups A, B, E, I, M and R-1 having occupied floors located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access in accordance with… *{Remaining language unchanged}*

Section 1026.6; amend exception #4 to read as follows:

Exceptions: *{Exceptions 1 - 3 unchanged}*

4. *Separation from the open-ended corridors* of the building… *{remaining language unchanged}*

———

IBC CHAPTER 11, ACCESSIBILITY

Section 1101.2; add an exception to read as follows:

Exception: Buildings regulated under State Law and built in accordance with State registered plans, including any variances or waivers granted by the State, shall be deemed to be in compliance with the requirements of this Chapter.

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IBC CHAPTER 15, ROOF ASSEMBLIES & ROOFTOP STRUCTURES

Table 1505.1; replace footnotes b and c with the following:

b. Non-classified roof coverings shall be permitted on buildings of U occupancies having not more than 120 sq. ft. of projected roof area. When exceeding 120 sq. ft of projected roof area, buildings of U occupancies may use non-rated non-combustible roof coverings.

Section 1505.7; delete the section.

Section 1510.1; add a sentence to read as follows:

All individual replacement shingles or shakes shall be in compliance with the rating required by Table 1505.1.

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IBC CHAPTER 16, STRUCTURAL DESIGN

Section 1612.3; insert jurisdiction name & date as follows:

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the applicable governing authority shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitle "The Flood Insurance Study for the City of Kyle," dated March 01, 2005, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

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IBC CHAPTER 23, WOOD.

Section 2308.4.3; add Section 2308.4.3 to read as follows:

2308.4.3 Application to engineered design. When accepted by the Building Official, any portion of this section is permitted to apply to buildings that are otherwise outside the limitations of this section provided that:

1. The resulting design will comply with the requirements specified in Chapter 16;
2. The load limitations of various elements of this section are not exceeded; and
3. The portions of this section which will apply are identified by an engineer in the construction documents.

_____

IBC CHAPTER 29, PLUMBING SYSTEMS.

Section [F]2901.1; add a sentence to read as follows:

The provisions of this Chapter are meant to work in coordination with the provisions of Chapter 4 of the International Plumbing Code. Should any conflicts arise between the two chapters, the Building Official shall determine which provision applies.

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IBC CHAPTER 30, ELEVATORS & CONVEYING SYSTEMS.

Section 3006.1; add Section 3006.1 to read as follows and renumber remaining sections:

3006.1, General. Elevator machine rooms shall be provided." *{Renumber remaining sections.}*

Section [F] 3006.4 {[F] 3006.5 if previous amendment adopted}; add a sentence to read as follows and delete exceptions #1 and #2.:

[F] 3006.4. Machine Rooms: {language unchanged}… Storage shall not be allowed within the elevator machine room. Provide approved signage at each entry door to the elevator machine room stating "*Elevator Machinery - No Storage Allowed.*"

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IBC CHAPTER 31, SPECIAL CONSTRUCTION.

Section 3109.1; change to read as follows:

3109.1 General. Swimming pools shall comply with the requirements of this section and other applicable sections of this code as well as also complying with applicable state laws.

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IBC CHAPTER 34, EXISTING STRUCTURES.

Section 3412.2; insert date as follows:

> **3412.2 Applicability.** Structures existing prior to *[Date to coincide with the effective date of building codes]*, in which there is work involving additions, alterations or changes of occupancy shall be made to comply with the requirements of this section or the provisions of Sections 3403 through 3409. The provisions in Sections 3412.2.1 through 3412.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S, and U. These provisions shall not apply to buildings with occupancies in Group H or I.

(Ord. No. 342, § 1, 11-16-1999; Ord. No. 342-1, § 2, 12-18-2001; Ord. No. 678, §§ 1, 2, 11-15-2011; Ord. No. 735, §§ 1, 2, 8-6-2013)

State Law reference— Adoption of International Building Code, V.T.C.A., Local Government Code § 214.216.

Sec. 8-24. - International Plumbing Code.

(a) *Adopted.*

(1) The International Plumbing Code, 2009 Edition, including Appendix Chapters C, D, E, F and G as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One (1) copy of the 2009 edition of the International Plumbing Code, marked Exhibit "C", is incorporated herein by reference and shall be filed in the office of the City Secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Plumbing Code as adopted and the other provisions of this ordinance, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

Table of Contents, Chapter 7, Section 714; change to read as follows:

> Section 714 Engineered Drainage Design 67

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IPC CHAPTER 1, ADMINISTRATION

Section 101.1; insert jurisdiction name as follows:

> **101.1 Title.** These regulations shall be known as the *International Plumbing Code* of City of Kyle, hereinafter referred to as "this code."

Section 102.8; change to read as follows:

> **102.8 Referenced codes and standards.** The codes and standards referenced in this code shall be those that are listed in Chapter 13 and such codes, when specifically adopted, and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Where the differences occur between provisions of this code and the referenced standards, the provisions of this code shall be the minimum requirements. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be

considered to reference the amendments as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the *National Electrical Code* as adopted.

Sections 106.6.2 and 106.6.3; insert fee schedule & percentages as follows:

106.6.2 Fee schedule. The fees for all plumbing work shall be as adopted by ordinance of the governing body of the jurisdiction.

106.6.3 Fee Refunds. The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder that was erroneously paid or collected.
2. Not more than 70 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 30 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

Sections 108.4 and 108.5; change to read as follows:

108.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair plumbing work in violation of the *approved* construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than $2,000 dollars or by imprisonment not exceeding 10 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

108.5 Stop work orders. Upon notice from the code official, work on any plumbing system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exist, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

Section 109; delete entire section and insert the following:

109 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

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IPC CHAPTER 3, GENERAL REGULATIONS.

Section 301.3; revised to read as follows:

301.3 Connections to drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent indirect waste systems required by Chapter 8.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an

approved gray water system for flushing of water closets and urinals or for subsurface landscape irrigation.

{remainder of language unchanged}

Section 305.6.1; insert number of inches in two locations as follows:

305.6.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be a minimum of 12 inches (304 mm) below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 12 inches (304 mm) below grade.

Section 305.9; change to read as follows:

305.9 Protection of components of plumbing system. Components of a plumbing system installed within 3 feet along alleyways, driveways, parking garages or other locations in a manner in which they would be exposed to damage shall be recessed into the wall or otherwise protected in an *approved* manner.

Sections 312.10.1 and 312.10.2; change to read as follows:

312.10.1 Inspections. Annual inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable. In the absence of local provisions, the owner is responsible to ensure that testing is performed.

312.10.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies, hose connection backflow preventers, and spill-proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with applicable local provisions. In the absence of local provisions, the owner is responsible to ensure that testing is done in accordance with one of the following standards:

{list of standards unchanged}

Section 314.2.1; change to read as follows:

314.2.1 Condensate disposal. Condensate from all cooling coils and evaporators shall be conveyed from the drain pan outlet to an *approved* place of disposal. … {language unchanged} … Condensate shall not discharge into a street, alley, sidewalk, rooftop, or other areas so as to cause a nuisance.

———

IPC CHAPTER 4, FIXTURES, FAUCETS & FITTINGS.

Section 401.1; add a sentence to read as follows:

The provisions of this Chapter are meant to work in coordination with the provisions of the Building Code. Should any conflicts arise between the two chapters, the *Code Official* shall determine which provision applies.

Section 403.1.2; add Section 403.1.2 to read as follows:

403.1.2 Finish material. Finish materials shall comply with Section 1209 of the *International Building Code.*

Section 409.2; change to read as follows:

409.2 Water connection. The water supply to a commercial dishwashing machine shall be protected against backflow by an air gap or backflow preventer in accordance with Section 608.

Section 410.1; change to read as follows:

410.1 Approval. Drinking fountains shall conform to ASME A112.19.1M, ASME A112.19.2M or ASME A112.19.9M, and water coolers shall conform to ARI 1010. Drinking fountains and water coolers shall conform to NSF 61, Section 9.

Exception: A drinking fountain need not be provided in a drinking or dining establishment.

Section 412.4; change to read as follows:

412.4 Required location. Floor drains shall be installed in the following areas.

1. In public coin-operated laundries and in the central washing facilities of multiple family dwellings, the rooms containing automatic clothes washers shall be provided with floor drains located to readily drain the entire floor area. Such drains shall have a minimum outlet of not less than 3 inches (76 mm) in diameter.
2. Commercial kitchens. In lieu of floor drains in commercial kitchens, the code official may accept floor sinks.

Section 417.5; change to read as follows:

417.5 Shower floors or receptors. Floor surfaces shall be constructed of impervious, noncorrosive, nonabsorbent and waterproof materials.

Thresholds shall be a minimum of 2 inches (51 mm) and a maximum of 9 inches (229 mm), measured from top of the drain to top of threshold or dam. Thresholds shall be of sufficient width to accommodate a minimum twenty-two (22) inch (559 mm) door.

Exception: Showers designed to comply with ICC/ANSI A117.1.

Section 417.5.2; change to read as follows:

417.5.2 Shower lining. Floors under shower compartments, except where prefabricated receptors have been provided, shall be lined and made water tight utilizing material complying with Sections 417.5.2.1 through 417.5.2.5. Such liners shall turn up on all sides at least 3 inches (76 mm) above the finished threshold level and shall extend outward over the threshold and fastened to the outside of the threshold jamb. Liners shall be recessed and fastened to an *approved* backing so as not to occupy the space required for wall covering, and shall not be nailed or perforated at any point less than 1 inch (25 mm) above the finished threshold. Liners shall be pitched one-fourth unit vertical in 12 units horizontal (2-percent slope) and shall be sloped toward the fixture drains and be securely fastened to the waste outlet at the seepage entrance, making a water-tight joint between the liner and the outlet. The completed liner shall be tested in accordance with Section 312.9 and Section 417.7.

Section 417.7; add Section 417.7 to read as follows:

417.7 Test for shower receptors. Shower receptors shall be tested for water tightness by filling with water to the level of the rough threshold. The drain shall be plugged in a manner so that both sides of pans shall be subjected to the test at the point where it is clamped to the drain.

Section 419.3; change to read as follows:

419.3 Surrounding material. Wall and floor space to a point 2 feet (610 mm) in front of a urinal lip and 4 feet (1219 mm) above the floor and at least 2 feet (610 mm) to each side of the urinal shall be waterproofed with a smooth, readily cleanable, hard, nonabsorbent material.

IPC CHAPTER 5, WATER HEATERS

Section 502.3; change to read as follows:

502.3 Water heaters installed in attics. Attics containing a water heater shall be provided with an opening and unobstructed passageway large enough to allow removal of the water heater. The passageway shall not be less than 30 inches (762 mm) high and 22 inches (559 mm) wide and not more than 20 feet (6096 mm) in length when measured along the centerline of the passageway from the opening to the water heater. The passageway shall have continuous solid flooring not less than 24 inches (610 mm) wide. A level service space at least 30 inches (762 mm) deep and 30 inches (762 mm) wide shall be present at the front or service side of the water heater. The clear access opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions are not large enough to allow removal of the water heater.

Section 502.6; Add Section 502.6 to read as follows:

502.6 Water heaters above ground or floor. When the attic, roof, mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A max 10 gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and a water heater is installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

502.6.1 Illumination and convenience outlet. Whenever the mezzanine or platform is not adequately lighted or access to a receptacle outlet is not obtainable from the main level, lighting and a receptacle outlet shall be provided in accordance with Section 502.1.

Section 504.6, items 2, 5, and 10; change text to read as follows:

504.6 Requirements for discharge as follows. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

2. Discharge through an *air gap.*
5. Discharge to an indirect waste receptor or to the outdoors. Where discharging to the outdoors in areas subject to freezing, discharge piping shall be first piped to an indirect waste receptor through an air gap located in a conditioned area.
10. Not terminate less than 6 inches or more than 24 inches above grade nor more than 6 inches above the waste receptor.

IPC CHAPTER 6, WATER SUPPLY & DISTRIBUTION.

Section 604.4; add Section 604.4.1 to read as follows:

604.4.1 State maximum flow rate. Where the State mandated maximum flow rate is more restrictive than those of this section, the State flow rate shall take precedence.

Section 606.1; delete items #4 and #5.

Section 606.2; change to read as follows:

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

1. On the fixture supply to each plumbing fixture other than bathtubs and showers in one- and two-family residential occupancies, and other than in individual sleeping units that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.
2. On the water supply pipe to each appliance or mechanical equipment.

Section 608.1; change to read as follows:

608.1 General. A potable water supply system shall be designed, installed and maintained in such a manner so as to prevent contamination from nonpotable liquids, solids or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system. Backflow preventer applications shall conform to applicable local regulations, Table 608.1, and as specifically stated in Sections 608.2 through 608.16.10.

Section 608.16.5; change to read as follows:

608.16.5 Connections to lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double-check assembly or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

Section 608.17; change to read as follows:

608.17 Protection of individual water supplies. An individual water supply shall be located and constructed so as to be safeguarded against contamination in accordance with applicable local regulations. In the absence of other local regulations, installation shall be in accordance with Sections 608.17.1 through 608.17.8.

———

IPC CHAPTER 7, SANITARY DRAINAGE.

Section 712.5; add Section 712.5 to read as follows:

712.5 Dual Pump System. All sumps shall be automatically discharged and, when in any "public use" occupancy where the sump serves more than 10 fixture units, shall be provided with dual pumps or ejectors arranged to function independently in case of overload or mechanical failure. For storm drainage sumps and pumping systems, see Section 1113.

Section 714, 714.1; change to read as follows:

SECTION 714
ENGINEERED DRAINAGE DESIGN

714.1 Design of drainage system. The sizing, design and layout of the drainage system shall be permitted to be designed by *approved* design methods.

———

IPC CHAPTER 8, INDIRECT/SPECIAL WASTE.

Section 802.4; add a sentence to the end of the paragraph to read as follows:

802.4 Standpipes. Standpipes shall be … *{language unchanged}* … drains for rodding. No standpipe shall be installed below the ground.

———

IPC CHAPTER 9, VENTS.

Section 904.1; insert number of inches as follows:

904.1 Roof extension. All open vent pipes that extend through a roof shall be terminated at least six (6) inches (152 mm) above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least 7 feet (2134 mm) above the roof.

Section 906.1; change to read as follows:

906.1 Distance of trap from vent. Each fixture trap shall have a protecting vent located so that the slope and the developed length in the fixture drain from the trap weir to the vent fitting are within the requirements set forth in Table 906.1.

———

IPC CHAPTER 11, STORM DRAINAGE.

Section 1101.8; change to read as follows:

1101.8 Cleanouts required. Cleanouts shall be installed in the building storm drainage system and shall comply with the provisions of this code for sanitary drainage pipe cleanouts.

Exception: Subsurface drainage system

Section 1106.1; change to read as follows:

1106.1 General. The size of the vertical conductors and leaders, building storm drains, building storm sewers, and any horizontal branches of such drains or sewers shall be based on 4.25 inches per hour.

Section 1107.3; change to read as follows:

1107.3 Sizing of secondary drains. Secondary (emergency) roof drain systems shall be sized in accordance with Section 1106. Scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1101.7. Scuppers shall not have an opening dimension of less than 4 inches (102 mm). The flow through the primary system shall not be considered when sizing the secondary roof drain system.

———

IPC CHAPTER 12, SPECIAL PIPING & STORAGE SYSTEMS.

Section 1202.1; delete Exception 2.

(Ord. No. 342, § 2, 11-16-1999; Ord. No. 342-1, § 4, 12-18-2001; Ord. No. 678, §§ 5, 6, 11-15-2011; Ord. No. 735, §§ 5, 6, 8-6-2013)

Sec. 8-25. - National Electrical Code.

(a) *Adopted.*

(1) The National Electrical Code, 2008 edition, as published by the National Fire Prevention Association, is hereby adopted, and designated as the electrical code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2008 edition of the National Electrical Code, marked Exhibit "I," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said National Electrical Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

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NEC CHAPTER 1, GENERAL.

Article 100, Definitions; amended by the addition of the following:

State of Texas Journeyman Electrician's License: A State of Texas Journeyman Electrician's License shall entitle the holder thereof to perform any type of electrical work under the supervision of a Master Electrician, but in no case shall a Journeyman Electrician contract for or engage in the business of electrical work of any nature, nor perform electrical work of any nature, except under the supervision of a Master Electrician.

State of Texas Master Electrician's License: A State of Texas Master Electrician's License shall entitle the holder to contract for and engage in the business of electrical wiring of any nature and to employ and supervise Journeyman Electricians.

State of Texas Residential Wireman License: A State of Texas Residential Wireman License shall entitle the holder to only perform electrical installation in single-family and multi-family dwellings not exceeding four stories.

Sec. 8-38, 8-39 of the Code of Ordinances; Contractor Registrations, is added to read:

(A) Contractor registration.

1) No person, firm or corporation shall engage in the business of electrical construction or install, augment, alter, or maintain any electrical equipment or system, within the city, without first obtaining a contractor registration as required by this chapter.

2) Any person, firm or corporation performing any electrical work within the city without possessing a contractor registration shall be subject to an investigation fee for contractor registration.

The investigation fee will be assessed as a special inspection fee as adopted by ordinance of the governing body of the jurisdiction. The payment of investigation fees shall not relieve any person from complying with this chapter, nor from any other penalties prescribed by this chapter or by law.

(B) Application: An application for contractor registration required by this chapter shall be filed with the Building Inspection Department. Such applications shall be on forms prepared and furnished by the city. Each applicant shall state in writing the information required, in order that the building official may determine if he has the qualifications prescribed by this chapter.

(C) Prerequisites of specific applicants:

1) **Electrical contractor.** An electrical contractor's registration, enabling the holder to secure permits for and engage in the business of installing, augmenting, altering and maintaining electrical equipment and systems, shall not be valid unless:

(a) The business is qualified by a State of Texas master electrician, licensed under provisions of this chapter, who:

1. Is an owner or full-time employee of the business; and

2. Actively supervises the daily operation of the business; and

3. Is not engaged in or employed by any other business at the same time that the electrical contracting business is performing electrical work within the city.

(b) A State of Texas master electrician shall not qualify more than one electrical contracting business at any one time.

(c) The business owner and/or State of Texas master electrician qualifying the business shall be jointly responsible for the following:

1. Obtaining and paying for permits; and

2. Having a licensed electrician, licensed under the provisions of this chapter, on each job, supervising the work undertaken by the electrical contracting company; and

3. Correcting deficiencies, errors or defects in installations within this jurisdiction.

(d) Homeowner's right. Nothing herein shall prohibit any home owner from personally installing electrical conductors or equipment within his own homestead premises, providing that the owner applies for and secures a permit, pays required fees, does work in accordance with this chapter, requests inspections of his work during the process of the installation, and receives final approval of his work upon completion.

(e) Recognition of licenses. Any person holding a currently valid master electrician's license of the State of Texas may apply for and receive a contractor's registration in the City of Kyle without taking an examination, providing the following conditions are complied with:

1. He/she shall comply with all other requirements of this chapter.

(f) Not transferable. No registration shall be transferable.

(g) Expiration and renewal.

1. All registrations issued shall expire at 12:00 midnight, one year from date of issuance, and shall be renewed on or before such date.

2) **License for firms or corporations.** The master licensing under this chapter of any member, officer, or supervisory employee of a firm or corporation shall be sufficient to qualify the firm or corporation to engage in the business or trade for which license application has been made. Should the holder of the license through which a firm or corporation engages in such business or trade terminate his or her relationship with such firm or corporation, such firm or corporation may continue in such business trade, if it has in its employ in a supervisory capacity a person whose qualifications are acceptable to the Board.

Fees shall be provided for in the city approved fee schedule (Appendix A of the Kyle Code of Ordinances).

(Ord. No. 342, § 3, 11-16-1999; Ord. No. 342-1, § 6, 12-18-2001; Ord. No. 678, § 17, 11-15-2011; Ord. No. 735, §§ 17, 18, 8-6-2013)

State Law reference— Adoption of National Electrical Code, V.T.C.A., Local Government Code § 214.214.

Sec. 8-26. - International Electrical Code.

(a) *Adoption.* That certain document, one copy of which is on file in the office of the city secretary, being marked and designated as the International Electrical Code, 2000 edition, excluding all appendixes published by the International Code Council, is hereby adopted as the electrical code of the city for regulating the design, construction, quality of materials, erection, installation, alteration, repair,

location, relocation, replacement, addition to, use or maintenance of electrical systems in the city and providing for the issuance of permits and collection of fees therefor. The regulations, provisions, conditions and terms of such International Electrical Code, 2000 edition, published by the International Code council, on file in the office of the city secretary are hereby referred to, adopted and made a part of this section as if fully set out in this article.

(b) *Amendments.* The International Electrical Code is amended as follows:

Each reference to "Jurisdiction" or location for insertion of name of jurisdiction shall mean the City of Kyle, Texas

Section 404.2. The fee schedule is located in appendix A to the Code of Ordinances.

(Ord. No. 342-1, § 7, 12-18-2001)

Sec. 8-27. - International Mechanical Code.

(a) *Adopted.*

(1) The International Mechanical Code, 2009 edition, including Appendix Chapter A as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Mechanical Code, marked Exhibit "D," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Mechanical Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

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IMC CHAPTER 1, ADMINISTRATION.

Section 101.1; insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *International Mechanical Code* of City of Kyle, hereinafter referred to as "this code."

Section 102.8; change to read as follows:

102.8 Referenced codes and standards. The codes and standards referenced herein shall be those that are listed in Chapter 15 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the *National Electrical Code* as adopted.

Sections 106.5.2; insert fee schedule as follows:

106.5.2 Fee schedule. The fees for all mechanical work shall be as adopted by ordinance of the governing body of the jurisdiction.

Sections 106.5.3; insert percentages in two locations as follows:

106.5.3 Fee Refunds. The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder that was erroneously paid or collected.
4. Not more than 70 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
5. Not more than 30 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

Section 108.4; insert offense, dollar amount, number of days as follows:

108.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the *approved* construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than $2,000 dollars or by imprisonment not exceeding 10 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 108.5; insert dollar amount in two locations as follows:

108.5 Stop work orders. Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exist, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

Section 109; delete entire section and insert the following:

109 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

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IMC CHAPTER 3, GENERAL REGULATIONS.

Section 306.3; change to read as follows:

306.3 Appliances in attics. Attics containing appliances requiring *access* shall be provided … *{bulk of paragraph unchanged}* … side of the appliance. The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions are not large enough to allow removal of the largest appliance. As a minimum, for *access* to the attic space, provide one of the following:

1. A permanent stair.
2. A pull down stair with a minimum 300 lb (136 kg) capacity.
3. An *access* door from an upper floor level.
4. *Access* Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

Exceptions:

1. The passageway and level service space are not required where the appliance is capable of being serviced and removed… *{remainder of section unchanged}*

Section 306.5; change to read as follows:

306.5 Equipment and appliances on roofs or elevated structures. Where *equipment* requiring *access* and appliances are installed on roofs or elevated structures at an aggregate height exceeding 16 feet (4877 mm), such *access* shall be provided by a permanent *approved* means of *access.* Permanent exterior ladders providing roof *access* need not extend closer than 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the *equipment* and appliances' level service space. Such *access* shall … *{language unchanged}*… on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope). … *{remaining language unchanged}.*

A receptacle outlet shall be provided at or near the equipment and appliance location in accordance with the *National Electric Code.*

Section 306.5.1; change to read as follows:

306.5.1 Sloped roofs. Where appliances, *equipment*, fans or other components that require service are installed on roofs having slopes greater than 4 units vertical in 12 units horizontal and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof *access* to a level platform at the appliance. The level platform shall be provided on each side of the appliance to which *access* is required for service, repair or maintenance. The platform shall be not less than 30 inches (762 mm) in any dimension and shall be provided with guards. The guards shall extend not less than 42 inches (1067 mm) above the platform, shall be constructed so as to prevent the passage of a 21-inch-diameter (533 mm) sphere and shall comply with the loading requirements for guards specified in the *International Building Code.*

Section 306.6; add Section 306.6 to read as follows:

306.6 Water heaters above ground or floor. When the mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A max 10 gallon water heater (or larger with approval) is capable of being accessed through a lay-in ceiling and a water heater is installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

306.6.1 Whenever the mezzanine or platform is not adequately lighted or *access* to a receptacle outlet is not obtainable from the main level, lighting and a receptacle outlet shall be provided in accordance with Section 306.3.1.

Section 307.2.1; change to read as follows:

307.2.1 Condensate disposal. Condensate from all cooling coils and evaporators shall be conveyed from the drain pan outlet to an *approved* place of disposal. … {language unchanged} … Condensate shall not discharge into a street, alley, sidewalk, rooftop, or other areas so as to cause a nuisance.

Section 307.2.3; amend # 2 to read as follows:

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. Such overflow drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection. The conspicuous point shall not create a hazard such as dripping over a walking surface or other areas so as to create a nuisance.

IMC CHAPTER 4, VENTILATION.

Section 403.2.1; add an item #5 to read as follows:

5. Toilet rooms within private dwellings that contain only a water closet, lavatory or combination thereof may be ventilated with an *approved* mechanical recirculating fan or similar device designed to remove odors from the air.

———

IMC CHAPTER 5, EXHAUST SYSTEMS.

Section 504.6; add a sentence at the end of the paragraph to read as follows:

The size of duct shall not be reduced along its developed length nor at the point of termination.

———

IMC CHAPTER 6, DUCT SYSTEMS.

Section 607.5.1; change to read as follows:

607.5.1 Fire Walls. Ducts and air transfer openings permitted in fire walls in accordance with Section 705.11 of the International Building Code shall be protected with listed fire dampers installed in accordance with their listing. For hazardous exhaust systems see Section 510.1-510.9 IMC.

(Ord. No. 342, § 4, 11-16-1999; Ord. No. 342-1, § 5, 12-18-2001; Ord. No. 678, §§ 7, 8, 11-15-2011; Ord. No. 735, §§ 7, 8, 8-6-2013)

Sec. 8-28. - International Fuel Gas Code.

(a) *Adopted.*

(1) The International Fuel Gas Code, 2009 edition, as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Fuel Gas Code, marked Exhibit "E," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Fuel Gas Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

———

IFGC CHAPTER 1, ADMINISTRATION.

Section 101.1; Insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *Fuel Gas Code* of City of Kyle, hereinafter referred to as "this code."

Section 102.2; add an exception to read as follows:

Exception: Existing dwelling units shall comply with Section 621.2.

Section 102.8; change to read as follows:

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the *National Electrical Code* as adopted.

Section 106.6.2; insert fee schedule as follows:

106.6.2 Fee schedule. The fees for all plumbing work shall be as adopted by ordinance of the governing body of the jurisdiction.

Section 106.6.3; insert percentages in two locations as follows:

106.6.3 Fee Refunds. The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder that was erroneously paid or collected.
2. Not more than 70 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 30 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

Section 108.4; insert offense, dollar amount, number of days as follows:

108.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair plumbing work in violation of the *approved* construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than $2,000 dollars or by imprisonment not exceeding 10 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 108.5; insert dollar amounts in two locations as follows:

108.5 Stop work orders. Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exist, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

Section 109; delete entire section and insert the following:

109 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

———

IFGC CHAPTER 3, GENERAL REGULATIONS.

Section 304.10; change to read as follows:

304.10 Louvers and grilles. The required size of openings for combustion, ventilation and dilution air shall be based on the net free area of each opening. Where the free area through a design of louver, grille or screen is known, it shall be used in calculating the size opening required to provide the free area specified. Where the design and free area of louvers and grilles are not known, it shall be assumed that wood louvers will have 25-percent free area and metal louvers and grilles will have 50-percent free area. Screens shall have a mesh size not smaller than ¼ inch (6.4 mm). Nonmotorized louvers and grilles shall be fixed in the open position. Motorized louvers shall be interlocked with the appliance so that they are proven to be in the full open position prior to main burner ignition and during main burner operation. Means shall be provided to prevent the main burner from igniting if the louvers fail to open during burner start-up and to shut down the main burner if the louvers close during operation.

Section 304.11; change #8 to read as follows:

304.11 Combustion air ducts. Combustion air ducts shall comply with all of the following:

1. Ducts shall be constructed of galvanized steel complying with Chapter 6 of the International Mechanical Code or of a material having equivalent corrosion resistance, strength and rigidity.

   Exception: Within dwellings units, unobstructed stud and joist spaces shall not be prohibited from conveying combustion air, provided that not more than one required fireblock is removed.

2. Ducts shall terminate in an unobstructed space allowing free movement of combustion air to the appliances.
3. Ducts shall serve a single enclosure.
4. Ducts shall not serve both upper and lower combustion air openings where both such openings are used. The separation between ducts serving upper and lower combustion air openings shall be maintained to the source of combustion air.
5. Ducts shall not be screened where terminating in an attic space.
6. Horizontal upper combustion air ducts shall not slope downward toward the source of combustion air.
7. The remaining space surrounding a chimney liner, gas vent, special gas vent or plastic piping installed within a masonry, metal or factory-built chimney shall not be used to supply combustion air.

   Exception: Direct-vent gas-fired appliances designed for installation in a solid fuel-burning fireplace where installed in accordance with the manufacturer's instructions.

8. Combustion air intake openings located on the exterior of a building shall have the lowest side of such openings located not less than 12 inches (305 mm) vertically from the adjoining finished ground level or the manufacturer's recommendation, whichever is more restrictive.

Section 305.5; delete section

Section 306.3; change to read as follows:

[M] 306.3 Appliances in attics. Attics containing appliances requiring *access* shall be provided … *{bulk of paragraph unchanged}* … side of the *appliance.* The clear *access* opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger where such dimensions are not large enough to allow removal of the largest *appliance.* As a minimum, for *access* to the attic space, provide one of the following:

1. A permanent stair.
2. A pull down stair with a minimum 300 lb (136 kg) capacity.
3. An *access* door from an upper floor level.
4. *Access* Panel may be used in lieu of items 1, 2, and 3 with prior approval of the code official due to building conditions.

Exceptions:

1. The passageway and level service space are not required where the *appliance* is capable of being serviced and removed through the required opening.
2. Where the passageway is not less than …*{bulk of section to read the same}.*

Section 306.5; change to read as follows:

[M] 306.5 Equipment and appliances on roofs or elevated structures. Where *equipment* requiring *access* and appliances are installed on roofs or elevated structures at an aggregate height exceeding 16 feet (4877 mm), such *access* shall be provided by a permanent *approved* means of *access.* Permanent exterior ladders providing roof *access* need not extend closer than 12 feet (2438 mm) to the finish grade or floor level below and shall extend to the *equipment* and appliances' level service space. Such *access* shall … *{bulk of section to read the same}*… on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope). … *{bulk of section to read the same}.*

Section 306.5.1; change to read as follows:

[M] 306.5.1 Sloped roofs. Where appliances, *equipment*, fans or other components that require service are installed on roofs having slopes greater than 4 units vertical in 12 units horizontal and having an edge more than 30 inches (762 mm) above grade at such edge, a catwalk at least 16 inches in width with substantial cleats spaced not more than 16 inches apart shall be provided from the roof *access* to a level platform at the appliance. The level platform shall be provided on each side of the appliance to which *access* is required for service, repair or maintenance. The platform shall be not less than 30 inches (762 mm) in any dimension and shall be provided with guards. The guards shall extend not less than 42 inches (1067 mm) above the platform, shall be constructed so as to prevent the passage of a 21-inch-diameter (533 mm) sphere and shall comply with the loading requirements for guards specified in the *International Building Code.*

Add Section 306.7 to read as follows:

306.7 Water heaters above ground or floor. When the attic, roof, mezzanine or platform in which a water heater is installed is more than eight (8) feet (2438 mm) above the ground or floor level, it shall be made accessible by a stairway or permanent ladder fastened to the building.

Exception: A max 10 gallon water heater (or larger when approved by the *code official*) is capable of being accessed through a lay-in ceiling and a water heater is installed is not more than ten (10) feet (3048 mm) above the ground or floor level and may be reached with a portable ladder.

306.7.1. Illumination and convenience outlet. Whenever the mezzanine or platform is not adequately lighted or *access* to a receptacle outlet is not obtainable from the main level, lighting and a receptacle outlet shall be provided in accordance with Section 306.3.1.

———

IFGC CHAPTER 4, GAS PIPING INSTALLATIONS.

Section 401.5; add a second paragraph to read as follows:

Both ends of each section of medium pressure corrugated stainless steel tubing (CSST) shall identify its operating gas pressure with an *approved* tag. The tags are to be composed of aluminum or stainless steel and the following wording shall be stamped into the tag:

"WARNING
1/2 to 5 psi gas pressure
Do Not Remove"

Section 402.3; add an exception to read as follows:

Exception: Corrugated stainless steel tubing (CSST) shall be a minimum of 1/2" (18 EHD).

Section 404.10; change to read as follows:

404.10 Minimum burial depth. Underground piping systems shall be installed a minimum depth of 18 inches (458 mm) top of pipe below grade.

Section 404.10.1; delete.

Section 406.1; change to read as follows:

406.1 General. Prior to acceptance and initial operation, all piping installations shall be inspected and pressure tested to determine that the materials, design, fabrication, and installation practices comply with the requirements of this code. The permit holder shall make the applicable tests prescribed in Sections 406.1.1 through 406.1.5 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the code official when the piping system is ready for testing. The equipment, material, power and labor necessary for the inspections and test shall be furnished by the permit holder and the permit holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

Section 406.4; change to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a monometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

Section 406.4.1; change to read as follows:

406.4.1 Test pressure. The test pressure to be used shall be not less than 10 psig (68.9 kPa gauge), the piping and valves may be tested at a pressure of at least six inches (152) of mercury, measured with a manometer, slope gauge or spring gauge. For welded piping and piping carrying gas at pressures in excess of 14 inches water column pressure (3.48 kPa), the test pressure shall not be less than 60 pounds per square inch (413.4 kPa).

Section 406.4.2; change to read as follows:

406.4.2 Test duration. Test duration shall be held for a length of time satisfactory to the Code Official, but in no case for less than fifteen (15) minutes. For welded piping, and for piping carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa), the test duration shall be held for a length of time satisfactory to the Code Official, but in no case for less than thirty (30) minutes. *(Delete remainder of section.)*

IFGC 406.7 (IRC G2417.7) Purging requirements. The purging of piping shall be in accordance with Sections 406.7.1 through 406.7.3.

IFGC 406.7.3 (IRC G2417.7.3) Purging appliances and equipment. After the piping system has been placed in operation, appliances and equipment shall be purged before being placed into operation.

Add Section 409.1.4 to read as follows:

409.1.4 Valves in CSST installations. Shutoff valves installed with corrugated stainless steel (CSST) piping systems shall be supported with an *approved* termination fitting, or equivalent support, suitable for the size of the valves, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the valve. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's piping, fittings, and valves between anchors. All valves and supports shall be designed and installed so they will not be disengaged by movement of the supporting piping.

Section 410.1; add a second paragraph and exception to read as follows:

Access to regulators shall comply with the requirements for *access* to appliances as specified in Section 306.

Exception: A passageway or level service space is not required when the regulator is capable of being serviced and removed through the required attic opening.

———

IFGC CHAPTER 6, SPECIFIC APPLIANCES.

Section 614.6; add a sentence to read as follows:

The size of duct shall not be reduced along its developed length nor at the point of termination.

Section 621.2; add exception as follows:

621.2 Prohibited use. One or more unvented room heaters shall not be used as the sole source of comfort heating in a dwelling unit.

Exception: Existing *approved* unvented heaters may continue to be used in dwelling units, in accordance with the code provisions in effect when installed, when *approved* by the Code Official unless an unsafe condition is determined to exist as described in Section 108.7.

Section 624.1.1; change to read as follows:

624.1.1 Installation requirements. The requirements for water heaters relative to *access*, sizing, relief valves, drain pans and scald protection shall be in accordance with the *International Plumbing Code.*

(Ord. No. 342, § 5, 11-16-1999; Ord. No. 342-1, § 9, 12-18-2001; Ord. No. 678, §§ 9, 10, 11-15-2011; Ord. No. 735, §§ 9, 10, 8-6-2013)

Sec. 8-29. - Swimming Pool Code.

(a) *Adoption.* The Standard Swimming Pool Code, 1997 edition, including all appendix, as published by the Southern Building Code Congress International, Inc., a copy of which is on file in the office of the city secretary, is hereby adopted, and designated as the swimming pool code of the city, and is made a part hereof, as amended. The Standard Swimming Pool Code, 1997 edition, has been reviewed by the council and is hereby adopted and incorporated as fully as if set out at length herein and shall be maintained as a public record in the office of the city secretary. In the event a conflict is determined to exist between said Standard Swimming Pool Code as adopted and the other provisions of this article,

the latter provisions shall be construed as controlling and taking precedence over the former. State and federal law shall prevail in the event of any conflict between this article and state or federal law.

(b) *Exceptions.* Any codes noted or mentioned in the Standard Swimming Pool Code which are not formally adopted by this article shall be a guide only and are not subject to permit and enforcement.

(Ord. No. 342, § 6, 11-16-1999)

Sec. 8-30. - Amusement Device Code.

(a) *Adoption.* The Standard Amusement Device Code, 1997 edition, including all appendixes, as published by the Southern Building Code Congress International, Inc., a copy of which is on file in the office of the city secretary, is hereby adopted, and designated as the amusement device code of the city, and is made a part thereof, as amended. The Standard Amusement Device Code, 1997 edition, has been reviewed by the council and is hereby adopted and incorporated as fully as if set out at length herein and shall be maintained as a public record in the office of the city secretary. In the event a conflict is determined to exist between the Standard Amusement Device Code, 1997 edition, as adopted and the other provisions of this article, the latter provisions shall be construed as controlling and taking precedence over the former. State and federal law shall prevail in the event of any conflict between this article and state or federal law.

(b) *Exceptions.* Any codes noted or mentioned in the standard amusement device code which are not formally adopted by this article shall be a guide only and are not subject to permit and enforcement.

(Ord. No. 342, § 7, 11-16-1999)

Sec. 8-31. - International Fire Code.

(a) *Adopted.*

(1) The International Fire Code, 2009 edition, including Appendix Chapters B, C, D, F, H, I and J as published by the International Code Council, is hereby adopted, and designated as the fire code of the City of Kyle, and is made a part hereof, as amended. Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding.

(2) One copy of the 2009 edition of the International Fire Code, marked Exhibit "B," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) In the event a conflict is determined to exist between said International Fire Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

Note: Fire sprinkler code provisions for single-family dwellings and duplexes may be found in the International Residential Code.

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IFC CHAPTER 1, ADMINISTRATION

Section 101.1; Insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *International Fire Code* of City of Kyle, hereinafter referred to as "this code."

Section 102.1; change #3 to read as follows:

3. Existing structures, facilities and conditions when required in Chapter 46 or in specific sections of this code.

Section 102.7; change to read as follows:

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 47 and such codes, when specifically adopted, and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the *National Electrical Code* as adopted.

Section 105.3.3; change to read as follows:

105.3.3 Occupancy Prohibited before Approval. The building or structure shall not be occupied prior to the *fire code official* issuing a permit when required and conducting associated inspections indicating the applicable provisions of this code have been met.

Section 105.7; add Section 105.7.15 to read as follows:

105.7.15 Smoke control or exhaust systems. Construction permits are required for smoke control or exhaust systems as specified in Section 909 and Section 910 respectively. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

Section 105.7.15; add Section 105.7.16 to read as follows:

105.7.16 Electronic access control systems. Construction permits are required for the installation or modification of an electronic access control system, as specified in Section 503 and Section 1008. A separate construction permit is required for the installation or modification of a fire alarm system that may be connected to the access control system. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

Section 108; Delete entire section and insert the following:

108 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

Section 109.3; insert offense, dollar amount, number of days as follows:

109.3 Violation penalties. *Persons* who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the *approved construction documents* or directive of the *fire code official*, or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than $2000 dollars or by imprisonment not exceeding 10 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 111.4; insert dollar amount in two locations as follows:

111.4 Failure to comply. Any *person* who shall continue any work after having been served with a stop work order, except such work as that *person* is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

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IFC CHAPTER 2, DEFINITIONS.

Section 202; change definition of ATRIUM as follows:

[B] **ATRIUM.** An opening connecting three or more stories … *{remaining language unchanged}*

Section 202; amend definition of Ambulatory Health Care Facility as follows:

[B] **Ambulatory Health Care Facility.** *{add to existing definition}*

This group may include but not be limited to the following:

- Dialysis centers
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

Section 202; amend definition of FIRE WATCH as follows:

FIRE WATCH. A temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the *fire code official*, for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the fire department.

Section 202; add new definition of HIGH-RISE BUILDING to read as follows:

HIGH-RISE BUILDING. A building having any floors used for human occupancy located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access.

Section 202; add new definition of ADDRESSABLE FIRE DETECTION SYSTEM as follows:

ADDRESSABLE FIRE DETECTION SYSTEM. Any system capable of providing identification of each individual alarm-initiating device. The identification shall be in plain English and as descriptive as possible to specifically identify the location of the device in alarm. The system shall have the capability of alarm verification.

Section 202; add new definition of ANALOG ADDRESSABLE FIRE DETECTION SYSTEM as follows:

ANALOG ADDRESSABLE FIRE DETECTION SYSTEM. Any system capable of calculating a change in value by directly measurable quantities (voltage, resistance, etc.) at the sensing point. The physical analog may be conducted at the sensing point or at the main control panel. The system shall be capable of compensating for long-term changes in sensor response while maintaining a constant sensitivity. The compensation shall have a preset point at which a detector maintenance signal shall be transmitted to the control panel. The sensor shall remain capable of detecting and transmitting an alarm while in maintenance alert.

Section 202; add new definition of SELF-SERVICE STORAGE FACILITY as follows:

SELF-SERVICE STORAGE FACILITY. Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

Section 202; add new definition of STANDBY PERSONNEL as follows:

STANDBY PERSONNEL. Qualified fire service personnel, approved by the Fire Chief. When utilized, the number required shall be as directed by the Fire Chief. Charges for utilization shall be as normally calculated by the jurisdiction.

IFC CHAPTER 3, GENERAL REQUIREMENTS.

Section 307.2; change to read as follows:

307.2 Permit required. A permit shall be obtained from the *fire code official* in accordance with Section 105.6 prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or open burning. Application for such approval shall only be presented by and permits issued to the owner of the land upon which the fire is to be kindled.

Examples of state or local law, or regulations referenced elsewhere in this section may include but not be limited to the following:

1. Texas Commission on Environmental Quality guidelines and/or restrictions.
2. State, County or Local temporary or permanent bans on open burning.
3. Local written policies as established by the Code Official.

Section 307.4; change to read as follows:

307.4 Location. The location for open burning shall not be less than 100 feet (91 440 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 100 feet (91 440 mm) of any structure. {*exceptions unchanged}*

Section 307.4.3, Exceptions: change to read as follows:

Exceptions:

1. Portable outdoor fireplaces used at one- and two-family *dwellings.*
2. Where buildings, balconies and decks are protected by an approved automatic sprinkler system.

Section 308.1.4; change to read as follows:

308.1.4 Open-flame cooking devices. Open-flame cooking devices, charcoal grills and other similar devices used for cooking shall not be located or used on combustible balconies, decks, or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family *dwellings.*

Section 308.1.6.2, Exception #3; change to read as follows:

Exceptions:

{language unchanged}

3. Torches or flame-producing devices in accordance with Section 308.1.3.

Section 311.5; change to read as follows:

311.5 Placards. The *fire code official* is authorized to require marking of any vacant or abandoned buildings or structures determined to be unsafe pursuant to Section 110 of this code relating to structural or interior hazards, shall be marked as required by Section 311.5.1 through 311.5.5.

IFC CHAPTER 4, EMERGENCY PLANNING & PREPAREDNESS

Section 401.3; add Section 401.3.4 to read as follows:

401.3.4 False Alarms and Nuisance Alarms. False alarms and nuisance alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted in any manner.

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IFC CHAPTER 5, FIRE SERVICE FEATURES.

Section 501.4; change to read as follows:

501.4 Timing of installation. When fire apparatus access roads or a water supply for fire protection is required to be installed for any structure or development, they shall be installed, tested, and approved prior to the time of which construction has progressed beyond completion of the foundation of any structure.

Section 503.1.1; add the following to the end of the first paragraph:

Except for one- or two-family dwellings, the path of measurement shall be along a minimum of a ten feet (10') wide unobstructed pathway around the external walls of the structure.

Section 503.2.1; change to read as follows:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 24 feet (7315mm), exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 14 feet (4267 mm).

Section 503.2.2; change to read as follows:

503.2.2 Authority. The *fire code official* shall have the authority to require an increase in the minimum access widths and vertical clearances where they are inadequate for fire or rescue operations.

Section 503.3; change to read as follows:

503.3 Marking. Where required by the *fire code official, approved* striping or, when allowed by the fire chief, signs, or both, or other *approved* notices shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Signs, notices and striping shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

Subsections 503.3.1, 503.3.2, 503.3.3; add new subsections, so that such subsections shall read as follows:

503.3.1 Striping - Fire apparatus access roads shall be marked by painted lines of red traffic paint six inches in width to show the boundaries of the lane. The words "FIRE LANE NO PARKING TOW-AWAY ZONE", "FIRE LANE-TOW AWAY ZONE", or "FIRE LANE-NO PARKING" shall appear in four inch white letters at thirty-five (35) feet intervals on the red border markings along both sides of the fire lanes. Curb facing shall be used when available; Fire lane striping shall be continuous throughout the designated Fire lane and shall lay down along backside of head in parking spaces.

503.3.2 Signs - shall read "FIRE LANE NO PARKING TOW-AWAY ZONE", "FIRE LANE-TOW AWAY ZONE", or "FIRE LANE-NO PARKING" and shall be twelve (12) inches wide and eighteen (18) inches high. Signs shall be painted on a white background with letters and borders in red, using not less than two (2) inch lettering. Signs shall be permanently affixed to a stationary post and the bottom of the sign shall be six feet, six inches above finished grade. Signs shall be spaced not more than fifty (50) feet apart. Signs may be installed on permanent buildings or walls if approved by the *fire code official.*

503.3.3 Maintenance generally.

(a) The *fire code official* shall report any negligent surface conditions, markings, or signs to the owner or person in control of property upon which a *fire lane* exists and shall issue instructions for repair.

(b) It shall be unlawful for the owner or person in control of property upon which a *fire lane* has been designated or exists to fail to maintain the surface of the fire lane in good condition, free of potholes and other non-approved obstructions.

(c) It shall be unlawful for the owner or person in control of property on which a *fire lane* has been designated or exists to fail to maintain any marking of the *fire lane* as required by this code in a condition which is not clearly legible.

Section 503.4; change to read as follows:

503.4 Obstruction of fire apparatus access roads. - Fire apparatus access roads shall not be obstructed by persons in any manner, including parking, stopping or standing of any non-emergency vehicle, whether attended or unattended, in a fire lane. The minimum widths and clearances established in section 503.2.1 and any area marked as a *fire lane* as described in section 503.3 shall be maintained at all times. The operator of a premises shall maintain, free of obstruction, all fire lanes on his premises. No person may mark, post or otherwise identify a non-fire lane private vehicular passageway as *afire lane* or in such a manner as tends to create confusion as to whether the passageway is a fire lane. Any unauthorized vehicle on *afire lane* is:

(1) Subject to removal by the operator of the premises, with the expense of removal and storage to be borne by the registered owner of the vehicle;

(2) Subject to citation, as well as removal, by the *fire code official* or a police officer; and

(3) Prima facie evidence that the person in whose name the vehicle is registered is guilty of a violation of the parking provisions of this section.

Section 505.1; change to read as follows:

505.1 Address Identification. Approved numerals of a minimum 6" height and of a color contrasting with the background designating the address shall be placed on all new and existing buildings or structures in a position as to be plainly visible and legible from the street or road fronting the property and from all rear alleyways / access. Where buildings do not immediately front a street, approved 6 inch height building numerals or addresses and 3-inch height suite / apartment numerals of a color contrasting with the background of the building shall be placed on all new and existing buildings or structures. Numerals or addresses shall be posted on a minimum 20 inch by 30 inch background on border. Address numbers shall be Arabic numerals or alphabet letters. The minimum stroke width shall be 0.5 inches.

Exception 1. R-3 Single Family occupancies shall have approved numerals of a minimum 4 inches in height and a color contrasting with the background clearly visible and legible from the street fronting the property and rear alleyway where such alleyway exists. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure.

Add Section 505.1.1 Utility Shut-Off Identification

Section 505.1.1 Utility shut-off identification. Approved numerals of minimum one-inch height and of a color contrasting with the background shall be placed on gas and electrical meters serving all new and existing buildings or structures except R-3 occupancies.

Section 507.4; change to read as follows:

507.4 Water supply test date and information. The water supply test used for hydraulic calculation of fire protection systems shall be conducted in accordance with NFPA 291 "Recommended Practice for Fire Flow Testing and Marking of Hydrants" and within one year of sprinkler plan submittal. The *fire*

code official shall be notified prior to the water supply test. Water supply tests shall be witnessed by the *fire code official*, as required. The exact location of the static/residual hydrant and the flow hydrant shall be indicated on the design drawings. All fire protection plan submittals shall be accompanied by a hard copy of the waterflow test report, or as approved by the *fire code official.* The report must indicate the dominant water tank level at the time of the test and the maximum and minimum operating levels of the tank, as well, or identify applicable water supply fluctuation. The licensed contractor must then design the fire protection system based on this fluctuation information, as per the applicable referenced NFPA standard.

Section 507.5.4; change to read as follows:

507.5.4 Obstruction. Unobstructed access to fire hydrants shall be maintained at all times. Posts, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

Section 509.1.1; add new Section 509.1.1 to read as follows:

509.1.1 Sign Requirements. Unless more stringent requirements apply, lettering for signs required by this section shall have a minimum height of two (2) inches when located inside a building and four (4) inches when located outside, or as approved by the *fire code official.* The letters shall be of a color that contrasts with the background.

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IFC CHAPTER 6, BUILDING SERVICES & SYSTEMS.

Section 603.3.2.1, Exception; change exception to read as follows:

Exception: The aggregate capacity limit shall be permitted to be increased to 3,000 gallons (11,356 L) in accordance with all requirements of Section 3404.2.9.5.1 and Chapter 34. *{Delete remainder of Exception}*

Section 603.3.2.2; change to read as follows:

603.3.2.2 Restricted use and connection. Tanks installed in accordance with Section 603.3.2 shall be used only to supply fuel oil to fuel-burning equipment installed in accordance with Section 603.3.2.4. Connections between tanks and equipment supplied by such tanks shall be made using closed piping systems.

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IFC CHAPTER 7, FIRE-RESISTANCE-RATED CONSTRUCTION.

Section 704.1; change to read as follows:

704.1 Enclosure. Interior vertical shafts, including but not limited to *stairways*, elevator hoistways, service and utility shafts, that connect two or more stories of a building shall be enclosed or protected in accordance with the codes in effect at the time of construction but, regardless of when constructed, not less than as required in Chapter 46. New floor openings in existing buildings shall comply with the *International Building Code.*

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IFC CHAPTER 8, INTERIOR FINISH.

Section 807.4.3.2; change to read as follows:

807.4.3.2 Artwork. Artwork and teaching materials shall be limited on the walls of corridors to not more than 20 percent of the wall area and on the walls of classrooms to not more than 50 percent of each wall area. Such materials shall not be continuous from floor to ceiling or wall to wall. *(Applies to occupancies in Group E, Education)*

Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

Exception: Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 shall be limited to 50 percent of the wall area.

Section 807.4.4.2; change to read as follows:

807.4.4.2 Artwork. Artwork and teaching materials shall be limited on the walls of corridors to not more than 20 percent of the wall area and on the walls of classrooms to not more than 50 percent of each wall area. Such materials shall not be continuous from floor to ceiling or wall to wall. *(Applies to occupancies in Group I, Daycare)*

Curtains, draperies, wall hangings and other decorative material suspended from the walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807 or be noncombustible.

Exception: Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 shall be limited to 50 percent of the wall area.

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IFC CHAPTER 9, FIRE PROTECTION SYSTEMS.

Section 901.7; change to read as follows:

901.7 Systems out of service. Where a required fire *protection system* is out of service or in the event of an excessive number of activations, the fire department and the *fire code official* shall be notified immediately and, where required by the *fire code official*, the building shall either be evacuated or an *approved fire watch* shall be provided for all occupants left unprotected by the shut down until the *fire protection system* has been returned to service. *{remaining language unchanged}*

Section 901.10; add Section 901.10 to read as follows:

901.10 Discontinuation or change of service. Notice shall be made to the *fire code official* whenever contracted alarm services for monitoring of any fire alarm system is terminated for any reason, or a change in alarm monitoring provider occurs. Notice shall be made in writing to the *fire code official* by the building owner and alarm service provider prior to the service being terminated.

Section 903.1.1; change to read as follows:

903.1.1 Alternative protection. Alternative automatic fire-extinguishing systems complying with Section 904 shall be permitted in addition to automatic sprinkler protection where recognized by the applicable standard and *approved* by the *fire code official.*

Section 903.2; add the following:

903.2 Where required. *{Language unchanged}*… Automatic Sprinklers shall not be installed in elevator machine rooms, elevator machine spaces, and elevator hoistways. Storage shall not be allowed within the elevator machine room. Signage shall be provided at the entry doors to the elevator machine room indicating "ELEVATOR MACHINERY - NO STORAGE ALLOWED."

Section 903.2; delete the exception.

Section 903.2.1.1, 903.2.1.3, 903.2.1.4, 903.2.2.1, 903.2.3, 903.2.4, 903.2.7, 903.2.9, and 903.2.9.1 are amended to read as follows:

[F] 903.2.1.1 Group A-1. An *automatic sprinkler system* shall be provided for Group A-1 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more;
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies; or
4. The *fire area* contains a multitheater complex.

[F] 903.2.1.3 Group A-3. An *automatic sprinkler system* shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more.
3. The *fire area* is located on a floor other than the *level of exit discharge.*

[F] 903.2.1.4 Group A-4. An *automatic sprinkler system* shall be provided for Group A-4 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2).
2. The *fire area* has an *occupant load* of 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies.

Add Section 903.2.2.1 to read as follows:

903.2.2.1 Group B. An *automatic sprinkler system* shall be provided for Group B occupancies where one of the following conditions exists:

1. The *fire area* exceeds 6,000 square feet (557.4m^2);
2. The *fire area* has an *occupant load* of 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies.

[F] 903.2.3 Group E. An *automatic sprinkler system* shall be provided for Group E occupancies where one of the following conditions exists:

1. Throughout all Group E *fire areas* greater than 6,000 square feet (557.4m^2) in area.
2. Throughout every portion of educational buildings below the lowest *level of exit discharge* serving that portion of the building.

   Exception: An *automatic sprinkler system* is not required in any area below the lowest *level of exit discharge* serving that area where every classroom throughout the building has at least one exterior *exit* door at ground level.

[F] 903.2.4 Group F-1. An *automatic sprinkler system* shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:

1. A Group F-1 fire area exceeds 6,000 square feet (557.4m^2).

2. A Group F-1 fire area is located more than three stories above *grade plane.*

3. The combined area of all Group F-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).

[F] 903.2.7 Group M. An *automatic sprinkler system* shall be provided throughout all buildings containing a Group M occupancy where one of the following conditions exists:

1. A Group M fire area exceeds 6,000 square feet (557.4m^2).

2. A Group M fire area is located more than three stories above *grade plane.*

3. The combined area of all Group M *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).

4. A Group M occupancy is used for the display and sale of upholstered furniture.

[F] 903.2.9 Group S-1. An *automatic sprinkler system* shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 6,000 square feet (557.4m^2).

2. A Group S-1 fire area is located more than three stories above *grade plane.*

3. The combined area of all Group S-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230m^2).

4. A Group S-1 *fire area* used for the storage of commercial trucks or buses where the fire area exceeds 5,000 square feet (464m^2).

[F] 903.2.9.1 Repair garages. An *automatic sprinkler system* shall be provided throughout all buildings used as repair garages in accordance with Section 406, where one of the following conditions exists:

1. Buildings having two or more *stories above grade plane*, including basements, with *afire area* containing a repair garage exceeding 6,000 square feet (557.4m^2).

2. Buildings no more than one *story above grade plane*, with a *fire area* containing a repair garage exceeding 6,000 square feet (557.4m^2).

3. Buildings with repair garages servicing vehicles parked in basements.

Add Section 903.2.9.3 to read as follows:

[F] 903.2.9.3 Self-service storage facility. An automatic sprinkler system shall be installed throughout all self-service storage facilities. A screen shall be installed at eighteen (18) inches below the level of the sprinkler heads to restrict storage above that level. This screen shall be a mesh of not less than one (1) inch nor greater than six (6) inches in size. The screen and its supports shall be installed such that all elements are at least eighteen (18) inches below any sprinkler heads.

Exception: One-story self-service storage facilities that have no interior corridors, with a one-hour fire barrier separation wall installed between every storage compartment.

Section 903.2.11; amend 903.2.11.3 and add 903.2.11.7, 903.2.11.8, and 903.2.11.9 as follows:

903.2.11.3 Buildings 35 feet or more in height. An automatic sprinkler system shall be installed throughout buildings with a floor level, other than penthouses in compliance with Section 1509 of the *International Building Code*, that is located 35 feet (10 668mm) or more above the lowest level of fire department vehicle access.

Exception:
Open parking structures in compliance with Section 406.3 of the *International Building Code.*

903.2.11.7 High-Piled Combustible Storage. For any building with a clear height exceeding 12 feet (4572 mm), see Chapter 23 to determine if those provisions apply.

903.2.11.8 Spray Booths and Rooms. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

903.2.11.9 Buildings Over 6,000 sq.ft. An automatic sprinkler system shall be installed throughout all buildings with a building area over 6,000 sq.ft. For the purpose of this provision, fire walls shall not define separate buildings.

Exceptions:

1. Open parking garages in compliance with Section 406.3 of the *International Building Code.*

Section 903.3.1.1.1; change to read as follows:

903.3.1.1.1 Exempt locations. When approved by the fire *code official*, automatic sprinklers shall not be required in the following rooms or areas where such … *{language unchanged}* … because it is damp, of fire-resistance-rated construction or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard.
2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the code official.
3. Generator and transformer rooms, under the direct control of a public utility, separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

903.3.1.2; Change to read as follows:

903.3.1.2 NFPA 13R sprinkler systems. Where allowed in buildings of Group R, up to and including four stories in height, automatic sprinkler systems shall be installed throughout in accordance with NFPA 13R. However, sprinkler protection is required in attic spaces of such buildings three or more stories in height.

903.3.1.2.1 Balconies. Sprinkler protection shall be provided for exterior balconies and ground floor patios. Side wall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch to 6 inches below the structural members, and a maximum distance of 14 inches below the deck of the exterior balconies that are constructed of open wood joist construction.

Section 903.3.1.3; add the following:

903.3.1.3 NFPA 13D sprinkler systems. Where allowed, *automatic sprinkler systems* installed in one- and two-family *dwellings* and *townhouses* shall be installed throughout in accordance with NFPA 13D or in accordance with state law.

Section 903.3.5; add a second paragraph to read as follows:

Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every fire protection system shall be designed with a 10 psi safety factor.

Section 903.3.7; add a second paragraph to read as follows:

903.3.7.1 Locking FDC Caps. *New sprinkler installations shall be equipped with locking fire department connection caps as approved by the code official. Existing sprinkler installations will require approved locking fire department connection caps where there is a history of problems with*

missing or damaged FDC caps. Fire Prevention Personnel will determine locations requiring these lockable caps.

Section 903.4; add a second paragraph after the exceptions to read as follows:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 903.4.2; add second paragraph to read as follows:

The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

Section 903.6.3; add Section 903.6.3 to read as follows:

903.6.3 Spray booths and rooms. New and existing spray booths and spray rooms shall be protected by an approved automatic fire-extinguishing system in accordance with Section 1504.

Section 905.2; change to read as follows:

905.2 Installation standard. Standpipe systems shall be installed in accordance with this section and NFPA 14. Manual dry standpipe systems shall be supervised with a minimum of 10 psig and a maximum of 40 psig air pressure with a high/low alarm.

Section 905.3.8; add Section 905.3.8 and exception to read as follows:

905.3.8 Building area. In buildings exceeding 10,000 square feet in area per story, Class I automatic wet or manual wet standpipes shall be provided where any portion of the building's interior area is more than 200 feet (60960 mm) of travel, vertically and horizontally, from the nearest point of fire department vehicle access.

Exception: Automatic dry and semi-automatic dry standpipes are allowed as provided for in NFPA 14.

Section 905.4, item #5; change to read as follows:

5. Where the roof has a slope less than four units vertical in 12 units horizontal (33.3-percent slope), each standpipe shall be provided with a two-way hose connection located either … *{remainder of language unchanged}.*

Section 905.4; add the following item #7:

7. When required by this Chapter, standpipe connections shall be placed adjacent to all required exits to the structure and at two hundred feet (200') intervals along major corridors thereafter.

Section 905.9; add a second paragraph after the exceptions to read as follows:

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

Section 906.1 {Where required}; change exception to item 1 as follows:

Exception: In R-2 occupancies, portable fire extinguishers shall be required only in locations specified in items 2. through 6. where each dwelling unit is provided with a portable fire extinguisher having a minimum rating of 1-A:10-B:C.

Section 907.1.4; add Section 907.1.4 to read as follows:

907.1.4 Design Standards. All alarm systems new or replacement shall be addressable. Alarm systems serving more than 20 smoke detectors shall be analog addressable.

Exception: Existing systems need not comply unless the total building remodel or expansion initiated after the effective date of this code, as adopted, exceeds 30% of the building. When cumulative building remodel or expansion exceeds 50% of the building must comply within 18 months of permit application.

Section 907.2.1; change to read as follows:

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with new Section 907.6 shall be installed in Group A occupancies having an occupant load of 300 or more persons or more than 100 persons above or below the lowest level of exit discharge. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy. Activation of fire alarm notification appliances shall:

1. Cause illumination of the *means of egress* with light of not less than 1 footcandle (11 lux) at the walking surface level, and
2. Stop any conflicting or confusing sounds and visual distractions.

Section 907.2.3; change to read as follows:

907.2.3 Group E. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in Group E educational occupancies. When *automatic sprinkler systems* or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100 feet open space, all buildings, whether portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

Section 907.2.3; change exception #1 and add exception #1.1 to read as follows:

Exceptions:

1. A manual fire alarm system is not required in Group E educational and day care occupancies with an occupant load of less than 50 when provided with an approved automatic sprinkler system.

1.1. Residential In-Home day care with not more than 12 children may use interconnected single station detectors in all habitable rooms. (For care of more than five children 2 1/2 or less years of age, see Section 907.2.6.)

Section 907.2.6; amended by the addition of the following:

907.2.6.4 Group I-4 Occupancies. An approved smoke detection system shall be installed in Group I-4 occupancies. Where automatic fire sprinklers are not provided, a full-coverage smoke detection system shall be provided in all Group I-4 occupancies.

Section 907.2.13; change to read as follows:

907.2.13 High-rise buildings. Buildings with a floor used for human occupancy located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access shall be provided with an automatic smoke detection system in accordance with Section 907.2.13.1, a fire department communication system in accordance with Section 907.2.13.2 and an emergency voice/alarm communication system in accordance with Section 907.6.2.2.

Section 907.2.13, Exception #3; change to read as follows:

3. Buildings with an occupancy in Group A-5 in accordance with Section 303.1 of the *International Building Code*, when used for open air seating; however, this exception does not apply to accessory uses including but not limited to sky boxes, restaurants and similarly enclosed areas.

Section 907.5.2.6; add Section 907.5.2.6 to read as follows:

907.5.2.6 Type. Manual alarm initiating devices shall be an approved double action type.

Section 907.7.1.1; add Section 907.7.1.1 to read as follows:

907.7.1.1 Installation. All fire alarm systems shall be installed in such a manner that a failure of any single initiating device or single open in an initiating circuit conductor will not interfere with the normal operation of other such devices. All initiating circuit conductors shall be Class "A" wired with a minimum of six feet separation between supply and return circuit conductors. IDC - Class "A" Style D; SLC - Class "A" Style 6; NAC - Class "B" Style Y. The IDC from an addressable device used to monitor the status of a suppression system may be wired Class B, Style B provided the distance from the addressable device is within 10-feet of the suppression system device.

Section 907.7.5.2; add Section 907.7.5.2 to read as follows:

907.7.5.2 Communication Requirements. All alarm systems, new or replacement, shall transmit alarm, supervisory and trouble signals descriptively to the approved central station, remote supervisory station or proprietary supervising station as defined in NFPA 72, with the correct device designation and location of addressable device identification. Alarms shall not be permitted to be transmitted as a General Alarm or Zone condition.

Section 910.2; add subsections 910.2.3 with exceptions and 910.2.4 to read as follows:

910.2.3 Group H. Buildings and portions thereof used as a Group H occupancy as follows:

1. In occupancies classified as Group H-2 or H-3, any of which are more than 15,000 square feet (1394 m^2) in single floor area.

   Exceptions:

   Buildings of noncombustible construction containing only noncombustible materials.

2. In areas of buildings in Group H used for storing Class 2, 3 and 4 liquid and solid oxidizers, Class 1 and unclassified detonable organic peroxides, Class 3 and 4_unstable (reactive) materials, or Class 2 or 3 water-reactive materials as required for a high-hazard commodity classification.

   Exceptions:

   Buildings of noncombustible construction containing only noncombustible materials

910.2.4 Exit access travel distance increase. Buildings and portions thereof used as a Group F-1 or S-1 occupancy where the maximum exit access travel distance is increased in accordance with Section 1016.3.

Table 910.3; Change the title of the first row of the table from "Group F-1 and S-1" to include "Group H" and to read as follows:

Group H, F-1 and S-1

Section 910.3.2.2; add second paragraph to read as follows:

The automatic operating mechanism of the smoke and heat vents shall operate at a temperature rating at least 100 degrees F (approximately 38 degrees Celsius) greater than the temperature rating of the sprinklers installed.

Section 912.2; add Section 912.2.3 to read as follows:

912.2.3 Hydrant distance. An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lays.

Section 913.1; add second paragraph and exception to read as follows:

When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than 3 ft. in width and 6 ft. - 8 in. in height, regardless of any interior doors that are provided. A key box shall be provided at this door, as required by Section 506.1.

Exception: When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the fire *code official.* Access keys shall be provided in the key box as required by Section 506.1.

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IFC CHAPTER 10, MEANS OF EGRESS.

Section 1004.1.1; amended to delete the following exception:

Section 1004.1.1; Areas without fixed seating.

Section 1007.1; add Exception #4 to read as follows:

4. Buildings regulated under State Law and built in accordance with State registered plans, including any variances or waivers granted by the State, shall be deemed to be in compliance with the requirements of Section 1007.

Section 1016; add Section 1016.3 to read as follows:

1016.3 Roof vent increase. In buildings that are one story in height, equipped with automatic heat and smoke roof vents complying with Section 910 and equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, the maximum exit access travel distance shall be 400 feet (122 m) for occupancies in Group F-1 or S-1.

Section 1018.1; add Exception #5 to read as follows:

5. In Group B office buildings, corridor walls and ceilings need not be of fire-resistive construction within office spaces of a single tenant when the space is equipped with an approved automatic fire alarm system with corridor smoke detection. The actuation of any detector shall activate alarms audible in all areas served by the corridor. The smoke-detection system shall be connected to the building's fire alarm system where such a system is provided.

Section 1018.6; amend to read as follows:

1018.6, Corridor Continuity. All corridors shall be continuous from the point of entry to an *exit*, and shall not be interrupted by intervening rooms.

…{Exception unchanged}…

Section 1022.9; change to read as follows:

1022.9 Smokeproof enclosures and pressurized stairways. In buildings required to comply with Section 403 or 405 of the IBC, each of the exit enclosures serving a story with a floor surface located more than 55 feet (16 764 mm) above the lowest level of fire … *{remainder of section unchanged}*.

Section 1024.1; change to read as follows:

1024.1; General. *Approved* luminous egress path markings delineating the exit path shall be provided in buildings of Groups A, B, E, I, M and R-1 having occupied floors located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access in accordance with… {*Remaining language unchanged*}

Section 1030.2; change to read as follows:

1030.2 Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency. Security devices affecting means of egress shall be subject to approval of the *fire code official.*

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IFC CHAPTER 15, FLAMMABLE FINISHES.

Section 1501.2; delete the section.

Section 1504.4; change to read as follows:

1504.4 Fire Protection. New and existing spray booths and spray rooms shall be protected by an *approved* automatic fire-extinguishing system … *{remainder of section unchanged}* …

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IFC CHAPTER 22, MOTOR FUEL-DISPENSING FACILITIES/GARAGES.

Section 2202.1 Definitions; add to definition of REPAIR GARAGE as follows:

REPAIR GARAGE. This occupancy shall also include garages involved in minor repair, modification and servicing of motor vehicles for items such as lube changes, inspections, windshield repair or replacement, shocks, minor part replacement and other such minor repairs.

Section 2204.1; change to read as follows:

2204.1 Supervision of dispensing. The dispensing of fuel at motor fuel-dispensing facilities shall be in accordance with the following:

1. Conducted by a qualified attendant; and/or,
2. Shall be under the supervision of a qualified attendant; and/or
3. Shall be an unattended self-service facility in accordance with Section 2204.3.

At any time the qualified attendant of item #1 or #2 above is not present, such operations shall be considered as an unattended self-service facility and shall also comply with Section 2204.3.

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IFC CHAPTER 23, HIGH-PILED COMBUSTIBLE STORAGE.

Section 2302; add a second paragraph to the definition of "High-Piled Combustible Storage" to read as follows:

Any building classified as a group S Occupancy or Speculative Building exceeding 6,000 sq.ft. that has a clear height in excess of 14 feet, making it possible to be used for storage in excess of 12 feet, shall be considered to be high-piled storage. When a specific product cannot be identified, a fire protection system and life safety features shall be installed as for Class IV commodities, to the maximum pile height.

Table 2306.2; change text of "footnote j" to read as follows:

j. Where areas of buildings are equipped with early suppression fast-response (ESFR) sprinklers, manual smoke and heat vents or manually activated engineered mechanical smoke exhaust systems shall be required within these areas.

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IFC CHAPTER 33, EXPLOSIVES & FIREWORKS.

Section 3301.1.3; change to read as follows:

3301.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

Exceptions:

1. Only when approved for fireworks displays, storage and handling of fireworks as allowed in Section 3304 and 3308.
2. The use of fireworks for approved display as allowed in Section 3308.

Section 3302; change the definition of FIREWORKS to read as follows:

FIREWORKS. Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, *deflagration, detonation*, and/or activated by ignition with a match or other heat producing device that meets the definition of 1.4G fireworks or 1.3G fireworks as set forth herein. … {*Remaining language unchanged*}…

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IFC CHAPTER 34, FLAMMABLE & COMBUSTIBLE LIQUIDS.

Section 3403.6; add a sentence to read as follows:

3403.6 Piping systems. Piping systems, and their component parts, for flammable and combustible liquids shall be in accordance with Sections 3403.6.1 through 3403.6.11. An approved method of secondary containment shall be provided for underground tank and piping systems.

Section 3404; add exception to read as follows:

Above ground storage tanks 250 gallons or greater shall be UL listed, Protected Above Ground Tanks.

Section 3404.2.9.5.1; add Section 3404.2.9.5.1 to read as follows:

3404.2.9.5.1 Combustible liquid storage tanks inside of buildings. The maximum aggregate allowable quantity limit shall be 3,000 gallons (11 356 L) of Class II or III combustible liquid for storage in protected aboveground tanks complying with Section 3404.2.9.7 when all of the following conditions are met:

1. The entire 3,000 gallon (11 356 L) quantity shall be stored in protected above-ground tanks;

2. The 3,000 gallon (11 356 L) capacity shall be permitted to be stored in a single tank or multiple smaller tanks;

3. The tanks shall be located in a room protected by an *automatic sprinkler system* complying with Section 903.3.1.1; and

4. Tanks shall be connected to fuel-burning equipment, including generators, utilizing an approved closed piping system.

The quantity of combustible liquid stored in tanks complying with this section shall not be counted towards the maximum allowable quantity set forth in Table 2703.1.1(1), and such tanks shall not be required to be located in a control area. Such tanks shall not be located more than two stories below grade.

Section 3404.2.9.6.1; amended to read as follows:

Section 3404.2.9.6.1 Location where above-ground tanks are prohibited. The storage of flammable or combustible liquids in outside above ground tanks is prohibited within each and every zoning district within the City of Kyle with the exception of those districts which are zoned for light industrial zoning use. Installation of above ground tanks in other than light industrial zoning districts shall be permitted at the discretion of the *Fire Chief* following his review of the proposed installation location, and the fire protection for the storage area. Tanks shall not be located within one hundred feet (100') of the property line of any Group E, I or R occupancies.

Section 3404.2.11.5; add a sentence to read as follows:

3404.2.11.5 Leak Prevention. Leak prevention for underground tanks shall comply with Sections 3404.2.11.5.1 through 3404.2.11.5.3. An approved method of secondary containment shall be provided for underground tank and piping systems.

Section 3404.2.11.5.2; change to read as follows:

3404.2.11.5.2 Leak detection. Underground storage tank systems shall be provided with an *approved* method of leak detection from any component of the system that is designed and installed in accordance with NFPA 30 and as specified in Section 3404.2.11.5.3.

Section 3404.2.11.5.3; add Section 3404.2.11.5.3 to read as follows:

3404.2.11.5.3 Observation wells. Approved sampling tubes of a minimum 6 inches in diameter shall be installed in the backfill material of each underground flammable or combustible liquid storage tank. The tubes shall extend from a point 12 inches below the average grade of the excavation to ground level and shall be provided with suitable surface access caps. Each tank site shall provide a sampling sump at the corners of the excavation with a minimum of 4 sumps. Sampling tubes shall be placed in the product line excavation within 10 feet of the tank excavation and one every 50 feet routed along product lines towards the dispensers, a minimum of two are required.

Section 3406.5.4.5; delete Section 3406.5.4.5 and replace with the following:

3406.5.4.5 Commercial, industrial, governmental or manufacturing. Dispensing of Class II and III motor vehicle fuel from tank vehicles into the fuel tanks of motor vehicles located at commercial, industrial, governmental or manufacturing establishments is allowed where permitted, provided such dispensing operations are conducted in accordance with Sections 3406.5.4.5.1 through 3406.5.4.5.3.

3406.5.4.5.1 Site requirements.

1. Dispensing may occur at sites that have been permitted to conduct mobile fueling.

2. A detailed site plan shall be submitted with each application for a permit. The site plan must indicate:

a. all buildings, structures, and appurtenances on site and their use or function;

b. all uses adjacent to the property lines of the site;

c. the locations of all storm drain openings, adjacent waterways or wetlands;

d. information regarding slope, natural drainage, curbing, impounding and how a spill will be retained upon the site property; and,

e. The scale of the site plan.

3. The Code Official is authorized to impose limits upon: the times and/or days during which mobile fueling operations are allowed to take place and specific locations on a site where fueling is permitted.

4. Mobile fueling operations shall be conducted in areas not generally accessible to the public.

5. Mobile fueling shall not take place within 15 feet (4.572 m) of buildings, property lines, or combustible storage.

3406.5.4.5.2 Refueling Operator Requirements.

1. The owner of a mobile fueling operations shall provide to the jurisdiction a written response plan which demonstrates readiness to respond to a fuel spill, carry out appropriate mitigation measures, and to indicate its process to properly dispose of contaminated materials when circumstances require.

2. The tank vehicle shall comply with the requirements of NFPA 385 and Local, State and Federal requirements. The tank vehicle's specific functions shall include that of supplying fuel to motor vehicle fuel tanks. The vehicle and all its equipment shall be maintained in good repair.

3. Signs prohibiting smoking or open flames within 25 feet (7.62 m) of the tank vehicle or the point of fueling shall be prominently posted on 3 sides of the vehicle including the back and both sides.

4. A fire extinguisher with a minimum rating of 40:BC shall be provided on the vehicle with signage clearly indicating its location.

5. The dispensing nozzles and hoses shall be of an approved and listed type.

6. The dispensing hose shall not be extended from the reel more than 100 feet (30.48m) in length.

7. Absorbent materials, non-water absorbent pads, a 10 foot (3.048 m) long containment boom, an approved container with lid, and a non-metallic shovel shall be provided to mitigate a minimum 5-gallon fuel spill.

8. Tanker vehicles shall be equipped with a fuel limit switch such as a count-back switch, limiting the amount of a single fueling operation to a maximum of 500 gallons (1893 L) between resettings of the limit switch.

   Exception: Tankers utilizing remote emergency shut-off device capability where the operator constantly carries the shut-off device which, when activated, immediately causes flow of fuel from the tanker to cease.

9. Persons responsible for dispensing operations shall be trained in the appropriate mitigating actions in the event of a fire, leak, or spill. Training records shall be maintained by the dispensing company and shall be made available to the *fire code official* upon request.

10. Operators of tank vehicles used for mobile fueling operations shall have in their possession at all times an emergency communications device to notify the proper authorities in the event of an emergency.

3406.5.4.5.3 Operational Requirements.

1. The tank vehicle dispensing equipment shall be constantly attended and operated only by designated personnel who are trained to handle and dispense motor fuels.

2. Prior to beginning dispensing operations, precautions shall be taken to assure ignition sources are not present.
3. The engines of vehicles being fueled shall be shut off during dispensing operations.
4. Nighttime fueling operations shall only take place in adequately lighted areas.
5. The tank vehicle shall be positioned with respect to vehicles being fueled so as to preclude traffic from driving over the delivery hose and between the tank vehicle and the motor vehicle being fueled.
6. During fueling operations, tank vehicle brakes shall be set, chock blocks shall be in place and warning lights shall be in operation.
7. Motor vehicle fuel tanks shall not be topped off.
8. The dispensing hose shall be properly placed on an approved reel or in an approved compartment prior to moving the tank vehicle.
9. The Code Official and other appropriate authorities shall be notified when a reportable spill or unauthorized discharge occurs.

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IFC CHAPTER 38, LIQUEFIED PETROLEUM GASES.

Section 3803.2.1; add Section 3803.2.1.8 to read as follows:

3803.2.1.8 Jewelry Repair, Dental Labs and Similar Occupancies. Where natural gas service is not available, portable LP-Gas containers are allowed to be used to supply approved torch assemblies or similar appliances. Such containers shall not exceed 20-pound (9.0 kg) water capacity. Aggregate capacity shall not exceed 60-pound (27.2 kg) water capacity. Each device shall be separated from other containers by a distance of not less than 20 feet.

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IFC CHAPTER 46, CONSTRUCTION FOR EXISTING BUILDINGS.

Section 4604.23; change to read as follows:

4604.23 Egress path markings. Existing buildings of Groups A, B, E, I, M, and R-1 having occupied floors located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access shall be provided with luminous *egress* path markings in accordance with Section 1024.

Exception: Open, unenclosed stairwells in historic buildings designated as historic under a state or local historic preservation program.

(Ord. No. 342, § 10, 11-16-1999; Ord. No. 342-1, § 8, 12-18-2001; Ord. No. 678, §§ 3, 4, 11-15-2011; Ord. No. 735, §§ 3, 4, 8-6-2013)

Sec. 8-32. - International Residential Code.

(a) *Adopted.*

(1) The International Residential Code, 2009 edition, including Appendix Chapters E, G, H, J, K, M, O and P as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Residential Code, marked Exhibit "F," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Residential Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

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IRC CHAPTER 1, ADMINISTRATION.

Section R101.1; Insert jurisdiction name as follows:

R101.1 Title. These provisions shall be known as the *International Residential Code for One- and Two-family Dwellings* of City of Kyle, and shall be cited as such and will be referred to herein as "this code."

Section R102.4; change to read as follows:

R102.4 Referenced codes and standards. The *codes*, when specifically adopted, and standards referenced in this *code* shall be considered part of the requirements of this *code* to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced *codes* and standards, each reference to said *code* and standard shall be considered to reference the amendments as well. Any reference made to NFPA 70 or the Electrical Code shall mean the *National Electrical Code* as adopted.

Exception: Where enforcement of a code provision would violate the conditions of the *listing* of the *equipment* or *appliance*, the conditions of the *listing* and manufacture's instructions shall apply.

Section R104.2.1; add subsection as follows:

104.2.1 Toilet Facilities. Every construction project requiring a building permit within the City limits of the City of Kyle shall have adequate toilet facilities for workers associated with the project.

At least one permanent or temporary toilet facility shall be maintained at every site where a building permit has been issued, as long as a building permit is active for the project.

Permanent toilet facility is defined as a room in an existing building or in the building being constructed with a water closet installed in such as room that conforms to the *International Plumbing Code* and is continuously available to all workers involved in a construction project.

Temporary toilet facility is defined as a portable, fully enclosed, chemically sanitized toilet, which is serviced and cleaned at least once each week.

Whenever the *building official* finds any work being performed in a manner contrary to the provisions of this section, the *building official* is authorized to issue a stop work order.

Section R105.2; Work exempt from permit. Delete items #1, #2, #5 and #10.

Section R106.1; amended by the addition of the following paragraph:

R106.1 Submittal documents. Foundation plans shall be submitted with each application. These plans shall be designed by an engineer licensed by the State of Texas and shall bear that engineer's seal, signature, and date.

Section R108.6; change to read as follows:

R108.6 Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to doubled fees and charges.

Section 108.7; add Section 108.7 to read as follows:

108.7 Re-inspection Fee. A fee as established by the city's fee schedule may be charged when:

1. The inspection called for is not ready when the inspector arrives;
2. No building address or permit is clearly posted;
3. Approved plans are not on the job site available to the inspector;
4. The building is locked or work otherwise not available for inspection when called;
5. The job site is disapproved twice for the same item;
6. The original disapproved inspection has been removed from the job site and/or,
7. Violations exist on the property including failure to maintain erosion control, trash control or tree protection.
8. Any re-inspection fees assessed shall be paid before final inspection.

Section R109.1.3; change to read as follows:

R109.1.3 Floodplain inspections. For construction permitted in areas prone to flooding as established by Table R301.2(1), upon … *{language unchanged}* … construction, the building official may require submission … *{language unchanged}*.

Section R110 (R110.1 through R110.5); delete the section.

Section R112; delete entire section and insert the following:

R112 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

Section R112.2.1 & R112.2.2; delete the sections.

Section R114.1; change to read as follows:

R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work.

Section R114.3; add the following subsection:

114.3 Construction debris. Whenever work is being done that is authorized by a permit, and construction debris from that work is not confined to a container or to a site on the property approved by the *building official* or his designee, an such construction debris poses a threat to public health, safety and comfort so that it constitutes a nuisance, the *building official* or his designee may order the worked stopped and the contractor shall clean up the construction debris within thirty-six (36) hour period, contractor shall pay City a re-inspection fee to offset costs incurred by City due to the necessary re-inspection before the stop work order is lifted.

As used herein, the term "construction debris" shall include all materials utilized in the construction process, including all litter and debris deposited and left remaining upon the premises of a job site by a contractor, subcontractor, and their employees, agents, and assigns.

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IRC CHAPTER 2, DEFINITIONS.

Section R202; change definition of "Townhouse" to read as follows:

TOWNHOUSE. A single-family dwelling unit constructed in a group of three or more attached units separated by property lines in which each unit extends from foundation to roof and with a *yard* or *public way* on at least two sides.

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IRC CHAPTER 3, BUILDING PLANNING.

Table R301.2(1); insert design criteria as follows:

Table R301.2(1) Climatic and Geographic Design Criteria.

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CATEGORY[f]
	SPEED[d] (mph)	Topographic Effects[k]	
5 lb/ft^2	90 (3-sec-gust)/76 fastest mile	No	A

SUBJECT TO DAMAGE FROM		
Weathering[a]	Frost line depth[b]	Termite[c]
negligible	6"	moderate to heavy

WINTER DESIGN TEMP[e]	ICE BARRIER UNDERLAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP[j]
28°F	No	local *code*	33	67.0°F

{No change to footnotes}

Section R302.1; add exception #6 to read as follows:

Exceptions: *{previous exceptions unchanged}*

6. Open metal carport structures may be constructed when also approved within adopted ordinances.

Section R302.2, Exception; change to read as follows:

Exception: A common two-hour fire-resistance-rated wall assembly, or one-hour fire-resistance-rated wall assembly when equipped with a sprinkler system… *{remainder unchanged}*

Section R302.2.4, Exception 5; change to read as follows:

Exception:

5. Townhouses separated by a common two-hour fire-resistance-rated wall, or one-hour fire resistant rated wall when equipped with an automatic sprinkler system, *{remainder unchanged}*

Section R302.3; add Exception #3 to read as follows:

Exceptions:

1. *{existing language unchanged}*
2. *{existing language unchanged}*
3. Two-family dwelling units that are also divided by a property line through the structure shall be separated as required for townhouses.

Section 302.5.2; change to read as follows:

R302.5.2 Duct penetration. Ducts in the garage … {language unchanged} … and shall have no openings into the garage and shall be protected as required by Section 302.11, Item 4.

Section R302.5.3; amend the section as follows:

R302.5.3 Other penetrations. Penetrations through the separation required in Section R302.6 shall be protected as required by Section R302.11, Item 4.

Section R302.7; change to read as follows:

R302.7 Under stair protection. Enclosed accessible space under stairs shall have walls, under stair surface and any soffits protected on the enclosed side with 5/8-inch (15.8 mm) fire-rated gypsum board or one-hour fire-resistive construction.

Section R303.3, Exception; change to read as follows:

Exception: The glazed areas shall not be required where artificial light and a mechanical ventilation system, complying with one of the following, are provided.

1. The minimum ventilation rates shall be 50 cfm (24 L/s) for intermittent ventilation or 20 cfm (10 L/s) for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside.
2. Bathrooms that contain only a water closet, a lavatory, or water closet and a lavatory may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

Section R313.2; One-and two-family dwellings automatic fire systems, and

Section R313.2.1; Design and installation; delete the sections

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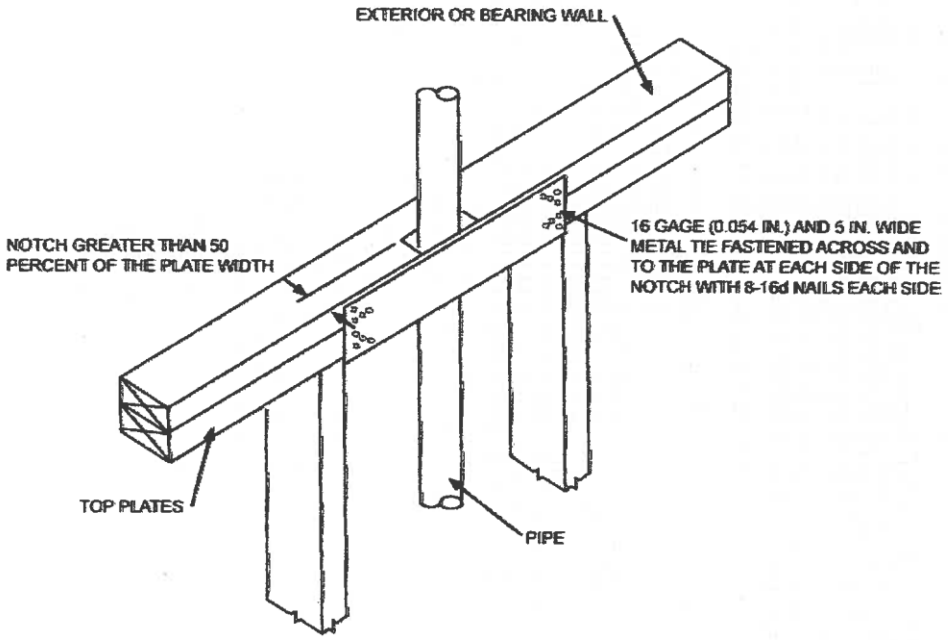
IRC CHAPTER 6, WALL CONSTRUCTION.

Section 602.6.1; amend the following:

R602.6.1 Drilling and notching of top plate. When piping or ductwork is placed in or partly in an exterior wall or interior load-bearing wall, necessitating cutting, drilling or notching of the top plate by more than 50 percent of its width, a galvanized metal tie not less than 0.054 inch thick (1.37 mm) (16 Ga) and 5 inches (127 mm) wide shall be fastened across and to the plate at each side of the opening with not less than eight 10d (0.148 inch diameter) having a minimum length of 1½ inches (38 mm) at each side or equivalent. Fasteners will be offset to prevent splitting of the top plate material. The metal tie must extend a minimum of 6 inches past the opening. See figure R602.6.1.

Figure R602.6.1; delete the figure and insert the following figure:

WALL CONSTRUCTION



For SI: 1 inch = 25.4 mm

FIGURE R602.6.1
TOP PLATE FRAMING TO ACCOMMODATE PIPING

IRC CHAPTER 7.

Section R703.7.4.1; add a second paragraph to read as follows:

In stud framed exterior walls, all ties shall be anchored to studs as follows:

1. When studs are 16 in (407 mm) o.c., stud ties shall be spaced no further apart than 24 in (737 mm) vertically starting approximately 12 in (381 mm) from the foundation; or
2. When studs are 24 in (610 mm) o.c., stud ties shall be spaced no further apart than 16 in (483 mm) vertically starting approximately 8 in (254 mm) from the foundation.

———

IRC CHAPTER 9, ROOF ASSEMBLIES.

Section R902.1; Amend and add exception #3 to read as follows:

R902.1 Roofing covering materials. Roofs shall be covered with materials as set forth in Sections R904 and R905. Class A, B, or C roofing shall be installed. *{remainder unchanged}*

Exceptions:

1. {unchanged}
2. {unchanged}
3. Non-classified roof coverings shall be permitted on one-story detached *accessory structures* used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed (area defined by jurisdiction).

Section R907.1; add a sentence to read as follows:

All individual replacement shingles or shakes shall comply with Section R902.1,

———

IRC CHAPTER 11, ENERGY EFFICIENCY.

Section N1101.2; add Section N1101.2.2 to read as follows:

N1101.2.2 Compliance software tools. Software tools used to demonstrate energy code compliance utilizing the UA alternative approach shall be approved by the building official. The PNL program **RES *check*** **™** is not acceptable for residential compliance.

Exception: When **RES *check*** **™** "UA Trade-off" compliance approach or the UA Alternate compliance approach method is used, the compliance certificate must demonstrate that the maximum glazed area does not exceed 15% of the conditioned floor area.

Section N1102.1; change to read as follows:

N1102.1 Insulation and fenestration criteria. The building thermal envelope shall meet the requirements of Table N1102.1 based on the climate zone specified in Table N1101.2. The use of Tables N1102.1 and N1102.1.2 are limited to a maximum glazing area of 15% window area to floor area ratio.

Section N1102.2.12; add Section N1102.2.12 to read as follows:

N1102.2.12. Insulation installed in walls. Insulation batts installed in walls shall be totally surrounded by an enclosure on all sides consisting of framing lumber, gypsum, sheathing, wood structural panel sheathing or other equivalent material approved by the *building official.*

———

IRC CHAPTER 13, GENERAL MECHANICAL SYSTEM

Section M1305.1.3; change to read as follows:

M1305.1.3 Appliances in attics. *Attics* containing *appliances* requiring access shall be provided … *{bulk of paragraph unchanged}* … sides of the *appliance* where access is required. The clear access opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger and large enough to allow removal of the largest *appliance.* As a minimum, access to the *attic* space, provide one of the following:

3. A permanent stair.
4. A pull down stair with a minimum 300 lb (136 kg) capacity.
5. An access door from an upper floor level.
6. Access Panel may be used in lieu items 1, 2, and 3 with prior approval of the *building official* due to building conditions.

Exceptions:

1. The passageway and level service space are not required where the *appliance* can be serviced and removed through the required opening.
2. Where the passageway is unobstructed… *{remainder unchanged}*

Section M1305.1.3.1; add text to read as follows:

M1305.1.3.1 Electrical requirements. A luminaire controlled by a switch located at the required passage-way opening and a receptacle outlet shall be installed at or near the *appliance* location in accordance with Chapter 39. Low voltage wiring of 50 Volts or less shall be installed in a manner to prevent physical damage.

Section M1305.1.4.1; change to read as follows:

M1305.1.4.1 Ground clearance. *Equipment* and *appliances* supported from the ground shall be level and firmly supported on a concrete slab or other *approved* material extending above the adjoining ground a minimum of 3 inches (76 mm). Appliances suspended from the floor shall have a clearance of not less than 6 inches (152 mm) above the ground.

Section M1305.1.4.3; add text to read as follows:

M1305.1.4.3 Electrical requirements. A luminaire controlled by a switch located at the required passage-way opening and a receptacle outlet shall be installed at or near the *appliance* location in accordance with Chapter 39. Low voltage wiring of 50 Volts or less shall be installed in a manner to prevent physical damage.

Section M1307.3.1; delete.

———

IRC CHAPTER 14, HEATING & COOLING EQUIPMENT.

Section M1411.3; change to read as follows:

M1411.3 Condensate disposal. Condensate from all cooling coils and evaporators shall be conveyed from the drain pan outlet to an *approved* place of disposal. … {language unchanged} … Condensate shall not discharge into a street, alley, sidewalk, rooftop, or other areas so as to cause a nuisance.

Section M1411.3.1, Items 3 and 4; add text to read as follows:

M1411.3.1 Auxiliary and secondary drain systems. *{bulk of paragraph unchanged}*

1. *{text unchanged}*
2. *{text unchanged}*
3. An auxiliary drain pan… *{bulk of text unchanged}*… with Item 1 of this section. A water level detection device may be installed only with prior approval of the *building official.*
4. A water level detection device… *{bulk of text unchanged}*… overflow rim of such pan. A water level detection device may be installed only with prior approval of the *building official.*

Section M1411.3.1.1; add text to read as follows:

M1411.3.1.1 Water-level monitoring devices. On down-flow units… *{bulk of text unchanged}* …installed in the drain line. A water level detection device may be installed only with prior approval of the *building official.*

———

IRC CHAPTER 15, EXHAUST SYSTEMS.

Section M1501; add new Section M1501.2 to read as follows:

M1501.2 Material and size. Exhaust ducts shall have a smooth interior finish and shall be constructed of metal a minimum 0.016-inch (0.4mm) thick. The exhaust duct size shall be 4 inches (102 mm) nominal in diameter. Duct size shall not be reduced along its developed length or at termination.

Section M1501; add new Section M1501.3 to read as follows:

M1501.3 Specified length. The maximum length of the exhaust duct shall be 35 feet (10668 mm) from the connection to the transition duct from the *appliance* to the outlet terminal. Where fittings are used, the maximum length of the exhaust duct shall be reduced in accordance with Table M1502.4.4.1.

———

IRC CHAPTER 20, BOILERS & WATER HEATERS.

Section M2005.2; change to read as follows:

M2005.2 Prohibited locations. Fuel-fired water heaters shall not be installed in a room used as a storage closet. Water heaters located in a bedroom or bathroom shall be installed in a sealed enclosure so that *combustion air* will not be taken from the living space. Access to such enclosure may be from the bedroom or bathroom when through a solid door, weather-stripped in accordance with the exterior door air leakage requirements of the *International Energy Conservation Code* and equipped with an *approved* self-closing device. Installation of direct-vent water heaters within an enclosure is not required.

———

IRC CHAPTER 24, FUEL GAS.

Section G2408.3 (305.5); delete.

Section G2412.5 (401.5); add a second paragraph to read as follows:

Both ends of each section of medium pressure gas piping shall identify its operating gas pressure with an *approved* tag. The tags are to be composed of aluminum or stainless steel and the following wording shall be stamped into the tag:

"WARNING
1/2 to 5 psi gas pressure
Do Not Remove"

Section G2413.3 (402.4.3); add an exception to read as follows:

Exception: Corrugated stainless steel tubing (CSST) shall be a minimum of 1/2" (18 EDH).

Section G2415.9.1 (404.9.1); delete.

Section G2415.10 (404.10); change to read as follows:

G2415.10 (404.10) Minimum burial depth. Underground *piping systems* shall be installed a minimum depth of 18 inches (457 mm) below grade, except as provided for in Section G2415.10.1.

Section G2417.1 (406.1); change to read as follows:

G2417.1 (406.1) General. Prior to acceptance and initial operation, all *piping* installations shall be inspected and *pressure tested* to determine that the materials, design, fabrication, and installation practices comply with the requirements of this *code.* The *permit* holder shall make the applicable tests prescribed in Sections 2417.1.1 through 2417.1.5 to determine compliance with the provisions of this *code.* The *permit* holder shall give reasonable advance notice to the *building official* when the *piping system* is ready for testing. The *equipment*, material, power and labor necessary for the inspections and test shall be furnished by the *permit* holder and the *permit* holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

Section G2417.4; change to read as follows:

G2417.4 (406.4) Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the *pressure test* period. The source of pressure shall be isolated before the *pressure tests* are made. Gauges used to measure… *{remainder unchanged}*

Section G2417.4.1; change to read as follows:

G2417.4.1 Test pressure. The test pressure to be used shall be not less than 10 psig (68.9 kPa gauge), the piping and valves may be tested at a pressure of at least six inches (152) of mercury, measured with a manometer, slope gauge or spring gauge. For welded piping and piping carrying gas at pressures in excess of 14 inches water column pressure (3.48 kPa), the test pressure shall not be less than 60 pounds per square inch (413.4 kPa).

Section G2417.4.2; change to read as follows:

G2417.4.2 (406.4.2) Test duration. The test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for less than fifteen (15) minutes. For welded *piping*, and for *piping* carrying gas at pressures in excess of fourteen (14) inches water column pressure (3.48 kPa), the test duration shall be held for a length of time satisfactory to the *Building Official*, but in no case for less than thirty (30) minutes.

Section G2417.7 deleted and change to read as follows:

IRC 406.7 (IFGC G2417.7) Purging requirements. The purging of piping shall be in accordance with Sections 406.7.1 through 406.7.3.

IRC 406.7.3 (IFGC G2417.7.3) Purging appliances and equipment. After the piping system has been placed in operation, appliances and equipment shall be purged before being placed into operation.

Section G2420.1 (409.1); add Section G2420.1.4 to read as follows:

G2420.1.4 Valves in CSST installations. Shutoff *valves* installed with corrugated stainless steel (CSST) *piping systems* shall be supported with an approved termination fitting, or equivalent support,

suitable for the size of the *valves*, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration but in no case greater than 12-inches from the center of the *valve.* Supports shall be installed so as not to interfere with the free expansion and contraction of the system's *piping*, fittings, and *valves* between anchors. All *valves* and supports shall be designed and installed so they will not be disengaged by movement of the supporting *piping.*

Section G2420.5.1 (409.5.1); add text to read as follows:

G2420.5.1 (409.5.1) Located within the same room. The shutoff valve… *{bulk of paragraph unchanged}…* in accordance with the appliance manufacturer's instructions. A secondary shutoff valve must be installed within 3 feet (914 mm) of the firebox if appliance shutoff is located in the firebox.

Section G2421.1 (410.1); add text and Exception to read as follows:

G2421.1 (410.1) Pressure regulators. A line *pressure regulator* shall be … *{bulk of paragraph unchanged}… approved* for outdoor installation. Access to *regulators* shall comply with the requirements for access to *appliances* as specified in Section M1305.

Exception: A passageway or level service space is not required when the *regulator* is capable of being serviced and removed through the required *attic* opening.

Section G2422.1.2.3 (411.1.3.3); delete Exception 1 and Exception 4.

Section G2439.5 (614.6); change text to read as follows:

G2439.5 (614.6) Domestic clothes dryer exhaust ducts. Exhaust ducts for domestic *clothes dryers* shall conform to the requirements of Sections G2439.5.1 through G2439.5.7. The size of duct shall not be reduced along its developed length nor at the point of termination.

Section G2445.2 (621.2); add Exception to read as follows:

G2445.2 (621.2) Prohibited use. One or more *unvented room heaters* shall not be used as the sole source of comfort heating in a *dwelling unit.*

Exception: Existing *approved unvented room heaters* may continue to be used in *dwelling units*, in accordance with the *code* provisions in effect when installed, when *approved* by the *Building Official* unless an unsafe condition is determined to exist as described in *International Fuel Gas Code* Section 108.7 of the Fuel Gas Code.

Section G2448.1.1 (624.1.1); change to read as follows:

G2448.1.1 (624.1.1) Installation requirements. The requirements for *water heaters* relative to access, sizing, *relief valves*, drain pans and scald protection shall be in accordance with this *code.*

———

IRC CHAPTER 25, PLUMBING ADMINISTRATION.

Section P2503.6; change to read as follows:

P2503.6 Shower liner test. Where shower floors and receptors are made water tight by the application of materials required by Section P2709.2, the completed liner installation shall be tested. The pipe from the shower drain shall be plugged water tight for the test. Water shall be held in the section under test for a period of 15 minutes. The system shall prove leak free by visual inspection.

———

IRC CHAPTER 26, GENERAL PLUMBING REQUIREMENTS.

Section 2601.2; revised to read as follows:

2601.2 Connections. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent indirect waste systems.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an *approved* gray water recycling system. *(Remainder of language unchanged)*

Section P2603.6.1; insert number of inches in two locations as follows:

P2603.6.1 Sewer depth. *Building sewers* that connect to private sewage disposal systems shall be a minimum of 12 inches (304 mm) below finished *grade* at the point of septic tank connection. *Building sewers* shall be a minimum of 12 inches (304 mm) below *grade.*

———

IRC CHAPTER 27, PLUMBING FIXTURES.

Section P2709.2; add Exception to read as follows:

Exception: Showers designed to comply with ICC/ANSI A117.1.

———

IRC CHAPTER 29, WATER SUPPLY & DISTRIBUTION.

Section P2902.5.3; change to read as follows:

P2902.5.3 Lawn irrigation systems. The potable water supply to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, a double-check assembly or a reduced pressure principle backflow preventer. A valve shall not be installed downstream from an atmospheric vacuum breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

———

IRC CHAPTER 30, SANITARY DRAINAGE.

Section P3005.2.6; change to read as follows:

P3005.2.6 Upper Terminal. Each horizontal drain shall be provided with a cleanout at its upper terminal.

Exception: Cleanouts may be omitted on a horizontal drain less than five (5) feet (1524 mm) in length unless such line is serving sinks or urinals.

———

IRC CHAPTER 31, VENTS.

Section P3112.2; delete and replace with the following:

P3112.2 Installation. Traps for island sinks and similar equipment shall be roughed in above the floor and may be vented by extending the vent as high as possible, but not less than the drainboard height and then returning it downward and connecting it to the horizontal sink drain immediately downstream

from the vertical fixture drain. The return vent shall be connected to the horizontal drain through a wye-branch fitting and shall, in addition, be provided with a foot vent taken off the vertical fixture vent by means of a wye-branch immediately below the floor and extending to the nearest partition and then through the roof to the open air or may be connected to other vents at a point not less than six (6) inches (152 mm) above the flood level rim of the fixtures served. Drainage fittings shall be used on all parts of the vent below the floor level and a minimum slope of one-quarter (1/4) inch per foot (20.9 mm/m) back to the drain shall be maintained. The return bend used under the drainboard shall be a one (1) piece fitting or an assembly of a forty-five (45) degree (0.79 radius), a ninety (90) degree (1.6 radius) and a forty-five (45) degree (0.79 radius) elbow in the order named. Pipe sizing shall be as elsewhere required in this Code. The island sink drain, upstream of the return vent, shall serve no other fixtures. An accessible cleanout shall be installed in the vertical portion of the foot vent.

———

IRC CHAPTERS 34-43, ELECTRICAL.

Chapters 34 through 43; delete. Replace with the National Electrical Code as adopted for all references regarding electrical installations within the International Residential Code..

APPENDIX G

(c) *Section AG 105.2.4 Barrier Requirements Outdoor Swimming Pools: Add an exception as follows:*

Exception: Horizontal members may be located on the outside of the barrier provided that 45 degree bevels are continuously placed on the topside of the second horizontal member away from grade.

Section AG 109; added to read as follows:

AG 109 Plumbing requirements.

AG 109.1 General. All residential swimming pools are required to have a drain pipe run from the pool filter system to the sanitary sewer system with an indirect 1 inch air gap connection to a P trap.

(Ord. No. 342, § 11, 11-16-1999; Ord. No. 342-1, § 3, 12-18-2001; Ord. No. 678, §§ 11, 12, 11-15-2011; Ord. No. 735, §§ 11, 12, 8-6-2013)

State Law reference— Adoption of the International Residential Code , V.T.C.A., Local Government Code § 214.001 et seq.

Sec. 8-33. - International Energy Conservation Code.

(a) *Adopted.*

(1) The International Energy Conservation Code, 2009 edition, as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Energy Conservation Code, marked Exhibit "G," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Energy Conservation Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

———

IECC CHAPTER 1, ADMINISTRATION.

Section 101.1; Insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *International Energy Conservation Code* of City of Kyle, hereinafter referred to as "this code."

Section 101.4.2; change to read as follows:

101.4.2 Historic Buildings. Any building or structure that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer of the Keeper of the National Register of Historic Places, shall comply with all of the provisions of this code.

Exception: Whenever a provision or provisions shall invalidate or jeopardize the historical designation or listing, that provision or provisions may be exempted.

Section 103.1.1; add Section 103.1.1 to read as follows:

103.1.1 Alternative compliance. A building certified by a national, state, or local accredited energy efficiency program and determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the Code Official, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance.

Section 108.4; insert dollar amount in two locations as follows:

108.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

Section 109; delete entire section and insert the following:

109 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

———

IECC CHAPTER 2, DEFINITIONS.

Section 202; add the following definition:

GLAZING AREA. Total area of the glazed fenestration measured using the rough opening and including sash, curbing or other framing elements that enclose conditioned space. Glazing area includes the area of glazed fenestration assemblies in walls bounding conditioned basements. For doors where the daylight opening area is less that 50 percent of the door area, the glazing area is the daylight opening area. For all other doors, the glazing area is the rough opening area for the door including the door and the frame.

———

IECC CHAPTER 4, RESIDENTIAL ENERGY EFFICIENCY.

Section 401.2, Item #1; change to read as follows:

1. Sections 402.1 through 402.3, 403.2.1 and 404.1 (prescriptive) and the use of Tables 402.1.1 and 402.1.3 are limited to a maximum *glazing area* of 15% window area to floor area ratio; or

2. *{language unchanged}*

Section 402.2.12; Add Section 402.2.12 to read as follows:

Section 402.2.12 Insulation installed in walls. Insulation batts installed in walls shall be totally surrounded by an enclosure on all sides consisting of framing lumber, gypsum, sheathing, wood structural panel sheathing or other equivalent material approved by the building official.

Section 405.4.1; add the following sentence to the end of paragraph:

RemRate™, Energy Gauge™, and IC3 are deemed acceptable performance simulation programs.

(Ord. No. 342, § 12, 11-16-1999; Ord. No. 342-1, § 10, 12-18-2001; Ord. No. 678, §§ 13, 14, 11-15-2011; Ord. No. 735, §§ 13, 14, 8-6-2013)

State Law reference— Energy conservation, V.T.C.A., Local Government Code § 214.901.

Sec. 8-34. - International Property Maintenance Code.

(a) *Adopted.*

(1) The International Property Maintenance Code, 2009 edition, as published by the International Code Council, is hereby adopted, and designated as the building code of the City of Kyle, and is made a part hereof, as amended.

(2) One copy of the 2009 edition of the International Property Maintenance Code, marked Exhibit "H," is incorporated herein by reference and shall be filed in the office of the city secretary for permanent record and inspection.

(3) Unless deleted, amended, expanded, or otherwise changed herein, all provisions of such code shall be fully applicable and binding. In the event a conflict is determined to exist between said International Property Maintenance Code as adopted and the other provisions of this section, the most restrictive of the conflicting provisions will prevail.

(b) *Amendments.*

———

IPMC CHAPTER 1, ADMINISTRATION.

Section 101.1; Insert jurisdiction name as follows:

101.1 Title. These regulations shall be known as the *International Property Maintenance Code* of City of Kyle, hereinafter referred to as "this code."

Section 101.3; change to read as follows:

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued *occupancy* and maintenance of structures and *premises.* Existing structures and *premises* that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the Building Codes as adopted by the City of Kyle.

Section 101.4.7; add the following:

101.4.7 Electrical. The provisions of the Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

Section 102.3; change to read as follows:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the Building Codes as adopted by the City of Kyle. Nothing in this Code shall be construed to cancel, modify or set aside any provision of the City of Kyle Zoning Ordinance.

Section 103.5; change to read as follows:

103.5 Fee. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as adopted by ordinance of the governing body of the jurisdiction.

Section 111; delete entire section and insert the following:

111 Means of Appeal. Any person shall have the right to appeal a decision of the *code official* to the Board of Adjustment established by ordinance. The board shall be governed by the enabling ordinance.

Section 112.4; insert the following dollar amount in two locations:

112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than $200 dollars or more than $2,000 dollars.

———

IPMC CHAPTER 3, GENERAL REQUIREMENTS.

Section 302.4; insert the following height in inches:

302.4 Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. *[remaining text unchanged]*

Section 304.14; insert the following dates in two locations:

304.14 Insect screens. During the period from January 01 to December 31, every door, window and other outside opening required for *ventilation* of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with *approved* tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other *approved* means, such as air curtains or insect repellent fans, are employed.

———

IPMC CHAPTER 6, MECHANICAL & ELECTRICAL REQUIREMENTS.

Section 601.1; delete entire section and insert the following:

601.1 Scope. The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided. Whenever reference is made to electrical code standards, all requirements shall be in accordance with the *National Electrical Code* as adopted.

Section 602.3; insert the following dates in two locations:

602.3 Heat supply. Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from October 01 to May 01 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms.*

Exceptions: *[remaining text unchanged]*

Section 602.4; insert the following dates in two locations:

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 01 to May 01 to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions: *[remaining text unchanged]*

(Ord. No. 342-1, § 11, 12-18-2001; Ord. No. 678, §§ 15, 16, 11-15-2011; Ord. No. 735, §§ 15, 16, 8-6-2013)

Sec. 8-35. - Adoption of 1985 edition of the Standard Unsafe Building Abatement Code.

That certain document, one copy of which is on file in the office of the city secretary, being marked and designated as Ordinance No. 279, the Standard Unsafe Building Abatement Code (see article III of this chapter), with certain deletions, additions, and amendments thereto, is in the best interest of the health, safety, and welfare of the citizens and will more adequately protect life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures.

(Ord. No. 342-1, § 12, 12-18-2001)

Sec. 8-36. - Permit applications.

Applications for permits required by this article shall be made to the appropriate inspector and must be made in writing by the person to do the work, or his authorized agent, that will be submitted upon forms provided to the inspector for that purpose. An application for such permit may be deposited at the office of the city secretary for delivery to and action by the inspector. Such application shall contain:

(1) Date application is submitted.

(2) Name of owner and name of person employed to do the work.

(3) Name of person actually presenting application to the inspector.

(4) Exact location of the property where work is to be done.

(5) A fee, appropriate to the number and kinds of installations to be made.

(6) A description of the work to be performed.

a. Where deemed necessary by the inspector to accomplish the objectives of this article, applications shall be accompanied by as many copies of specifications, plans and a complete feeder layout drawn to scale and in detail to show the nature and character of the work to be performed as the inspector may deem necessary.

b. The plan or diagram shall show the manner in which the installations are to be made or the character of any of the repairs to existing electrical installations.

c. When such plans, specifications and layout are demanded, it shall be a violation of this article for any person to install any part of the electrical, plumbing or structure until the appropriate inspector approves such installations.

(7) Other such pertinent information as the inspector may require.

(Ord. No. 342, § 13, 11-16-1999)

Sec. 8-37. - Permit fees.

Permit fees shall be collected prior to the issuance of any permit for building construction work, plumbing work, mechanical work, or electrical work in accordance with appendix A to this Code. The fee schedule, set forth in appendix A to this Code, shall be maintained as a public record in the office of the city secretary. Payment of fees for inspection shall be applied for each scheduled inspection. Failure of the person requesting the inspection to be available at the scheduled time for inspection shall constitute grounds for the inspection fee to be applied to the inspection regardless of whether the inspector actually inspected. The applicant for inspection may be required to pay a new inspection fee if such failure to be available for inspection was due to the applicant's actions.

(Ord. No. 342, § 14, 11-16-1999)

Sec. 8-38. - Contractor registration.

(a) No person, firm or corporation shall be authorized to secure permits as indicated in subsection (d) of this section without being a valid registered contractor with the city. Homeowners doing work on their homestead are exempt.

(b) A valid registered contractor is a person, firm or corporation who is not delinquent in any fees or debt to the city.

(c) The registration applicant shall file an application in writing on a form furnished by the building inspection department for this purpose. Failure by the applicant to have obtained appropriate licenses shall be cause for rejection of the application.

(d) Permits that pertain to this chapter include, but are not limited to, the following: Building, electrical, plumbing, irrigation, mechanical and fire sprinkler.

(Ord. No. 342, § 15, 11-16-1999; Ord. No. 678, § 18, 11-15-2011; Ord. No. 735, § 19, 8-6-2013)

Sec. 8-39. - Reserved.

Editor's note— Ord. No. 678, § 18, adopted Nov. 15, 2011, has been treated by the editor as superseding and repealing former § 8-39 in its entirety which pertained to the registration and licensing of electrical contractors and derived from Ord. No. 342, § 16, adopted Nov. 16, 1999.

Secs. 8-40—8-66. - Reserved.

ARTICLE III. - UNSAFE BUILDING ABATEMENT

Sec. 8-67. - Definitions.

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

Building official means the city building inspector or a person employed, appointed, or designated by the city council for purposes of making inspections, sending notices, and otherwise enforcing the provisions of this article.

Dangerous building or *unsafe building* means any structure or building located within the incorporated limits of the city that is:

(1) In such a state or condition of repair or disrepair that all or any of the following conditions exist:

a. Walls or other vertical structural members list, lean, or buckle;

b. Damage or deterioration exists to the extent that the building is unsafe;

c. Loads on floors or roofs are improperly distributed or the floors or roofs are insufficient strength to be reasonably safe to the purposes used;

d. Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city;

e. The building or structure is so dilapidated, substandard, decayed, unsafe, unsanitary or otherwise lacking in the amenities essential of decent living that the same is unfit for human habitation or is likely to cause sickness, disease or injury or otherwise to constitute a detriment to the health, morals, safety or general welfare of those persons assembled, working, or living therein or is a hazard to the public health, safety, and welfare;

f. Light, air and sanitation facilities are inadequate to protect the health, morals, safety or general welfare of persons who assemble, work or live therein;

g. Stairways, fire escapes and other facilities of egress in case of fire or panic are inadequate;

h. Parts or appendages of the building or structure are so attached that they are likely to fall and injure persons or property;

(2) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare of the city's residents;

(3) Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or

(4) Boarded up, fenced or otherwise secured in any manner if:

a. The building constitutes a danger to the public even though secured from entry;

b. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building to the extent it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or

c. Defined as a dangerous or unsafe building by the Standard Unsafe Building Abatement Code, 1985 edition, published by the Southern Building Code Congress International, Inc.

Responsible parties means the owner, occupant or person in custody of the building or structure, and any mortgagee or lienholder.

(Ord. No. 279, § 2, 3-21-1995)

Sec. 8-68. - Findings of fact.

The findings and recitations set out hereinabove are found to be true and correct and are hereby adopted by the city council and made a part hereof for all purposes as finding of fact.

(Ord. No. 279, § 1, 3-21-1995)

Sec. 8-69. - Standard Unsafe Building Abatement Code, 1985 edition.

The Standard Unsafe Building Abatement Code, 1985 edition, published by the Southern Building Code Congress International, Inc., a copy of which has been exhibited to and approved by the city council, and certified copies of which are on file in the office of the city secretary, is hereby adopted by reference and declared to be the unsafe building abatement code of the city for the regulation, vacation, removal, repair, or demolition of unsafe buildings in a timely and legal manner in the city; save and except:

Section 105.1. Which deals with the composition of the membership of the board of adjustment which is hereby amended to provide that the composition of the board of adjustment of the city shall be five citizens of the city; and further provided that preference shall be given to qualified architects, engineers, and citizens knowledgeable in the construction industry, for such board appointments; and

Sections 302, 304, 401, 501.1, 504.2, 601, and 602. Which are deleted in their entirety and replaced by the provisions of this article.

(Ord. No. 279, § 3, 3-21-1995)

Sec. 8-70. - Unsafe buildings declared a nuisance.

(a) It shall be unlawful for any person to maintain or permit the existence of any unsafe building in the city; and it shall be unlawful for any person to permit same to remain in such condition.

(b) All unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this article.

(c) The building official shall enforce the provisions of this article.

(Ord. No. 279, § 4, 3-21-1995)

Sec. 8-71. - Inspections and duties of the building official.

The building official shall inspect, or cause to be inspected, every building, or portion thereof, reported to be unsafe. If such building, or any portion thereof, is determined to be unsafe, the building official shall give the responsible parties notice in accordance with the requirements set forth in sections 8-72 and 8-73. The building official shall further:

(1) Inspect or cause to be inspected, when necessary, any building or structure within the incorporated limits of the city, including public buildings, schools, halls, churches, theaters, hotels, tenements or apartments, multifamily residences, single-family residences, garages, warehouses, and other commercial and industrial structures of any nature whatsoever for the purpose of determining whether any conditions exist which render such places a dangerous building as defined in section 8-67.

(2) Inspect any building, wall or structure about which complaints have been filed by any person to the effect that a building wall or structure is or may be existing in violation of this article.

(3) Report to the board of adjustment any noncompliance with the minimum standards set forth in this article. The city building official shall obtain from the secretary of the board of adjustment a hearing date for a public hearing by the board of adjustment on any structure believed to be a dangerous building and shall provide the secretary of the board of adjustment with copies of the written notice to persons with interest in the property as provided for in section 8-72.

(4) Appear at all hearings conducted by the board of adjustment and testify as to the conditions of dangerous buildings within the city.

(5) Place a notice on all dangerous buildings reading as follows:

"This building has been found to be a dangerous building by the city building official. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given to the owners, occupants and persons with interests in the property as shown by the records of the city secretary and the tax appraisal district. It is unlawful to remove this notice until such notice is complied with."

(6) Perform the other requirements with respect to notification of public hearings as are set forth more specifically in this article.

(Ord. No. 279, § 5, 3-21-1995)

Sec. 8-72. - Notice to repair.

Should the building official determine that any building or structure within the incorporated limits of the city is a dangerous building or unsafe building, he shall cause written notification to be sent, by certified mail, to the owner and all other persons having an interest in the building after a diligent effort to discover each owner, mortgagee, and lienholder. Such notice shall contain:

(1) A description of the building or structure deemed unsafe and its location;

(2) A statement of the particulars which make the building or structure a dangerous building;

(3) Notice of the date and time of a public hearing before the board of adjustment to determine whether the building complies with the standards set out in this article;

(4) A statement that the owner, lienholder, mortgagee, or persons with a legal interest in the building will be required to submit at the hearing proof of the scope of any work that may be required to comply with this article and the amount of time it will take to reasonably perform the work.

Such notice is to be served upon the responsible parties as set out in this article.

(Ord. No. 279, § 6, 3-21-1995)

Sec. 8-73. - Sufficiency of notice.

Notice given pursuant to this article shall be deemed property served upon the responsible parties if a copy thereof is:

(1) Served upon him personally;

(2) Sent by registered or certified mail, return receipt requested, to the last known address of such person as shown on the records of the city; and

(3) Posted in a conspicuous place in or about the building affected by the notice.

(Ord. No. 279, § 7, 3-21-1995)

Sec. 8-74. - Duties of the board of adjustment.

The board of adjustment' duties are as follows:

(1) The board of adjustment shall schedule and hold a hearing and hear testimony form the building official, the owner and other persons having an interest in the dangerous building, and any person desiring to present factual evidence relevant to the unsafe building. Such testimony shall relate to the determination of the question of whether the building or structure in question is a dangerous building and the scope of any work that may be required to comply with this article and the amount of time it will take to reasonably perform the work. The owner or a person having an interest in

the dangerous building shall have the burden of proof to demonstrate the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work.

(2) Upon conclusion of the hearing, the board of adjustment shall determine by majority vote whether the building or structure in question is a dangerous building. Upon a determination that the building or structure in question constitutes a dangerous building, the board of adjustment shall issue an order:

a. Containing an identification of the building and the property on which it is located;

b. Making written findings of the violations of the minimum standards that are present at the building;

c. Requiring the owner and persons having an interest in the building to repair, vacate, or demolish the building within 30 days from the issuance of such order, unless the owner or a person with an interest in the building establishes at the hearing that the work cannot reasonably be performed within 30 days, in which instance the board of adjustment shall specify a reasonable time for the completion of the work; and

d. Containing a statement that the city will vacate, secure, remove or demolish the dangerous building and relocate the occupants of the building if the ordered action is not taken within the time specified by the board of adjustment.

(3) The board of adjustment shall deliver a copy of the order by hand delivery or certified mail to the owner and all persons having an interest in the property, including all identifiable mortgagees and lienholders as soon as is practicable after the hearing.

(4) If the board of adjustment allows the owner or a person with an interest in the dangerous building more than 30 days to repair, remove, or demolish the building, the board of adjustment in its written order shall establish specific time schedules for the commencement and performance of the work and shall require the owner or person to secure the property in a reasonable manner from unauthorized entry while the work is being performed. The securing of the property shall be in a manner found to be acceptable by the city building official.

(5) The board of adjustment may not allow the owner or person with an interest in the dangerous building more than 90 days to repair, remove, or demolish the building or fully perform all work required to comply with the written order unless the owner or person:

a. Submits a detailed plan and time schedule for the work at the hearing; and

b. Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

(6) If the board of adjustment allows the owner or person with an interest in the dangerous building more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the board of adjustment shall require the owner or person to regularly submit progress reports to board of adjustment to demonstrate that the owner or person has complied with the time schedules established for commencement and performance of the work. The written order may require that the owner or person with an interest in the building appear before the city building official to demonstrate compliance with the time schedules.

(7) In the event the owner or a person with an interest in a dangerous building fails to comply with the order within the time specified therein, the city may cause any occupants of the dangerous building to be relocated, and may cause the dangerous building to be secured, removed, or demolished at the city's expense. The city may assess the expenses on, and the city has a lien against, unless it is a homestead as protected by the state constitution, the property on which the dangerous building was located. The lien is extinguished if the property owner or a person having an interest in the building reimburses the city for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in with the property is located. The notice of lien must contain the name and address of the owner of the dangerous building if that information can be determined by a diligent effort, a legal description of the real property on which the building was located, the amount of

expenses incurred by the city, and the balance due. Such lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property.

(8) In addition to the authority set forth in subsection (7) of this section, after the expiration of the time allotted in the order for the repair, removal, or demolition of a dangerous building, the city may repair the building at its expense and assess the expenses on the land on which the building stands or to which it is attached. The repairs contemplated by this section may only be accomplished to the extent necessary to bring the building into compliance with the minimum standards established by this article, and to the extent such repairs do not exceed minimum housing standards. This section shall be applicable only to residential buildings with ten or fewer dwelling units. The city shall follow the procedures set forth in subsection (7) of this section for filing a lien on the property on which the building is located.

(Ord. No. 279, § 8, 3-21-1995)

Sec. 8-75. - Appeal to the city council and public hearing.

Any responsible party that is aggrieved by the decision of the board of adjustment may appeal such decision to the city council within ten days from the date of the decision appealed from. In such even, the city council shall set a time and date for hearing such appeal and hold such hearing within 30 days from the date of the appeal.

(1) The purpose of the public hearing of the appeal shall be determine whether or not the building is an unsafe building or a dangerous building in accordance with the standards set forth in the definition of the term "dangerous building" or "unsafe building" in section 8-68, and to uphold, reverse or modify the decision of the board of adjustment.

(2) The matter shall be set forth hearing before the city council at the earliest practicable date and notice of said hearing shall be served on the responsible parties, each known mortgagee and lienholder, and the building official not less than ten days prior to the date of said hearing. All interested persons shall have the opportunity to be heard and may introduce evidence to the city council for its consideration.

(3) After the public hearing, the city council shall make such findings and orders as it shall deem appropriate.

(4) After the public hearing, if a building is found in violation of standards set out in the definition of the term "dangerous building" or "unsafe building" in section 8-68, the city council may order that the decision of the board of adjustment be affirmed, reversed or modified and, in the latter instance, that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time. The city council also may order that the occupants be relocated within a reasonable time. The secretary shall send to each identified mortgagee and lienholder a notice containing:

a. An identification, and address of the building and property on which it is located;

b. A description of the violation of this Code, if any, that is found by the city council to be present at the building; and

c. A statement that the city will vacate, secure, remove, repair, or demolish the building or relocate the occupants of the building if the ordered is not taken within a reasonable time, or that the city will take no action.

(5) As an alternative to the procedure prescribed by subsection (4) of this section, the city council shall make a diligent effort to contact each mortgagee and lienholder before conducting the public hearing and shall give them a notice of and an opportunity to comment at the hearing. If the city proceeds under this subsection, the order issued by the city council shall specify a reasonable time for the building to be vacated, secured, repaired, removed, or demolished by the responsible party and an additional reasonable time for the ordered action to be taken by any of the

mortgagees or lienholders in the event the responsible party fails to comply with the order within the time provided for action by the responsible party. Under this subsection, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the event the responsible party fails to timely take the order action.

(6) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the city may vacate, secure, remove, repair or demolish the building or relocate the occupants at its own expense.

(7) If the city incurs expenses under subsection (6) of this section, the city may assess the expenses on the property and the city has a lien against the property, unless it is a homestead as protected by the state constitution, the property on which the building was or is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorder and indexed in the office of the county clerk. The notice must contain the name and address of the owner if that information can be determined by a diligent effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the city, and the balance due.

(8) If the notice is given and the opportunity to repair, remove, or demolish the building is afforded to each mortgagee and the lienholder as provided in subsection (4) or (5) of this section, the lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the city's lien attaches.

(Ord. No. 279, § 9, 3-21-1995)

Sec. 8-76. - Assessment of expenses and penalties.

(a) If an appeal has been made to the city council by any interested party, and if the city council has held a hearing pursuant to section 8-75(2) and the time allotted for the repair, removal or demolition of a building under section 8-75(4) or (5) has expired, then the city council may, in addition to the authority granted under V.T.C.A., Local Government Code ch. 214 and section 8-75:

(1) Order the repair of the building at the city's expense and assess the expenses on the land on which the building stands or to which it is attached; or

(2) Assess a civil penalty against the responsible party for failure to repair, remove, or demolish the building.

The city building official shall invite at least two or more building contractors to make estimates pertaining to the needed repair, removal or demolition of a building. The building official shall cause to be made an assessment of expenses or civil penalty based on such estimates. The building official shall endeavor to minimize the expenses of any building repairs, removal or demolitions order pursuant to this section.

(b) The city may repair a building under subsection (a) of this section only to the extent necessary to bring the building into compliance with the minimum standards of the city and only if the building is a residential building with ten or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum standards prescribed by the city.

(c) The city shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the state constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the city shall file for record, in recordable form in the office of the county clerk, a written notice of the imposition of the lien. The notice shall contain a legal description of the land.

(d) The city's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the city's lien attaches if the mortgage lien was filed for record in the office of the county clerk before the

date the civil penalty is assessed or the repair, removal, or demolition is begun by the city. The city's lien is superior to all other previously recorded judgment liens.

(e) Any civil penalty or other assessment imposed under this section accrues interest at the rate of ten percent a year from the date of the assessment until paid in full.

(f) In any judicial proceeding regarding enforcement of the city's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees as otherwise provided by statute.

(g) A lien acquired under this section by the city for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.

(Ord. No. 279, § 10, 3-21-1995)

Sec. 8-77. - Violations.

(a) The owner of any unsafe building or dangerous building who shall fail to comply with any notice or order to repair, vacate or demolish said building or structure, such notice or order given by the authority of the board of adjustment, or the city council, shall be guilty of a misdemeanor.

(b) An occupant or lessee in possession of any unsafe building or dangerous building who fails to comply with any notice or order to vacate such building and fails to repair such building in accordance with an order given by the board of adjustment shall be guilty of a misdemeanor.

(c) Any person removing the notice of a dangerous building as provided for in section 8-71(5) shall be guilty of a misdemeanor.

(d) The violation of any provision of this article shall be unlawful and a misdemeanor offense punishable by a fine not exceeding $500.00. Each day a violation of this article continues shall constitute a separate offense.

(Ord. No. 279, § 11, 3-21-1995)

Secs. 8-78—8-97. - Reserved.

ARTICLE IV. - BUILDING PERMIT FEES AND CHARGES

Sec. 8-98. - Basic building permit fees and charges.

The fees and charges are established and included in appendix A to this Code and shall be in addition to any fees otherwise required pursuant to this Code.

(Ord. No. 475, § 1, 10-18-2005)

Sec. 8-99. - Fee components and exemption.

(a) *Generally.* The permit fee for single-family residential, multifamily and commercial structures shall consist of a base permit fee, as set forth in section 8-100, the applicable plan review fee set forth in section 8-101, and the inspection fees set forth in section 8-102.

(b) *Minimum valuation.* Where the valuation of the addition does not exceed $500.00, no fee shall be charged, unless such work by its nature requires an inspection (such as structural alterations, addition to plumbing, electrical or mechanical systems). If the total valuation of the work is $500.00 or less, but

one or more inspections are required because the work includes structural alterations, plumbing, electrical or mechanical system work, an administrative fee as established in the fee schedule in appendix A to this Code per required inspection shall be charged.

(Ord. No. 475, § 1(A), 10-18-2005)

Sec. 8-100. - Base permit fees.

(a) *Single-family residential.* The base building permit fee for a single-family residential structure, inclusive of general building, electrical, plumbing and mechanical work, shall be based on the square footage of the structure according to the fee schedule in appendix A to this Code.

(b) *Commercial and multifamily.* The building permit fee for commercial and multifamily structures, inclusive of general building, electrical, plumbing and mechanical work, shall be based on the square footage of the structure according to the fee schedule in appendix A to this Code.

(Ord. No. 475, § 1B, 10-18-2005)

Sec. 8-101. - Plan review fee increment.

A nonrefundable plan review fee shall be charged, in addition to the base permit fee, for and with respect to each single-family, multifamily or commercial structure for which a base permit fee is payable pursuant to the fee schedule in appendix A to this Code. Such plan review fees shall be charged and payable as follows:

(1) *Single-family.* A plan review fee in an amount equal to 20 percent of the base fee for each permit as described in the fee schedule in appendix A to this Code shall be charged for and with respect to each single-family building permit application. Such fee shall be payable upon the initial application for such building permit.

(2) *Multifamily and commercial.* A plan review fee in an amount equal to 20 percent of the base fee for each permit as described in the fee schedule in appendix A to this Code, shall be charged for and with respect to each multifamily and commercial building permit application. The full estimated amount of such fee, including the hourly charge, shall be payable upon the initial application for such building permit. In the event the required review time exceeds the estimate the additional amount payable as the plan review fee shall be paid prior to the issuance of any building permit. In the event the estimated plan review fee paid exceeds the actual required amount, the difference shall be credited against the base permit fee or the inspection fee.

(Ord. No. 475, § 1(C), 10-18-2005)

Sec. 8-102. - Inspection fee increments.

The work and improvements for which a base building permit fee is required to be paid pursuant to the fee schedule in appendix A to this Code shall be subject to the inspections provided for in the National Electrical Code, the International Mechanical Code, the International Plumbing Code, the International Building Code and all related codes and ordinances of the city (the codes). A nonrefundable inspections fee shall be charged, in addition to the base permit fee and plan review fee, for and with respect to each single-family, multifamily or commercial structure for which a base permit fee is payable pursuant to the fee schedule in appendix A to this Code. Such inspection fees shall be charged and payable as follows:

(1) *Single-family.* A base inspections fee increment shall be paid for each building permit for a single-family dwelling in an amount equal to the fee as established in the fee schedule in appendix A to this Code, multiplied by the minimum number of inspections required pursuant to the codes, shall be paid prior to the issuance of any building permit for which a base building permit fee is required

to be paid pursuant to the fee schedule in appendix A to this Code. Such fee shall be payable upon the issuance of the building permit.

(2) *Multifamily and commercial.* A base inspections fee increment shall be paid for each building permit for a multifamily or commercial structure in an amount equal to the fee as established in the fee schedule in appendix A to this Code, multiplied by the minimum number of inspections required pursuant to the codes, shall be paid prior to the issuance of any building permit for which a base building permit fee is required to be paid pursuant to the fee schedule in appendix A to this Code. Such fee shall be payable upon the issuance of the building permit.

(3) *Additional inspection fees.* In addition to the base inspections fee payable pursuant to subsections (1) and (2) of this section and the fee schedule in appendix A to this Code, additional inspection fees shall be payable, as applicable, as follows:

a. *Additional inspections.* An additional fee shall be charged for each additional inspection, if any, that is required above the minimum required by the codes. Such fees shall be as established in the fee schedule in appendix A to this Code for each additional inspection of a single-family dwelling and a multifamily or commercial structure. The fees for such additional inspections as are required by the codes or any state or federal agency having jurisdiction shall be paid prior to being made and, in any event, prior to the issuance of any certificate or occupancy. An inspection fee as established in the fee schedule in appendix A to this Code shall he charged for the testing of lead and the assurance that no direct connection between public drinking water supply and a potential source contamination exists as required by Texas Commission on Environmental Quality.

b. *Reinspections.* If the inspector needs to make a return trip to ensure compliance with required corrections, an additional inspection fee as established in the fee schedule in appendix A to this Code per reinspection for single-family dwellings and commercial and multifamily construction must be paid to the city before reinspection will be made and, in any event, prior to the issuance of any certificate of occupancy.

c. *Out of sequence inspections.* An additional fee in the amount as established in the fee schedule in appendix A to this Code shall be charged for each inspection requested that is not requested in the sequence provided for in the codes. Such additional fee shall be paid to the city before the inspection is made and, in any event, prior to the issuance of any certificate of occupancy.

(Ord. No. 475, § 1(D), 10-18-2005)

Sec. 8-103. - Other building permit fees.

Save and except as provided in section 8-99(b), it is the intent of this article to establish an appropriate fee for each permit and inspection required to be made pursuant to the codes. With that purpose, the following permit fees and charges shall be charged for and with respect to the following permits:

(1) *Moving of structures.*

a. Except as provided in subsection (1)b of this section, a permit fee shall be charged for moving buildings or structures, including mobile or manufactured homes moved by other than a registered retailer or installer, in or out of the city. Such fee shall be as established in the fee schedule in appendix A to this Code, plus an escort fee is applicable. No permit or inspection fee shall be charged or required for the moving of a mobile or manufactured home into the city for the purpose of placing the same on a sales or dealership lot operated by registered retailer, or for installation within the city by a registered retailer or installer.

b. If, based upon location moved from or to, the streets to be used in the move, size of the structure, and related facts, an escort is deemed necessary for the protection of the public health and safety, except as provided in this subsection (1), an additional fee shall be collected in advance for such escort to be provided by the police department. Such escort

fee shall be an amount equal to 1.5 times the hourly cost for both the officer (including wages and benefits) and the patrol car, times the estimated number of hours or fractions thereof required for the escort within the city limits.

c. No fee shall be charged for the moving of a portable building or structure that is eight feet or less in height and that is not larger than 64 square feet.

(2) *Demolition permits.* A permit fee shall be charged for the demolition of any building, structure, or part thereof. Such demolition fee shall be as established in the fee schedule in appendix A to this Code, plus a fee for each required inspection.

(3) *Manufactured homes.* No permit or inspection fee shall be imposed with respect to the installation of a manufactured home within the city by a registered retailer or installer as defined in V.T.C.A., Occupations Code § 1201.001 et seq. A permit fee as established in the fee schedule in appendix A to this Code, plus a fee per required inspection shall be charged tar each mobile home as defined in V.T.C.A., Occupations Code § 1201.001 et seq., or manufactured home not installed by a registered retailer or installer, setup within the city.

(4) *Swimming pools and spas.* The permit fee for construction or installation of a swimming pool, spa or hot tub shall be as established in the fee schedule in appendix A to this Code, plus a fee for each required inspection.

(5) *Irrigation and backflow prevention assembly.* The permit fee for installation of an irrigation system shall be as established in the fee schedule in appendix A to this Code, plus a fee for each required inspection.

(6) *Certain structures with roof.* The permit fee for the construction of porches, patios, decks, carports, storage sheds and similar structures under roof, and not permitted under another subdivision of this section, shall be as established in the fee schedule in appendix A to this Code.

(7) *Remodeling and alterations.* Structural alterations, repairs, and remodeling on all structures, buildings and residences including shell buildings and mobile or manufactured homes, but excluding projects costing $500.00 or less and for which a permit is not otherwise required, shall require a minimum permit fee of as established in the fee schedule in appendix A to this Code, plus the applicable inspection fee for single-family residential, multifamily and commercial, per required inspection. In the event that the total square footage to be altered repaired or remodeled exceeds 200 square feet, the base permit fee shall be determined pursuant to section 8-100 or 8-101, as applicable.

(8) *Certificate of occupancy fee.* If a structure has been vacant or unused for one year, an inspection will be performed to determine the requirements to bring the building or other structure into compliance with current city ordinances and life, safety and health codes for the intended occupancy. The permit fee for single-family dwelling occupancy shall be as established in the fee schedule in appendix A to this Code. Such fee for multifamily, commercial or industrial structures shall be as established in the fee schedule in appendix A to this Code, plus a fee per hour of required inspection time with a one hour minimum.

(Ord. No. 475, § 1(E), 10-18-2005)

Sec. 8-104. - Double permit fees.

If work for which a permit is required, pursuant to this section, is initiated, started or proceeded without the permit first being obtained, the fees and charges specified in this article shall be doubled.

(Ord. No. 475, § 1(F), 10-18-2005)

Sec. 8-105. - Existing buildings and structures.

A fee in the amount as established in the fee schedule in appendix A to this Code for single-family and multifamily and commercial shall be charged with respect to each required inspection in the codes.

(Ord. No. 475, § 1(G), 10-18-2005)

Sec. 8-106. - Construction in extraterritorial jurisdiction (ETJ).

If water, sewer or other services are provided to a structure or other improvement, a minimum fee as established in the fee schedule in appendix A to this Code, plus a fee per inspection for residential and per required inspection for multifamily and commercial. The surcharges under this article are to defray the additional cost to the city of making inspections outside the city limits.

(Ord. No. 475, § 1(H), 10-18-2005)

Sec. 8-107. - Subdivision plats.

The fees and charges are established and included in appendix A to this Code and shall be collected for the subdivision of land within the city or its extraterritorial jurisdiction.

(Ord. No. 475, § 2, 10-18-2005)

Sec. 8-108. - Concept or master plan.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus a fee per acre or part thereof, shall be charged for filing and review of any concept or master plan. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the estimated amount of the engineer review fee, when the concept plan or master plan is filed. A deposit shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(A), 10-18-2005)

Sec. 8-109. - Short form subdivision plat.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus a fee per lot shall be paid for each short form subdivision plat filed for review by the city. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the estimated amount of the engineer review fee, when the plat plan is filed. A deposit as established in the fee schedule in appendix A to this Code shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(B), 10-18-2005)

Sec. 8-110. - Preliminary subdivision plat plan.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus a fee per lot, shall be paid for each preliminary subdivision plat filed for review by the city. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the then estimated amount of the engineer review fee, when the plat plan is filed. A deposit in the amount as established in the fee schedule in appendix A to this Code plus a fee per lot shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(C), 10-18-2005)

Sec. 8-111. - Final subdivision plat plan.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus a fee per lot, shall be paid for each final subdivision plat filed for review by the city. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the then estimated amount of the engineer review fee, prior to the plat plan being finally approved by the city and filed of record. A deposit in the amount as established in the fee schedule in appendix A to this Code plus a fee per lot shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(D), 10-18-2005)

Sec. 8-112. - Site development application.

A fee in the amount as established in the fee schedule in appendix A to this Code shall be paid for each site development application filed for review by the city. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the estimated amount of the engineer review fee, when the site development application is filed. A deposit as established in the fee schedule in appendix A to this Code shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(E), 10-18-2005)

Sec. 8-113. - Engineer review fee.

In addition to the fees set and required pursuant to this section, every person or entity filing a concept plan, master plan, preliminary subdivision plat plan, and every person filing a final subdivision plat plan, or any other application specified herein, shall pay to the city an amount equal to all engineering fees billed to the city for and with respect to such plat plan, plus an amount equal to ten percent of the total of such engineering fees billed to the city. The deposit made and applicable to such plan shall be credited against the final amount of such fee.

(Ord. No. 475, § 2(F), 10-18-2005)

Sec. 8-114. - Plat vacation.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus all estimated county recording fees, shall be charged for each plat plan vacation request. Such fee shall be in addition to any engineer review fee, if any, that may be applicable and charged pursuant to section 8-113. A deposit as established in the fee schedule in appendix A to this Code shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(G), 10-18-2005)

Sec. 8-115. - Subdivision replat; amending plat.

A fee in the amount as established in the fee schedule in appendix A to this Code plus a fee per lot shall be paid for each replat or resubdivision of a plat, or part thereof, filed for review by the city. Such fee shall be in addition to the engineer review fee provided in section 8-113 and shall be paid, together with the then estimated amount of the engineer review fee, when such request is filed. A deposit as established in the fee schedule in appendix A to this Code shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(H), 10-18-2005)

Sec. 8-116. - Subdivision variance request.

In addition to all other applicable fees and charges, a fee in the amount as established in the fee schedule in appendix A to this Code shall be paid in advance for each variance requested from chapter 53, pertaining to subdivision or any applicable design and/or construction standards. A deposit as established in the fee schedule in appendix A to this Code shall be paid to apply against the engineer review fee.

(Ord. No. 475, § 2(I), 10-18-2005)

Sec. 8-117. - Construction inspection.

A fee in the amount of 1.5 percent of the estimated cost for construction of all streets, water, wastewater, drainage and other infrastructure required to be constructed for the approval and final acceptance of any subdivision or section thereof shall be paid, together with all other applicable fees and charges, prior to any approved plat plan being finally approved by the city and filed of record. The total estimated amount of such fee shall be paid as a deposit prior to the start of construction.

(Ord. No. 475, § 2(J), 10-18-2005)

Sec. 8-118. - Zoning change and variances.

A fee in the amount as established in the fee schedule in appendix A to this Code, plus a fee per acre or portion thereof, shall be charged for each zoning change or variance requested under this chapter or chapter 53, zoning. A fee in the amount as established in the fee schedule in appendix A to this Code shall be charged for each applicant requested postponement of a zoning request.

(Ord. No. 475, § 3, 10-18-2005)

Secs. 8-119—8-149. - Reserved.

ARTICLE V. - MOBILE HOMES, MANUFACTURED HOMES AND PARKS[3]

Footnotes:

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State Law reference— Manufactured homes, V.T.C.A., Occupations Code § 1201.001 et seq.

DIVISION 1. - GENERALLY

Sec. 8-150. - Definitions.

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

Agent means any person authorized by the owner of a mobile home park to operate or maintain such park under the provisions of this article.

Blocking means the foundation for leveling and supporting the mobile home, as required by state standards.

Building official means the legally designated inspection authority of the city, or his authorized representative.

Certificate of occupancy means a certificate issued by the building official for the use of a building, structure, and/or land, when the building, structure, and/or land complies with the provisions of all applicable city codes and regulations.

City health officer means the legally designated head of the city health department, or his authorized representative.

City official means the legally designated head of a city department, or his authorized representative when acting in an official capacity.

Common access route means a private way which affords the principal means of access to individual mobile home lots or auxiliary buildings.

Director of public works means the duly authorized employee or representative of the city in charge of the street, water and sewer department or any combination thereof.

Driveway means a minor entranceway off the common access route within the park, into an off-street parking area serving one or more mobile homes.

Fire chief means the legally designated chief of the fire department of the city, or his authorized representative.

HUD code manufactured home or *manufactured home.*

(1) The term "HUD code manufactured home" or "manufactured home" means:

   a. A structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

   b. Built on a permanent chassis;

   c. Designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

   d. Transportable in one or more sections;

   e. In the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

   f. Includes the plumbing, heating, air conditioning, and electrical systems of the home.

(2) The term "HUD code manufactured home" or "manufactured home" does not include a recreational vehicle as defined by 24 CFR 3282.8(g).

Internal street means the same as common access route.

Mobile home means:

(1) A structure constructed before June 15, 1976;

(2) Built on a permanent chassis;

(3) Designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(4) Transportable in one or more sections;

(5) In the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(6) Includes the plumbing, heating, air conditioning, and electrical systems of the home.

The term "mobile home" also means and refers to manufactured homes.

Mobile home park means a unified development of three or more mobile home spaces for rent or lease arranged on a tract of land.

Mobile home space means an area within the park which is designed for and designated as the location for a single mobile home and the exclusive use of its occupants. The term "mobile home space" also includes the terms "lot," "stand" and "site."

Parking space, off-street, means a minimum space, 8½ feet in width by 20 feet in length, located within the boundary of a mobile home space, or in a common parking and storage area having unobstructed access to an internal street.

Permit means a written permit or certificate issued by the building official permitting the construction, alteration or extension of a mobile home park, under the provisions of this article and regulations issued hereunder.

Replacement means the act of moving one mobile home from its existing stand and replacing it with another mobile home.

Service building means a structure housing toilet, lavatory, and such other facilities as may be required by this article for the general use of the tenants of the mobile home.

Sewer connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of a mobile home to the inlet of the corresponding sewer service riser pipe of the sewer system serving the mobile home park.

Sewer service riser pipe means that portion of a sewer service which extends vertically to the ground elevation and terminates at a mobile home space.

Site plan means graphic representation, drawn to scale, in a horizontal plane, delineating:

(1) The area and dimensions of the tract of land, with identification of location and boundaries;

(2) The number, location and size of all mobile home spaces;

(3) The location, width, grade and specifications of driveways, roadways, and walkways;

(4) The location, grade and specifications of water and sewer lines and riser pipes;

(5) The location and details of lighting, electrical and gas systems;

(6) The location and specifications of all buildings constructed or to be constructed within the park;

(7) Existing and proposed topography of the mobile home park;

(8) The location of fire mains, including the size, the hydrants, and any other equipment which may be provided;

(9) Such other information as municipal reviewing officials may reasonably require;

(10) A stamp showing approval of the site plan from the director of public works in accordance with the specifications and provisions of this article.

Stand means an area of a mobile home lot which has been reserved for placement of a mobile home.

Tax assessor-collector means the legally designated tax assessor-collector of the city, or his authorized representative.

Tie-down means any device designed for the purpose to anchor a mobile home to ground anchors, as required by state standards.

Travel trailer means any structure or vehicle used as sleeping or living quarters which may be driven toward or propelled from one location to another without change in the structure, vehicle or design thereof, whether or not the same is intended to include recreational and vacation vehicles and trailers, pickup coaches mounted on a truck chassis, motor homes, camping trailers. This definition does not include mobile homes as defined in this section.

Water connection means the connection consisting of all pipes and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within a mobile home.

Water riser pipe means that portion of the private water service system serving a mobile home park, which extends vertically to a ground elevation and terminates at a designated point at a mobile home space.

(Ord. No. 131, § 1, 4-17-1984)

Sec. 8-151. - Permits.

(a) *Required.* A permit shall be required for the construction of a permanent residential and/or commercial structure in any mobile home park.

(1) Existing residential and/or commercial structures may be retained or new residential and/or commercial structures may be constructed on the premises of the park.

(2) An existing structure may be converted to a clubhouse, community center or service building for use by the residents of the mobile home park.

(b) *Conformance to standards.* It shall be unlawful for any person to construct, alter or extend any mobile home park within the limits of the city unless he holds a valid permit issued by the building official in the name of such person for the specific construction, alteration or extension proposed in conformation with the city building code and the Southern Standard Building Codes.

(c) *Application requirements.* All applications for permits shall be made upon a standard form provided by the building official and shall contain the following:

(1) Name and address of the applicant;

(2) Location and legal description of the mobile home park.

To this application shall be attached ten copies of a site plan, at a minimum scale of one inch to 200 feet for sites of 30 acres or more, and at a minimum scale of one inch to 100 feet for sites under 30 acres. The site plan shall include all data required under section 8-177. One print of the site plan is to be circulated by the building official to each of the city departments designated in division 2 of this article for approval prior to issuing the permit.

(d) *Fee.* All applications to the building official shall be accompanied by a fee.

(e) *Issuance.* When, upon review of the application, the proposed plan meets the requirements of this article, a permit shall be issued by the building official to construct a mobile home park.

(f) *Denial; hearing.* Any person whose application for a permit under this article has been denied may request a hearing on the matter under the procedure provided by section 8-153.

(Ord. No. 131, § 2, 4-17-1984)

Sec. 8-152. - Inspection.

(a) *Required.* The building official, the city health officer, director of public works, the fire chief, and the tax assessor-collector are hereby authorized and directed to make such inspections as are necessary to determine compliance with this article.

(b) *Entry on premises.* The building official, the city health officer, director of public works, fire chief, police chief and the tax assessor-collector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this article.

(c) *Fees.* An application for an inspection certificate will be issued in the office of the building official.

(1) *Owner's fee.* The mobile home owner's inspection certificate will be issued for a fee for the initial hookup. A certificate of inspection will be issued provided the mobile home meets the provisions and specifications of this article. The mobile home inspection shall consist of the following:

a. *Water supply.* Hook up shall be made with schedule No. 40 PVC or equivalent piping.

b. *Sewer system.* Only rigid pipes shall be used to connect mobile home to park sewer. Piping shall be protected against damage. All joints and connections in sewer lines shall be gastight and liquidtight.

c. *Mobile home stand.* The area beneath the mobile home shall be graded so that water will not stand under the mobile home. The stand shall provide stable area for placing of tie-down anchors and blocking.

d. *Storage.* The area beneath the mobile home shall not be used to store lumber, gasoline, or any flammable materials.

e. *Grass.* The mobile home owner shall not allow grass and weeds to become a fire or health hazard.

f. *Tie-downs.* The mobile home shall be tied down as required by state standards.

g. *Blocking.* The mobile home shall be blocked as required by state standards.

h. *Inspection responsibility.* The mobile home owner shall arrange for an inspection date with the inspector and may accompany him on his inspection if he so desires. A fee will be charged for each reinspection.

(2) *Mobile home park fee.* The mobile home park will be issued a certificate of inspection for a base fee. An additional fee per mobile home space shall be computed and added to the base fee. The mobile home park inspection certificates will certify park compliance with this article. The mobile home park inspection shall consist of the following:

a. Placement of mobile home on space;

b. Parking facilities per mobile home space;

c. Condition of internal streets, accessways;

d. Condition of road signs;

e. Condition of service buildings;

f. Condition and proper functioning of drainage system;

g. Condition of ground and soil cover;

h. Condition of premises of unoccupied spaces;

i. Condition of park sewer system.

The mobile home park owner shall arrange for an inspection date with the inspector for the inspection of the park. The mobile home park owner may accompany the inspector if he so desires. All mobile home parks shall be inspected annually or more often upon tenant complaint. If violations are found, there shall be a reinspection fee for each inspection.

(d) *Inspection of register.* The building official, the city health officer, the fire chief, the police chief and the tax assessor-collector shall have the power and authority in discharging their official duties to inspect the register containing a record of all residents of the mobile home park.

(e) *Duty of occupants.* It shall be the duty of every occupant of a mobile home park to give the park owner, his agent, or authorized employee, access to any part of such park at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this article.

(f) *Exemptions.* Travel trailers as defined in section 8-150 which remain for less than 21 days are exempt from this article.

(Ord. No. 131, § 3, 4-17-1984)

Sec. 8-153. - Notices, hearings, and orders.

(a) *Notification procedure.* Whenever it is determined that there are grounds to believe that there has been a violation of any provision of this article, the city shall give notice of such alleged violation to the park owner or agent, as hereinafter provided. Such notice shall:

(1) Be in writing;

(2) Include a statement of the reasons for its issuance;

(3) Allow a reasonable time for the performance of the act it requires;

(4) Be served upon the park owner or his agent, provided that such notice or order shall be deemed to have been properly served upon such park owner or agent when a copy thereof has been sent by mail to his last known address, or when he has been served with such notice by any method authorized or required by the laws if this state; and

(5) Contain an outline of remedial action which, if taken, will effect compliance with provisions of this article.

(b) *Appeal from notice issued by the city.* Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article applicable to such park by the city may request and shall be granted a hearing on the matter before the city council provided that such person shall file within ten days after the day the notice was served, in the office of the city secretary, a written petition requesting such hearing and setting forth a brief statement of the grounds therefor. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension, except in the case of an order issued under section 8-181. Upon receipt of such petition, the city secretary shall request the city council to set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn.

(c) *Appeal from denial of permit by the building official.* Any person affected by the refusal of the building official to issue a permit shall be presented a written statement listing the reasons for permit denial under the provisions of this article as set out in section 8-151. Any person affected by the refusal may request and shall be granted a hearing on the matter before the city council provided that such person shall file within ten days after the day the denied permit was made known to the applicant in the office of the building official, a written petition requesting such hearing and setting forth a brief statement of the grounds therefor. Upon receipt of such petition the building official shall forward it, along with a copy of the reason for permit denial, to the city secretary who shall request the city council to set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing, the petitioner shall be given an opportunity to be heard and to show why such refusal should be modified or withdrawn.

(d) *Hearing; order.* After such hearing, the city shall issue an order in writing sustaining, modifying, or withdrawing the refusal, which order shall be served as provided in subsection (a) of this section. Upon failure to comply with an order of the city sustaining or modifying a decision thereof, the building official shall take whatever action necessary to enforce the requirements of this article.

(e) *Order without notice.* Whenever the city finds that an emergency exists which requires immediate action to protect the public health or safety, it may, without notice or hearing, issue an order reciting the existence of such an emergency. Notwithstanding any other provisions of this article, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon written petition to the city shall be afforded a hearing as soon as possible. The provisions of subsection (d) of this section shall be applicable to such hearing and the order issued thereafter.

(Ord. No. 131, § 4, 4-17-1984)

Sec. 8-154. - Foundation requirements; service connections.

(a) All blocks supporting mobile homes shall be placed on foundation piers as hereinafter set out.

(b) Foundation piers for mobile homes shall not be spaced more than eight feet apart and shall be constructed of concrete. Said piers shall be a minimum of 12 inches in depth below the surface of the ground and shall be no less than 24 inches by 24 inches in width.

(c) An "I" bolt shall be set in the foundation pier at each of the four corners and turnbuckles used to securely fasten the beams under the mobile home to each of the "I" bolts.

(d) All such mobile homes shall have approved underpinning between it and the surface of the ground.

(e) All service connections to such mobile homes shall conform to applicable city codes, and may not be connected to public utilities until approved by the city electrical and plumbing inspector.

(Ord. No. 50, § 5, 12-1-1970)

Secs. 8-155—8-176. - Reserved.

DIVISION 2. - MOBILE HOME PARKS

Sec. 8-177. - Site plan.

(a) The site plan shall be filed as required by section 8-151(c) and shall show the following:

(1) The area and dimensions of the tract of land, with identification of location and boundaries;

(2) The number, location and size of all mobile home spaces;

(3) The location, width, grade and specifications of driveways, roadways, and walkways;

(4) The location, grade and specifications of water and sewer lines and riser pipes;

(5) The location and details of lighting, electrical and gas systems;

(6) The location and specifications of all buildings constructed or to be constructed within the park;

(7) Existing and proposed topography of the mobile home park;

(8) The location of fire mains, including the size, the hydrants and any other fire related equipment which may be provided;

(9) Such other information as municipal reviewing officials may reasonably require;

(10) A stamp showing approval of the site plan from the director of public works based on the specifications and provisions as stated in this article.

(b) A print of the site plan shall be circulated to the following city departments by the building official, and approval obtained from them prior to the issuance of a permit:

(1) Public works department;

(2) Police department;

(3) Fire department;

(4) Planning department;

(5) Tax department; and

(6) Finance department.

(c) Approval or disapproval of the site plan shall be based on the specifications and provisions of this article. Approval or disapproval shall be in writing from the respective city officials within 60 days after the submission of the site plan to the building official. If approval or disapproval is not granted within 60 days, the site plan shall be automatically approved.

(Ord. No. 131, § 5A, 4-17-1984)

Sec. 8-178. - Site requirements.

Any mobile home park constructed after the adoption of the ordinance from which this article is derived, and for any extension or addition to any existing mobile home park in the city, shall be done in compliance with the following site requirements:

(1) *Location.* A mobile home park shall be located only on sites having a zoning classification of district R-5; mobile home parks, as defined in chapter 53, zoning.

(2) *Minimum space.* The following are mobile home minimum space requirements:

a. *Space per lot.* Each mobile home space shall provide a minimum area of 3,200 square feet; however, no mobile home space shall have dimensions less than 40 feet on the narrow dimension nor 80 feet on the long dimension.

b. *Setbacks and open space.* The open space requirements for each mobile home is as follows:

1. The minimum front yard setback shall be ten feet from the nearest corner of the mobile home to the front line of the mobile home space.

2. No mobile home shall be closer than five feet to any end lot line nor closer than 25 feet to the lot line adjoining a public street.

3. For other structures on each space, the minimum front yard setback shall be at least ten feet.

4. The minimum distances between mobile homes shall be ten feet end-to-end, and 20 feet side-to-side.

c. *Height regulation.* The height limit for any structure intended for occupancy in the mobile home park shall be 25 feet.

d. *Soil and ground cover.* Exposed ground surfaces in all parts of every mobile home park shall be paved, covered with stone screening or other solid material, or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating dust. (A 12-month grace period shall be granted to all new mobile home parks, after first occupancy.)

e. *Drainage.* The ground surface in all parts of a park shall be graded and equipped to drain all surface water.

f. *Design and location of storage facilities.* Unless provided in current mobile home models, storage facilities with a minimum capacity of 200 cubic feet per mobile home space may be provided on the space or in compounds located within 100 feet of each space. Where provided, storage facilities shall be designed in a manner that will enhance the appearance of the park and shall be faced with masonry, porcelainized steel, baked enamel steel or other material equal in fire resistance, durability and appearance. Storage outside the perimeter walls of the mobile home shall be permitted only if in such facilities.

(Ord. No. 131, § 5B, 4-17-1984)

Sec. 8-179. - Access and traffic circulation and parking.

Access and traffic circulation and parking requirements in mobile home parks is as follows:

(1) Internal streets, no-parking area signs, and street name signs shall be privately owned, built, and maintained. Streets shall be designed for safe and convenient access to all spaces and to facilities for common use of park residents. Internal streets shall be kept open and free of obstruction in order that police and fire vehicles may have access to any areas of the mobile home park.

(2) On all sections of internal streets on which parking is prohibited under this article, the owner or agent shall erect metal signs; type, size, height, and location shall be approved by the director of public works prior to installation.

(3) All internal streets shall be constructed and maintained by the owner or agent. All internal streets shall be free of cracks, holes and other hazards. Internal streets shall be constructed on hard-surfaced, all-weather material and be approved by the director of public works. All existing mobile home parks will be exempt for a period of 60 days.

(4) Internal street dimensions and parking. An internal street or common access route shall be provided to each mobile home space. Such street shall have a minimum paved width of 30 feet if off-street parking is provided in the ratio of two parking spaces for each mobile home space. The internal street shall be continuous and connect with other internal streets or with a public street, or shall be provided with a cul-de-sac having a minimum diameter of 95 feet.

(5) Two spaces per mobile home space shall be provided for parking and each parking space shall be hard-surfaced with all-weather material, located to eliminate interference with access to parking areas provided for other mobile homes and for public parking in the park.

(6) Internal street shall permit unobstructed access to within at least 200 feet of any portion of each mobile home.

(7) Interior streets shall intersect adjoining public streets at approximately 90 degrees with a curbline radius of 20 feet at location which will eliminate or minimize interference with traffic on those public streets.

(8) A minimum parking area of 150 square feet per mobile home space shall be provided in a common area for storage of boats or vehicles in excess of two per mobile home space, and for visitors' vehicles to minimize on-street parking and to facilitate movement of emergency vehicles into and through the park.

(Ord. No. 131, § 5C, 4-17-1984)

Sec. 8-180. - Street lighting.

Street lighting within the mobile home park shall be provided by the developer along internal streets. Light standards shall have a height and spacing to ensure an average illumination level of not less than 0.2 footcandles shall be maintained.

(Ord. No. 131, § 5D, 4-17-1984)

Sec. 8-181. - Fire safety standards.

(a) *Storage and handling of liquefied petroleum gases.* In parks in which liquefied petroleum gases are stored and dispensed, their handling and storage shall comply with requirements of the city plumbing and fire codes as applicable.

(b) *Storage and handling of flammable liquids.* In parks in which gasoline, fuel, oil or other flammable liquids are stored and/or dispensed, their handling and storage shall comply with the city fire codes.

(c) *Access to mobile home for firefighting.* Approaches to all mobile homes shall be kept clear for firefighting.

(d) *Firefighting instruction.* The mobile home park owner or agent shall be responsible for the instruction of his staff in the use of the park fire protection equipment and in their specific duties in the event of fire.

(e) *Water supply facilities for fire department operation.* The park owner shall provide standard city fire hydrants located within 500 feet of all mobile home spaces, measured along the driveways or streets. Fire hydrants will be subject to periodic inspection by the city fire department. It shall be the responsibility of the park owner to notify the city that the fire hydrants are in need of repair. The park owner shall reimburse the city for expensed incurred in repair of park owned fire hydrants.

(f) *Owner or agent responsible for adequate solid waste collection system.* The mobile home park owner or agent shall provide an adequate system of collection and safe disposal of rubbish, approved by the fire chief and the city health officer.

(g) *Owner or agent responsible for maintenance of brush and weeds.* The mobile home park owner or agent shall be responsible for maintaining the entire area of the park free of dry brush, leaves and weeds.

(Ord. No. 131, § 5E, 4-17-1984)

Sec. 8-182. - Recreational area.

All mobile home parks shall have a recreational area amounting to five percent total area of the park.

(Ord. No. 131, § 5F, 4-17-1984)

Sec. 8-183. - Water supply.

An accessible, adequate, safe and potable supply of water shall be provided in each mobile home park. Connection shall be made to the public supply of water. The public supply shall be adequate both for domestic requirements and for firefighting requirements established by the city.

(1) Water distribution system.

   a. The water supply system of the mobile home park shall be connected by pipes or tubing to all mobile homes, buildings, and other facilities requiring water.

   b. All water piping, fixtures, and other equipment shall be constructed and maintained in accordance with state and city regulations and requirements.

   c. The water supply system from the mobile home park connections shall be of pipes or tubing with the minimum pressure test of 160 psi.

(2) Individual water riser pipes and connections shall be in accordance with requirements of the city plumbing code, as applicable.

(Ord. No. 131, § 5G, 4-17-1984)

Sec. 8-184. - Sewage disposal.

From and after the effective date of the ordinance from which this article is derived, the following shall apply:

(1) *General requirements.* An adequate sanitary and safe sewerage system shall be provided in all mobile home parks for conveying and disposing of all sewage. The sewerage system for a mobile home park shall be constructed in accordance with the city plumbing code, as applicable. All proposed sewerage disposal facilities shall be approved by the city health officer and director of

public works prior to construction. The use of septic tanks for the disposal of sewage shall not be approved except when city sewage facilities are not available.

(2) *Sewer lines.* All sewer lines shall be in accordance with the city plumbing code, as applicable.

(3) *Connections.* Individual sewer and water connection requirements are as follows:

a. Each mobile home space shall be provided with at least a three-inch diameter sewer riser pipe. The sewer riser pipe shall be located within the following four feet from the right space line. This will be as viewed from the hitch of the mobile home.

b. The sewer connection to the mobile home from the sewer riser pipe and any other sewer connection shall be in accordance with the requirements of the city plumbing code, as applicable.

c. All materials used for sewer connections shall be in accordance with city plumbing code, as applicable.

d. Provision shall be made for plugging the sewer riser when no mobile home occupies the space. Surface drainage shall be diverted away from the riser.

(Ord. No. 131, § 5H, 4-17-1984)

Sec. 8-185. - Electrical and telephone distribution system.

From and after the effective date of the ordinance from which this article is derived, the following shall apply:

(1) All electrical wiring in the mobile home park shall be underground, or installed in accordance with the city electrical code, as applicable. All telephone lines in proposed mobile home parks shall be installed underground.

(2) General requirements. Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with applicable codes and regulations for such systems.

(3) Power distribution lines, individual electrical connections and groundings. Power distribution lines shall be located underground. Otherwise, all power distribution lines, individual electrical connections and grounding of the mobile homes and equipment shall comply with the city electrical code, as applicable.

(Ord. No. 131, § 5I, 4-17-1984)

Sec. 8-186. - Service building and other community service facilities.

(a) *Applicability of section.* The requirements of this section shall apply to service buildings, recreation buildings and other community service facilities such as:

(1) Management offices, repair shops and storage areas;

(2) Sanitary facilities;

(3) Laundry facilities;

(4) Indoor recreation areas; and

(5) Commercial uses supplying essential goods or services for the benefit and convenience of park occupancy.

(b) *Structural requirements for buildings.* The following are the structural requirements:

(1) All portions of the structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such materials and be so constructed and protected as to prevent entrance or penetration of moisture and weather; and to comply with all applicable codes of the city.

(2) All rooms containing sanitary or laundry facilities shall have the following:

a. Sound-resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent waterproof materials or covered with moisture resistant materials.

b. At least one window or skylight facing directly to the outdoors. The minimum aggregate gross area of windows for each required room shall be not less than ten percent of the floor area served by them.

c. At least one window which can be opened easily, or mechanical device which will adequately ventilate the room.

(3) Toilets shall be located in separate compartments equipped with self-closing doors. Showers stalls shall be of the individual type. The room shall be screened to prevent direct view of the interior when the exterior doors are opened.

(4) Illumination levels shall be maintained as follows:

a. General seeing tasks of five footcandles;

b. Laundry room work area of 40 footcandles;

c. Toilet rooms, in front of mirrors of 40 footcandles.

(5) Hot and cold water shall be furnished in every lavatory, sink, bathtub, shower, and laundry fixture; and cold water shall be furnished to every water closet and urinal.

(6) Heating. Service buildings shall be maintained at a comfortable temperature by heating equipment permitted by city regulations.

(c) *Barbecue pits, fireplaces, stoves, and incinerators.* Cooking shelters, barbecue pits, fireplaces, wood-burning stoves and incinerators shall be located, constructed, maintained and used so as to minimize fire hazards and smoke nuisance, both on the property on which used and on neighboring property. No open fire shall be permitted except in facilities provided. No open fire shall be left unattended. No fuel shall be used and no material burned which emits dense smoke or objectionable odors.

(Ord. No. 131, § 5J, 4-17-1984)

Sec. 8-187. - Refuse and garbage handling.

(a) The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to eliminate health hazards, rodent harborage, insect breeding areas, accident of fire hazards or air pollution. One or both of the systems described in subsection (b) or (c) of this section shall be used in every park.

(b) If refuse is gathered at the individual sites, it shall be stored in flytight, watertight, rodentproof containers which shall be located at each mobile home site. Containers for this use shall be provided by the mobile home owner in sufficient number and capacity to store properly all refuse.

(c) Conveniently located refuse containers having a capacity of three cubic yards or larger may be provided. If provided, such containers shall be so designed as to prevent spillage, container deterioration and to facilitate cleaning around them. Refuse and garbage shall be removed from the park at least twice a week.

(d) The owner or agent shall ensure that containers at mobile home spaces are emptied regularly and maintained in a usable, sanitary condition.

(Ord. No. 131, § 5K, 4-17-1984)

Sec. 8-188. - Inspect and rodent control.

Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall conform with the requirements of the city health director and as follows:

(1) Parks shall be maintained free of accumulation of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(2) The growth of brush, weeds and grass shall be controlled to prevent harborage of noxious insects or other pests. Parks shall be so maintained as to prevent the growth of noxious weeds detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

(Ord. No. 131, § 5L, 4-17-1984)

Sec. 8-189. - Fuel supply and storage.

From and after the effective date of the ordinance from which this article is derived, the following shall apply:

(1) *Natural gas system.*

a. Natural gas piping systems shall be installed underground and maintained in accordance with applicable codes and regulations governing such systems.

b. Each mobile home space provided with piped gas shall have a cap on the outlet when not in use to prevent accidental discharge of gas, and shall be in accordance with the city plumbing code, as applicable.

(2) *Liquefied petroleum gas system.* Liquefied petroleum gas systems shall be installed only if an available natural gas system is more than 1,000 feet from the mobile home park. The liquefied petroleum gas systems shall be maintained in accordance with applicable codes of the city governing such systems and regulations of the state railroad commission pertaining thereto.

(Ord. No. 131, § 5M, 4-17-1984)

Sec. 8-190. - Miscellaneous requirements.

(a) *Responsibilities of the park management.* The responsibilities of the park management are as follows:

(1) All responsibilities set out elsewhere in this article.

(2) The owner or his agent shall operate the park in compliance with this article and other applicable ordinances and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

(3) The owner or agent shall notify park occupants of this article and inform them it is their duty and responsibility to comply with this article.

(4) The owner or agent shall maintain a register of park occupancy which shall contain the following information:

a. Name and park address of park residents;

b. Dates of arrival and departure.

(5) A new register shall be initiated on January 1 of each year, and the old register shall be retired, but shall be retained on the premises for at least three years following the retirement. Registers shall be available for inspection at all reasonable times by an official of the city whose duties may necessitate access to the information contained therein.

(6) The mobile home licensee or his agent shall furnish to the tax assessor-collector for the city, within ten days after January 1 of each year, a list of all mobile homes resident in the park on January 1. The list shall contain the owner's name and address, the make, length, width, year of manufacture and identification number of the mobile home; and the address or location description of such mobile home within the park.

(b) *Responsibilities of mobile home owner and park occupants.* The responsibilities of mobile home owner and park occupants are as follows:

(1) All responsibilities set out elsewhere in this article.

(2) The mobile home owner shall be responsible for proper placement of his mobile home in its mobile home space and proper installation of all utility connections in accordance with the instructions of the park management and this article.

(3) The mobile home owner and/or park occupant shall comply with all requirements of this article, and shall maintain his mobile home space in a clean and sanitary condition.

(4) Skirting, porches, awnings, and other additions, when installed, shall be maintained in good repair. Such installations must comply with the city building code. The use of space immediately underneath a mobile home for storage shall be permitted only under the condition that the stored items do not interfere with the underneath inspection of the mobile home.

(Ord. No. 131, § 5N, 4-17-1984)

Sec. 8-191. - Applicability.

All existing mobile home parks shall conform to the following sections of this article:

(1) Section 8-150, Definitions.

(2) Section 8-151, Permits.

(3) Section 8-152, Inspection.

(4) Section 8-153, Notices, hearings, and orders.

(5) Division 2, Mobile home parks.

a. Section 8-178(2)c, Height regulations.

b. Section 8-178(2)d, Soil and ground cover.

(6) Access and traffic circulation and parking

a. Internal street signs.

b. Internal street.

c. Internal streets, access.

d. Street names, space numbers.

(7) Fire safely standards.

(8) Water supply.

(9) Sewerage disposal.

a. General requirements.

b. Sewer lines.

c. Sewer connections.

d. Materials.

e. Plugging sewer.

f. Water supply system.

(10) Refuse and garbage system.

(11) Miscellaneous requirements.

a. Responsibility of the park management.

1. Compliance with this article.

2. Notification of this ordinance.

3. Register of park occupancy (1 and 2).

4. New register period.

b. Responsibility of mobile home owner and park occupants.

1. Compliance with this article.

2. Good repair.

(Ord. No. 131, § 7, 4-17-1984)

Secs. 8-192—8-218. - Reserved.

ARTICLE VI. - MODEL HOMES

Sec. 8-219. - Permit required.

(a) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Model home means a building designed for use as a single-family residential dwelling and that is used, or planned for use, as an office by the builder, or entity marketing similar buildings, or that is planned for use or used as a demonstration home for the purpose of marketing other buildings.

(b) In addition to all other required permits, a separate permit shall be required for each model home.

(c) No person or entity shall use, suffer or permit the use of, any building as a model home unless a model home permit has been issued for such building in compliance with this article.

(Ord. No. 299, § 1, 3-18-1997)

Sec. 8-220. - Requirements.

The following conditions and requirements shall be applicable to all model homes:

(1) A minimum of four off-street parking spaces must be provided, including the required driveway and garage for the structure;

(2) Outdoor lighting shall be planned and installed so as not to shine or cast light on any other property or public street; and, if more than one porch light, one light over the entrance to the garage and one light at the rear entrance of the house is planned, the lighting plan must be approved by the building official;

(3) Model homes shall not be open to the public between the hours of 9:00 p.m. and 9:00 a.m.; and

(4) Signs shall comply with all ordinances and not more than one open house sign, or similar sign, shall be allowed.

(Ord. No. 299, § 2, 3-18-1997)

Sec. 8-221. - Additional requirements for certain subdivisions.

Building permits may be issued for the construction of model homes within an approved subdivision prior to the final acceptance of the subdivision as-built, contingent upon the applicant satisfying the requirements of this article and the following:

(1) The guarantee and surety required pursuant to chapter 41, subdivisions, shall have been made by the subdivider of the land and approved by the city.

(2) All required curb, gutter and coarse base material for the abutting street shall be installed, and any required underground utilities on or abutting the lot shall have been installed.

(3) The applicant for the model home permit shall acknowledge to the city in writing that:

a. Such applicant is knowledgeable of all legal and pertinent facts applicable to the subdivision for which such permit is requested;

b. The applicant understands the requirements of this article, and further agrees that:

1. A certificate of occupancy will not be issued for the model home and that such home may not lawfully be sold or conveyed to any third party prior to the final acceptance of the subdivision improvements and recordation of the subdivision plat; and that the applicant will proceed at his own risk and understands and assumes all risks with respect to delay in acceptance of, or refusal to accept, the subdivision by the city;

2. No water or wastewater connections shall be made until the city gives written authorization therefor;

3. The city cannot and will not project any date or time for authorizing connection to the water and wastewater systems or acceptance of the subdivision; and

4. The city reserves the right to stop construction of the model home at anytime prior to acceptance of the subdivision.

(Ord. No. 299, § 3, 3-18-1997)

Sec. 8-222. - Variances.

The city council may grant variances to the requirements of section 8-220 upon written application made to, and majority vote of, the city council.

(Ord. No. 299, § 4, 3-18-1997)

Sec. 8-223. - Application and issuance.

(a) Application for a model home permit shall be made to the building official on a designated form. A nonrefundable permit fee shall accompany each such application. The building official shall issue a

model home permit for each application that complies in every respect with this article. If an application does not comply, the building official shall reject such application and shall not thereafter consider the application; provided that upon the payment of an additional application fee a revised application in compliance with this article may be resubmitted.

(b) The model home permit shall have the following statement printed thereon:

"The City of Kyle can neither enforce nor waive any deed restriction, restrictive covenant, or private contract rights. This permit is subject to any such restrictions, covenants or rights that may be applicable to the property for which this permit is issued. The applicant/permittee should confirm the deed restrictions, if any, for the lot, tract or parcel of land for which this permit is issued, and seek legal counsel with respect thereto as appropriate."

(Ord. No. 299, § 5, 3-18-1997)

Sec. 8-224. - Permit fee.

A separate fee is hereby established and imposed for each application for a model home permit. Such fee shall be charged for each separate application or resubmittal of a previously rejected application. The fee shall entitle the applicant for each approved application to occupy and use the permitted structure in compliance with this article for a period of 12-calendar months; provided that any model home permit may be cancelled if the model home shall not be maintained in compliance herewith.

(Ord. No. 299, § 6, 3-18-1997)

Sec. 8-225. - Collection and deposit.

The building official shall cause the application fee to be collected and paid to the city treasurer prior to reviewing any application for a model home permit. The city treasurer shall deposit each such fee into the general fund.

(Ord. No. 299, § 7, 3-18-1997)

Sec. 8-226. - Enforcement.

The building official shall be responsible for enforcing this article and shall inspect each property for which an application has been approved for the purpose of verifying that the applicant has complied with the permit requirements and this article. No structure for which a model home permit has been issued shall be occupied as a model home until such structure complies with the permit requirements and this article.

(Ord. No. 299, § 8, 3-18-1997)

Chapter 11 - BUSINESS REGULATIONS

ARTICLE I. - IN GENERAL

Secs. 11-1—11-18. - Reserved.

ARTICLE II. - ALCOHOLIC BEVERAGES[1]

Footnotes:

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State Law reference— Alcoholic beverage code, V.T.C.A., Alcoholic Beverage Code § 1.01 et seq.

DIVISION 1. - GENERALLY

Secs. 11-19—11-39. - Reserved.

DIVISION 2. - PERMITS AND LICENSES[2]

Footnotes:

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State Law reference— Authority to levy permit and license fees, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

Sec. 11-40. - State law authority.

The ordinance from which this division is derived is passed pursuant to and is referable to the Texas Alcoholic Beverage Code ("TABC"), and the provisions of such code are hereby adopted insofar as the same are applicable, and shall govern the administration and enforcement of this division. In the event of a conflict between this division and the TABC, the TABC shall control.

(Ord. No. 450, § 1, 8-3-2004; Ord. No. 559, § 1, 1-20-2009)

State Law reference— Authority to levy permit and license fees, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

Sec. 11-41. - Definitions.

For the purpose of this division, all definitions, words, terms, and phrases set forth in the TABC, as amended from time to time, are hereby adopted and made a part hereof.

(Ord. No. 450, § 2, 8-3-2004; Ord. No. 559, § 2, 1-20-2009)

State Law reference— Definitions, V.T.C.A., Alcoholic Beverage Code § 1.04.

Sec. 11-42. - License and permit fees.

(a) Pursuant to the authority granted to cities in Section 11.38, TABC, there is hereby prescribed and levied a permit fee for each premises located within the city that is required to obtain and hold a permit issued under the provisions of Chapter 11, TABC. Such fee is hereby established as an amount equal to 50 percent of the state permit fee payable for and with respect to each such premises each time such state permit fee is due, save and except the applicable exemptions to the fee identified in TABC § 11.38(d), as amended, shall apply.

(b) Pursuant to the authority granted to cities in § 61.36, TABC, there is hereby prescribed and levied a license fee for each premises located within the city that is required to obtain and hold a license issued under the provisions of Chapter 61, TABC. Such license fee is hereby established as an amount equal to 50 percent of the state license fee payable for and with respect to each such premises each time such license fee is due.

(Ord. No. 450, § 3, 8-3-2004; Ord. No. 559, § 3, 1-20-2009)

State Law reference— Authority to levy permit and license fees, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

Sec. 11-43. - Payment of fees.

All fees required pursuant to this division shall be paid in advance to the city secretary or designee and shall be applicable for the term of the state permit or license. All fees shall be due and payable at the same time that the initial state annual fee or state annual renewal fee, as appropriate, is due and payable. The city secretary or designee shall issue an appropriate receipt for the payment of each such fee and the holder of the state permit or license involved shall display such receipt in some conspicuous place on the premises in the same manner that the applicable state license or permit is displayed.

(Ord. No. 450, § 4, 8-3-2004; Ord. No. 559, § 4, 1-20-2009)

Sec. 11-44. - Review and recommendation.

For the purposes of obtaining a recommendation as provided for in § 11.41, TABC, every person, firm or entity making application for a permit, pursuant to Chapters 11 or 61, TABC, within the city, shall be required to provide such information as may be reasonably required, including a copy of the application made to the alcoholic beverage commission (the "commission") and a personal history, to the chief of police. The chief of police shall review such application and materials, make such reasonable investigation as is deemed prudent, and make a written recommendation pursuant to § 11.41, TABC. In the event the chief of police makes written objection to the issuance of any such permit or license, such recommendation shall be communicated to the commission and no city permit or license shall be issued by the city on such application until such time, if any, as the commission shall grant the requested permit or license.

(Ord. No. 450, § 5, 8-3-2004; Ord. No. 559, § 5, 1-20-2009)

Sec. 11-45. - Hours of operation.

An on-site permittee or licensee operating within the city limits may sell, allow to consume or to be served alcoholic beverages on the licensed premises during the hours as permitted by the TABC in compliance with the permittee's or licensee's permit. An off-site permittee or licensee operating within the city limits may sell alcoholic beverages during hours as permitted by TABC in compliance with the permittee's or licensee's permit. However, should the premises be located in a zoning district which limits the hours of operation for businesses within the district, the zoning regulations shall control the hours of operation.

(Ord. No. 450, § 6, 8-3-2004; Ord. No. 559, § 6, 1-20-2009)

State Law reference— Authority to extend hours of operation, V.T.C.A., Alcoholic Beverage Code §§ 105.03, 105.05.

Sec. 11-46. - Cancellation and suspension of permits.

A permit or license issued pursuant to this ordinance may be canceled, denied or revoked as provided in Subchapter C of Chapters 11 or 61, TABC. The City shall have all powers, duties and remedies permitted in Chapter 11 or 61, TABC.

(Ord. No. 450, § 7, 8-3-2004; Ord. No. 559, § 7, 1-20-2009)

State Law reference— Cancellation and suspension of licenses, V.T.C.A., Alcoholic Beverage Code §§ 11.61 et seq., 61.71 et seq.

Sec. 11-47. - Violations and penalties.

A licensee or permittee who sells an alcoholic beverage without first having paid the fees levied under this division or who fails to pay the full amount of the fees levied under this division when due commits a misdemeanor punishable by a fine of not less than $10.00 or more than $200.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein. Any violation of this division may be used as grounds for cancellation, suspension or denial of a permit.

(Ord. No. 450, § 8, 8-3-2004; Ord. No. 559, § 8, 1-20-2009)

State Law reference— Suspension or cancellation of permit, V.T.C.A., Alcoholic Beverage Code § 11.09; suspension or cancellation of license, V.T.C.A., Alcoholic Beverage Code § 61.71 et seq.

Secs. 11-48—11-67. - Reserved.

ARTICLE III. - AMUSEMENTS AND ENTERTAINMENTS

DIVISION 1. - GENERALLY

Secs. 11-68—11-92. - Reserved.

DIVISION 2. - COIN-OPERATED MACHINES[3]

Footnotes:

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Editor's note—Ord. No. 643, § 1, adopted Feb. 1, 2011, amended former Div. 2, §§ 11-93—11-99, in its entirety to read as herein set out. Former Div. 2 pertained to the same subject matter and derived from Ord. No. 106, art. I, §§ 1—5, adopted Jan. 19, 1982.

State Law reference— Coin-operated machines, V.T.C.A., Occupations Code § 2153.001 et seq.

Sec. 11-93. - Definitions.

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

Coin-operated machines means and includes every coin-operated machine of any kind or character which is operated by or with coins or other United States currency, metal slugs, tokens, electronic card or checks including a music or skill or pleasure coin-operated machine.

Music coin-operated machine means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

(1) Dispenses music or is used to dispense music;

(2) Is operated by inserting a coin, metal slug, token, or check; and

(3) Is not an amusement machine designed exclusively for a child.

Owner means a person who owns a coin-operated machine in this state.

Person means and includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or organization.

Service coin-operated machine means any kind of machine or device, including a pay toilet or telephone, that dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

Skill or pleasure coin-operated machine means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music, or service. The term:

(1) Includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and

(2) Does not include an amusement machine designed exclusively for a child.

(Ord. No. 643, § 1, 2-1-2011)

State Law reference— Definitions, V.T.C.A., Occupations Code § 2153.002.

Sec. 11-94. - Prohibited areas.

It shall be unlawful to permit the use and operation of music and skill or pleasure coin-operated machines within 300 feet of a church, school or hospital.

(Ord. No. 643, § 1, 2-1-2011)

State Law reference— Zoning and distance regulations, V.T.C.A., Occupations Code § 2153.452.

Sec. 11-95. - Hours of operation.

It shall be unlawful for an operator to permit the use and operation of music and skill or pleasure coin-operated machines between the hours of 12:00 midnight and 7:00 a.m. on weekdays and/or Saturdays, and between 1:00 a.m. and 1:00 p.m. on Sundays.

(Ord. No. 643, § 1, 2-1-2011)

Sec. 11-96. - Narcotics prohibited.

It shall be unlawful for an operator to sell, offer for sale or permit the consumption of narcotics on premises where music and skill or pleasure coin-operated machines are exhibited or displayed for use.

(Ord. No. 643, § 1, 2-1-2011)

Sec. 11-97. - Occupation tax levied.

There is hereby levied an occupation tax of one-fourth the rate of the state tax imposed under V.T.C.A., Occupations Code § 2153.401 on every coin-operated machine not exempt in state law.

(Ord. No. 643, § 1, 2-1-2011)

State Law reference— Authority to levy tax, V.T.C.A., Occupations Code § 2153.451.

Sec. 11-98. - Authority to seal machines.

The city may:

(1) Seal a coin-operated machine if the tax imposed is not paid; and

(2) Charge a fee for the release of a sealed coin-operated machine.

(Ord. No. 643, § 1, 2-1-2011)

Secs. 11-99—11-126. - Reserved.

DIVISION 3. - RESERVED[4]

Footnotes:

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Editor's note—Ord. No. 643, § 2, adopted Feb. 1, 2011, repealed former Div. 3, §§ 11-127—11-132, in its entirety which pertained to pool halls and derived from Ord. No. 106, art. II, §§ 1—5, adopted Jan. 19, 1982.

Secs. 11-127—11-161. - Reserved.

ARTICLE IV. - PEDDLERS, SOLICITORS AND VENDORS[5]

Footnotes:

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Editor's note—Ord. No. 629, § 1, adopted Aug. 3, 2010, amended former art. IV, §§ 11-162—11-174, in its entirety which pertained to similar subject matter and derived from Ord. No. 239, §§ 1—13, adopted March 21, 1989.

State Law reference— Authority to regulate any lawful business or occupation, V.T.C.A., Local Government Code § 215.075.

Sec. 11-162. - Definitions.

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

Mobile food vendor means a vendor who operates or sells food for human consumption, hot or cold, from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile food vendor—cold means a vendor who operates or sells cold food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile food vendor—hot means a vendor who operates or sells hot food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Temporary food vendor means a vendor who operates or sells food for human consumption, hot or cold, from a stationary stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure.

Temporary food vendor—cold means a vendor who operates or sells cold food for human consumption from a stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure.

Temporary food vendor—hot means a vendor who operates or sells hot food for human consumption from a stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure.

Vendors means any itinerant merchant, itinerant vendor, temporary merchant, or temporary vendor and shall be held to be any person, firm, company, partnership, corporation, or association engaged in any activity mentioned in sections 11-165 and 11-166.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-163. - Penalty.

Any person who shall pursue, follow, permit, or allow to continue any occupation, calling, or profession, or do any act regulated by ordinance of this city, without first obtaining licenses therefore, shall have committed an offense and shall be fined as provided in section 1-10. Each day that a person is found to be in violation of this article shall constitute a separate violation. A culpable mental state is not required for the commission of an offense under this article.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-164. - Purpose.

This entire article is and shall be deemed an exercise of the police power of the state, and the city for the public safety, convenience and protection of the city and the citizens of the city, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-165. - Itinerant vendors.

It shall hereafter be unlawful for a person to go from house to house or from place to place in the city soliciting, selling or taking orders for or offering for sale or take orders for any goods, wares, merchandise, services, photographs, magazines, or subscriptions to newspapers or magazines or go from house to house distributing handbills, circulars, or any other literature, without having first applied for and obtained a permit from the city building department. It shall also hereafter be unlawful to go from house to house for any of the purposes expressed in this section without carrying such permit which must be displayed upon request by the landowner or occupant of any such house or a peace officer. Upon the application for such a permit, the applicant shall make a written application to the city building department, which application shall show the name, address, proof of notification of the state comptroller's office (sales tax number) or driver's license number of the person, if any, that he represents, the nature of his business, and the period of time such applicant wishes to do business in the city; should a vehicle be used in sales, the applicant shall show proof of valid liability insurance provided for vehicle sales; applicants using vehicles to sell food or refreshments shall also show valid hazard insurance and a recent passing health inspection report from the agency or political subdivision enforcing food establishment regulations in the City for the vehicle. Permits shall not be transferred from one vehicle to another. The application shall be routed to the city police department for review and concurrence prior to the issuance of a permit by the city building department.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-166. - Temporary vendors.

It shall hereafter be unlawful for person to set up a temporary stand or location on a public street or right-of-way, or on private property without written consent of the property owner, as applicable, for the purpose of displaying, selling, soliciting, taking orders for sale, or offering for sale of goods, wares, merchandise, services, photographs, magazines, or subscriptions to newspapers or magazines, or for distributing handbills, circulars, or any other literature, without having first applied for and obtained a permit from the city building department. It shall also hereafter be unlawful to operate such stand or location without carrying such permit which must be displayed upon request by any person or peace officer. Upon the application for such a permit, the applicant shall make a written application to the city building department, which application shall show the name, address, proof of notification of the state comptroller's office (sales tax number) or driver's license number of the person, firm or corporation, if any, that he represents, the

nature of his business, and the period of time such applicant wishes to do business in the city; should a vehicle be used in sales, applicant shall show proof of valid liability insurance provided for vehicle sales; applicants using vehicles to sell food or refreshments shall also show valid hazard insurance and a recent passing health inspection report from the agency or political subdivision enforcing food establishment regulations in the City for the vehicle. Permits shall not be transferred from one vehicle to another. The application shall be routed to the city police department for review and a concurrence prior to the issuance of a permit by the city building department.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-167. - Additional requirements.

Any person desiring to go from house to house or from place to place, or to own, operate, or control a temporary location or stand on a public street or right-of-way in the city, to sell or solicit orders for goods, wares, merchandise, services, photographs, newspaper, magazines, or subscriptions to magazines, shall in addition to securing a permit as provided for in sections 11-165 and 11-166, make application to the city building department for a license to do so, which application shall show the name and address of the person, if any, that he represents and the kind of goods offered for sale, and whether such applicant upon such sale or order shall demand, accept or receive payment or deposit or money in advance of final delivery, and the period of time such applicant wishes to sell or solicit in the city.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-168. - Fees.

The license and permit fees for an itinerant merchant, itinerant vendor, temporary merchant, or temporary vendor shall be as provided in appendix A to this Code and payable in advance.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-169. - Exemptions.

The provisions of this article shall not apply to unless otherwise stated:

(1) Sales made under authority of a state statute and by order of any court;

(2) Sheriff constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;

(3) Newspaper carriers and newspaper vending machines;

(4) The sale of personal property goods which occurs on a person's own private property by the owner thereof at his private residence or business;

(5) The sale of goods which occurs during organized community and special events held by the authority of agreements or special permits issued by the city council or held upon public premises or in or upon public parks under the auspices or sponsorship or within the regular administration of the parks and recreation department of the city; or

(6) The sale of goods or services for noncommercial purposes or causes, whether community service, charitable, civic, religious or educational, which shall not be required to obtain a permit or license.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-170. - Request for waiver.

The city manager or designated representative shall have the authority to waive the license, permit or fee requirements of this article. Persons or organizations which wish to be considered for waivers of this article, or any part thereof, must make written request for waiver, in addition to the regular application for permit and license. Each request shall be considered individually, and a response to each request shall be determined within three working days. Should the request for waiver be denied, the person or organization may appeal such denial to the city council. The council shall have final authority to make determinations on all appeals, by any person or organization, to any or all provisions of this article.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-171. - Dismissal of prosecution.

Any person prosecuted under the provisions of section 11-163 shall have the right at any time before conviction to have such prosecution dismissed upon payment of said fees and all costs of prosecution; and no prosecution shall be commenced against any person after the payment of said fees, notwithstanding he may have followed such occupation, calling, or profession before paying fees, provided said license shall cover the time said person has actually followed said occupation, calling or profession.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-172. - Authority to enforce.

The chief of police, or designated representative, shall have authority to enforce the provisions of this article, and to enlist the assistance of all appropriate agencies in the enforcement effort.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-173. - Permit and license revocation.

Nothing in this article shall prevent the chief of police, or designee, from immediately revoking a peddler's, vendor's or itinerant vendor's license and permit should such peddler or vendor be in violation of this or any other city code or ordinance.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-174. - All codes and ordinances effective.

In addition to the provisions of this article, all other applicable city codes and ordinances shall apply to the operation of any itinerant and/or temporary vendor, and shall be in full force and effect. This policy shall be effective even if the vendor has applied for and obtained a valid license and permit to operate, should the violations occur either prior or subsequent to obtaining such permit.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-175. - Mobile food vendors.

It shall be unlawful for mobile food vendors to operate within the city limits, without having first applied for and obtained a permit from the City Building Department as provided for in this section. It shall be unlawful for a mobile food vendor permit holder to fail to comply with any condition of such permit.

(1) *Permit requirements.* To receive and hold a permit for a Mobile Food Vendor operation, the applicant/permittee must meet each of following minimum requirements:

a. Meet all requirements set forth by section 11-165 of this Code.

b. Meet all state and local laws and regulations applicable to Mobile Food Vendors and food establishments, including but not limited to 25 Texas Administrative Code 229, Subchapter K, as amended (the "Food Establishment Rules" or the "Rules").

c. In addition where not in conflict with the Food Establishment Rules, comply with the following:

1. All foods must be from an approved source and bear a label demonstrating that they are from an approved source.

2. Mobile units must operate from an approved commissary. A residential home commissary is not allowed. The commissary shall comply with all Food Establishment Rules, and hold a current licenses and permits as required by the Rules. The mobile unit shall return to that commissary for weekly replenishing of supplies, and servicing of the mobile unit. If the commissary is located outside the city, valid copies of the commissary's current licenses and permits issued under the Food Establishment Rules and most recent health inspection report must be kept on file with the City.

3. Only single service/use items are allowed (i.e. styrofoam, plastic or paper).

4. Plumbing. Mobile food vendors may not connect to the city water or wastewater system except at an approved commissary or other facility approved by the city for such purposes.

5. The mobile food vendor must operate out of a clean and enclosed unit or vehicle.

6. The mobile food vendors unit or vehicle must be equipped with the following:

i. Self—contained pressurized (by pump) hot and cold potable water system.

ii. A hand washing sink (equipped with soap and paper towels).

iii. A three compartment ware wash sink (must have capacity for largest piece of ware/equipment).

iv. A permanently installed wastewater holding tank (15 percent greater in size than potable water capacity).

v. Covered trash receptacles.

vi. Thermometers (cold hold, hot hold and stem type for cooked food).

vii. Smooth, easily cleanable, & nonabsorbent surfaces,

7. Mobile food vendors shall properly sanitize all food contact surfaces.

8. All employees must have a valid food handler's training certificate.

9. All mobile food vendors must provide the city with a copy of Texas sales tax certificate.

10. If a mobile food vendor unit or vehicle is not commercially designed, then a plan or drawing showing the layout of the mobile unit must be submitted to the city building department for review with the application for permit.

11. Mobile food vendors must complete a commissary certification letter.

12. All mobile food vendors may only operate from 6:00 a.m. to 30 minutes past dusk and may not remain longer than 60 minutes at any one location. For the purposes of defining a location—a location is considered to be the same parcel of property.

d. Display the City of Kyle permit number on the top left rear of the vehicle in vinyl, or other temporary lettering no less than two inches in height before vehicle is put into operation under any permit.

e. Make a deposit of funds as provided for in appendix A of this code which shall be returned in full when the permittee chooses to non-renew their mobile food vendor permit in writing, except when forfeited as provided below.

3. The deposit shall be forfeited for the following reasons:

i. Any violation of this code.

ii. Any violation of Food Establishment Rules or an applicable regulation of the Texas Health and Human Services Commission, or successor agency, or any other State laws, rules, or regulations dealing with food, beverage, or health and human services.

iii. Operating as a mobile food vendor with an expired permit.

2. Should the deposit be forfeited for any reason, a new deposit and any permit fees will be required before any new application for permit under this section will be considered.

(2) *Permit revocation.*

a. Compliance with subsection (2) of this section shall be a condition of the mobile food vender permit. If the permittee fails to comply with a subsection (2), then the mobile food vendor permit may be revoked.

b. If a mobile food vendor permit is revoked, any deposits and fees paid to the city will be forfeited.

c. The former permittee may appeal the revocation of a mobile food vendor permit by submitting a written request for appeal to the city secretary within ten days of receiving the notice of revocation. The city manager will hold a hearing within a reasonable time of receipt of the appeal, but no later than 30 days after receipt, at which the former permittee will have an opportunity to explain why the permit should not be revoked. The city manager shall issue his decision within 30 days of the date of the hearing. The city manager's decision shall be final.

(3) *Permit renewal and fees.*

a. Mobile food vendor permits expire at the end of the calendar quarter in which they were issued and must be renewed every calendar quarter. A permittee's violation of this Code, the Food Establishment Rules, or any applicable Texas State, law, rule or regulation shall be grounds for denial of a permit. Denial of a permit may be appealed pursuant to the procedure for appealing revocation of permits.

b. Fees for the mobile food Vendor—hot and mobile food vendor—cold are provided for in appendix A of this Code and payable in advance. Where both hot and cold food are offered, only one permit is required, and the permit for hot food will prevail. Permits will not be prorated, though the permittee may chose which calendar quarter during which the permit will be valid.

(Ord. No. 629, § 1, 8-3-2010)

Sec. 11-176. - Temporary food vendors.

It shall be unlawful for temporary food vendors to operate within the city limits , without having first applied for and obtained a permit from the city building department as provided for in this section. It shall be unlawful for a temporary food vendor permit holder to fail to comply with any condition of such permit.

1. *Permit requirements.* To receive and hold a permit for a temporary food vendor operation, the applicant/permittee must meet each of the following minimum requirements:

    a. Meet all requirements set forth by section 11-166 of this Code.

    b. Meet all state and local laws and regulations applicable to mobile food vendors and food establishments, including but not limited to the Food Establishment Rules.

    c. In addition, where not in conflict with the Food Establishment Rules, comply with the following:

        1. All foods must be from an approved source and bear label demonstrating that they are form an approved source.

        2. Temporary food vendors—hot must operate from an approved commissary; a residential home commissary is not allowed. The commissary shall comply with all Texas Food Establishment Rules and hold current licenses and permits as required by the Rules. The mobile unit shall return to that commissary for replenishing of supplies, and servicing of the mobile unit. If the commissary is located outside the cit, valid copies of the commissary's current licenses and permits issued under the Food Establishment Rules and the most recent health inspection report must be kept on file with the city.

            i. Temporary food vendors must complete a commissary certification letter.

            ii. Temporary food vendors—cold and vendors offering only shaved ice or prepackaged frozen treats are exempt from commissary requirements so long as there is no history of violations of this Code.

        3. Only single service/use items are allowed (i.e. styrofoam, plastic or paper).

        4. The temporary food vendor shall properly sanitize all food contact surfaces.

        5. All employees must have a valid food handler's training certificate.

        6. If a temporary food vendor unit or vehicle is not commercially designed, then a plan or drawing showing the layout of the mobile unit must be submitted to the city building department for review with the application for permit.

        7. The temporary food vendor must operate out of a clean and enclosed unit/vehicle.

        8. The temporary food unit or vehicle must be equipped with the following:

            i. Covered trash receptacles.

            ii. Smooth, easily cleanable, and nonabsorbent surfaces.

            iii. Thermometers (cold hold, hot hold and stem type for cooked foods).

            iv. Trash receptacle for customers.

    d. Temporary Food Vendors are permitted in "RS" Retail Services, "CBD-2" Central Business and "E" Entertainment Zoning Districts only, where each of the following conditions are met:

        1. The temporary food vendor is or will be located on private property where an existing, permanent business operates in a building with a Certificate of Occupancy at all times while the temporary food vendor occupies the property.

        2. Temporary connections to utilities such as potable water, city sewer, or electricity are not utilized. Water shall be from an internal tank. Waste water shall be handled with an internal tank which may not be emptied into city sewer system. Electricity shall be from a generator or an electrical outlet via a portable cord that is in conformance with the National Electrical Code as adopted by the city, including amendments thereto.

        3. The temporary food vendor is located no closer than 50 feet from major thoroughfares, as designated on the city's thoroughfare plan, as it exists or may be amended.

4. A drive through is not utilized in conjunction with the temporary food vendor.

5. Temporary food vendors may not be located within 150 feet of another temporary food vendor on the same lot, except that two temporary food vendors may cluster (be within 150 feet of each other on the same lot) but the buffer then becomes 300 feet for any other temporary food vendors;

6. The temporary food vendor operate no closer than 150 feet from property used or zoned for residential purposes.

e. Temporary food vendors may operate only during the hours allowed by the zoning district they are located in so long as restroom access is still available.

f. A temporary food vendor may not remain on a particular property for a period of time that cumulatively exceeds nine months within a calendar year.

g. The Temporary food vendor may not use amplifiers, loudspeakers, or devices for the production of sound.

h. No tables, chairs, ice chests or equipment are allowed outside the stationary cart or trailer, except for use by temporary food vendor employees;

i. Every temporary food vendor must visibly display the approved permit issued by the City.

j. No signage is allowed other than what is permitted by the city building department and permanently installed on the stationary cart or trailer itself except for one sandwich board which may be placed during business hours, but must be removed daily.

k. Temporary food vendors must submit with the permit application written authorization or other suitable documentation showing that the owner of the property consents to the temporary food vendor operating on said property.

l. A temporary food vendor shall submit a site map depicting the location of the temporary food vendor on the property, shall secure a health permit from the county, and a permit from Building Inspections prior to the operation of such use.

m. The operator of the temporary food vendor operation shall possess a valid Texas sales and use tax permit.

(4) *Permit revocation.*

a. Compliance with subsection (2) of this section shall be a condition of the temporary food vender permit. If the permittee fails to comply with subsection (2), then the temporary food vendor permit may be revoked.

b. If a temporary food vendor permit is revoked, any deposits and fees paid to the city will be forfeited.

c. The former permittee may appeal the revocation of a temporary food vendor permit by submitting a written request for appeal to the city secretary within ten days of receiving the notice of revocation. The city manager will hold a hearing within a reasonable time of receipt of the appeal, but no later than 30 days after receipt, at which the former permittee will have an opportunity to explain why the permit should not be revoked. The city manager shall issue his decision within 30 days of the date of the hearing. The city manager's decision shall be final.

(3) *Permit renewal and fees.*

a. Temporary food vendor permits expire at the end of the month in which they were issued and must be renewed every calendar month. A permittee's violation of this code, the Food Establishment Rules, or any applicable Texas state law, shall be grounds for denial of a permit. Denial of a permit may be appealed pursuant to the procedure for appealing revocation of permits.

b. A permittee may not hold a temporary food vendor permit for more than nine consecutive months, nor more than nine months total in any given year.

c. Fees for the temporary food vendor—hot and temporary food vendor—cold are provided for in appendix A of this Code and payable in advance. Where both hot and cold food are offered, only one permit is required, and the permit for hot food will prevail. Permits will not be prorated, though the permittee may chose which calendar month during which the permit will be valid.

(Ord. No. 629, § 1, 8-3-2010)

Secs. 11-177—11-239. - Reserved.

(d) Any person who continues to operate a taxicab under a permit which has been revoked for any reason while the revocation is in effect shall be deemed guilty of a misdemeanor.

(Ord. No. 416, § 7, 1-7-2003)

Sec. 11-314. - Permit display and use.

(a) A copy of the holder's permit as well as any individual certificate authorizing operation of such vehicle shall be displayed in each of the vehicles operated by virtue of the holder's permit. The permit shall be displayed in a clear, protective cover located on the dashboard so it may be seen by any and all passengers in such vehicle. Further, the chief of police or any peace officer shall be permitted to examine the permit upon request. Failure to have such document displayed within such vehicle shall be a violation of this article. Replacement of the individual permit authorizing operation of the vehicle shall require payment of a fee as provided in appendix A to this Code, payable in advance.

(b) No permit shall be used for the operation of a greater number of vehicles than were authorized by the permit. Furthermore, no permit shall be used for the operation of the taxi service by anyone except the applicant thereof or any employee or independent contractor of the applicant except as provided herein.

(c) Permits may not be transferred to any other company or individual.

(Ord. No. 416, § 8, 1-7-2003)

Secs. 11-315—11-330. - Reserved.

ARTICLE VIII. - OIL AND GAS DRILLING AND PRODUCTION REGULATIONS

Sec. 11-331. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All technical or oil and gas industry words and phrases used in this article and not specifically defined in this section shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

Actual drilling means when the drilling rig, whose purpose it is to drill the bore hole into the production horizon, first inserts the drill bit into the ground.

Block means block of land only and shall not be misconstrued to mean drilling block.

Lease means any tract of land subject to an oil, gas and mineral lease or other oil and gas development contract, or any unit composed of several tracts and leases but operated as one lease, and any tract of land in which the minerals are owned by an operator or someone holding under it or him, but which, due to the fee royalty ownership is developed and operated as a separate tract.

New well permittee means the person to whom is issued a permit for the drilling and operation of a new well under this Ordinance, and their administrators, executors, heirs, successors and assigns.

Old well permittee means the person to whom is issued a permit for the redrilling, working-over, recompletion and reoperation of an old or existing well under this Ordinance, and their administrators, executors, heirs, successors and assigns.

Permittee means both an old well permittee and a new well permittee.

Well means any holes, bores to any sand, any formation, strata or depth for the purpose of producing and recovering any oil or gas, salt water injection, gas injection or enhanced recovery injection project.

Well location means the surface location of a well.

(Ord. No. 578, § 2(Attach., § 1), 7-7-2009)

Sec. 11-332. - Enforcement of article.

It shall be the duty of the building official to enforce the provisions of this article.

(Ord. No. 578, § 2(Attach., § 2), 7-7-2009)

Sec. 11-333. - Compliance with laws, rules and regulations.

Any violation of valid law or of any rule, regulation or requirement of any state or federal regulatory body having jurisdiction with reference to drilling, completing, equipping, operating, producing, maintaining, or abandoning oil or gas wells or related appurtenances, equipment or facilities, or with reference to firewalls, fire protection, blow-out protection or safety of persons or property shall also be a violation of this article.

(Ord. No. 578, § 2(Attach., § 3), 7-7-2009)

Sec. 11-334. - Permit required.

(a) *New well permit.* It shall be unlawful and an offense for any person acting either for himself or acting as, by or through an agent, employee or independent contractor, to commence to drill, or to operate, any new well within the city limits, or to work upon or assist in any way in the development or operation of any such new well, without a new well permit for the drilling and operation of such new well having first been issued by the city, in accordance with the terms of this article.

(b) *Old well permit.* It shall be unlawful and an offense for any person acting either for himself or acting as, by or through an agent, employee or independent contractor, to commence to deepen, to repair or to recomplete any well, old or existing, or to install any trunkline pipeline or repressurizing or injection facilities within the city limits or to work upon or assist in any way in the development or operation of any such well, without an old well permit having first been issued by the city, in accordance with the terms of this article.

(c) A separate permit shall be issued for the drilling or operating of each well.

(Ord. No. 578, § 2(Attach., § 4), 7-7-2009)

Sec. 11-335. - Application and filing fee.

Every application for a permit to drill and operate a well shall be in writing, signed by the applicant, and duly filed with the city secretary, accompanied by a permit fee in an amount of $1,000.00. The application shall be for a single well and shall include full information, including the following:

(1) The date of the application.

(2) Name and address of the applicant.

(3) Proposed site of the well, including:

   a. Name of the fee owner.

   b. Name of the lease owner.

   c. Legal description of the lease.

   d. Map showing the exact location of the well on the lease, including distances from exterior boundary lines, streets and rights-of-way, residences and other structures located on or near the lease property.

   e. Information detailing the requisite permission (if required) from the surface owner(s) and improvements located thereon.

(4) Type of drilling rig to be used.

(5) The proposed depth of the well.

(6) The proposed complete casing program.

(7) Location of compressor, pressure control, or safety devices with explanation of operating characteristics of each.

(8) Detailed explanation of operating pressures of all pipelines and facilities.

(9) A statement that it is understood and agreed that for any legal action or undertaking, venue for all suits arising under this article shall lie exclusively in Hays County, Texas.

(10) The name and contact information of the person(s) to be notified in case of emergency.

(11) Any other information required by the city.

(Ord. No. 578, § 2(Attach., § 5), 7-7-2009)

Sec. 11-336. - Issuance of permit.

The building official, within 60 days after the filing of the application for a permit to drill and operate a well, shall determine whether the application complies in all respects with the provisions of this Ordinance and other applicable local, state and federal laws. If the application complies with this Ordinance and applicable local, state and federal law, the building official shall issue a permit for the drilling and operation of the proposed well.

(Ord. No. 578, § 2(Attach., § 6), 7-7-2009)

Sec. 11-337. - Content of permit.

(a) Each permit issued under this article shall:

   (1) By reference have incorporated therein all the provisions of this article with the same force and effect as if this article were copied verbatim in the permit.

(2) Specify the well location with particularity to lot number, block number and correct legal description.

(3) Contain and specify that the term of such permit shall be for a period of one year from the date of the permit and as long thereafter as the permittee is engaged in drilling operations with no cessations of such operations for more than 90 days, or oil or gas is produced in commercial quantities from the well drilled pursuant to such permit, provided that if at any time after discovery of oil or gas the production thereof in commercial quantities shall cease, the term shall not terminate if the permittee commences additional reworking operations within 90 days thereafter, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from such well.

(4) Contain and specify such conditions as are authorized by this article.

(5) Contain and specify that no actual operations shall be commenced until the permittee shall file and have approved an indemnity bond and insurance policies in the designated principal amount established and conditioned as specified herein.

(6) Specify the total depth to which the well may be drilled, not exceeding the projected depth.

(b) Such permit, in duplicate originals, shall be signed by the building official, and prior to delivery to the permittee, shall be signed by the permittee (with one original to be retained by the City and one by the permittee). When so signed, the permit shall constitute the permittee's drilling and operating license and the contractual obligation of the permittee to comply with the terms of such permit, such bond, this Article, and all applicable laws.

(Ord. No. 578, § 2(Attach., § 7), 7-7-2009)

Sec. 11-338. - Refusal or withdrawal of permit.

If the permit for the well is refused, or if the applicant notifies the city in writing that he does not elect to accept the permit as tendered and wishes to withdraw his application, or if the bond of the applicant is not approved and the applicant notifies the city in writing that he wishes to withdraw his application, then, upon the happening of such events, the cash deposit provided for to be filed with the application shall be returned to the applicant, except that there shall be retained therefrom by the city a processing fee in an amount of $200.00.

(Ord. No. 578, § 2(Attach., § 8), 7-7-2009)

Sec. 11-339. - Permittee's insurance and bond.

If a permit is issued by the building official under the terms of this article for the drilling and operation of a well, no actual drilling operations or site preparation work shall be commenced until the permittee shall file with the city secretary a bond and a certificate of insurance, as follows:

(1) The bond shall be in the amount of no less than $100,000.00. A reliable insurance company authorized to do business as a surety in the State of Texas shall execute the bond. Such bond shall be for the benefit of the city and all persons concerned, conditioned that the permittee will comply with the terms and conditions of this article in the drilling and operation of the well. Such bond shall become effective on or before the date the same is filed with the city secretary and remain in force and effect and on deposit for at least a period of six months subsequent to the expiration of the term of the permit issued, and in addition the bond will be conditioned that the permittee will promptly pay off fines, penalties and other assessments imposed upon the permittee by reason of his breach of any of the terms, provisions and conditions of this Article, and that the permittee will promptly restore the streets and sidewalks and other public property of the city, which may be disturbed or damaged in the operations, to their former condition. The permittee will promptly clear all premises of all litter, trash, waste and other substances used,

allowed or occurring in the drilling or producing operations, and will, after abandonment, grade, level and restore such property to the same surface condition, as nearly as possible, as existed when operations for the drilling of the wells were first commenced. The permittee will indemnify and hold the city harmless from any and all liability growing out of or attributable to the granting of such permit, including the payment of any expenses incurred by the City for any legal action which may be filed by either party hereto by reason of seeking or recovery of damages from the city. If at any time, the building official shall deem any permittee's bond to be insufficient for any reason, they may require the permittee to make an additional bond. If, after completion of a well, the permittee has complied with all of the provisions of this article, such as removing the derrick, clearing the premises, etc., they may apply to the Building Official to have the bond reduced to a sum of not less than $25,000.0) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond shall be increased to the original amount; provided however, the building official may waive the requirement of the bond provided for in this section.

(2) In addition to the bond required in subsection (1) of this section, the permittee shall carry a policy of standard comprehensive public liability insurance, including contractual liability covering bodily injuries and property damage, naming the permittee and the city as an additional insured, issued by an insurance company authorized to do business within the state, such policy in the aggregate shall provide for the following minimum coverages:

   a. *Bodily injuries:* $1,000,000.00, one person and $3,000,000.00, one accident; and

   b. *Property damage:* $1,000,000.00.

(3) The permittee shall file with the city secretary certificates of such insurance coverage as stated in subsection (2) of this section, and shall obtain the written approval thereof by the city secretary, who shall act thereon within ten days from the date of such filing. Such insurance policy shall not be cancelled without written notice to the city secretary at least 30 days prior to the effective date of such cancellation. If the insurance policy is cancelled, the permit granted shall terminate, and the permittee's rights to operate under the permit shall cease until the permittee files additional insurance as provided in this section. If after completion of a well, permittee has complied with all provisions of this article, such as removing dirt, put up fencing, clearing the premises, etc., the permittee may apply to the building official to have the insurance policies reduced as followed:

   a. *Bodily injuries:* $250,000.00, one person and $500,000.00, one accident; and

   b. *Property damage:* $250,000.00.

(4) The city council may elect to make an exception to the requirements of this section when in their opinion the intent and purpose for the requirements of the bond and insurance can be assured by any of the following means:

   a. Acceptance of a guaranty of indemnity to the City in lieu of bond and a plan of self insurance in the case of financially responsible operators.

   b. Acceptance of a blanket bond and a single policy of insurance to cover all operations of the permittee within the city limits.

   c. Application of bond and insurance requirements acceptable to the city council.

(Ord. No. 578, § 2(Attach., § 9), 7-7-2009)

Sec. 11-340. - Termination and Revocation.

A duly issued permit shall terminate without any action on the part of the city unless actual drilling of the well shall have commenced within 90 days from the date of issuance. The cessation for a like period of the drilling operations, or the cessation of the production of oil or gas from the well after production shall have commenced, shall cancel the permit, and the well shall be considered as abandoned for all purposes

of this article. It shall be unlawful thereafter to continue the operation or drilling of such well without the issuance of another permit.

The building official, providing ten days notice has been given to the permittee that revocation is to be considered and the reasons that revocation is being considered, revoke or suspend any permit under this article under which drilling or producing operations are being conducted in the event that the permittee thereof has violated any provisions of an issued permit, bond or insurance requirements, or applicable provisions of this article, state law, or city ordinance, rules, or regulations. In the event that the permit is revoked, the permittee may make application to the building official for a re-issuance of such permit. The permittee may appeal revocation of the permit to the city manager in writing within ten days of revocation of the permit.

(Ord. No. 578, § 2(Attach., § 10), 7-7-2009)

Sec. 11-341. - Well location restrictions.

(a) *Streets and alleys.* No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets or alleys of the city. No street or alley shall be blocked or encumbered or closed in any drilling or production operation except by special permit by order of the city council, and then only temporarily. No permittee shall make any excavation or construct any lines for the conveyance of fuel, water, or minerals on, under, or through the streets and alleys of the city with/express permission of the city council in writing, and then only in strict compliance with the applicable provisions of this article, state and federal law, or other city ordinances, rules and regulations.

(b) *Residences; commercial buildings; places of worship; schools; City-owned buildings; water wells.* No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is nearer than 850 feet of any residence, commercial building or place of worship without the applicant having first secured the written permission of the owner(s). No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is nearer than 850 feet of any school campus within the Kyle Independent School District. No drilling and no permit shall be issued to any well nearer than 850 feet to city-owned buildings or water wells without written permission from the city.

(Ord. No. 578, § 2(Attach., § 11), 7-7-2009)

Sec. 11-342. - Deeper drilling.

If the City is satisfied that a well may be deepened with the same degree of safety as existed with the original well, a permit may be issued to the permittee, authorizing the deepening and operation of the well to such specified depth as applied for. In any deeper drilling or any deeper completion or any deeper production operations, the permittee shall comply with all other provisions applicable to the drilling, completion and operation of a well contained in this article and applicable state and federal law.

(Ord. No. 578, § 2(Attach., § 12), 7-7-2009)

Sec. 11-343. - Derrick and rig.

It shall be unlawful and an offense for any person to use or operate in connection with the drilling or reworking of any well within the city limits, any wooden derrick, and all engines shall be equipped with adequate mufflers approved by the building official; or to permit any drilling rig or derrick to remain on the premises or drilling site for a period longer than 60 days after completion or abandonment of the well. At all times from the start of erection of a derrick, mast or gin-pole, until the well is abandoned and plugged or completed as a producer and enclosed with a fence as provided in this division, the permittee shall keep a

watchman on duty on the premises at all times; provided, however, that it shall not be necessary to keep an extra watchman on duty on the premises when other workers of the permittee are on the premises.

(Ord. No. 578, § 2(Attach., § 13), 7-7-2009)

Sec. 11-344. - Pits.

Steel slush pits shall be used in connection with all drilling and reworking operations unless the city council shall waive such requirements. Such pits and contents shall be removed from the premises and the drilling site with 30 days after completion of the well. No earthen slush pits shall be used.

(Ord. No. 578, § 2(Attach., § 14), 7-7-2009)

Sec. 11-345. - Drilling operations and equipment.

All drilling and operation of any well performed by a permittee under this article shall be conducted in accordance with the best practices of any reasonably prudent operator in the central Texas area. All casing, valves, and blow-out preventers, drilling fluid, tubing, bradenhead, Christmas tree, and well head connections shall be of the type and quality consistent with the best practices of such reasonable and prudent operators. Setting and cementing casing and running drill-steam tests shall be performed in a manner and at a time consistent with the best practices of such reasonable prudent operation. Each permittee shall observe and follow the recommendations and/or regulations of the American Petroleum Institute, the State Railroad Commission and the Texas Commission on Environmental Quality, or respective successor agencies.

(Ord. No. 578, § 2(Attach., § 15), 7-7-2009)

Sec. 11-346. - Condition of premises.

The premises shall be kept in a clean and sanitary condition, free from rubbish and fire hazardous materials of every character, to the satisfaction of the city at all times drilling operations or reworking are being conducted, and as long thereafter as oil and/or gas is being produced therefrom. It shall be unlawful for any permittee, his agents, or employees to permit within the city limits any mud, water, waste oil, slush or other waste matter from any slush pit, storage tank, or oil and/or gas well located within the City, or from any premises with the City developed or being developed for oil and/or gas purposes, in or on any alleys, streets, lots, land, or leases within the city. Any spill, oil or salt water must be reported immediately to the city and cleanup commenced promptly.

(Ord. No. 578, § 2(Attach., § 16), 7-7-2009)

Sec. 11-347. - Fencing.

Any person who completes a well as a producer shall have the obligation to enclose the well, together with its surface facilities, with a substantial fence sufficiently high and properly built so as to ordinarily keep persons and animals out of the enclosure, with all gates thereto to be kept locked when the permittee or his employees are not within the enclosure. Provided, however, that in noncongested areas, the Inspector, at his discretion, may waive the requirements of any fence or may designate the type of fence to be erected.

(Ord. No. 578, § 2(Attach., § 17), 7-7-2009)

Sec. 11-348. - Mufflers required.

Motive power for all operations after completion of drilling operations shall be electricity or properly muffled gas, gasoline, or diesel engines. Such mufflers are to be approved by the chief building official prior to their use.

(Ord. No. 578, § 2(Attach., § 18), 7-7-2009)

Sec. 11-349. - Venting or flaring.

No person engaged in drilling or operating any well shall permit gas to escape or be vented into the air unless the gas is flared and burned as permitted by the state railroad commission.

(Ord. No. 578, § 2(Attach., § 19), 7-7-2009)

Sec. 11-350. - Fire prevention.

It shall be unlawful to operate a well for oil and/or gas without a four-inch header being laid over the top of the tanks and a 2½-inch line extending from the tank battery to a point 200 feet from tank battery. The manner and method provided for connection at the point shall be determined by the fire department so that foamite or other chemicals may be pumped through such line and header to such tanks to extinguish any fire in the tanks. Adequate fire fighting apparatus and supplies, approved by the fire department, shall be maintained on the drilling site at all times during drilling and production operations. All machinery, equipment, and installations on all drilling sites within the city shall conform to such requirements as may from time to time be issued by the fire department.

(Ord. No. 578, § 2(Attach., § 20), 7-7-2009)

Sec. 11-351. - Storage tanks and separators.

It shall be unlawful and an offense for any person to use, construct or operate in connection with any producing well within the city limits, any crude oil well storage tanks except to the extent of two steel tanks for oil storage, not exceeding 500 barrels capacity each and so constructed and maintained as to be vapor tight, with pressure release valves set below tank design pressure, and each surrounded with an earthen firewall at such distance from the tank as will, under any circumstances, hold and retain at least 1½ times the maximum capacity of such tank. A permittee shall operate a conventional steel separator, and such other steel tanks and appurtenances as are necessary for separating oil and gas with each of such facilities to be so constructed and maintained as to be vapor tight. Each oil and gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head. Site location and design of any tanks shall be approved by the inspector.

(Ord. No. 578, § 2(Attach., § 21), 7-7-2009)

Sec. 11-353. - Explosives prohibited.

No geophysical work employing underground explosives will be permitted anywhere at any time within the city limits. Other geophysical systems employing the "thumper", "vibroseis", or other techniques not employing explosives, will be permitted upon proper application and payment of a $500.00 application fee. Such application shall include the following:

(1) The date of the application.

(2) The name of the applicant.

(3) The address of the applicant.

(4) A statement of the proposed commencement and completion dates.

(5) A map or plat outlining the areas proposed to be covered by the survey.

(6) Compliance with the indemnification bond and insurance coverage requirements herein or as established by city council.

(Ord. No. 578, § 2(Attach., § 22), 7-7-2009)

Sec. 11-353. - Inspections.

(a) All equipment necessarily incident to the production of oil and/or gas within the city limits shall be subject to the inspection and approval of the appropriate qualified inspectors, building inspectors, electrical inspector, fire and safety inspector, etc. All operations will be maintained in such a manner that will minimize dust, noise, noxious odors, vibrations and other offensive conditions to the surrounding residential area.

(b) Each producing well, together with their associated equipment (tankage, separators, structures, fencing, etc.) regulated by this article shall be inspected annually by the building official for the purpose of conformance to the various regulations. If any nonconformance is found, the permittee will be notified in writing of the violation immediately, and the permittee shall begin to institute proceedings to come into full compliance with this article. The annual inspection fee shall be two hundred dollars ($200.00) for each site upon which there is located a facility covered by this article, and such fee shall be paid by the permittee.

(Ord. No. 578, § 2(Attach., § 23), 7-7-2009)

Sec. 11-354. - Disposal of salt water.

The permittee shall make adequate provisions for the disposal of all salt water or other impurities which may come to the surface, and disposal to be made in such manner as to not contaminate the underground water strata or to injure surface vegetation. The disposal process shall be approved by the city, prior to disposal for the protection of public health, safety and well-being.

(Ord. No. 578, § 2(Attach., § 24), 7-7-2009)

Sec. 11-355. - Abandonment and plugging.

Whenever any well is abandoned, it shall be the obligation of the permittee and the operator of the well to comply with the regulations of the Railroad Commission of the State of Texas in connection with the abandonment and plugging of a well.

(Ord. No. 578, § 2(Attach., § 25), 7-7-2009)

Secs. 11-356—11-380. - Reserved.

ARTICLE IX. - COMMERCIAL TOWING AND WRECKER SERVICES[6]

Footnotes:

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Editor's note— Ord. No. 839, §§ 2, 3, adopted March 3, 2015, amended Ch. 11 by the addition of provisions designated §§ 11-275—11-295. Inasmuch as there were already codified provisions so designated, said provisions have been renumbered §§ 11-381—11-401, with the original section designation included parenthetically in the history note.

Sec. 11-381. - Purpose.

The purpose of this article is to provide the city with requirements set forth for voluntary participation or privately owned commercial towing and wrecker services with the city. This article shall apply to all commercial towing and wrecker services whose principal place of business is located within the corporate limits of the city and to all commercial towing and wrecker services, both within and without the city, who participate in nonconsent tows in the city.

(Ord. No. 839, § 3(11-275), 3-3-2015)

Sec. 11-382. - Definitions.

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

Accident means an occurrence in the operation of a motor vehicle that results in injury to any person or damage to property.

Chief of police means the chief police official of the city or such other police department official as he or she shall designate.

Disabled means any vehicle which had been rendered unsafe to be driven upon the streets as the result of some occurrence other than a wreck, reasonably requiring that such vehicle be removed by a wrecker.

Heavy-duty wrecker means a wrecker not less than two tons in size.

Hold means a request made to the wrecker company by a police officer on behalf of the Kyle Police Department to maintain custody of a vehicle until approval to release the vehicle to the proper owner is given by the police department.

Motor vehicle means any vehicle which is self-propelled.

Nonconsent tow means the removal of any motor vehicle from a public or private place without the effective consent of the vehicle's owner.

Owner's request means the operator or owner or legal custodian of the vehicle of a wrecked or disabled vehicle may select a wrecker company to remove his or her vehicle and authorizes the police department to call that wrecker company on behalf of the individual.

Police department means the Kyle Police Department.

Police pull means when the police department has called a wrecker company from the rotation list to remove a wrecked or disabled vehicle or to remove a vehicle in a safe driving condition when the driver is absent, in custody or otherwise incapable of making authorization.

Private property commonly used by the public means supermarkets or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients or patrons and parking areas owned and operated for the convenience of, and commonly used by the public.

Public property means any property owned by a governmental entity.

Restricted use wrecker means a wrecker which otherwise complies with the terms and conditions of this article, including a current inspection certificate and all required equipment and insurance as set out in

section 11-390 and 11-391, but which is operated by a company other than a wrecker company and is used exclusively for the purpose of hauling or towing vehicles owned or operated by the same company owning the wrecker.

Rollback unit means a specific type of wrecker consisting of a drive-on hydraulic tilting, flat-surface bed truck equipped with a forward-mounted winch manufactured with the intent of being able to remove heavily damaged vehicles from the road surface by having the bed unit tilt to the surface and winching the vehicle up onto the flat surface bed. Any rollback unit used under this article shall meet all State of Texas tow truck requirements for its intended purpose. A rollback unit meeting all applicable requirements of this article and of state law shall be considered a qualified wrecker for the purpose of this article, subject to other limitations as set out herein; provided, however, that a rollback unit shall not qualify as a heavy-duty wrecker under this article.

Rotation means when the operator of a wrecked or disabled vehicle fails to designate a specific wrecker operator to remove the vehicle and he or she has authorized the police department to call a wrecker or heavy-duty wrecker from the appropriate rotation list, a police initiated pull will utilize the same rotation list. A separate rotation list will exist for both wreckers and heavy-duty wreckers. The chief of police will establish the fair and equal rotation lists.

Rotation pull means and refers to a wrecker company called from the wrecker rotation list.

Street means any street, alley, avenue, lane, public place or highway within the corporate limits of the city.

Tow truck means a vehicle equipped with a lifting device which is designed, made or adapted to tow or carry other vehicles but which does not meet the minimum requirements for a wrecker. Vehicles which are commonly referred to as "two-car haulers" or "three-car haulers" are included in this definition of "tow truck."

Vehicle means any device in, upon or by which any person or property is, or may be, transported or drawn upon a street, except devices moved by human power or used exclusively upon stationary rails or tracks.

Vehicle storage facility means a garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking ten or more vehicles per year or as amended by the Texas Administrative Code.

Wrecked means the status of any vehicle that has been damaged as the result of an accident so as to reasonably require that such vehicle be removed by a wrecker.

Wrecker means a motor vehicle used for the purpose of towing or removing disabled or wrecked vehicles which meets all the State of Texas tow truck requirements.

Wrecker business means any wrecker company that hauls, tows or in any way moves vehicles by the use of a wrecker or tow truck.

Wrecker company means any individual, corporation, partnership or association engaged in the business of towing vehicles on public streets or highways for compensation or with the expectation of compensation for the towing, storage or repair of vehicles. The term "wrecker company" includes the owner, operator, employee or agent or a towing company but does not include cities, counties or other political subdivisions of the state.

Wrecker selection means the selection process provided for in section [11-393].

(Ord. No. 839, § 3(11-276), 3-3-2015)

Sec. 11-383. - Vehicle disabilities and accidents covered.

The prohibitions and requirements of this article shall apply to all vehicle accidents and vehicle disabilities occurring on public property or property having public access and commonly used by the public, regardless of whether or not the final resting place of a vehicle is upon the above described areas

immediately after the accident or disability, police pulls for the vehicles for violations of the laws of the State of Texas, and those circumstances where the operator is incapacitated and unable to drive said vehicle, or if the operator is arrested.

(Ord. No. 839, § 3(11-277), 3-3-2015)

Sec. 11-384. - Certain emergencies excepted.

The prohibitions and requirements of this article shall not apply to any person who necessarily must act immediately to prevent death or bodily injury to any person involved in an accident. This authority may include the use of any means necessary to clear a roadway, move or remove a vehicle or other item, or otherwise assist in the preservation of life or property.

(Ord. No. 839, § 3(11-278), 3-3-2015)

Sec. 11-385. - Pushing or towing.

A vehicle may be pushed or towed by another vehicle only when it does not reasonably require removal by a wrecker and only when it may be done in a safe manner. Tow trucks may not be used to remove a wrecked vehicle from the scene of an accident.

(Ord. No. 839, § 3(11-279), 3-3-2015)

Sec. 11-386. - City employees shall not attempt to influence owners of vehicles.

No employee of the city shall recommend to any person in any manner the name of any repair, wrecker or towing business, nor shall any city employee influence or attempt to influence in any manner the decision of any person in choosing or selecting a repair, wrecker service or towing business.

(Ord. No. 839, § 3(11-280), 3-3-2015)

Sec. 11-387. - Wrecker prohibited at scene unless called; solicitation prohibited.

(a) No person shall drive a wrecker to the site of an accident or park in the immediate vicinity of an accident, within the corporate limits of the city unless such person has been called to the site by the owner of the vehicle, his or her authorized representative, or by the police department. Any wrecker company when called as provided herein shall notify the police dispatcher before proceeding to the disabled vehicle.

(b) No person shall solicit in any manner, directly or indirectly, at the immediate site of an accident involving motor vehicles in the city, any business regarding wrecked or disabled vehicles, regardless of whether the solicitation is for the purpose of removing, repairing, wrecking, storing, trading or purchasing said vehicle. The presence of any person engaged in the wrecker business or other business for which solicitation is prohibited (such person not having been specifically summoned by the owner or legal custodian of the vehicle of a wrecked or disabled vehicle, or if not by the owner, the police officer in charge of the accident investigation) either as owner, operator, employee or agent on any street at the site of an accident or within the immediate vicinity within one hour after the happening of such accident shall be prima facie evidence of a solicitation in violation of this section.

(c) Any person who violates, disobeys, omits, neglects or refuses to comply with or who resist the enforcement of any of the provisions of this section shall be fined not less than $50.00 nor more than $500.00.

(Ord. No. 839, § 3(11-281), 3-3-2015)

Sec. 11-388. - Inspection certificates required for wreckers and heavy wrecker.

No person shall operate a wrecker or heavy-duty wrecker to remove a vehicle within the city unless a wrecker inspection certificate for such wrecker has been issued by the chief of police or designee. Such certificate shall be affixed securely to the inside of the windshield of such wrecker and displayed at all times.

(Ord. No. 839, § 3(11-282), 3-3-2015)

Sec. 11-389. - Procedure for acquiring inspection certificates, wrecker rotation list.

(a) Any wrecker company desiring to engage in the wrecker business in the city shall annually apply in writing to the chief of police or designee on a form provided for that purpose by the chief of police or designee for an inspection certificate for each wrecker proposed to be operated. The application shall contain the name, address and telephone number of the wrecker company, the number and types of wreckers to be operated, the legal owner of the company concerned and a statement that the applicant does or does not desire to appear on the "wrecker rotation list," and other information as required by the chief of police or designee to properly administer this ordinance.

(b) The applicant shall submit an acceptable payment of a fee at the time of submitting the application in the amount specified in appendix A to this Code.

(c) Every application, when filed, shall be sworn to by the applicant and filed with the Kyle Police Department.

(Ord. No. 839, § 3(11-283), 3-3-2015)

Sec. 11-390. - Qualifications, equipment, insurance.

The chief of police or designee shall issue an inspection certificate for each qualified wrecker which shall be valid until December 31 of the year in which same was issued. No inspection certificate authorizing the operation of a wrecker shall be operated in the city unless the following minimum requirements are met:

(1) Each wrecker shall be not less than one ton in size and shall have a gross vehicle weight of not less than 10,000 pounds.

(2) Each wrecker shall be equipped with a lifting device, wench line and boom with a rated lifting capacity of not less than 8,000 pounds, single-line capacity.

(3) Each wrecker shall carry as standard equipment towing mechanisms, safety chains, a properly functioning fire extinguisher and emergency lighting as approved by the chief or police or designee. Standard equipment for wreckers shall also include a broom, square point shovel and a receptacle for holding debris.

(4) Wreckers which are qualified for the rotation list shall be equipped with flashing or rotating beacons capable of warning motorists, and such beacons shall be used in accordance with the Texas Transportation Code and, if approved, police radio communications of a type approved by the chief of police or designee.

(5) Each wrecker shall have inscribed on both the passenger and driver doors, in letters not less than three inches in height, the name, city and telephone number of the wrecker company.

(6) Each owner of a wrecker must furnish evidence of the minimum insurance coverage at the time of the application as defined and required for a tow truck by Title 43, Texas Administrative Code, Chapter B.

(7) Each policy of said insurance coverage must contain an endorsement providing for ten days' notice to the city in the event of any material change or cancellation of any policy and shall name the city as an additional insured while the wrecker company is performing a wrecker job for the city.

(8) Each wrecker company shall provide a telephone number to the Kyle Police dispatch division that will be the primary contact point for the police department, and such number shall be promptly answered 24 hours per day on each day of the year.

(Ord. No. 839, § 3(11-284), 3-3-2015)

Sec. 11-391. - Requirements for wrecker rotation list.

In order to qualify for the wrecker rotation list, and to maintain a place on said list, the following requirements shall be met:

(1) All delinquent taxes due to the city by a wrecker company must be paid prior to the wrecker company being added to the rotation list;

(2) The applicant shall have a minimum of two wreckers and two certified drivers that meet the requirements of the Texas Department of Licensing and Regulation and that are available for wrecker service at all times, one of which may be a rollback unit as defined herein;

(3) If a wrecker company elects to be added to the heavy-duty wrecker rotation list, the wrecker company must have a minimum of one heavy-duty wrecker available for service at all times;

(4) The applicant shall file a sworn statement that the applicant has no financial or ownership interest in any other wrecker service which is on the city's wrecker rotation list; and

(5) The applicant must have an individually-owned or leased vehicle storage facility within the city limits of Kyle unless the service is provided by a heavy-duty wrecker company. Heavy-duty wrecker companies are not required to have a storage facility within the city limits.

(Ord. No. 839, § 3(11-285), 3-3-2015)

Sec. 11-392. - Grounds for suspension or removal.

(a) After an administrative hearing, the chief of police may recommend suspension or removal of any wrecker company from the rotation list if:

(1) The place on the wrecker rotation list was procured by fraudulent conduct, concealment of or false statement of a material fact concerning the wrecker company at the time of the wrecker company makes its application or such fraudulent conduct is subsequently discovered;

(2) The wrecker company violates the provisions of this article or any other city ordinance or any state law regulating vehicular traffic or wrecker companies;

(3) The wrecker company fails to comply with the provisions of a storage area for wrecked or disabled vehicles;

(4) The wrecker company fails to protect the vehicle in its care as a result of a wrecker pull and fails to prevent parts, accessories and personal belongings from being removed from the vehicle, except as may be necessary to protect such items from theft;

(5) The wrecker company fails to deliver a vehicle directly to said company's vehicle storage facility, the location within the city limits as designated by the owner or legal custodian of the vehicle, or to the location designated by the police officer investigating the accident, provided such vehicle can be legally delivered to such location as designated by said officer, but this provision shall not apply when it is necessary to remove a vehicle to its ultimate destination by two separate tows

because of an emergency or breakdown of a wrecker, and no charge is levied which is greater than the amount provided in section 11-395 for a single tow from one point on a street to another location within the city limits; this shall not prohibit the wrecker company and the owner or legal custodian of the vehicle of the vehicle from entering into an agreement to deliver the vehicle to any other location, provided that the police officer investigating the accident has not required otherwise;

(6) The wrecker company is repeatedly tardy without justification acceptable to the police chief or designee in arriving after being called to the scene of an accident by the police department for a rotation pull or police pull; or

(7) The wrecker company or its employee intentionally provides confidential arrest information learned by the wrecker company or its employee, as a result of a police action, from the scene of a rotation pull or police pull and provides this information to any other person, party or business in the city that may find it advantageous to acquire such information.

(b) The chief of police shall give ten days' notice of the time and place for the administrative hearing concerning suspension, cancellation or removal as provided above and is empowered to administer oaths to witnesses and to conduct hearings as otherwise provided by law.

(c) Findings of the chief of police and said chief's written order of suspension or removal from the rotation list shall terminate all authority and permission theretofore granted. The period of suspension or removal from the rotation list shall not exceed one year, unless the violation occurs under subsection (a)(7) above, in which case removal from the rotation list will be permanent. If ownership of the permanently removed wrecker company changes, the new owners may apply to join the rotation list. The chief of police will present the application to the city council, who has the final authority to affirm, reject or modify the application.

(d) Any order of the chief of police in this section may be appealed to the city council within ten days from the date of suspension or removal. The city council shall have authority to reverse, affirm, vacate or modify the order of the chief of police, provided that in the event of affirmance of the order, the suspension shall commence upon the date of action by the city council.

(Ord. No. 839, § 3(11-286), 3-3-2015)

Sec. 11-393. - Procedure used in wrecker selection.

(a) When a police officer investigating an accident determines that any vehicle which has been involved in an accident should be removed by a wrecker, the officer shall first determine whether or not the legal custodian of the vehicle has already made arrangements with an authorized wrecker service or, if appropriate, a restricted use wrecker, for the removal of the vehicle.

(b) If not, the officer shall request the legal custodian of the vehicle to either designate an authorized company or allow a wrecker to be called from the wrecker rotation list as follows:

(1) If the legal custodian of the vehicle selects a wrecker company, the investigating officer shall notify the police department dispatcher to call the wrecker company. If the requested wrecker company is unable to promptly respond, then the wrecker company first up on the rotation list will be called. If the first-up wrecker company is unavailable to respond, other wrecker companies in order on said list shall be called until an available company is located.

(2) If the legal custodian of the vehicle does not designate a wrecker company to be called, the investigating police officer shall notify the dispatcher to call the wrecker company first-up on the wrecker rotation list and furnish its name to the investigating officer. In such event, the investigating officer shall notify the police dispatcher who shall call the wrecker company next up from the wrecker rotation list and dispatch it to the scene. The vehicle or vehicles to be removed shall be taken to the place designated by the owner, legal custodian of the vehicle or by the investigating officer or to the wrecker company's storage facility if no designation is made. If the responding wrecker company is unable to immediately provide a wrecker for each wrecked

vehicle at the scene, the wrecker service next on the rotation list shall be called to remove excess vehicles.

(c) On each succeeding accident or call, the next wrecker company on the rotation list will be called to respond. The chief of police will establish a fair and consistent rotation procedure to ensure equal service for each wrecker company on the rotation list.

(d) To effect the wrecker rotation and heavy-duty wrecker list procedure, the police department shall keep a master list of all wrecker companies which meet all the requirements of this article and are qualified to be on the wrecker rotation list and the heavy-duty wrecker rotation list.

(Ord. No. 839, § 3(11-287), 3-3-2015)

Sec. 11-394. - Storage; wrecker company responsibility.

It shall be the responsibility of each wrecker company to provide a storage area for wrecked or disabled vehicles which are moved or towed as the result of a police or rotation pull. The storage area may be inspected by the chief of police or designee to determine whether it complies with the provisions of this section. A wrecker company or storage facility shall meet all requirements set forth in Texas Administrative Code, Chapter 18, Chapters A through G, which establish the minimum standards for motor carrier laws and storage facilities, in order to qualify for participation on the rotation list. The storage area must also be located within the incorporated city limits of Kyle.

(Ord. No. 839, § 3(11-288), 3-3-2015)

Sec. 11-395. - Fees for service, towing and storage.

(a) *Towing.* It is not the policy of the city to regulate the fees for towing or services provided by a wrecker company on the rotation list. However, no wrecker company on the rotation list shall charge a higher fee or rate for calls originating by virtue of the rotation list than for calls for similar services from other sources.

(b) *Rate sheet required.* Each wrecker company shall provide to the chief of police or designee a rate sheet listing its published rates for towing and storage for each class, annually, or sooner if there is a rate change. This list shall also include all charges for ancillary services such as the use of dollies, dropping, hooking linkage, clearing debris off the roadway and similar charges. No charge shall be greater than those listed on the rate sheet.

(c) *Storage.* Storage fees shall not exceed the limitations as set forth in state law. All storage charges shall cease at the time the owner or legal custodian of a stored vehicle requests the vehicle from the storage yard of the wrecker company, provided the request is made during regular business hours.

(d) *Other charges.* Any ancillary services are to be performed only if required and appropriate.

(e) *Waiting time.* A charge of not more than $15.00 for each one-half hour of time spent shall be allowed for waiting to tow a vehicle.

(Ord. No. 839, § 3(11-289), 3-3-2015)

Sec. 11-396. - Fee regulation or police pull not involving accident.

On a police pull for a vehicle that is in safe driving condition, but no owner or legal custodian of the vehicle or licensed operator is present to drive the vehicle from the site, the wrecker company called from the rotation list shall observe and maintain the same maximum fees provided for in this article. In the event a police pull is made for a tow-away zone or traffic law violator, the vehicle shall not be released to the owner or any other person until authorization is granted by the police department. If a police officer requests

a hold placed on the vehicle, then the wrecker company and/or storage facility operator may not release the vehicle to any other person until authorization is granted by the police department.

(Ord. No. 839, § 3(11-290), 3-3-2015)

Sec. 11-397. - Rules for extraordinary conditions; large vehicles.

(a) If a vehicle is wrecked or disabled and a wrecker of ordinary lifting capacity cannot move the vehicle, the investigating police officer will summon a wrecker from the heavy-duty wrecker rotation list that has the capacity to move the vehicle. Charges rendered for services of wreckers of extraordinary lifting capacity shall not exceed the usual and customary charges for like services provided in the wrecker industry.

(b) If in the opinion of city fire or police officials, a wrecked or disabled vehicle or its cargo constitutes a hazard to the public, any wrecker company shall act at the direction of the said city official.

(Ord. No. 839, § 3(11-291), 3-3-2015)

Sec. 11-398. - Removal of wrecks and debris.

The operator of a wrecker shall remove from the street, along with the disabled vehicle, all broken or shattered glass and other debris and parts coming from the disabled vehicle. Failure to do so shall constitute a misdemeanor punishable as provided in the City Code of Ordinances and subject to cancellation of the wrecker license. A truck and trailer or pulled or transported items shall constitute one vehicle and shall be treated as such by the wrecker company.

(Ord. No. 839, § 3(11-292), 3-3-2015)

Sec. 11-399. - Nonresident wrecker companies.

No provisions in this article shall be construed to prohibit a nonresident wrecker company from transporting a wrecked or disabled vehicle from some point in the city other than the site of an original accident to some point outside the city, nor shall it be construed to prohibit a nonresident wrecker company from transporting a wrecked or disabled vehicle from a point outside the city limits to a destination inside the city limits.

(Ord. No. 839, § 3(11-293), 3-3-2015)

Sec. 11-400. - Companies to keep records.

(a) Every wrecker company qualified for and whose name appears at its request on the wrecker rotation list shall maintain at its storage facility any and all records pertaining to all vehicles moved by the wrecker company.

(b) The records shall contain the following information:

  (1) Make, model and identification numbers of the disabled vehicle moved by the company;

  (2) Location from which a disabled vehicle was removed and the final destination of the vehicle;

  (3) Total amount charged for towing;

  (4) Storage rate per day;

  (5) A detailed description of all personal property within the disabled vehicle at the time of its removal; and

(6) The date, time, name of the wrecker operator(s) involved in the tow.

(c) The records described in subsection (b) of this section shall be preserved by the wrecker company for at least six months from the date such company came into possession of the vehicle.

(d) The wrecker company shall make available to the chief of police or designee said records upon request and within a reasonable time.

(Ord. No. 839, § 3(11-294), 3-3-2015)

Sec. 11-401. - Establishment of rotation schedules.

The chief of police or designee shall establish a rotation procedures intended to provide equal service potential for each wrecker business on the rotation list. The procedures established by the chief of police shall be subject to review by the city council upon request by any wrecker company that alleges the procedures established are illegal.

(Ord. No. 839, § 3(11-295), 3-3-2015)

Chapter 14 - COURTS

ARTICLE I. - IN GENERAL

Secs. 14-1—14-18. - Reserved.

ARTICLE II. - MUNICIPAL COURT[1]

Footnotes:

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Charter reference— Municipal court, § 7.11.

State Law reference— Municipal courts, V.T.C.A., Government Code § 29.001 et seq.; procedure, Vernon's Ann. C.C.P. art. 45.001 et seq.

DIVISION 1. - GENERALLY

Sec. 14-19. - Powers and duties.

There shall be a court known as the municipal court of the city, with such jurisdiction, powers, and duties as are given and prescribed by the laws of the state.

(Ord. No. 87, § 1, 3-2-1976)

State Law reference— Municipal courts, V.T.C.A., Government Code § 29.001 et seq.

Sec. 14-20. - Judge.

(a) The municipal court shall be prescribed over by the judge of the municipal court. He shall be appointed by the city council for a two-year term beginning on January 1 of even-numbered years. He shall be removed for cause or disability as defined in the state constitution.

(b) In the event the judge of the municipal court is unable to act for any reason, the city council shall appoint an attorney possessing the qualifications required to act in his place. The judge, or anyone acting in his place, shall receive such compensation as may be set by the city council.

(Ord. No. 87, § 2, 3-2-1976)

State Law reference— Municipal judge, V.T.C.A., Government Code § 29.004.

Sec. 14-21. - Clerk.

(a) The city secretary shall be the ex officio clerk of the municipal court and shall serve as such clerk during his term as city secretary. The clerk shall have the power to administer oaths and affidavits,

make certificates, affix the seal of the court thereto, and otherwise perform any and all acts necessary in issuing process of such court and conducting the business thereof.

(b) There shall be such deputy clerks of the municipal court as may be authorized by the council, who shall have authority to act for and on behalf of the clerk of the municipal court and who shall be appointed by the city secretary, as ex officio clerk of the municipal court.

(Ord. No. 87, § 3, 3-2-1976)

State Law reference— Municipal court clerk, V.T.C.A., Government Code § 29.010.

Secs. 14-22—14-45. - Reserved.

DIVISION 2. - COURT FINES AND MISCELLANEOUS FEES[2]

Footnotes:

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State Law reference— Collection of court fines and costs generally, Vernon's Ann. C.C.P. art. 45.203.

Sec. 14-46. - Definitions.

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

Access device means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other access devices may be used to:

(1) Obtain money, goods, services, or another thing of value; or

(2) Initiate a transfer of funds other than a transfer originated solely by paper instrument.

Conviction or *convicted* means any person be deemed to have been convicted for whom the municipal court imposes any penalty or sentence, the person receives community service, supervision or deferred adjudication, or the court defers final disposition of the case.

Rules of the road means offenses committed under subtitle C, title 7 of the Texas Transportation Code being V.T.C.A., Transportation Code chs. 541 through 600.

School crossing zone means a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduce speed limit applies.

(Ord. No. 384, § 2, 11-20-2001; Ord. No. 447, § 2, 6-1-2004)

Sec. 14-47. - Fees.

The fines imposed in the municipal court may be the same as are prescribed for like offenses by the penal statutes of the state, but shall never be greater. Where any offense is covered solely and alone by

ordinances of the city, such ordinance shall control. The municipal court clerk shall collect and report all court costs as required.

(Ord. No. 384, § 3, 11-20-2001; Ord. No. 447, § 3, 6-1-2004)

Sec. 14-48. - State court costs.

(a) The municipal court clerk shall collect each and every court cost statutorily mandated to be collected for the state. The municipal court clerk shall keep a record of each court cost collected for the benefit of the state and report the collection to the director of finance or designee including forwarding the monies to be deposited with the director of finance or designee as required by internal policy.

(b) The director of finance or designee may deposit the money in an interest bearing account. The director of finance or designee shall keep records of the money collected and on deposit in the treasury and shall remit the court costs collected for the benefit of the state to the comptroller of public accounts not later than the last day of the month following the calendar quarter in which the court costs were collected.

(c) The director of finance or designee shall report the fees collected for a calendar quarter categorized according to the class of offense and shall report the court costs collected for the benefit of the state to the comptroller of public accounts not later than the last day of the month following the calendar quarter in which the court costs were collected.

(d) The municipal court clerk shall forward a completed quarterly report form to be reviewed and confirmed by the director of finance or designee.

(e) The director of finance or designee shall ensure the accuracy of the report and for all fees collected for the consolidated court cost fund to be forwarded to the state. The director of finance or designee shall retain ten percent of all court costs collected, except for court costs collected pursuant to V.T.C.A., Transportation Code § 542.4031 as a service fee and deposit the retained sums to the general fund to offset administrative expenses, save and except the ten percent shall not be retained on sums not timely forwarded to the comptroller of public accounts.

(f) The director of finance or designee shall retain five percent of court costs collected pursuant to V.T.C.A., Transportation Code § 542.4031 as a service fee and deposit the retained sums in the general fund to offset administrative expenses, save and except the five percent shall not be retained on sums not timely forwarded to the comptroller of public accounts.

(Ord. No. 384, § 3(a), 11-20-2001; Ord. No. 447, § 3(a), 6-1-2004)

State Law reference— Quarterly reporting of fees collected, V.T.C.A., Local Government Code §§ 133.055—133.056; court costs, V.T.C.A., Transportation Code § 542.4031.

Sec. 14-49. - Warrant of arrest fees.

The municipal court clerk shall collect a warrant fee established in state law from any defendant upon whom a peace officer executed a warrant issued by the municipal court at the time of conviction. For arrests made by a state trooper, the municipal court clerk shall report the fee established in state law as payable to the comptroller. Law enforcement agencies other than state troopers and city police officers executing a warrant must submit a request for payment within 15 days of the conviction in order to be paid the warrant fee. If demand is not made within 15 days or a city police officer executed the warrant, the municipal court clerk shall report the warrant fees collected as payable to the city police department. The city shall refund the fees in cases where the defendant pleas and demonstrates within 30 days of payment of such fee that the court failed to give the person proper notice.

(Ord. No. 384, § 3(b), 11-20-2001; Ord. No. 447, § 3(b), 6-1-2004)

State Law reference— Fees for services of peace officers, Vernon's Ann. C.C.P. art. 102.011.

Sec. 14-50. - Failure to appear fee.

(a) *Special expense.* The municipal court clerk shall collect the special expense fee established in state law for the issuance and service or a warrant of arrest from each defendant served with a warrant for failure to appear or violation of a promise to appear. The municipal court clerk shall report each special expense collected to the director of finance or designee for deposit into the general funds of the city.

(b) *Contract with state department of public safety.* At all times that the city has a contract with the state department of public safety to deny renewal of licenses for individuals failing to appear at court as directed, the municipal court clerk shall collect an additional administrative fee as provided in V.T.C.A., Transportation Code § 706.006 at the time of the following:

(1) The court enters judgment on the offense for which the failure to appear was submitted;

(2) The case is dismissed;

(3) Bond or other security is posted to reinstate the charge for which the warrant was issued; or

(4) The defendant fails to pay or satisfy a judgment in the manner ordered by the court.

Distribution of the funds shall be as provided by agreement with the state department of public safety. The municipal court clerk shall maintain a copy of the agreement and report each failure to appear fee collected as well as the distribution of the fee to the director of finance or designee. Should a defendant fail to pay the administrative fee as provided in V.T.C.A., Transportation Code § 706.006., the municipal court clerk shall report such failure to the state department of public safety and request the department deny renewal of the defendant's license.

(Ord. No. 384, § 3(c), 11-20-2001; Ord. No. 447, § 3(c), 6-1-2004)

State Law reference— Administrative fee for failure to appear, V.T.C.A., Transportation Code § 706.006.

Sec. 14-51. - Establishment of time payment fee.

(a) Each defendant being permitted to make payments on any part of a fine, court cost or restitution on or after the 31st day after the date on which a judgment is entered, including deferred adjudication and deferred disposition, shall pay the time payment fee established by state law on or before the 31st day after the judgment is entered.

(b) The municipal court clerk shall keep separate records of the time payment fees collected. Each month 50 percent of the time payment fees collected shall be forwarded to the comptroller, 40 percent shall be deposited in the general revenue account of the city, and ten percent shall be deposited in the general fund of the city to be allocated to improving the efficiency of the administration of justice in the city.

(c) No defendant shall be permitted more than 180 days to pay fines, fees, costs, restitution or any other fees ordered to be paid in the judgment of the court.

(Ord. No. 384, § 3(d), 11-20-2001; Ord. No. 447, § 3(d), 6-1-2004)

State Law reference— Time payment fees, V.T.C.A., Local Government Code § 133.103.

Sec. 14-52. - Arrest fee.

The municipal court clerk shall collect an arrest fee established by state law with each conviction. The arrest fee shall be reported quarterly to the comptroller of public accounts. For each citation submitted to the municipal court by a state trooper for which a conviction occurs, the municipal court clerk shall report the amount established by state law of the arrest fee as payable to the comptroller with the remaining amount established by state law being reported as distributable to the city police department. Any law enforcement agency other than the state trooper or a city police officer submitting a citation to the municipal court for which a conviction occurs, the municipal court shall hold the arrest fee for 15 working days. Should the law enforcement agency fail to claim the arrest fee in 15 working days after the conviction, the municipal court clerk shall report the arrest fee as payable to the city police department. For each citation that the city police department issues a citation and a conviction occurs, the full arrest fee shall be reported as payable to the city police department.

(Ord. No. 384, § 3(e), 11-20-2001; Ord. No. 447, § 3(e), 6-1-2004)

State Law reference— Arrest fee, Vernon's Ann. C.C.P. art. 102.009(a)(1).

Sec. 14-53. - Dishonored check fee.

A service charge established by state law shall be assessed against any person who pays the city with a check, draft or money order which is returned unpaid for lack of sufficient funds or closed or nonexistent account.

(Ord. No. 384, § 3(f), 11-20-2001; Ord. No. 447, § 3(f), 6-1-2004)

State Law reference— Returned check fee, Vernon's Ann. C.C.P. arts. 102.007(e), 102.0071, V.T.C.A., Business and Commerce Code § 3.506.

Sec. 14-54. - Jury fee.

A defendant convicted by a jury in a trial before the municipal court shall pay the jury fee established in state law. A defendant in the municipal court who requests a trial by jury and who withdraws the request not earlier than 24 hours before the time of trial shall pay the jury fee established in state law, if the defendant is convicted of the offense or final disposition of the defendant's case is deferred.

(Ord. No. 384, § 3(h), 11-20-2001; Ord. No. 447, § 3(h), 6-1-2004)

State Law reference— Jury fee, Vernon's Ann. C.C.P. art. 102.004.

Sec. 14-55. - Rules of the road fee.

The municipal court clerk shall collect an additional fee established by state law as court costs for each defendant convicted of violating the rules of the road. The municipal court clerk shall deposit the fee collected with the director of finance or designee. Fines and fees collected for violations of the rules of the road shall be deposited to the general fund of the city and utilized to construct and maintain roads, bridges and culverts in the city and to enhance the enforcement of laws regulating the use of highways.

(Ord. No. 384, § 3(i), 11-20-2001; Ord. No. 447, § 3(i), 6-1-2004)

State Law reference— Court costs, V.T.C.A., Transportation Code § 542.401 et seq.

Sec. 14-56. - Administrative fees when certain charges are dismissed established.

(a) *Vehicle inspection certificate.* On the finding of the municipal court judge, having been presented credible evidence, that a defendant remedied the failure to have a valid vehicle inspection certificate within ten working days of the issuance of a citation for an expired inspection certificate which has not been expired more than 60 days, the municipal court clerk shall collect an administrative fee established by state law from the defendant at the time of dismissal. Inspection certificates expired more than 60 days on the date of the citation shall not be dismissible on proof of correction.

(b) *Vehicle registration.* On the finding of the municipal court judge, having been presented credible evidence, that a defendant remedied the failure to register the motor vehicle alleged in the offense not more than ten working days from the date of the offense and within the discretion of the judge the court grants the request to dismiss, the municipal court clerk shall collect an administrative fee established by state law from the defendant at the time of dismissal. Vehicle registration corrected more than ten working days after the date of the citation shall not be dismissible on proof of correction.

(c) *Driver's license proof.* On the finding of the municipal court judge, having been presented credible evidence, that a defendant remedied the expired driver's license within ten working days and within the discretion of the judge the court grants the request to dismiss, the municipal court clerk shall collect an administrative fee established by state law from the defendant at the time of dismissal.

(d) *Deferred disposition.* The defendant's pleading no contest or guilty and requesting defensive driving on or before the date mandated for the first appearance date for an offense involving operation of a motor vehicle, other than speeding more than 25 miles per hour over the posted speed, speeding in a construction zone while workers are present, or any other offense listed in Vernon's Ann. C.C.P. art. 45.0511(p), who has a valid state driver's permit or driver's license that is not a commercial driver's license and adequate financial responsibility, and provides a sufficient affidavit and records from the state department of public safety demonstrating that the individual has not had defensive driving in the proceeding 12 months from the date of the offense, upon granting of such request, the municipal court clerk shall collect, in addition to the other court costs, an administrative fee established by state law to be distributed to the director of finance or designee for deposit in the general fund of the city.

(Ord. No. 384, § 3(j), 11-20-2001; Ord. No. 447, § 3(j), 6-1-2004)

State Law reference— Administrative fee, V.T.C.A., Transportation Code § 502.407; safety course requirements, Vernon's Ann. C.C.P. art. 45.0511, V.T.C.A., Transportation Code §§ 521.026, 548.605(b)(1)(B).

Sec. 14-57. - Seat belt fund.

The municipal court clerk shall report each fine collected for violations committed after September 1, 2001, of the requirements to wear a seat belt contrary to V.T.C.A., Transportation Code §§ 545.412 and 545.413(b), which require a person to transporting a child under the age of 17 years to secure the child with a safety belt or in a passenger safety seat system. The report shall designate 50 percent of each fine as funds to be remitted to the comptroller annually. The director of finance shall maintain the seat belt funds in a separate interest bearing account and annually remit 50 percent of all fines collected from defendants for violations V.T.C.A., Transportation Code §§ 545.412 and 545.413(b). The director of finance shall retain the entire fine for violations of V.T.C.A., Transportation Code § 545.413(a), which requires persons at least 15 years of age riding in the front seat of a passenger vehicle to wear a safety belt, and deposit said fine with the city pursuant to this division and applicable internal policy.

(Ord. No. 384, § 4(d), 11-20-2001; Ord. No. 447, § 4(d), 6-1-2004)

State Law reference— Safety belts, V.T.C.A., Transportation Code §§ 545.412, 545.413.

Sec. 14-58. - Waiver of fines, fees and costs of court.

The municipal court judge may hold a hearing to determine the economic capabilities of any defendant filing a written motion seeking a finding of the court that the defendant is per se indigent and each alternative method of discharging the fine or costs of court under Vernon's Ann. C.C.P. art. 43.09 would impose an undue hardship on the defendant. The municipal court judge shall review the motion of the defendant, including any another evidence deemed necessary, and on a finding that defendant is indigent as a matter of law and that the alternative methods of discharge would work an undue hardship on the defendant the municipal court judge may waive payment of any fines or costs for which the defendant has defaulted.

(Ord. No. 384, § 5, 11-20-2001; Ord. No. 447, § 5, 6-1-2004)

State Law reference— Fine discharged, Vernon's Ann. C.C.P. art. 43.09.

Sec. 14-59. - Postjudgment collection of fines and court costs.

As provided in the ordinances of the city and state statutes, the municipal court judge shall assess fines and court costs against each defendant entering a plea of guilty or no contest or based on the verdict of the court or jury finding a defendant guilty. Defendants having not timely appealed the judgment of the court and who fail to timely pay fines, fees, costs or restitution as ordered shall be subject to permitted postjudgment collection procedures.

(1) *Capias pro fine.* The municipal court judge may order a capias pro fine be issued for any defendant failing to satisfy a judgment of the court according to the terms of the judgment. The municipal court clerk shall ensure that each capias states the amount of the judgment and sentence and commands a peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

(2) *Commitment.* Defendants failing to satisfy any judgment may be committed as provided in the Texas Code of Criminal Procedure to satisfy the judgment. Any defendant committed to jail serving less than eight consecutive hours in jail shall not be given credit for time served. The court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy an amount established by state law of the fine and costs. Defendants committing offenses prior to January 1, 2004, shall receive an amount established by state law as credit for each time period served.

(3) *Private collection contract.* All times that the city council has authorized a private collection contract with a private attorney or a public or private vendor for collection services relating to fines, fees, restitution or other debts or costs, other than forfeited bonds, the municipal court is authorized to collect an additional 30 percent on each such debt or account receivable that is more than 60 days past due and has been collected as a result of the action of a duly authorized contractor. The municipal court clerk shall report the 30 percent as payable to the contractor. Should the contractor collect less than the full sum due from defendant, the municipal court clerk shall ensure that the payment is distributed first in an amount sufficient to fully compensate the contractor and then in equal shares to the comptroller and the city until the comptroller is paid in full.

(4) *Civil assessment against property.* The municipal court judge may review judgments in which the defendant has defaulted in payment, either in whole or part after sentencing, and may order the fine and costs be collected by execution against the defaulting defendant's property in the same manner as a judgment in a civil suit.

(Ord. No. 384, § 6, 11-20-2001; Ord. No. 447, § 6, 6-1-2004)

State Law reference— Collection of fines, Vernon's Ann. C.C.P. art. 45.047; collection of certain costs, Vernon's Ann. C.C.P. art. 103.003.

Sec. 14-60. - Copying charges for court public records.

The following service charge for copying governmental and public records shall be as follows:

(1) For readily available information on standard size pages (up to 8½ inches by 14 inches), the copying charge shall be as established in appendix A to this Code.

(2) For information which is not readily available, the copying charge shall be as established in appendix A to this Code, plus actual labor costs incurred by the city in providing the requested information.

(3) In addition, the city may also add any postal expenses which may be necessary to transmit the reproduced documents to the requesting party.

(4) The city secretary shall establish the copying or reproduction charge for nonstandard sized pages or documents (maps, books, etc.).

(Ord. No. 384, § 7, 11-20-2001; Ord. No. 447, § 7, 6-1-2004)

State Law reference— Charge for copying municipal court records, V.T.C.A., Government Code § 552.266.

Sec. 14-61. - Jury duty pay.

The city shall pay each person appearing in response to a duly notice jury summons the amount established by state law for service in municipal court for each day or fraction of each day they serve as a juror.

(Ord. No. 384, § 8, 11-20-2001; Ord. No. 447, § 8, 6-1-2004)

Sec. 14-62. - Confidential payment and communication records.

The municipal court clerk shall separately file from the records of any case in the municipal court any documents collected, assembled or otherwise maintained containing a credit card, debit card charge card, or other access device number. The municipal court clerk shall redact the email address from any communications received via email or shall maintain such documents separately of the documents of the case. The email address of any individual communicating with the court shall not be disclosed to a member of the public without express consent of the individual. Any requests for documents containing this information shall be immediately referred to the city attorney's office.

(Ord. No. 384, § 9, 11-20-2001; Ord. No. 447, § 9, 6-1-2004)

Sec. 14-63. - Prima facie evidence.

(a) *Vehicles.* In any prosecution charging a violation of this division governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of this division, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(b) *Properties.* In any prosecution charging a violation regarding nuisances upon a property, the failure to comply with any notice or order regarding a nuisance on a property or building in violation of an ordinance of the city, including but not limited to failure to apply for a building permit or other permit or license required herein, proof that the particular property described in the complaint was in violation of

an ordinance regulating the property, together with proof that the defendant named in the complaint was, at the time of such notice, violation or order or at the time when work was performed without a permit, the registered owner of such property, shall constitute in evidence a prima facie presumption that the registered owner of such property was the person who failed to comply with the notice or order or failed to apply for a permit for the time during which such violation occurred in violation of the charged ordinance of the city.

(c) *Animals.* In any prosecution charging a violation of an ordinance or statute regulating or governing the abuse, neglect or ownership of an animal or failure to license an animal as required, proof that the particular property described in the complaint was the premises upon which the animal resided, was harbored or maintained and a violation of an ordinance or statute regulating or governing the animal alleged in the complaint, together with proof that the defendant named in the complaint was, at the time of such complaint or at the time when the animal was in violation of said ordinance or statute, the registered owner of such animal or the person with legal rights to reside on said property, shall constitute in evidence a prima facie presumption that the registered owner of such property or the person with legal rights to reside on said property was the owner of the animal and the person who failed to comply with or violated the ordinance or statute.

(Ord. No. 384, § 10, 11-20-2001; Ord. No. 447, § 10, 6-1-2004)

Secs. 14-64—14-86. - Reserved.

DIVISION 3. - FUNDS

Subdivision I. - In General

Sec. 14-87. - Court cost collection.

In addition to the court costs mandated to be collected under state statute and remitted to the comptroller as court costs and as set out in sections 14-47 through 14-57, the court costs shall be collected for each conviction as provided in this division.

(Ord. No. 384, § 4, 11-20-2001; Ord. No. 447, § 4, 6-1-2004)

Secs. 14-88—14-117. - Reserved.

Subdivision II. - Child Safety Fund[3]

Footnotes:

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State Law reference— Child safety fund, Vernon's Ann. C.C.P. art. 102.016; failure to attend school, V.T.C.A., Education Code § 25.094; passing school bus, V.T.C.A., Transportation Code § 545.066.

Sec. 14-118. - School crossing fee.

Each defendant convicted of violating any provisions of the rules of the road, V.T.C.A., Transportation Code § 541.001 et seq., within a school crossing zone or convicted for passing a school bus, in violation of V.T.C.A., Transportation Code § 545.066, shall pay an additional amount established by state law taxable as court costs.

(Ord. No. 384, § 4(a)(1), 11-20-2001; Ord. No. 447, § 4(a)(1), 6-1-2004)

State Law reference— Child safety fund, Vernon's Ann. C.C.P. art. 102.016; passing a school bus, V.T.C.A., Transportation Code § 545.066.

Sec. 14-119. - Failure to attend school fee.

Each defendant convicted of violating the V.T.C.A., Education Code § 25.094, thwarting compulsory attendance, or V.T.C.A., Education Code § 25.094, failure to attend school, shall pay an additional amount established by state law taxable as court costs.

(Ord. No. 384, § 4(a)(2), 11-20-2001; Ord. No. 447, § 4(a)(2), 6-1-2004)

Sec. 14-120. - Collection and deposit.

(a) The municipal court clerk shall collect such court costs, including the school crossing fee and failure to attend school fee, and pay such court costs to the director of finance or designee for all offenses governed by this section. For all fines collected pursuant to V.T.C.A., Education Code § 25.093, thwarting compulsory attendance, the municipal court clerk shall report 50 percent of the fine to be deposited to the credit of the operating fund of the school district in which the child attends or to the juvenile justice alternative education program, if the child has been ordered to attend such a program. The remaining 50 percent of the fine collected under V.T.C.A., Education Code § 25.093 shall be reported as payable to the general fund of the city.

(b) The director of finance or designee shall deposit the amount established by state law as a crossing fee and the amount established by state law as a failure to attend school fee portion of such court costs into the child safety fund. The director of finance or designee shall quarterly forward 50 percent of the fine collected under V.T.C.A., Education Code § 25.093 payable to the school district which the convicted children attend, or, if the children were sentenced to a juvenile justice alternative education program, the city treasurer shall forward the 50 percent to the program. The remaining 50 percent shall be deposited to the general fund of the city.

(Ord. No. 384, § 4(a)(3), 11-20-2001; Ord. No. 447, § 4(a)(3), 6-1-2004)

Sec. 14-121. - Creation of fund.

There is hereby created a child safety fund which shall be maintained and reported as a separate fund of the city. The child safety fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

(Ord. No. 384, § 4(a)(4), 11-20-2001; Ord. No. 447, § 4(a)(4), 6-1-2004)

State Law reference— Creation of fund, Vernon's Ann. C.C.P. art. 102.014.

Sec. 14-122. - Designated use of the child safety fund and administration.

All school crossing fees and failure to attend school fees collected shall be deposited in the child safety fund which shall be administered by the city council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Vernon's Ann. C.C.P. art. 102.014(g), and as authorized by a majority vote of the city council. On the finding of the city council that an expenditure is authorized, child safety funds may be removed from the fund solely to be used to improve child safety, including:

(1) School crossing guard program, if one is established all money must first fund this program;

(2) Programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention.

(Ord. No. 384, § 4(a)(5), 11-20-2001; Ord. No. 447, § 4(a)(5), 6-1-2004)

Secs. 14-123—14-142. - Reserved.

Subdivision III. - Municipal Court Security Fund[4]

Footnotes:

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State Law reference— Municipal court security fund and fees authorized, Vernon's Ann. C.C.P. art. 102.017.

Sec. 14-143. - Security fee levied.

(a) A security fee in the amount established by state law is hereby established and imposed as a court cost to be paid by every person convicted of a misdemeanor in the municipal court. The security fee shall be charged for each separate case, matter or charge upon which any person is convicted in the municipal court.

(b) For the purpose of this subdivision, a person shall be deemed to have been convicted if the municipal court imposes any penalty or sentence, the person receives community service, supervision or deferred adjudication, or the court defers final disposition of the case.

(Ord. No. 348, § 2, 2-15-2000)

Sec. 14-144. - Collection and deposit.

(a) The clerk of the municipal court shall collect such court costs, including the security fee, and pay such court costs to the director of finance or designee.

(b) The director of finance or designee shall deposit the security fee portion of such court costs into the municipal court building security fund.

(Ord. No. 348, § 3, 2-15-2000; Ord. No. 384, §§ 4(b)(1), (2), 11-20-2001; Ord. No. 447, §§ 4(b)(1), (2), 6-1-2004)

Sec. 14-145. - Creation of fund.

There is hereby created a municipal court building security fund (the "security fund") which shall be maintained and reported as a separate fund of the city. All security fees collected shall be deposited in the fund which shall be administered by the city council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Vernon's Ann. C.C.P. art. 102.017(d), and as authorized by a majority vote of the city council.

(Ord. No. 348, § 4, 2-15-2000; Ord. No. 384, § 4(b)(3), 11-20-2001; Ord. No. 447, § 4(b)(3), 6-1-2004)

Sec. 14-146. - Designated use of the fund and administration.

All security fees collected shall be deposited in the fund which shall be administered by the city council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Vernon's Ann. C.C.P. art. 102.017(d), and as authorized by a majority vote of the city council. On the finding of the city council that an expenditure is authorized, security funds may be removed from the fund solely to be used to finance items to be used for the purpose providing security services for the municipal court of the city, including:

(1) The purchase or repair of X-ray machines and conveying systems;

(2) Handheld metal detectors;

(3) Walk-through metal detectors;

(4) Identification cards and systems;

(5) Electronic locking and surveillance equipment;

(6) Bailiffs, deputy sheriffs, deputy constables or contract security personnel during times when they are providing appropriate security services;

(7) Signage;

(8) Confiscated weapon inventory and tracking systems;

(9) Locks, chains, alarms or similar security devices;

(10) The purchase or repair of bulletproof glass; and

(11) Continuing education on security issues for court personnel and security personnel.

(Ord. No. 384, § 4(b)(4), 11-20-2001; Ord. No. 447, § 4(b)(4), 6-1-2004)

Secs. 14-147—14-175. - Reserved.

Subdivision IV. - Municipal Technology Fund[5]

Footnotes:

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State Law reference— Authority to levy fees for technology, Vernon's Ann. C.C.P. art. 102.0172.

Sec. 14-176. - Technology fee levied.

(a) A technology fee in the amount established by state law is hereby established and imposed as a court cost to be paid by every person convicted of a misdemeanor in the municipal court pursuant to Vernon's Ann, C.C.P. art. 102.0172. The technology fee shall be charged for each separate case, matter or charge upon which any person is convicted in the municipal court.

(b) For the purpose of this subdivision, a person shall be deemed to have been convicted if the municipal court imposes any penalty or sentence, the person receives community service, supervision or deferred adjudication, or the court defers final disposition of the case.

(Ord. No. 347, § 2, 2-15-2000; Ord. No. 384, § 4(c)(1), 11-20-2001; Ord. No. 447, § 4(c)(1), 6-1-2004)

Sec. 14-177. - Collection and deposit.

(a) The clerk of the municipal court shall collect such court costs, including the technology fee, and pay such court costs to the director of finance or designee for all offenses governed by this subdivision.

(b) The director of finance shall deposit the technology fee portion of such court costs into the municipal technology fund.

(Ord. No. 347, § 3, 2-15-2000; Ord. No. 384, § 4(c)(2), 11-20-2001; Ord. No. 447, § 4(c)(2), 6-1-2004)

Sec. 14-178. - Creation of fund.

There is hereby created a municipal technology fund (the "technology fund") which shall be maintained and reported as a separate fund of the city. The fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

(Ord. No. 347, § 4, 2-15-2000; Ord. No. 384, § 4(c)(3), 11-20-2001; Ord. No. 447, § 4(c)(3), 6-1-2004)

Sec. 14-179. - Designated use of the fund and administration.

All technology fees collected shall be deposited in the fund which shall be administered by the city council. No expenditures or withdrawals shall be made from the fund except to finance eligible items listed in Vernon's Ann. C.C.P. art. 102.0172(d), and as authorized by a majority vote of the city council. On the finding of the city council that an expenditure is authorized, technology funds may be removed from the fund solely to be used to finance the purchase of technological enhancements for the municipal court of the city, including:

(1) Computer systems;

(2) Computer networks;

(3) Computer hardware;

(4) Computer software;

(5) Imaging systems;

(6) Electronic kiosks;

(7) Electronic ticket writers;

(8) Docket management systems; or

(9) Service and maintenance agreements for technological enhancements purchased pursuant to this section.

(Ord. No. 384, § 4(c)(4), 11-20-2001; Ord. No. 447, § 4(c)(4), 6-1-2004)

Chapter 17 - FLOODS

ARTICLE I. - IN GENERAL

Secs. 17-1—17-18. - Reserved.

ARTICLE II. - FLOOD HAZARD AREA REGULATIONS

DIVISION 1. - GENERALLY

Sec. 17-19. - Definitions.

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

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future conditions flood hazard means the land area that would be inundated by the one percent annual chance (100-year) flood based on future conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as zone A on the flood hazard boundary map (FHBM). After detailed rate making has been completed in preparation for publication of the flood insurance rate map, zone A usually is refined into zones A, AO, AH, A1-30, AE, A99, AR, AR/1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means, for insurance purposes, a nonbasement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the flood insurance rate maps or before January 1, 1975, for flood insurance rate maps effective before that date. The term "existing construction" may also be referred to as existing structures.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood insurance rate map or *FIRM* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study. See *Flood elevation study.*

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or *floodprone area* means any land area susceptible to being inundated by water from any source. See *Flooding.*

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway or *regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include longterm storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

    a. By an approved state program as determined by the Secretary of the Interior; or

    b. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of 44 CFR 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level, for purposes of the National Flood Insurance Program, means the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial flood insurance rate map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading

or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projections;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area. See *Area of special flood hazard.*

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The term "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. The term "permanent construction" does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the term "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief by a community for the terms of a floodplain management regulation. (For full requirements see 44 CFR 60.6 of the National Flood Insurance Program regulations.)

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 224, art. II, 1-5-1988; Ord. No. 463, art. II, 3-1-2005)

Sec. 17-20. - Penalty.

No structure or land shall be hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $2,000.00; each day in violation shall be deemed a separate offense. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation including the bringing of a suit seeking injunctive relief and attorneys fees and costs.

(Ord. No. 463, art. V(F), 3-1-2005)

Sec. 17-21. - Statutory authorization.

The legislature of the state has in the Texas Local Government Code delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the city council does hereby amend in its entirety its flood hazard area regulations adopted and adopt the findings in section 17-22.

(Ord. No. 224, art. I(A), 1-5-1988; Ord. No. 463, art. I(A), 3-1-2005)

Sec. 17-22. - Findings of fact.

(a) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(Ord. No. 224, art. I(B), 1-5-1988; Ord. No. 463, art. I(B), 3-1-2005)

Sec. 17-23. - Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area.

(Ord. No. 224, art. I(C), 1-5-1988; Ord. No. 463, art. I(C), 3-1-2005)

Sec. 17-24. - Methods of reducing flood losses.

In order to accomplish its purposes, this article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 224, art. I(D), 1-5-1988; Ord. No. 463, art. I(D), 3-1-2005)

Sec. 17-25. - Lands to which this article applies.

The article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Ord. No. 224, art. III(A), 1-5-1988; Ord. No. 463, art. III(A), 3-1-2005)

Sec. 17-26. - Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study for Kyle, Texas," as adopted and amended from time to time with accompanying flood insurance rate maps (FIRM) and/or flood boundary floodway maps (FBFM) as amended from time to time and any revisions thereto, are hereby adopted by reference and declared to be a part of this article.

(Ord. No. 224, art. III(B), 1-5-1988; Ord. No. 463, art. III(B), 3-1-2005)

Sec. 17-27. - Establishment of development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this article.

(Ord. No. 224, art. III(C), 1-5-1988; Ord. No. 463, art. III(C), 3-1-2005)

Sec. 17-28. - Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 224, art. III(D), 1-5-1988; Ord. No. 463, art. III(D), 3-1-2005)

Sec. 17-29. - Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 224, art. III(E), 1-5-1988; Ord. No. 463, art. III(E), 3-1-2005)

Sec. 17-30. - Interpretation.

In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the city council; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 224, art. III(F), 1-5-1988; Ord. No. 463, art. III(F), 3-1-2005)

Sec. 17-31. - Warning and disclaimer or liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 224, art. III(G), 1-5-1988; Ord. No. 463, art. III(G), 3-1-2005)

Secs. 17-32—17-50. - Reserved.

DIVISION 2. - ADMINISTRATION

Sec. 17-51. - Floodplain administrator—Designated.

The building official or his designee is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance, National Flood Insurance Program regulations) pertaining to floodplain management.

(Ord. No. 224, art. IV(A), 1-5-1988; Ord. No. 463, art. IV(A), 3-1-2005)

Sec. 17-52. - Same—Duties and responsibilities.

(a) Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.

(2) Review permit application to determine whether the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by the adoption of the ordinance from which this article is derived.

(4) Review permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344) from which prior approval is required.

(5) Make the necessary interpretation where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).

(6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Commission on Environmental Quality prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with section 17-26, shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of division 3 of this article.

(9) When a regulatory floodway has not been designated, must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's flood insurance rate maps, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(b) Under the provisions of 44 CFR 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in zones A1-30, AE, AH, on the community's flood insurance rate maps which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by 44 CFR 65.12.

(Ord. No. 224, art. IV(B), 1-5-1988; Ord. No. 463, art. IV(B), 3-1-2005)

Sec. 17-53. - Permit procedures.

(a) Application for a floodplain development permit shall be presented to the floodplain administrator on forms furnished by him and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required along with payment of the permit application fees:

(1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria in section 17-83(2);

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(5) Maintain a record of all such information in accordance with in section 17-52(1).

(b) Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all of the provisions of this article and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(10) The relationship of the proposed use to the comprehensive plan for that area.

(Ord. No. 224, art. IV(C), 1-5-1988; Ord. No. 463, art. IV(C), 3-1-2005)

Sec. 17-54. - Variance procedures.

(a) The appeals board shall hear and render judgment on requests for variances from the requirements of this article. The city council authorizes the board of adjustment to sit as the appeals board and to exercise the powers set forth in this article.

(b) The appeals board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.

(d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this article.

(f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 17-53 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(g) Upon consideration of the factors noted in this section and the intent of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of section 17-23.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(j) Prerequisites for granting variances.

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

a. A showing a good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(k) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(1) The criteria outlined in section 17-54(a)—(i) are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. No. 224, art. IV(D), 1-5-1988; Ord. No. 463, art. IV(D), 3-1-2005)

Secs. 17-55—17-81. - Reserved.

DIVISION 3. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 17-82. - General standards.

In all areas of special flood hazard, the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed

and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. No. 224, art. V(A), 1-5-1988; Ord. No. 463, art. V(A), 3-1-2005)

Sec. 17-83. - Specific standards.

In all areas of special flood hazard, where base flood elevation data has been provided as set forth in section 17-26, 17-52(8) or 17-84(c), the following provisions are required:

(1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in section 17-53(a)(1) is satisfied.

(2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.

(3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) *Manufactured homes.*

a. Require that all manufactured homes to be placed within zone A, if any, on a community's flood boundary floodway maps or flood insurance rate maps shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or

frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's flood insurance rate maps on sites:

1. Outside of a manufactured home park or subdivision;

2. In a new manufactured home park or subdivision;

3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood;

be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

c. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with zones A1-30, AH and AE on the community's flood insurance rate maps that are not subject to the provisions of this subsection (4) is elevated so that either:

1. The lowest floor of the manufactured home is at or above the base flood elevation; or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) *Recreational vehicles.* Require that recreational vehicles placed on sites within zones A1-30, AH, and AE on the community's flood insurance rate maps either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of section 17-53(a), and the elevation and anchoring requirements for "manufactured homes" in subsection (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. No. 224, art. V(B), 1-5-1988; Ord. No. 463, art. V(B), 3-1-2005)

Sec. 17-84. - Standards for subdivision proposals.

(a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with sections 17-22 through 17-24.

(b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of sections 17-27, 17-53 and the provisions of division 3 of this article.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is fewer, if not otherwise provided pursuant to section 17-26 or 17-52(8).

(d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. No. 224, art. V(C), 1-5-1988; Ord. No. 463, art. V(C), 3-1-2005)

Sec. 17-85. - Standards for areas of shallow flooding (AO/AH zones).

Located within the areas of special flood hazard established in section 17-26 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's flood insurance rate maps (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of nonresidential structures:

a. Have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's flood insurance rate maps (at least two feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO zone or below the base flood elevation in an AH zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in section 17-53 are satisfied.

(4) Require within zones AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 463, art. V(D), 3-1-2005)

Sec. 17-86. - Floodways.

Floodways located within areas of special flood hazard established in section 17-26 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of division 3 of this article.

(3) Under the provisions of 44 CFR 65.12, of the National Flood Insurance regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an

increase in base flood elevations, provided that the community first completes all of the provisions required for 44 CFR 65.12.

(Ord. No. 463, art. V(E), 3-1-2005)

Chapter 20 - LAW ENFORCEMENT AND CIVIL EMERGENCIES

ARTICLE I. - IN GENERAL

Secs. 20-1—20-18. - Reserved.

ARTICLE II. - LAW ENFORCEMENT

DIVISION 1. - GENERALLY

Secs. 20-19—20-39. - Reserved.

DIVISION 2. - POLICE DEPARTMENT

Sec. 20-40. - Oath of office.

Before entering upon the duties of their respective offices, the members of the police department, including the chief of police, shall take and subscribe to the oath of office prescribed by article XVI, section 1, of the state constitution for appointed officers.

(Ord. No. 89-1, § 9, 3-2-1974)

Sec. 20-41. - Power and authority.

The chief of police and all police officers shall be and are hereby invested with all the power and authority given to them as peace officers under the laws of the state in taking cognizance of, and in enforcing the criminal laws of the state and the ordinances and regulations of the city within the limits of the city. It shall be the duty of such officers to be active in quelling riots, disorders and disturbances of the peace within the limits of the city, and shall take into custody all persons so offending against the public peace. Such officers shall have no power or authority in civil matters, but shall execute any criminal warrant or warrant of arrest that may be placed in their hands by the duly constituted authorities of the city. Such officers shall not receive any fee or other compensation for any services rendered in the performance of their duties, other than the salary paid by the city, except upon the approval of the city council, nor shall they receive a fee as witness in any case arising under the laws of the state, or under the ordinances or regulations of the city and prosecuted in the municipal court.

(Ord. No. 89-1, § 10, 3-2-1974)

Secs. 20-42—20-98. - Reserved.

ARTICLE III. - EMERGENCY MANAGEMENT[1]

Footnotes:

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State Law reference— Emergency management, V.T.C.A., Government Code § 418.001 et seq.

Sec. 20-99. - Adoption of county emergency management plan.

The Emergency Management Plan adopted and amended by the county from time to time is hereby adopted as the Emergency Management Plan of the city. The mayor, chief of police, and city manger are hereby authorized to carry out such plan as authorized by state law and the city Charter.

Sec. 20-100. - Adoption of National Incident Management System (NIMS).

The city council does hereby adopt the National Incident Management System dated March 1, 2004.

(Ord. No. 488, § 2, 10-17-2006; Ord. No. 536, § 2, 4-15-2008)

Sec. 20-101. - Public shelter procedure.

In case of national emergency, public shelter managers duly appointed by the emergency management director shall open public shelters, take charge of all stocks of food, water, and other supplies stored in said shelter, admit the public according to the city's shelter use plan and take whatever control measures are necessary for the protection and safety of the occupants.

(Ord. No. 45, § 1, 11-19-1974)

Sec. 20-102. - Shelter manager authority.

Shelter managers are authorized to use reasonable restraint against those who refuse to cooperate with the routine of shelter living under emergency conditions. Refusal to carry out the orders of the shelter manager and his appointed staff shall be punishable as provided in section 1-10.

(Ord. No. 45, § 2, 11-19-1974)

Secs. 20-103—20-132. - Reserved.

ARTICLE IV. - EMERGENCY SERVICES

DIVISION 1. - GENERALLY

Secs. 20-133—20-162. - Reserved.

DIVISION 2. - ALARM SYSTEMS[2]

Footnotes:

State Law reference— Alarm systems, V.T.C.A., Local Government Code § 212.191 et seq.

Sec. 20-163. - Definitions.

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

Alarm administrator. See *Chief of police.*

Alarm notification means a notification intended to summon the police, which is designed either to be initiated purposely by a person or by an alarm system that responds to a stimulus characteristic of unauthorized intrusion. (Recorded messages to any police station are prohibited herein.)

Alarm site means the specific property served by an alarm system that is under the control of one owner, tenant or lessor.

Alarm system business means any person or entity that sells, installs, services, monitors, or responds to any alarm systems.

Alarm system holder means any person who owns, leases, or has control of a property or structure equipped with an alarm system.

Burglar alarm system (herein referred to as "alarm systems" or "alarm" unless otherwise indicated) means a device or system that transmits a signal intended to summon police of a municipality. The term includes an alarm that emits an audible signal on the exterior of a structure.

(1) The term "burglar alarm system" is categorized as the following types or combinations of types of systems:

   a. Residential burglar alarm;

   b. Residential medical emergency alarm;

   c. Residential duress alarm; or

   d. Commercial burglar alarm.

(2) The term "burglar alarm system" does not include the following:

   a. An alarm system installed in a motor vehicle, unless the vehicle is used for habitation at a permanent site;

   b. An alarm system designed to alert only the inhabitants of the premises that does not have a local alarm;

   c. An alarm system installed upon premises occupied by the United States government, or the state government when they occupy property owned by the state;

   d. An alarm system designed solely to detect or give notice of fire or smoke; and

   e. Any communications device not designed solely for alarm notification.

Chief of police means the chief of police for the city, his assistant chief or any representative designated by departmental operational order as alarm administrator.

False alarm notification means an alarm notification to the police department, to which a police officer responds within 30 minutes of the alarm notification, and the responding officer or a subsequent investigation finds no evidence of unauthorized intrusion, an attempted unauthorized intrusion, robbery, attempted robbery or other illegal activity for which the alarm was intended to report.

Local alarm means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure.

Relaying intermediary means any person who reports the activation of an alarm to the police department for compensation.

Robbery alarm systems (herein referred to as "alarm systems" or "alarm" unless otherwise indicated) means any electrical, mechanical, or electronic device or assembly of equipment that emits, transmits, or relays a signal intended to summon, or that would reasonably be expected to summon, by direct or indirect means, the aid of the police services of the city in response to a robbery. Such systems are categorized as to the following types or combinations of types:

(1) Commercial holdup alarm; or

(2) Manual holdup alarm indicating presence of robbery suspect.

(Ord. No. 467, § 2, 7-19-2005)

Sec. 20-164. - Penalty.

(a) Any person who shall violate any of the provisions of this division, except section 20-169, or fail to comply therewith, or with any requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed more than $500.00 but not less than $50.00 upon first conviction, and not less $100.00 upon second and subsequent convictions. Each day the violation exists shall constitute a separate offense.

(b) It shall be a Class C misdemeanor for any person to knowingly cause any category of false alarm notification to be activated or such incident may be investigated as a violation of V.T.C.A., Penal Code § 42.06, false alarm or report, depending on the circumstances.

(Ord. No. 467, § 8, 7-19-2005)

Sec. 20-165. - Operation and maintenance.

(a) An alarm system holder shall:

(1) Maintain the premises equipped with an alarm system in a manner that ensures proper operation of the alarm system;

(2) Maintain the alarm system in a manner that will minimize false alarm notifications;

(3) Respond or cause a representative to respond within one hour when notified by the city to repair or inactive a malfunctioning alarm system, to provide access to the premises, or to provide security for the premises;

(4) Not manually activate an alarm system for any reason other than occurrence of an event that the alarm system was intended to report;

(5) Utilize relaying intermediaries for residential alarm systems of all classification types; and

(6) Utilize relaying intermediaries for commercial alarm systems of all classification types except holdup alarms.

(b) An alarm system holder shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal will sound for no longer than 15 minutes after being activated.

(Ord. No. 467, § 3, 7-19-2005)

Sec. 20-166. - Policies and procedures.

(a) The chief of police may institute policies and procedures in the form of operational orders to implement this division.

(b) An alarm system holder will be provided copies of these standards and all changes thereto upon request.

(Ord. No. 467, § 4, 7-19-2005)

Sec. 20-167. - Police response.

(a) The response, if any, made to a signal from an alarm system shall be subject to the policies and procedures of the police department and will be in accordance with the priorities set for police response.

(b) The policies and procedures for use of an alarm system are not intended to nor shall they create a contract, either express or implied, nor do they create a duty or guarantee of response by the city police department. Any and all liability and consequential damages resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained.

(Ord. No. 467, § 5, 7-19-2005)

Sec. 20-168. - Violations.

(a) No person shall operate, cause to be operated or allow the operation of an alarm system:

  (1) Without being in compliance with the procedures and provision of this division;

  (2) That automatically dials the 911 emergency communications system; or

  (3) Without due regard in maintaining such a system in a manner that minimizes false alarm notifications.

(b) No person shall knowingly cause a false alarm to be activated.

(Ord. No. 467, § 6, 7-19-2005)

Sec. 20-169. - False alarm notifications; penalty.

(a) It shall be unlawful for any person who owns, leases, or is in control of a property or structure equipped with an alarm system to permit or fail to prevent the occurrence of more than three false alarm notifications within any consecutive 12-month period.

(b) For any false alarm notification for which a fine is assessed, the chief of police has the authority to investigate the circumstances of the alarm, and may waive the payment of the fine.

(c) The fine for a violation of this section shall be as follows:

  (1) If the property or structure has had more than three but fewer than six other false alarm notifications in the preceding 12-month period, the fine is $50.00.

  (2) If the property or structure has had more than five but fewer than eight other false alarm notifications in the preceding 12-month period, the fine is $75.00;

  (3) If the property or structure has had eight or more other false alarm notifications in the preceding 12-month period, the fine is $100.00.

(d) Before a penalty may be imposed on a person who owns or is in control of an apartment complex, condominium, or other multiunit housing facility, the person shall be notified of the date of the false alarm notification; the address of the apartment complex, condominium, or other multiunit housing

facility where the false alarm notification occurred; and the identification of the individual unit within the apartment, condominium, or other multiunit housing facility where the false alarm notification occurred.

(e) All fines under this section shall be set herein and such fees shall only be utilized to offset costs associated with the implementation, enforcement, personnel training, and general administration of this division by the police department.

(f) Allegations and evidence of culpable mental state are not required for proof of a violation of this section.

(Ord. No. 467, § 7, 7-19-2005)

State Law reference— False alarm penalties, V.T.C.A., Local Government Code § 214.197.

ARTICLE I. - IN GENERAL

Sec. 23-1. - Fortunetelling.

It shall be unlawful for any person to operate a palm reading, fortunetelling or similar business telling the past, present, or future in any kind of structure within 1,000 feet of any private residence in the city.

(Ord. No. 19, § 1, 3-21-1957)

Sec. 23-2. - Illegal smoking products and related paraphernalia prohibited.

(a) *Findings.* The council finds that:

(1) Local businesses within the city are selling to the general public products containing synthetic cannabinoids, salvia divinorum, or related chemicals that when ingested produce intoxicating effects similar to marijuana.

(2) These products are being sold, distributed, and marketed in the form of incense or herbal smoking blends under names such as "Dascents," "Fire N Ice," "Genie," "K-2," "K-2 Sex," "K-2 Summit," "K O Knock-Out 2," "Pep Spice," "Sage," "Salvia Divinorum," "Solar Flare," "Spice," "Spice Cannabinoid," "Spice Diamond," "Spice Gold," "Yucatan Fire," and "Zohai."

(3) The National Drug Intelligence Center of the United States Department of Justice issued an immediate alert to law enforcement and public health officials of potential substance abuse problems and harmful side effects related to the use of these synthetic cannabinoid products in EWS Report 000006 dated May 18, 2010.

(4) The use of these products is a danger to the public health, safety, and welfare because the adverse side effects from the use of synthetic cannabinoids, salvia divinorum, or related chemicals include panic attacks, vomiting, tachycardia, elevated blood pressure, pallor, numbness and tingling, and in some cases, tremors and seizures.

(5) The Drug Enforcement Agency has placed a ban on synthetic cannabinoids, and the State of Texas has not yet designated synthetic cannabinoids, salvia divinorum, or related chemicals as controlled substances. The federal government has not yet designated salvia divinorum as a controlled substance.

(6) In order to promote the public health, safety, and welfare of the citizens of this city, products containing synthetic cannabinoids, salvia divinorum, or related chemicals and paraphernalia should be prohibited in the City of Kyle as provided in this section.

(7) The rules, regulations, terms, conditions, provisions and requirements of this section are reasonable and necessary to protect the public health, safety and quality of life.

(b) *Definitions.* In this section:

(1) *Illegal smoking paraphernalia* means any equipment, product, material or object used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

b. A water pipe;

c. A carburetion tube or device;

d. A smoking or carburetion mask;

e. A chamber pipe;

f. A carburetor pipe;

g. An electric pipe;

h. An air-driven pipe;

i. A chillum;

j. A bong; or

k. An ice pipe or chiller.

(2) *Illegal smoking product* means any plant or other substance, whether described as tobacco, herbs, incense, spice or any blend thereof, including any of the marketed names of illegal smoking products; regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

a. Salvia divinorum or salvinorin A: All parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts (referred to herein as "salvia divinorum");

b. 2-[(lR,3S)-3-hydroxycyclohexylJ-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;

c. (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-l-ol (also known as HU-211 or Dexanabinol);

d. l-pentyl-3-(l-naphthoyl)indole (also known as JWH-018);

e. l-butyl-3-(l-naphthoyl)indole (also known as JWH-073);

f. 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081); or

g. Methylenedioxypyrovalerone and mephedrone (referred to herein as "MDPV").

The substances set forth in subsections 23-2(b)(2)b.—f. are herein referred to as "synthetic cannabinoids".

(3) *Marketed names of illegal smoking products* means the following commercial names in which some or all of the illegal smoking products are currently being marketed under:

a. "Dascents," "Fire N Ice," "Genie," "K-2," "K-2 Sex," "K-2 Summit," "K O Knock-Out 2," "Pep Spice," "Sage," "Salvia Divinorum," "Solar Rare," "Spice," "Spice Cannabinoid," "Spice Diamond," "Spice Gold," "Yucatan Fire," and "Zohai."

b. "MDPK," "Magic," "Super Code," "PV," "bath salts," "Cloud 9," "Ivory Wave," "Ocean," "Charge Plus," "White Lightening," "Scarface," "Hurricane Charlie," "Red Dove," "White Dove," "Vanilla Sky," and "Bliss."

It is anticipated that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth in Section 23-2(b)(2) above.

(4) *Person* means an individual, corporation, retailer, wholesaler, partnership, association, or any other legal entity.

(c) *Offenses.*

(1) Synthetic cannabinoids and MDPV.

a. A person commits an offense if he uses, possesses, buys, sells, offers for sale, barters, gives, publicly displays, delivers, or transfers any synthetic cannabinoid or MDPV.

b. A person commits an offense if he uses, inhales, ingests, or otherwise introduces into the human body any synthetic cannabinoid or MDPV.

c. A person commits an offense if he uses or possesses any illegal smoking paraphernalia with the intent to inject, inhale, ingest, or otherwise introduce into the human body any synthetic cannabinoid or MDPV.

(2) Salvia divinorum.

a. A person commits an offense if he sells, offers for sale, barters, gives, delivers, or transfers salvia divinorum to any person below 21 years of age.

b. A person below 21 years of age commits an offense if he uses, inhales, ingests, or otherwise introduces into the human body salvia divinorum.

c. A person below 21 years of age commits an offense if he uses or possesses any illegal smoking paraphernalia with the intent to inject, inhale, ingest, or otherwise introduce into the human body salvia divinorum.

(3) Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this section, regardless of whether the product is marketed under names other than those listed above.

(d) *Defenses.*

(1) It is a defense to prosecution under this section that an illegal smoking product or illegal smoking paraphernalia was:

a. In the possession of a peace officer, or a person acting under the authority of a peace officer, acting in the performance of official duties;

b. In the possession of or being used by a governmental entity for a health, research, education, or similar program;

c. In the possession of or used by a person under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances in the State of Texas.

d. In the case of Salvia divinorum, possessed, sold, offered for sale, bartered, given, displayed, delivered, or transferred as ornamental landscaping and solely for that purpose. In the case MDPV, the MDPV is a component of a lawful substance, such as plant food, that is possessed, bought, sold, offered for sale, bartered, given, publicly displayed, delivered, or transferred solely for such lawful purpose.

e. In the possession of a person who can provide proper and complete historic documentation that the use of such materials is a part of a religious undertaking or activity of a religious denomination in which the person has long standing historic membership supported by documentation from clergy or spiritual leadership recognized by the State of Texas.

(e) *Exceptions.* This section does not apply to equipment, products, materials, or objects, including those items listed in subsections 23-2(b)(l)a.—k. that are solely used or intended for use in ingesting, inhaling, or introducing tobacco into the human body.

(f) *Penalty.* A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $2,000.00.

(Ord. No. 647, § 1, 3-1-2011; Ord. No. 652, §§ 2—5, 4-19-2011)

Secs. 23-3—23-8. - Reserved.

ARTICLE II. - WEAPONS[1]

Footnotes:

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State Law reference— Weapons, V.T.C.A., Penal Code § 45.01 et seq.; authority regarding firearms, V.T.C.A., Local Government Code §§ 229.001, 229.002.

Sec. 23-9. - Definitions.

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

Deadly weapon shall have the meaning set forth in the Texas Penal Code.

Firearm means any device designed, made, or adapted to expel or launch a projectile through a barrel by using compressed gas or air (including but not limited to devices such as BB guns, pellet guns, paint ball guns, Airsoft toy guns, etc.) or by using the energy generated by an explosion, burning substance, or any device readily convertible to that use.

Projectile weapon means a bow and arrow, cross-bow, sling-shot or other similar device that expels or launches a projectile by mechanical means or a combination of mechanical and physical means.

(Ord. No. 615, § 2, 1-19-2010)

Sec. 23-10. - Display of a firearm or deadly weapon in a public place.

(a) A person commits an offense under this article who displays a firearm or other deadly weapon, within the city limits, in a public park; public meeting of a municipality, county, or other governmental body; political rally, parade, or official political meeting; or non-firearm-related school, college, or professional athletic event. The prohibition provided by this subsection does not apply if the firearm or other deadly weapon is in or is carried to or from an area designated for use in a lawful hunting, fishing, or other sporting event and the firearm is of the type commonly used in the activity.

(b) For the purpose of this article, an act is deemed to have occurred in a public place if it produces the proscribed consequences in view of others.

(c) This article shall not apply to a peace officer or animal control officer in the official discharge of his/her duties or to other exceptions set forth in the state penal code. The defenses set forth in Texas Penal Code, Sections 9.21 (Public Duty) and 9.22 (Necessity), and Texas Penal Code, Chapter 9, Subchapter C (Protection of Persons), as amended from time to time, shall be defenses to the prohibitions of this section.

(Ord. No. 168, § 1, 8-6-1985; Ord. No. 615, §§ 3, 4, 1-19-2010)

State Law reference— Unlawful display of weapons in certain places, V.T.C.A., Penal Code § 45.03; authority to regulate unlicensed persons carrying a firearm in certain places, V.T.C.A., Local Government Code § 229.002.

Sec. 23-11. - Discharging a firearm within the city limits.

(a) Any person commits an offense who intentionally or knowingly discharges a firearm within the city limits, except this prohibition shall not apply to a police officer in the discharge of his duties as a peace officer.

(b) This prohibition shall not apply to a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the city or in an area annexed by the city after September 1, 1981, if the firearm or other weapon is:

(1) A shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

a. On a tract of land of ten acres or more and more than 150 feet from a residence or occupied building located on another property; and

b. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(2) A center fire or rim fire rifle or pistol of any caliber discharged:

a. On a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and

b. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

(c) Notwithstanding any other provision to the contrary in this section, it shall be unlawful for a person to discharge a firearm or projectile weapon in a public park; provided that a firearm or projectile weapon may be discharged in an area specifically designated by the city for the discharge of the particular firearm or projectile weapon.

(d) The defenses set forth in Texas Penal Code, Sections 9.21 (Public Duty) and 9.22 (Necessity), and Texas Penal Code, Chapter 9, Subchapter C (Protection of Persons), as amended from time to time, shall be defenses to the prohibitions of this section.

(Ord. No. 169, § 1, 8-6-1985; Ord. No. 615, §§ 5, 6, 1-19-2010)

State Law reference— Authority to prohibit discharge of firearms in city limits, V.T.C.A., Local Government Code § 229.001(2); limitations on such authority, V.T.C.A., Local Government Code § 229.002.

Secs. 23-12—23-22. - Reserved.

ARTICLE III. - CURFEW FOR MINORS[2]

Footnotes:

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Editor's note—Ord. No. 583, §§ 2—10, adopted Sept. 1, 2009, repealed former Art. III, §§ 23-23—23-28, in its entirety and enacted new provisions as herein set out. Former Art. III pertained to similar subject matter and derived from Ord. No. 289, §§ 1—6, adopted July, 2, 1996. Subsequently, Ord. No. 706, § 1, adopted Sept. 4, 2012, provides that Art. III [Curfew for Minors], §§ 23-23—23-30, is hereby renewed for an additional three-year period; expiring Sept. 1, 2015.

State Law reference— Authority to adopt curfews for minors, V.T.C.A., Local Government Code §§ 341.905, 351.903.

Sec. 23-23. - Purpose.

It is the express purpose of this article to:

(1) Deter criminal conduct involving juveniles;

(2) Reduce the number of juvenile crime victims;

(3) Reduce injury from accidents involving juveniles;

(4) Reduce the additional time police officers are required to be in the field due to juvenile crime;

(5) Provide additional and more effective means and options for dealing with gang related violence and crime;

(6) Reduce juvenile peer pressure to stay out late;

(7) Reduce juvenile peer pressure to participate in violent or criminal activities;

(8) Assist parents in the control of their children; and

(9) To make the city a better community and a safer place to live and work, to raise a family.

(Ord. No. 583, § 3, 9-1-2009)

Sec. 23-24. - Definitions.

For the purposes of this article the following words or terms shall have the meanings given below:

Curfew hours shall mean:

(1) 12:00 midnight on any day of the week until 6:00 a.m. of the following day; and

(2) 9:00 a.m. until 2:30 p.m. on Monday through Friday; provided however, the hours defined in this paragraph (2) shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to § 25.085, Texas Education Code, nor shall the hours defined in this paragraph (2) be considered as curfew hours on days or during periods in which the school where the applicable minor is enrolled is closed, or classes for which the applicable minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives, or, if the applicable minor is a duly authorized home school student under applicable provisions of the Texas Education Code, on days or during periods in which such minor is not receiving educational instruction.

Emergency shall mean and include, but not be limited to, a fire, natural disaster, automobile accident, or any unforeseen situation requiring immediate action to prevent serious illness, bodily injury, or loss of life, or for the preservation of property.

Establishment shall mean any privately owned place of business to which the public has access or is invited, including, but not limited to, any place of amusement or entertainment.

Guardian shall mean a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.

Minor shall mean any person who is under 17 years of age.

Operator shall mean any individual, firm, association, partnership, entity or corporation operating, managing, or conducting the operation of any establishment. The term shall include the members or partners of an association or partnership and the officers of a corporation.

Parent shall mean a person who is a natural parent, adoptive parent or stepparent of a minor, or a person at least 18 years of age who is authorized by the parent or guardian of a minor or by court order to have the care and custody of such minor.

Police department shall mean the Kyle Police Department or any successor police department of the City of Kyle, and shall include any law enforcement agency working with the city through any interagency agreement.

Public place shall mean any place to which the public or a substantial group of the public has access and shall include, but not be limited to, streets and highways, and the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, restaurants, theaters, game rooms, shops, shopping centers, or any other place that offers for sale services, merchandise or entertainment.

Remain shall mean to linger or stay, or fail to leave premises, when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ord. No. 583, § 4, 9-1-2009)

Sec. 23-25. - Curfew-related offenses.

(a) It shall be unlawful for any minor to remain, walk, run or stand, or operate or ride about in any motor vehicle or bicycle, in or upon any public place or on the premises of any establishment within the city during curfew hours.

(b) It shall be unlawful for the parent or guardian of a minor to knowingly permit, or by insufficient control allow, a minor to remain in or upon any public place or on the premises of any establishment within the City during curfew hours.

(c) It shall be unlawful for the owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

(Ord. No. 583, § 5, 9-1-2009)

Sec. 23-26. - Defenses.

(a) It shall be a defense to prosecution under section 23-25 that a minor was:

(1) Accompanied by the minor's parent or guardian;

(2) On an errand at the direction of the minor's parent or guardian;

(3) In a motor vehicle involved in intrastate or interstate travel, and traveling through the city by a direct route between the point of departure and destination;

(4) Engaged in a lawful employment activity, or going directly to the employment activity or returning directly to the minor's residence from the employment activity;

(5) Involved in an emergency;

(6) On an errand made necessary by an illness, injury, or emergency;

(7) On the sidewalk abutting the minor's permanent residence or abutting the residence of a next door neighbor of the minor's permanent residence if the neighbor did not complain to the police department about the minor's presence thereon;

(8) Attending a school, religious, or government-sponsored or other civic activity supervised by adults and sponsored by an educational, religious, or governmental institution, civic organization, or other similar entity, or traveling directly to or returning from any such school, religious, governmental, or civic activity;

(9) Engaged, participating in, or traveling to or from any event, function, or activity for which the application of section 23-25 would contravene the minor's rights protected by the United States Constitution including, but not limited to, First Amendment rights such as the free exercise of religion, freedom of speech, or the right of assembly; or

(10) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(b) It is a defense to prosecution under section 23-25 that the minor has been directed by his or her parent or guardian to engage in a specific activity, or to carry out expressed instructions, during the time that the minor is actually engaged in fulfilling those directions or responsibilities.

(c) It is a defense to prosecution under section 23-25 that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and the minor refused to leave.

(Ord. No. 583, § 6, 9-1-2009)

Sec. 23-27. - Enforcement.

(a) Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place or establishment. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that based on any response given, and other circumstances, no defense permitted or allowed under section 23-26 is present.

(b) In lieu of issuing a citation or making an arrest, the police officer may, based on the circumstances, issue a warning notice to the minor, who shall be ordered to go home by the most direct means and route. A copy of the warning notice shall be filed with the police department, and a letter shall then be promptly sent to the parent or guardian of the minor advising of the contact with the minor during curfew hours and requesting cooperation in the future.

(Ord. No. 583, § 7, 9-1-2009)

Sec. 23-28. - Penalties.

(a) Any person who shall violate any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $500.00. Each day of violation shall constitute a separate offense. Following the issuance of a citation for any violation of those curfew hours set forth in paragraph (2) of the definition of curfew hours in section 23-24, the minor shall be returned to school. Any citation issued for violation of any provision of this article shall direct the parent(s) or legal guardian(s) of the minor to appear together with the minor in connection with the charge of a violation. Unless otherwise expressly stated within this article, evidence of a culpable mental state shall not be required to establish a violation of this article.

(b) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection 23-25(a) of this ordinance and shall refer the minor to juvenile court.

(Ord. No. 583, § 8, 9-1-2009)

Sec. 23-29. - Liability.

The Kyle Police Department, police officers of the Kyle Police Department, or any employee charged with the enforcement of this article, acting in good faith and without malice for the city in the discharge of his or her duties, shall not thereby be rendered liable personally and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his or her duties. Any suit brought against the police officer or such employee, because of any act or omission in the discharge of duties under any provision of this article,

shall be defended by the city attorney or an attorney appointed by the city's insurance carrier until final termination of the proceedings.

(Ord. No. 583, § 9, 9-1-2009)

Sec. 23-30. - Governmental immunity.

Nothing in this article shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the city, the police department or its employees, or to create any legal rights or claims on behalf of any third party. Neither the city, the police department, nor any of its employees, waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

(Ord. No. 583, § 10, 9-1-2009)

Secs. 23-31—23-40. - Reserved.

ARTICLE IIIA. - ELECTRONIC CIGARETTES

Sec. 23-41. - Definitions.

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

Electronic cigarette means or refers to an electronic device, including a device that may be recharged and the components of the device, that converts liquid nicotine into a gas or vapor intended to be inhaled or otherwise orally used by a person and is generally described as a device composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that produce a gas or vapor derived from liquid nicotine and other substances which has the effect of simulating smoking. The term includes such devices, regardless of the details of the appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices. Electronic cigarettes are also variously known as "e-cigarettes," "e-cigs," "electronic vapors," "e-vapors," and other similar names.

Liquid nicotine means any liquid product composed of nicotine, either in whole or in part, propylene glycol, or similar substances and manufactured for use in an e-cigarette.

Minor means an individual less than the legal age to smoke tobacco products as authorized under the law of the State of Texas.

Person means any provider of e-cigarettes, an individual, corporation, limited liability company, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, employee, wholesaler, agent, producer or other entity engaged in an e-cigarette business or enterprise or gives, distributes, transfers, sells, markets, or offers an e-cigarette, including samples or facsimiles, to any minor.

Photographic identification means state, district, national or other equivalent government driver's license, identification card or military card, in all cases bearing a photograph and a date of birth, or a valid passport.

Under false pretenses means and refers to a minor knowingly, willfully and deliberately representing, either verbally or otherwise in person, or by presenting false documentation that purports to establish or leave the impression that said minor is not a minor in fact and as defined by this article in order to come into possession of or otherwise acquire one or more e-cigarettes from another.

(Ord. No. 804, § 3, 6-3-2014)

Sec. 23-42. - Prohibited acts.

It is a criminal offense if a person engages in any of the following conduct or fails to otherwise comply with this article by committing one or more of the following prohibited acts:

(1) No person may give, distribute, transfer, sell, market, or offer e-cigarettes, including samples or facsimiles, to any minor.

(2) No person shall sell or permit to be sold e-cigarettes through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited or said person can observe and control what product is dispensed out of the device.

(3) No person shall solicit or engage minors in the testing, product-sampling or other business-related purpose involving the inhalation or other use of e-cigarettes, regardless of whether a minor is an employee, contractor, volunteer, or of other relationship with said person.

(4) No minor may possess, purchase or otherwise acquire e-cigarettes. This prohibition does not apply to activities or enforcement actions under the control of a city, state, or federal law enforcement authority.

(5) No minor may, under false pretenses, acquire or attempt to acquire one or more e-cigarettes from a person.

(Ord. No. 804, § 4, 6-3-2014)

Sec. 23-43. - Penalty; defenses.

(a) A person who violates any section of this article is guilty of a class C misdemeanor and upon conviction is punishable by a fine not to exceed $500.00. In addition to a fine, the municipal court judge may require a person convicted under this article to perform community service up to 40 hours or attend a tobacco awareness program or both.

(b) It is a defense to a prosecution for violation of this article that a minor was in possession of an e-cigarette while in the course and scope of the minor's employment by a person or entity in the business of being a distributor, wholesaler, bonded agent or retailer of e-cigarette products, so long as the minor does not engage in the inhalation or other prohibited use of an e-cigarette.

(c) It is a defense to prosecution for a violation of this article that the minor purchased, possessed or otherwise acquired one or more e-cigarettes while in the presence of the minor's parent, step-parent, legal guardian, or spouse, other adult to whom the minor has been committed by a court.

(Ord. No. 804, § 5, 6-3-2014)

Sec. 23-44. - Administration; enforcement; disposal of seized property.

(a) The administration and enforcement of this article shall be the responsibility and jurisdiction of the chief of police of the city, including the issuance of citations for violations and the seizure of e-cigarettes in the commission of a violation of this article. Upon request by the chief of police or the city attorney, the municipal court may issue any order necessary to the enforcement of this article, subject to the court's jurisdiction. Upon an order issued by a court of competent jurisdiction, and in accordance with the laws governing the disposition of seized property, the chief may dispose of any property seized as a result of a violation of this article.

(b) At the direction of a majority of the city council, and based upon law, the chief of police of the city may enter into an interlocal agreement with one or more local school districts or other political subdivisions,

whether local or private, said agreement being for the purpose of enforcing or enhancing the enforcement of this article, subject to the cooperation and assistance of said school district or districts. Any interlocal agreement for this purpose shall be approved by a majority vote of the city council and the board of the school district or districts entering such an agreement.

(Ord. No. 804, § 6, 6-3-2014)

Sec. 23-45. - Warning signs required.

Any business or retailer that offers for sale e-cigarettes shall post in a prominent location on the premises where e-cigarettes are offered for sale a prominent notice that reads "Electronic cigarettes or their components will not be sold to minors. Proper identification may be required of any person for the purpose of proving the person is not a minor."

(Ord. No. 804, § 7, 6-3-2014)

Secs. 23-46—23-59. - Reserved.

ARTICLE IV. - NOISE[3]

Footnotes:

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Editor's note— Ord. No. 775, § 8, adopted Feb. 4, 2014, repealed Ord. No. 424-1, constituting the former Art. IV, §§ 23-60—23-63. Sections 2—6 of said ordinance enacted a new Art. IV as set out herein, renumbered at the editor's discretion to preserve the style of this Code. Sections 7, 9—11, pertaining to severability, savings clause, effective date, and open meetings, respectively, were omitted from codification. The former Art. IV pertained to similar subject matter and derived from Ord. No. 424-1, §§ 2—5, adopted Dec. 6, 2005.

Sec. 23-60. - Noises prohibited.

Any unreasonably loud, disturbing or unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof, or any noise of such character, intensity and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities, is prohibited after the effective date hereof, and is hereby declared to be a nuisance. The following acts, among others, are declared to come within the purview of this article and to be nuisances within the meaning hereof, but said enumerations shall not be deemed to be exclusive, such acts being as follows:

(1) The playing of any radio, phonograph or other musical instrument, or any musical reproduction or amplification device, in such manner or with such volume, particularly during the hours from 10:00 p.m. until 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type residence;

(2) Any loud or vociferous language or any soliciting for, or description of, any amusement house, moving picture theater, or other like place of amusement, or for the performance therein, in the entrance thereto, the foyer or lobby thereof, or on the sidewalks adjoining the same;

(3) Any loud or vociferous language which annoys or disturbs the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type residence;

(4) The use of any stationary loudspeaker or amplifier, particularly during the hours from 10:00 p.m. until 7:00 a.m., to produce a noise or sound of such pitch, intensity that annoys or disturbs persons in the immediate vicinity thereof;

(5) The keeping of any animal or fowl which, by causing frequent or long continued noise, disturbs the comfort or repose of persons of ordinary sensibilities in the immediate vicinity thereof;

(6) The continued or frequent sounding of any horn or other signal device on any automobile or other vehicle except as a danger or warning signal, or the creation by means of any such signal device of any unreasonably loud or harsh noise for any unnecessary purpose or unreasonable period of time;

(7) The blowing of any steam whistle attached to any stationary boiler, except when giving notice of the time to commence or stop work, or as a warning of danger;

(8) The discharge into the open air of the exhaust of any fixed and stationary steam engine, stationary internal combustion engine, or motor vehicle or boat engine, except through an exhaust system in good working order and in constant operation to prevent excessive or unusual noise; provided that this subsection shall not apply to trains and locomotives;

(9) The use of any mechanical device operated by compressed air, unless the noise to be created thereby has been effectively muffled and reduced;

(10) The creation of any excessive or unreasonable noise on any street or premises adjacent to any school, place of religious worship, or other institution of learning while the same is in session, or any hospital, which unreasonably interferes with the operation or use of any such institution;

(11) The raucous shouting or crying of peddlers, hawkers or vendors which unreasonably disturbs the peace and quiet of any neighborhood; and

(12) The excavation or grading of land, or the erection, construction, demolition or alteration of any building or structure, between the hours of 9:00 p.m. and 7:00 a.m., within 600 feet of any occupied residential structure, or that generates, produces or results in any noise or sound that may be heard at the property line of any occupied residential structure; provided that this subsection shall not apply to any such work, construction, repairs or alterations that constitute an urgent necessity for the benefit and interest of the public safety, health or general welfare, e.g., repairs and emergency installations by any public utility, or to any excavation, erection, construction, demolition or alteration authorized by the city council to be undertaken between the hours of 9:00 p.m. and 7:00 a.m.

(13) Motor vehicle stereos. Any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette player or other similar device in the motor vehicle in such a manner that, when operating, it is:

a. Audible in a public place or on private property other than that owned or occupied by the person at a distance of 30 feet or more from the vehicle; or

b. Causes vibration that can be felt at a distance of 30 feet or more from the vehicle.

(Ord. No. 775, § 2, 2-4-2014)

Sec. 23-61. - Person in control of property.

It shall be unlawful for any person to permit or fail to control the nuisances described in section 23-60 that occur upon property which is under said person's control at the time the nuisance occurs.

(Ord. No. 775, § 3, 2-4-2014)

Sec. 23-62. - Exceptions.

The prohibitions in this article shall not apply to the reasonable playing of musical instruments, the use of an amplifier, or crowd noise during an event that is sponsored by a religious, school, civic, or community association or organization, or a trade or political group, provided that such noise occurs before 10:00 p.m. on a Sunday, Monday, Tuesday, Wednesday, or Thursday, or before 11:59 p.m. [on] a Friday or a Saturday, and provided that such noise occurs during the event and as part of the event. The noise addressed by this section is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the notice and failure to reduce the sound volume to within 85 decibels or less, measured at the property line of the property at which the event is held.

(Ord. No. 775, § 4, 2-4-2014)

Sec. 23-63. - Conduct consisting of speech or communication.

If conduct that would otherwise violate this article consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the person or persons shall be ordered to reduce the sound or otherwise remedy the violation prior to being issued citations.

(Ord. No. 775, § 5, 2-4-2014)

Sec. 23-64. - Penalty.

Any person, firm or corporation violating any provision of this article shall be fined not less than $1.00 nor more than $500.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. No. 775, § 6, 2-4-2014)

Secs. 23-65—23-84. - Reserved.

ARTICLE V. - NUISANCES[4]

Footnotes:

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State Law reference— Regulation of sanitation, V.T.C.A., Health and Safety Code § 342.001 et seq.

DIVISION 1. - GENERALLY

Sec. 23-85. - Statement of policy.

The terms and provisions in this article shall apply to stagnant water and to the accumulation and storage of any solid waste, including garbage and trash, and to the growth, accumulation, cutting and

storage of grass, weeds and any other vegetative material upon property in the city, to the end that property shall be maintained in a sanitary and healthful condition for the benefit of all residents of the community.

(Ord. No. 280, § 1.2, 4-4-1995)

Sec. 23-86. - Definitions.

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

Brush means all uncultivated shrubs, bushes and small trees.

Earth and construction materials means earth, rocks, bricks, concrete, other similar materials and waste materials resulting from construction or remodeling.

Garbage means rubbish, trash, kitchen and household waste, ashes, bottles, cans, rags, paper, food containers, lawn trimmings, tree trimmings, hedge trimmings, leaves, grass, weeds and refuse, and all decayable wastes, including animal and vegetable matter, but not including sewage, hazardous, toxic or corrosive materials, and earth and construction materials as herein, or any other material which may be found to be harmful to garbage collection and handling personnel or equipment.

Injure means any and all character of physical damage, whether caused by fire or force, and which shall be done or caused willfully by any person.

Junk means all worn out, worthless and discarded material, in general, including, but not limited to, odds and ends, old iron or other metal, glass, paper, cordage or other waste or discarded materials.

Lot means, in addition to land within the boundaries of the property lines, all land adjacent to and extending beyond the property lines of any lot or parcel of land to the curblines or adjacent streets where curblines have been established or, where no curblines have been established, to eight feet beyond the property lines.

Refuse. See *Garbage*.

Rubbish means all refuse, old vessels of all sorts, useless articles, abandoned pipe, discarded clothing and textiles of all sorts, and in general all litter. The term "any and all objectionable or unsanitary matters," is not included within the meaning of the other terms as herein used, means those which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to general locality where the same are situated.

Solid waste means household garbage and refuse and commercial garbage and refuse, brush cutting and weeds.

Trash. See *Garbage*.

Unwholesome matter means all stagnant water, filth, carrion, impure matters and any condition liable to produce disease.

Weeds means all rank and uncultivated vegetable growth or matter which is liable to become an unwholesome or decaying mass or breeding place for flies, mosquitoes or vermin.

(Ord. No. 280, § 1.3, 4-4-1995)

Secs. 23-87—23-115. - Reserved.

DIVISION 2. - WEEDS AND OFFENSIVE CONDITIONS ON PRIVATE PROPERTY[5]

Footnotes:

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State Law reference— Regulation of weeds and other unsanitary matter, V.T.C.A., Health and Safety Code § 342.005 et seq.

Sec. 23-116. - Prohibited conduct.

It shall be unlawful for an owner, occupant, lessee or renter of any lot or parcel of ground within the city to fail to keep the property free from brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature, or to fail to keep the sidewalks in front of property free and clear of weeds and tall grass from the line of such property to the established curbline next adjacent thereto, or to fail to fill up and drain holes and depressions in which water collects, or to regrade any lots, grounds or yards or any other property owned or controlled by the owner, occupant, lessee, or renter which shall be unwholesome or have stagnant water thereon, or which from any other cause, is in such condition as to be liable to produce disease or to fail to keep any house, building, establishment, lot, yard or ground owned or occupied or under his control at all times free from filth, impure or unwholesome matter of any kind.

(Ord. No. 280, § 2.1, 4-4-1995)

Sec. 23-117. - Nuisance declared; duty to abate.

Whenever brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature shall exist, covering or partially covering the surface of any lot or parcel of any real estate situated within the city or when any of said lots of parcels of real estate as aforesaid shall have the surface thereof filled or if from any other condition that the same holds or is liable to hold stagnant water therein, or if from any other cause shall be in such condition as to cause disease, or produce, harbor or spread disease, germs of any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, or shall contain unwholesome matter of any kind or description, the same is hereby declared to constitute a public nuisance, the prompt abatement of which is hereby declared to be a public necessity. Any such nuisance shall be removed from the property by the owner or other person in possession or control of such property.

(Ord. No. 280, § 2.2, 4-4-1995)

Sec. 23-118. - Right to inspect.

The city manager is authorized to inspect any property within the city, at any reasonable time, subject, however, to the restrictions against such inspection and entry of private residence for health inspection as are provided for in the laws of the state.

(Ord. No. 280, § 2.3, 4-4-1995)

State Law reference— Inspection warrants, Vernon's Ann. C.C.P. art. 18.05.

Sec. 23-119. - Violations; notice; failure to abate.

(a) In the event the officer charged with enforcement of this article shall determine that a situation exists which immediately affects the health, safety and well-being of the general public and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or occupant of the property upon which such condition exists, as may be deemed appropriate and necessary.

(b) In the event the officer charged with enforcement of this article shall determine that a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the city council may, at a regular session or at any emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exists and orders such action as may be required to protect the public health, safety and welfare. In such event, the city may prosecute an action in any court of competent jurisdiction to recover its costs.

(c) In the event any owner or occupant shall fail to refuse to remedy any of the conditions prohibited by section 23-116 within seven days after notice to do so, the city may do such work or cause the same to be done, and pay therefor, and charge the expenses in doing or having such work done or improvements made, to the owners of the property, whereupon such charge shall be a personal liability of such owner to the city. Such notice shall be in writing, served upon such owner and occupant in person by an officer or employee of the city, or may be by letter addressed to such owner at the owner's address as recorded in the records of the appraisal district in which the property is located and occupants at their post office address, or if personal service cannot be had, or the owner and occupant's address be not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the city addressed "Sanitary Improvements, To Whom it may Concern," and such publication shall be deemed sufficient notice; by posting the notice on or near the front door of each building on the property to which the violation relates; or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(Ord. No. 280, § 2.4, 4-4-1995)

State Law reference— Similar provisions, V.T.C.A., Health and Safety Code § 342,006.

Sec. 23-120. - Assessment of city's abatement cost; collections of costs; appeals.

In addition to the remedy provided in section 23-119 and cumulative thereto, the city manager, after giving to the owner of the property seven days' personal notice in writing, or by notice sent by United States mail addressed to such owner at his post office address, or by publication at least once in the official newspaper of the city or by posting notice, if the owner's address or whereabouts are not known, may cause any of the work or improvements mentioned in sections 23-116, 23-117 and 23-119 to be done at the expense of the city, on the account of the owner of the property on which such work or improvements are done, and cause all of the actual cost to the city to be assessed on the real estate or lot on account of which such expenses occurred; provided that the owner of any such real estate may appeal to the city council from the order of the city manager by filing a written statement with the city manager within ten days after receipt of the notice provided for section 23-119(c), stating that such real estate complied with the provision of section 23-116 before the expiration of a seven-day period. The city council shall set a date, within 30 days from the date of the appeal, for hearing upon such appeal to determine whether the real estate complied with the provisions of section 23-116 before the expiration of such seven-day period. The authority of the city manager to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending, but if it shall be determined by the city council that the seven-day period, then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done.

(Ord. No. 280, § 2.5, 4-4-1995)

Sec. 23-121. - Cost of city abatement constitutes lien.

Cumulative of the city's remedy by fine, as set forth in this article, the city may do such work or cause the same to be down to remedy such condition to remove such matter form such owner's premises at the city's expense and may charge the same to the account of the owners of such property and assess the same against the real estate or lot or lots upon which such expense is incurred. Upon filing with the county clerk of a statement by the city administrator of such expenses, the city shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten percent interest on the amount from the date of such payment so made by the city. The city may institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy any condition or remove any matter.

(1) The governing body of a municipality may assess expenses incurred under V.T.C.A., Health and Safety Code § 342.006 against the real estate on which the work is done or improvements made.

(2) To obtain a lien against the property, the mayor, municipal health authority, or municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the municipality is located. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.

(3) The lien obtained by the municipality's governing body is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the municipality.

(4) The lien is inferior only to:

   a. Tax liens; and

   b. Liens for street improvements.

(5) The city council may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due.

(6) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(7) The remedy provided by this section is in addition to the remedy provided by V.T.C.A., Health and Safety Code § 342.005.

(8) The city council may foreclose a lien on property under this article in a proceeding relating to the property brought under V.T.C.A., Tax Code ch. 33.

(Ord. No. 280, § 2.6, 4-4-1995)

State Law reference— Similar provisions, V.T.C.A., Health and Safety Code § 342.007.

Sec. 23-122. - Limitation on height of grass and weeds.

It shall be unlawful for any person who shall own or occupy any lots in the city to allow weeds and/or grass to grow on such lots to a height of more than 12 inches. Weeds and/or grass of a height exceeding 12 inches are declared a nuisance. Provided, however, this section shall not apply to property used for the growing of agricultural crops or grass if such property has not been plotted into lots.

(Ord. No. 280, § 2.7, 4-4-1995)

State Law reference— Abatement of weeds more than 48 inches without notice, V.T.C.A., Health and Safety Code § 342.008.

Sec. 23-123. - Discharge of sewage.

Any person who shall allow to permit sewage to discharge into the ground or subsurface soil, which shall have the effect of causing odors, obnoxious, unhealthy and unwholesome conditions to exist, is declared to have caused a public nuisance and shall be in violation of this article.

(Ord. No. 280, § 2.8, 4-4-1995)

Secs. 23-124—23-130. - Reserved.

DIVISION 3. - GRAFFITI

Sec. 23-131. - Authority and purpose.

(a) *Authority.* This division is adopted pursuant to the police powers and authority given cities by the Constitution, codes and general laws of the State of Texas, including but not limited to Chapt. 51, Tex. Loc. Gov't. Code and Section 250.006, Tex. Local Gov't Code, and the City Charter. Graffiti is a criminal act prohibited by state laws in the Penal Code.

(b) *Purpose.* The purpose of this division is to provide for public health and general welfare of the community. This division serves the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by providing an additional enforcement tool to protect public and private property from additional acts of graffiti, vandalism and other criminal activities. The city council recognizes that although the person who has had graffiti applied on his/her property may be the victim of a criminal act, unless the city acts to cause the removal of graffiti, it tends to remain and causes other properties and entire neighborhoods to be affected and become less desirable places in which to be, all to the detriment of the city and the public welfare. Graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community.

(Ord. No. 580, §§ 2, 3, 8-18-2009)

Sec. 23-132. - Definitions.

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

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the city's police department or city's code enforcement officer.

Owner means any owner of record, person who has contractual responsibility for the property, person who has the legal right of possession of the property, or an occupant of the property. There shall be a rebuttable presumption in prosecutions under this division that the person who is listed on the tax records for the county wherein the property is situated is the owner. There shall be a rebuttable presumption in prosecutions under this division that the person currently named on the account for utility services furnished by the city is the person who has the legal right of possession of the property.

Unauthorized means without the consent of the owner or without authority of law. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show (i) the absence of evidence of specific authorization by the owner, (ii) that the visual blight is inconsistent with the design and the use of the subject property, or (iii) that the person causing the visual blight was unknown to the owner.

(Ord. No. 580, § 4, 8-18-2009)

Sec. 23-133. - Graffiti declared a public nuisance.

(a) The city finds and determines that graffiti is an impure and unwholesome matter and its existence:

(1) Is detrimental to the safety and welfare of the public;

(2) Tends to reduce the value of private property;

(3) Invites vandalism, additional graffiti, and other criminal activities; and

(4) Produces urban blight which is adverse to the maintenance and continuing development of the city.

(b) The existence of graffiti on public or private property in violation of this division is expressly declared to be a public nuisance. It is the duty of the owner of the property to which graffiti has been applied to at all times keep the property clear of graffiti.

(Ord. No. 580, § 5, 8-18-2009)

Sec. 23-134. - Duty to remove graffiti.

A person commits an offense if the person is the owner of property within the city and the owner fails to paint over or remove the graffiti from the property within 15 days after being notified by the city pursuant to section 23-137 of the presence of graffiti on the owner's property.

(Ord. No. 580, § 6, 8-18-2009)

Sec. 23-135. - Exceptions.

It is an exception to this division, and an owner is not required to remove graffiti from the owner's property if:

(1) The graffiti is located on transportation infrastructure; and

(2) The removal of the graffiti would create a hazard for the person performing the removal.

(Ord. No. 580, § 7, 8-18-2009)

Sec. 23-136. - Removal of graffiti by city.

If any owner fails or refuses to remove the graffiti within 15 days after being notified by the city, the city may remove or cause to be removed the graffiti from the owner's property and charge to the owner the actual expenses in doing or having such work done, and such charge shall be a personal liability of such owner to the city and the city may assess the same against the real estate or lot or lots upon which such expense is incurred, provided that the city has offered to remove the graffiti free of charge and the owner has declined such offer pursuant to section 23-138.

(Ord. No. 580, § 8, 8-18-2009)

Sec. 23-137. - Notice.

(a) The city must notify the property owner of the existence of graffiti on his or her property before removing the graffiti or issuing a citation for failure to remove the graffiti.

(b) Notice must be given:

(1) In writing and delivered to the owner in person;

(2) By letter addressed to the owner at the owner's mailing address as shown in the records of the Hays County Appraisal District, and sent certified mail; or

(3) If personal service cannot be obtained or the owner's mailing address is unknown, by one of the following methods:

a. Publication at least once in a newspaper of general circulation in the city;

b. Posting the notice on or near the front door of each building on the property to which the violation relates; or

c. Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) Notice will be deemed to have been received:

(1) For personal service, notice by posting, or notice by publication, as of the date the notice was given personally to the owner, posted, or published in accordance with this section, as applicable;

(2) For mailed notice, three (3) days after the notice was mailed.

(Ord. No. 580, § 9, 8-18-2009)

Sec. 23-138. - Conditions to be satisfied prior to giving notice.

(a) The city may not notify an owner of the presence of graffiti on the owner's property pursuant to section 23-137, remove the graffiti, or file a lien against the owner's property for the costs of removal of the graffiti until the city has offered in writing that the city will remove the graffiti from the owner's property free of charge and the owner declines the offer.

(b) The offer shall be made in writing and given to the owner in accordance with section 23-137. The date of receipt of the offer will be determined in accordance with subsection 23-137(c).

(c) The offer shall contain a statement that the offer must be accepted in writing within 15 days using the form provided by the city or the offer will be deemed declined. The form shall include the owner's authorization to enter the property to remove the graffiti and a waiver of liability in favor of the city for removing the graffiti.

(d) The owner will be deemed to have declined the offer if the owner fails to accept the offer in writing using the form provided by the city within 15 days after the date of receipt of the offer. The owner must use the form provided by the city in order for acceptance of the offer to be effective. A copy of the form shall be included in offers made by personal delivery, mail, or posting on or near the front door of the building.

(Ord. No. 580, § 10, 8-18-2009)

Sec. 23-139. - Defense to prosecution.

The following shall be defenses to prosecution under this division:

(1) The city failed to send an offer to remove the graffiti free of charge under section 23-138.

(2) The owner accepted the offer for the city to remove the graffiti free of charge in accordance with section 23-138.

(Ord. No. 580, § 11, 8-18-2009)

Sec. 23-140. - Lien.

(a) To obtain a lien against the property for expenses incurred under section 23-136, the city must file a statement of expenses with the county clerk. The statement of expenses must contain:

(1) The name of the property owner, if known;

(2) The legal description of the property; and

(3) The amount of expenses incurred under section 23-138.

(b) The lien attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to:

(1) Any previously recorded lien; and

(2) The rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed under this division.

(c) The lien shall secure the expenditures for removal of graffiti as provided in this division and the maximum interest per annum interest allowed by law, not to exceed ten) percent, from the date of such expenditure made by the city.

(d) The city may, additionally, institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work to remove graffiti as provided herein.

(Ord. No. 580, § 12, 8-18-2009)

Sec. 23-141. - Conflict with state law.

In the event of any conflict or inconsistency between the terms and provisions of this division and Section 250.006, Tex. Local Gov't. Code, the terms and provisions of Section 250.006, Tex. Local Gov't. Code shall govern and control.

(Ord. No. 580, § 13, 8-18-2009)

Sec. 23-142. - Enforcement.

The code enforcement officer, the building official, and police officers of the city are authorized to enforce this division.

(Ord. No. 580, § 14, 8-18-2009)

Sec. 23-143. - Penalty.

Any person violating any provision of this division shall be guilty of a Class C misdemeanor and upon conviction, an offense under this division shall be punishable by a fine of not less than $1.00 and not more

than $500.00. Each day the violation exists shall constitute a separate offense. Proof of culpable mental state is not required to establish that a violation of this division has occurred.

(Ord. No. 580, § 15, 8-18-2009)

Secs. 23-144—23-148. - Reserved.

ARTICLE VI. - FIREWORKS[6]

Footnotes:

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State Law reference— Fireworks, V.T.C.A., Occupations Code § 2154.001 et seq.

Sec. 23-149. - Definitions.

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

Fireworks means any device that can be used to produce or intended for use in obtaining visible or audible pyrotechnic display or a combination of those by the combustion of explosive or flammable composition and includes any firecrackers, cannon crackers, skyrockets, torpedoes, Roman candles, sparklers, squibs, fire balloons, star shells or any other substance in whatever combination by any designated name and includes all articles or substances within the commonly accepted meaning of fireworks, whether specifically designated and defined in this article or not.

(Ord. No. 288, § 1, 6-4-1996; Ord. No. 288-1, § 1, 3-7-2000; Ord. No. 288, § 1, 4-3-2001; Ord. No. 288-2, § 1, 4-17-2001)

Sec. 23-150. - Penalty.

(a) Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $2,000.00.

(b) Any person who manufacturers, assembles or stores, or who transports, receives, keeps, sells, offers for sale or has in his possession with intent to sell, any fireworks within the city limits, without a valid permit, shall be fined an amount not less than $500.00 and not more than $2,000.00 for each offense. If the fireworks are separately wrapped or packaged, doing any act prohibited by, or omitting to do any act required by this article shall be a separate offense as to each such separately wrapped or separately packaged fireworks. Each day that a violation of this article continues with respect to any package of fireworks constitutes a separate offense.

(c) Any person who uses, discharges, causes to be discharged, ignites, detonates, fires or otherwise sets in action any fireworks, without a permit as provided herein, in violation of the provisions of this article is guilty of a separate offense for each act prohibited by this article. Upon conviction for the first offense, the offender shall be fined an amount not to exceed $500.00. For each subsequent conviction, within two years, the offender shall be fined an amount not less than $500.00 and not more than $2,000.00 for each offense.

(Ord. No. 288, § 6, 6-4-1996; Ord. No. 288-1, § 6, 3-7-2000; Ord. No. 288, § 6, 4-3-2001; Ord. No. 288-2, § 7, 4-17-2001)

Sec. 23-151. - Prohibited sale, use or discharge.

(a) It shall be unlawful for any person to manufacture, assemble, store, transport, receive, keep, offer to another or to otherwise have in his possession with intent to sell, use, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description, except under special permit as authorized herein or in the fire code adopted by the city.

(b) It shall be unlawful for any parent or guardian of any minor child below the age of 18 years to permit or allow such a minor child to use, discharge, ignite, detonate, fire or otherwise set in action any fireworks.

(c) It shall be unlawful for any person to knowingly or intentionally encourage or in any way assist a person under 18 years of age in to use, discharge, ignite, detonate, fire or otherwise set in action, transport, keep, possess or otherwise store any fireworks.

(Ord. No. 288, § 2, 6-4-1996; Ord. No. 288-1, § 2, 3-7-2000; Ord. No. 288, § 2, 4-3-2001; Ord. No. 288-2, § 2, 4-17-2001)

Sec. 23-152. - Public nuisance; enforcement.

The presence of any fireworks within the jurisdiction of the city in violation of this article is declared to be a common and public nuisance and a violation of this article. The fire marshal and any police officer of the city is directed and required to seize and cause to be safely destroyed any fireworks found within the jurisdiction in violation of this article, and the fire marshal or any police officer of the city or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the said fireworks may be seized and destroyed in accordance with the terms of this article. Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city or the fire marshal or both for injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the jurisdiction of the city and to aid the fire marshal and police officers in the discharge of their duties pursuant to this article, and to particularly prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction. The fire marshal is authorized to enter any commercial, retail or manufacturing building or establishment where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks.

(Ord. No. 288, § 3, 6-4-1996; Ord. No. 288-1, § 3, 3-7-2000; Ord. No. 288, § 3, 4-3-2001; Ord. No. 288-2, § 3, 4-17-2001)

Sec. 23-153. - Exceptions.

This article does not apply to:

(1) Signal flares and torpedoes of the type and kind commonly used by any railroad and which signal flares and torpedoes are received by and stored or transported by any railroad or trucking company for use in railroad or trucking operations;

(2) Fireworks being transported through the city by railroad, or on Interstate 35, by a licensed carrier; and

(3) Fireworks being transported through the city or stored within the city in compliance with a valid permit issued by the city for a fireworks display, provided such transportation and storage shall

only be valid for those permitted to transport and store the fireworks and so long as a valid permit has not expired or been revoked.

(Ord. No. 288, § 4, 6-4-1996; Ord. No. 288-1, § 4, 3-7-2000; Ord. No. 288, § 4, 4-3-2001; Ord. No. 288-2, § 4, 4-17-2001)

Sec. 23-154. - Permitting of displays.

(a) Any person, company or other entity desiring to ignite fireworks in a controlled display must file an application with the city secretary at least 30 days prior to the proposed display along with an application fee as provided in appendix A to this Code. The applicant must identify:

(1) The exact location upon which the display is intended to be held;

(2) The date and time the display is proposed to be ignited;

(3) The estimated duration of the display;

(4) The types of fireworks to be ignited;

(5) The proposed trajectory and landing site of all fireworks that will be airborne;

(6) The persons to transport the fireworks and the location, including duration, for which the fireworks are to be stored; and

(7) A safety plan provided for fire prevention and for the safety of persons and property at or near the display.

The fire marshal shall review the application. With the recommendation of the fire marshal, the city manager may issue a permit for controlled displays of fireworks. The fireworks display permitted may only be ignited as provided in the application and any restrictions added in the permit. At the time of the display, the fire marshal may require that the fire department be on standby at the site. As a requirement of the permit, the permittee may be charged the reasonable costs for the fire department being on standby status for the display.

(b) The city, its agents, assigns and contractors, may sponsor city fireworks displays with the express authorization of a majority vote of the city council. The fire marshal shall be notified of all city fireworks displays and shall review the proposed ignition site, the proposed trajectory and landing site for all fireworks displays and make recommendations or proposals for any changes. The city sponsored fireworks displays shall be exempt from the permit requirements. The fire marshal shall be notified of the location for storage of fireworks.

(c) All fireworks displays shall be operated and supervised by a person qualified in pyrotechnic displays. All applications for permits must include the name and qualifications of the person to operate and supervise the fireworks display. Permits that are issued shall name the person to operate and supervise the fireworks display.

(d) The city reserves the right to deny any application. The city reserves the right, with or without notice, to revoke any fireworks permit. All permits shall expire, and no longer be valid, immediately after the fireworks display permitted was to occur.

(e) Only those persons issued a valid permit shall be permitted to transport, store and ignite fireworks in compliance with a valid permit.

(Ord. No. 288-1, § 5, 3-7-2000; Ord. No. 288-2, § 5, 4-17-2001)

Sec. 23-155. - Territorial applicability.

This article is applicable and in force throughout the territory of the city within its corporate limits. This article is also applicable and in force within the area immediately adjacent and contiguous to the city limits and extending for a distance outside the city limits for a total of 5,000 feet, and it is unlawful to do or perform any act in violation of this article; provided this article does not apply within any portion of such 5,000-foot area which is contained within the territory of any other municipal corporation. The 5,000-foot limitation will be determined by reference to the most recent city map evidencing this boundary limitation. In the event of dispute, the city will accept a professionally sealed ground survey map as evidence of the 5,000-foot limitation. The costs of such survey will be paid by the person alleging the dispute and not by the city.

(Ord. No. 288, § 5, 6-4-1996; Ord. No. 288, § 5, 4-3-2001; Ord. No. 288-2, § 6, 4-17-2001)

Secs. 23-156—23-178. - Reserved.

ARTICLE VII. - OPEN BURNING

Sec. 23-179. - Penalty.

Any person who shall violate any of the provisions of this article, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of $2,000.00. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(Ord. No. 334, § 8, 6-15-1999)

Sec. 23-180. - Prohibited burning upon public property; exceptions.

It shall be unlawful for any person within the city limits, in any way, to intentionally or carelessly burn or cause to be burned any combustibles, including but not limited to grass, weeds, timber, rubbish, leaves, or other natural or synthetic materials, trash, rubbish, litter, solid waste or any like substances on any street, alley, lot or premises. Such prohibited fires shall include bonfires and fires used for ceremonial purposes not in compliance herewith. The following exceptions to burning apply:

(1) Burning may be conducted for the purposes of cooking or heating in a device designated for such a purpose by the manufacturer.

(2) Burning of grass, weeds, timber and/or leaves.

(3) When approved by the fire chief, burning may be permitted in a manner approved by the fire chief, provided a standby firefighter is present if required by the fire chief. A permit shall be acquired and approved safety measures shall be employed as detailed within the permit.

(Ord. No. 334, § 1, 6-15-1999)

Sec. 23-181. - Duty to report.

In the event of a fire or discovery of a fire or unauthorized smoke discharge caused by fire, burning or smoldering combustibles on any property, the owner, occupant or person in control of the property or person in control of the fire from which the fire or smoke is emanating shall immediately report such condition to the local fire department.

(Ord. No. 334, § 2, 6-15-1999)

Sec. 23-182. - Noxious smoke deemed a nuisance.

It shall be unlawful for any person within the city limits, in any way, to intentionally or carelessly burn or cause to be burned any combustibles which causes noxious smoke or smoke of a significant quantity or quality to be released so as to inhibit the use and enjoyment of neighboring properties is hereby declared a nuisance and is hereby prohibited.

(Ord. No. 334, § 3, 6-15-1999)

Sec. 23-183. - Repair and cleanup.

(a) Any person responsible for any fire or unauthorized smoke discharge shall institute and complete all actions necessary to remedy the effects of such fire and/or smoke, whether sudden or gradual, at no cost to the city.

(b) Whenever any building or other structure is partially burned, the owner thereof or the person in charge or control thereof, within ten days after notice from the fire chief, shall remove from the premises all refuse, debris, charred and partially burned lumber and material. If such building or other structure is burned to such an extent that it is rendered incapable of being repaired, the owner of the property upon which the same is located or the person in control thereof, within ten days after notice from the chief, shall remove from the premises all of the remaining portion of the building or structure.

(c) When deemed necessary by the fire chief, cleanup may be initiated by the fire department or by an authorized individual or firm.

(d) All costs associated with such cleanup shall be borne by the owner, operator, person in control of the property or other person responsible for the fire or unauthorized discharge of smoke.

(Ord. No. 334, § 4, 6-15-1999)

Sec. 23-184. - Inspection of premises.

A premises emanating fire or smoke shall be subject to inspection by the fire chief, or authorized representative, at any reasonable hour, or at any hour in cases of emergency.

(Ord. No. 334, § 5, 6-15-1999)

Sec. 23-185. - Burn ban.

During periods of time in which the county institutes a total burn ban for the entire county, the city prohibits any burning, except as provided in section 23-180(1) for the duration of the burn ban.

(Ord. No. 334, § 6, 6-15-1999)

Sec. 23-186. - Enforcement.

The civil and criminal provisions of this article shall be enforced by those persons or agencies designated by municipal authority. It shall be a violation of this article to interfere with a firefighter in the performance of his duties.

(Ord. No. 334, § 7, 6-15-1999)

Secs. 23-187—23-210. - Reserved.

ARTICLE VIII. - JUNKED, WRECKED, ABANDONED VEHICLES[7]

Footnotes:

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State Law reference— Abandoned vehicles, V.T.C.A., Transportation Code § 683.001 et seq.

DIVISION 1. - GENERALLY

Sec. 23-211. - Definitions.

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

Abandoned motor vehicle means a vehicle that:

(1) Is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;

(2) Has remained illegally on public property for more than 48 hours;

(3) Has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

(4) Has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours;

(5) Has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the state turnpike authority division of the state department of transportation or a controlled access highway; or

(6) Is considered an abandoned motor vehicle under V.T.C.A., Transportation Code § 644.153(r).

Antique auto means a passenger car or truck that is at least 25 years old.

Collector means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Demolisher means a person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

Junked vehicle means any vehicle that is self-propelled, and:

(1) Does not have lawfully affixed to it:

   a. An unexpired license plate; or

   b. A valid motor vehicle safety inspection certificate;

(2) Is wrecked, dismantled, partially dismantled or discarded; or

(3) Is inoperable and has remained inoperable for more than:

   a. If on public property, for 72 consecutive hours; or

b. If on private property, for 30 consecutive days.

Motor vehicle means any motor vehicle subject to registration pursuant to the Certificate of Title Act, V.T.C.A., Transportation Code § 501.001 et seq.

Outboard motor means an outboard motor subject to registration under, V.T.C.A., Parks and Wildlife Code § 31.001 et seq.

Police department means the police department of the city, and any other law enforcement agency as defined in V.T.C.A., Transportation Code § 683.001.

Special interest vehicle means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

Storage facility means a vehicle storage facility, as defined by V.T.C.A., Occupations Code § 2303.002, that is operated by a person who holds a license issued under V.T.C.A., Occupations Code § 2303.001 et seq., to operate that vehicle storage facility.

Watercraft means a vessel subject to registration under V.T.C.A., Parks and Wildlife Code § 31.001 et seq.

(Ord. No. 381, § 2, 10-16-2001)

State Law reference— Similar provisions, V.T.C.A., Transportation Code §§ 683.001, 683.071, 683.077(b).

Sec. 23-212. - Penalties.

Any person convicted of violating any provision of this article shall be guilty of a misdemeanor and shall be subject to a fine in an amount not to exceed $200.00 and each day of such violation shall be a separate violation.

(Ord. No. 381, § 15, 10-16-2001)

Sec. 23-213. - Findings.

The findings and recitations set out in the ordinance from which this article is derived are found to be true and correct and are hereby adopted by the city council and made a part hereof for all purposes.

(Ord. No. 381, § 1, 10-16-2001)

Sec. 23-214. - Administration and enforcement.

The administration of this article shall be the responsibility of the chief of police or such other officer or employee of the city designated by the city council in the minutes of its meetings; provided that the chief of police, or such other salaried, fulltime employee of the city as designated by the chief of police and the city manager, is authorized to administer and supervise the procedures, sections and provisions of this article applying to junk vehicles. Whoever is so authorized may enter upon private property for the purposes specified in this article to examine motor vehicles or parts thereof, obtain information as to the identity of motor vehicles and to remove or cause the removal of a motor vehicle or parts thereof declared to be a nuisance pursuant to this article. Upon request by the officer designated pursuant to this section, the municipal court may issue any order necessary to the enforcement of this article. This article does not affect a law authorizing the immediate removal of a vehicle left on public property that is an obstruction to traffic.

(Ord. No. 381, § 3, 10-16-2001)

State Law reference— Authority to abate nuisances, V.T.C.A., Transportation Code § 683.074.

Secs. 23-215—23-236. - Reserved.

DIVISION 2. - ABANDONED VEHICLES[8]

Footnotes:

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State Law reference— Abandoned vehicles, V.T.C.A., Transportation Code § 683.002 et seq.

Sec. 23-237. - Authority to take possession.

The police department is authorized to take into custody any abandoned motor vehicle, watercraft or outboard motor found on public or private property.

(Ord. No. 381, § 4, 10-16-2001)

State Law reference— Authority to take possession, V.T.C.A., Transportation Code § 683.011.

Sec. 23-238. - Notice of abandonment.

(a) The police department shall send notice of abandonment to the last known registered owner and lienholder of record pursuant to the Certificate of Title Act, V.T.C.A., Transportation Code § 501.001 et seq., or, as applicable, V.T.C.A., Parks and Wildlife Code § 31.001 et seq. Such notice shall be given within ten days after the date the motor vehicle, watercraft or outboard motor is taken into custody, or the date the police department receives a report of abandonment. The notice shall be by certified mail; specify the year, make, model and identification number of the item; set forth the location of the facility where the item is being held; and inform the owner and any lienholder of the right to reclaim the item not later than the 20th day after the date of the notice, on payment of all towing, preservation, storage and/or garagekeeper charges and fees under V.T.C.A., Transportation Code § 683.032 and, if the vehicle is a commercial motor vehicle impounded under V.T.C.A., Transportation Code § 644.153(q), the delinquent administrative penalty and costs. The notice shall state that the failure of the owner or lienholder to exercise the right to reclaim the item within the time provided shall be deemed a waiver of all right, title, and interest in the item and their consent to the sale of the item at a public auction. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in a newspaper of general circulation in the city shall be made within ten days from the date the item was taken into custody, or from the date the report of abandonment was received. The published notice shall be sufficient if it contains the information otherwise required to be included in the notice by certified mail. A list of motor vehicles, watercraft or outboard motors may be included in the same publication.

(b) In addition to the notice required under subsection (a) of this section, if the police department takes an abandoned motor vehicle into custody, the police department shall notify a person that files a theft report or similar report prepared by any law enforcement agency for the vehicle of that fact. The notice must be sent by regular mail on the next business day after the agency takes the vehicle into custody. The police department shall also provide the name and address of the person that filed the theft report

or similar report to the vehicle storage facility or governmental vehicle storage facility that is storing the vehicle

(Ord. No. 381, § 5, 10-16-2001)

State Law reference— Similar provisions, V.T.C.A., Transportation Code § 683.012.

Sec. 23-239. - Use of abandoned motor vehicles.

(a) Provided that a garagekeeper's lien has not attached to the vehicle, if an abandoned motor vehicle has not been reclaimed as provided in section 23-238, the police department may use such abandoned motor vehicle for police department purposes if such use is cost effective or transfer the vehicle to any municipal or county agency or school district for the use of that agency or district.

(b) If the police department or municipal or county agency or school district to which the vehicle was transferred discontinues use of the abandoned motor vehicle, the police department shall auction such abandoned motor vehicle as provided in section 23-240.

(c) The police department must comply with the notice requirements of section 23-238 before the law enforcement agency may transfer a vehicle under this section.

(Ord. No. 381, § 6, 10-16-2001)

State Law reference— Similar provisions, V.T.C.A., Transportation Code § 683.016.

Sec. 23-240. - Auction sales; disposition of proceeds generally.

(a) If an abandoned motor vehicle, watercraft or outboard motor has not been reclaimed within 20 days after the date of notice and payment of all towing, preservation and storage charges resulting from its impoundment, the owner or lienholder waives all rights and interests in the item; and consents to the sale of the item by public auction or the transfer of the item, if a watercraft, as provided by V.T.C.A., Transportation Code § 683.014(d). The police department shall sell the item at a public auction. Proper notice of the public auction shall be given and, in the event a vehicle is to be sold in satisfaction of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of such auction.

(b) The police department shall furnish a sales receipt for each vehicle to the purchaser thereof at the public auction. The proceeds shall be applied first to reimburse the police department for the expenses of the auction, costs of towing, preserving and storing the vehicle, and all notice and publication costs, and any remainder from the proceeds of the sale shall be held for the owner of the vehicle or entitled lienholder for 90 days, and then shall be deposited in a special fund with the city which shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned vehicles, watercraft or outboard motors in custody, whenever the proceeds from a sale of such other abandoned motor vehicles are insufficient to meet these expenses and costs. In the event the special fund on deposit with the city accumulates to an excess of $1,000.00, the city council may transfer the balance of such fund, that exceeds $1,000.00, to the general fund for use by the police department as budgeted.

(Ord. No. 381, § 7, 10-16-2001)

State Law reference— Similar provisions, V.T.C.A., Transportation Code § 683.015.

Sec. 23-241. - Custody, reports and proceeds of abandoned motor vehicles.

(a) The police department, upon receipt of a report from a garagekeeper that a motor vehicle has been deemed abandoned pursuant to V.T.C.A., Transportation Code § 683.031, shall follow the notification procedures set forth in section 23-238 for the giving of notice to owners and lienholders of abandoned vehicles, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been satisfied.

(b) A fee of $10.00 shall accompany the report of the garagekeeper and such fee shall be retained by the police department receiving the report and used to defray the cost of notification or other costs incurred in the disposition of such vehicles, and such fee shall be deposited in the general fund of the city. Abandoned vehicles left in storage facilities, which are not reclaimed after notice is given in accordance with this section, shall be taken into custody by the police department and retained for the use of the vehicle as authorized by V.T.C.A., Transportation Code § 683.016 or sold at auction, as in the cases of other abandoned motor vehicles. The proceeds of the sale shall first be applied to the garagekeeper's charges for servicing, storage and repair; provided, however, that the police department shall retain an amount of two percent of the gross proceeds of the sale for each vehicle auctioned, but in no event shall it retain less than $10.00, to be used to defray expenses of custody and auction.

(c) If the police department does not take the vehicle into custody before the 31st day after the date the vehicle was reported abandoned:

(1) The police department may not take the vehicle into custody; and

(2) The storage facility may dispose of the vehicle under:

a. V.T.C.A., Property Code ch. 70, except that notice under V.T.C.A., Transportation Code § 683.012 satisfies the notice requirements of that chapter; or

b. V.T.C.A., Occupations Code ch. 2303, if the storage facility is a vehicle storage facility.

(Ord. No. 381, § 8, 10-16-2001)

State Law reference— Garagekeeper's duties, V.T.C.A., Transportation Code § 683.031; disposal of vehicle in storage facility, V.T.C.A., Transportation Code § 683.034.

Sec. 23-242. - Disposal of abandoned motor vehicle to demolisher.

The police department is authorized to apply to the state department of transportation for authority to sell, give away or dispose of any abandoned motor vehicle in its possession to a demolisher in accordance with the provisions of V.T.C.A., Transportation Code § 683.051 et seq.

(Ord. No. 381, § 9, 10-16-2001)

State Law reference— Demolition of vehicle, V.T.C.A., Transportation Code § 683.051 et seq.

Secs. 23-243—23-262. - Reserved.

DIVISION 3. - JUNKED VEHICLES[9]

Footnotes:

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State Law reference— Junked vehicles, V.T.C.A., Transportation Code § 683.071 et seq.

Sec. 23-263. - Public nuisance—Findings and declarations.

Junked vehicles, that are at any time of the year located in any place where they are readily visible from a public place or public right-of-way, are detrimental to the safety and welfare of the general public, reduce the value of private property, invite vandalism, create fire hazards, constitute an attractive nuisance creating a hazard to the health and safety of minors, and produce urban blight adverse to the maintenance and continuing development of the city, and are a public nuisance as stated in V.T.C.A., Transportation Code § 683.072. The city council hereby adopts such findings and declarations, and declares that junked vehicles are a public nuisance.

(Ord. No. 381, § 10, 10-16-2001)

State Law reference— Similar provision, V.T.C.A., Transportation Code § 683.072.

Sec. 23-264. - Same—Maintenance prohibited.

It shall be unlawful for any person to maintain a public nuisance, as defined in section 23-263, within the city. Any person found guilty of maintaining a public nuisance, as defined in section 23-263, shall be guilty of a misdemeanor and be subject to a fine not to exceed $200.00 for each offense and, upon the municipal court finding any person guilty of maintaining a public nuisance as defined in section 23-263, the court shall order removal and abatement of the nuisance.

(Ord. No. 381, § 11, 10-16-2001)

State Law reference— Similar provision, V.T.C.A., Transportation Code § 683.073.

Sec. 23-265. - Procedures for abatement.

(a) The police department, when desiring to remove and dispose of junked vehicles from private property, public property or public rights-of-way, shall comply with the applicable procedures in this section.

(b) A written notice stating the nature of the public nuisance on private property and that it must be removed and abated within ten days, and further stating that any request for a hearing must be made before the expiration of said ten-day period, shall be mailed, by certified mail with a five-day return receipt requested, to the last known registered owner of the junked vehicle, any lienholder of record and the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate such nuisance shall be continued to a date not less than ten days from the date of such return.

(c) The requirements of subsection (b) of this section shall also apply to the case of a public nuisance on public property and similar notice shall be sent to the owner or the occupant of the public premises and to the owner or the occupant of the premises adjacent to the public property whereupon such public nuisance exists.

(d) If the nuisance is not removed and abated and a hearing is not requested within the ten-day period provided, in addition to any other procedure authorized by this article, a complaint may also be filed in municipal court for the violation of maintaining a public nuisance; provided that such notice shall not be a requirement for any such complaint being filed in municipal court.

(e) Once a vehicle has been removed under the provisions of this section, it shall not be reconstructed or made operable.

(f) The vehicle must be removed or otherwise brought into compliance or a public hearing requested. If requested, the public hearing will be held not earlier that the 11th day after the date of the service of the notice before the chief of police. If a hearing is requested by a person for whom notice is required under V.T.C.A., Transportation Code § 683.075(a)(3), the hearing shall be held not earlier than the 11th day after the date of the service of notice. At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:

(1) Description;

(2) Vehicle identification number; and

(3) License plate number.

(g) Should the chief of police find that such vehicle is a public nuisance as defined herein, he shall enter an order requiring the removal of the vehicle or part thereof from the public or private property or public right-of-way where it is situated, and such order shall include a description of the vehicle and the correct identification number and license number of the vehicle, if available. Any aggrieved city officer, owner or lienholder may appeal any such decision of the chief of police to the city council.

(h) The police department shall give notice to the state department of transportation within five days after the date of the removal of a junked vehicle by the department, identifying the vehicle or part thereof.

(i) The procedures set out in this section shall not apply to:

(1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;

(2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or

(3) An antique and special interest vehicle stored by a collector on his property;

provided that the vehicle and outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery or other appropriate means.

(j) The administration of the procedures of this section shall be carried out by regularly salaried, fulltime employees of the city, except that the removal of vehicles or parts thereof from property may be accomplished by any other duly authorized person, including authorized wrecker service operators acting at the direction of the city.

(Ord. No. 381, § 12, 10-16-2001)

State Law reference— Similar provision, V.T.C.A., Transportation Code § 683.075.

Sec. 23-266. - Disposal of junked vehicles.

Junked vehicles or parts thereof may be disposed of by removal to a scrap yard, demolisher or to any suitable site operated by the city for processing as scrap or salvage. Relocation of a junked vehicle, for which a notice has been issued under or the procedures provided in this article have been otherwise initiated, to another location shall have no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(Ord. No. 381, § 13, 10-16-2001)

State Law reference— Disposal of junked vehicle, V.T.C.A., Transportation Code § 683.078.

Sec. 23-267. - Storage fees.

The police department shall be entitled to charge and collect reasonable storage fees for abandoned and junked vehicles removed and stored pursuant to this article. Such fees shall be established by the city council and, absent the city council having established such fees, the police department. Such fees may be charged beginning the day the vehicle is taken into custody as follows:

(1) For a period of up to ten days prior to the date of the mailing of written notice pursuant to this article; and

(2) Beginning on the day after written notice is mailed until the vehicle is reclaimed or disposed of pursuant to this article.

If any such vehicle is stored with a garagekeeper, the police department shall not charge an additional fee for any day that the garagekeeper charges a fee.

(Ord. No. 381, § 14, 10-16-2001)

Secs. 23-268, 23-269. - Reserved.

ARTICLE IX. - MASS GATHERINGS[10]

Footnotes:

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Editor's note— Ord. No. 778, § 1, adopted Feb. 18, 2014, effectively repealed and replaced the former Art. IX., §§ 23-270—23-280.1, and enacted a new Art. IX as set out herein. The former Art. IX pertained to similar subject matter and derived from Ord. No. 730, § 1, adopted July 2, 2013.

Sec. 23-270. - Definitions.

Mass gathering means a gathering that is held inside the limits of the City of Kyle and that attracts or is expected to attract:

(1) More than 1,000 persons; or

(2) More than 500 persons, if 51 percent or more of those persons may reasonably be expected to be younger than 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering; and

(3) At which the persons will remain for more than four continuous hours; or for any amount of time during the period beginning at 10:00 p.m. and ending at 6:00 a.m.

Person means an individual, group of individuals, firm, corporation, partnership, or association.

Promote includes organize, manage, finance, or hold.

Promoter means a person who promotes a mass gathering.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-271. - Permit requirement.

A person may not promote a mass gathering without a permit issued under this article. City council shall establish cost for such permit.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-272. - Application procedure.

(a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the city. Applications submitted less than 45 days prior to the event may still be considered; however, the applicant acknowledges that the required inspections and review process may not be completed in time to allow for authorization and permitting.

(b) The application must include:

(1) The promoter's name and address;

(2) The name and address of the owner of the property on which the mass gathering will be held;

(3) An executed copy of the agreement between the promoter and the property owner;

(4) The location and a description of the property on which the mass gathering will be held;

(5) The dates and times that the mass gathering will be held;

(6) The maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;

(7) A description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;

(8) A description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;

(9) A description of the preparations made to provide adequate medical care; and

(10) A description of the preparations made to supervise minors who may attend the mass gathering.

(11) Adequate assurance of scheduled performers' appearance.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-273. - Application review.

(a) After a permit application is filed with the city, the application shall be sent to the county health authority, the Kyle Fire Department and the police chief.

(b) The county health authority shall inquire into preparations for the mass gathering. At least 15 days before the date of the mass gathering, the county health authority shall submit to the police chief a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The Kyle Fire Department Chief or his designee shall investigate preparations for the mass gathering. At least 15 days before the date of the mass gathering, the fire department official shall submit to the police chief a report stating whether the Kyle Fire Official believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.

(d) Police chief, or designee, shall investigate preparations for the mass gathering. At least 15 days before the date of the mass gathering, the police chief shall make a determination on whether the minimum

standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(e) The city manager may conduct any additional investigation that the manager considers necessary.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-274. - Decision by police chief.

(a) After a review of the reports from the Kyle Fire Department and county health authority, the police chief shall either grant or deny the permit. The decision of the police chief shall be no later than the tenth day before the date on which a mass gathering will begin

(b) The police chief may deny the permit if he finds that:

(1) The application contains false or misleading information or omits required information;

(2) The location selected for the mass gathering is inadequate for the purpose for which it will be used;

(3) The promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(4) The promoter does not have assurance that scheduled performers will appear;

(5) The preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(6) The preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(7) Adequate arrangements for traffic control have not been provided;

(8) Adequate medical and nursing care will not be available.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-275. - Permit revocation.

The police chief may revoke a permit issued under this article if the police chief finds that preparations for the mass gathering will not be completed by the time the mass gathering will begin, for any reason identified in section 23-274(b), or that the permit was obtained by fraud or misrepresentation.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-276. - Appeal.

A promoter or a person affected by the granting, denying, or revoking of a permit may appeal that action to the city council or, if time does not permit for a city council meeting to be called, the appeal can be to a district court having jurisdiction in Hays County.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-277. - Inspections.

(a) The county health authority may inspect a mass gathering during the mass gathering to ensure that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders

are being maintained. If the county health authority determines a violation of the minimum standards is occurring, the health authority may order the promoter of the mass gathering to correct the violation.

(b) The Kyle Fire Department Official may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders are being maintained. If the official determines a violation of the minimum standards is occurring, the marshal or designee may order the promoter of the mass gathering to correct the violation.

(c) The police chief may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public safety and order prescribed by state and local laws, rules, and orders are being maintained. If the police chief determines a violation is occurring, the police chief may order the promoter of the mass gathering to correct the violation.

(d) A promoter who fails to comply with an order issued under this section commits an offense. An offense under this section is a Class C misdemeanor.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-278. - Indemnity clause.

The applicant shall indemnify and hold the city harmless from all costs, expenses (including reasonable attorney's fees) and damages to persons or property arising directly or indirectly as a result of the mass gathering.

This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the applicant and the city.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-279. - Noise.

Any unreasonably loud, disturbing or unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity of the mass gathering, or any noise of such character, intensity and continued duration which interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is prohibited and is hereby declared a nuisance. All other regulations in chapter 23, article IV of this Code regarding noise shall apply to mass gatherings.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-280. - Inspection fees.

(a) City council may establish and collect a fee for an inspection performed under section 23-277. The fee may not exceed the amount necessary to defray the costs of performing the inspections.

(b) City council may use money collected under this section to reimburse the county and the Kyle Fire Department the cost of performing the inspections outlined in section 23-277.

(Ord. No. 778, § 1, 2-18-2014)

Sec. 23-280.1. - Exceptions to permit and fee.

The following types of mass gatherings are required to notify the chief of police ten days prior to the event, but are not required to obtain a mass gatherings permit or to pay any fees established under section 23-280:

(1) Church events held on church property;

(2) City, school, county or other governmental entity events held on property owned by the governmental entity;

(3) Weddings, family reunions, wakes, and funerals; or

(4) Any other exceptions approved by city council.

(5) An applicant may request, and the chief of police may approve, an annual or event series permit for a single location hosting repetitive events of similar nature; including but not limited to attendance, hours of operation, and safety measures as described elsewhere in this article.

(Ord. No. 778, § 1, 2-18-2014)

Editor's note— Ord. No. 778, § 1, adopted Feb. 18, 2014, amended the Code by adding provisions designated as § 23-281. Inasmuch as there were already provisions so designated, the provisions have been redesignated § 23-280.1 at the discretion of the editor.

Sec. 23-280.2. - Criminal penalty.

(a) A person commits an offense if the person violates section 23-271.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $1,000.00.

(Ord. No. 778, § 1, 2-18-2014)

Editor's note— Ord. No. 778, § 1, adopted Feb. 18, 2014, amended the Code by adding provisions designated as § 23-282. Inasmuch as there were already provisions so designated, the provisions have been redesignated § 23-280.2 at the discretion of the editor.

ARTICLE X. - CODE VIOLATIONS[11]

Footnotes:

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Editor's note—Ord. No. 689, §§ 1—7, adopted Feb. 21, 2012, did not specifically amend the Code; hence, inclusion herein as Art. IX, §§ 23-281—23-289, was at the editor's discretion. Ord. No. 730, § 1, adopted Jul. 2, 2013, amended Ch. 23 of the Code by adding a new Art. IX. In order to add said provisions without duplicating article numbers, the former Art. IX, entitled "Code Violations," was renumbered Art. X.

Sec. 23-281. - Definitions.

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

Citation means an ordinance violation notice and notice to appear before the city municipal court, as provided for in this section.

City means the City of Kyle, a home-rule municipality located in Hays County, Texas.

Person means any individual, association, firm, corporation, governmental agency, political subdivision, or legal entity of any kind.

(Ord. No. 689, § 1(a), 2-21-2012)

Sec. 23-282. - Administration.

(a) *Relation to related laws.* A citation issued pursuant to this section does not relate to authority of a peace officer to issue a citation pursuant to V.T.C.A., Code of Criminal Procedure art. 14.06(d) or V.T.C.A., Transportation Code § 543.003.

(b) *Authority to issue citations.* Pursuant to this section, and the scope of their assigned duties, a citation may be issued of the following individuals so designated by the city council:

(1) Code enforcement officer(s);

(2) Animal control officer(s);

(3) Building inspector(s); and

(4) Any certified peace officer licensed by the State of Texas and employed by the city's police department.

(c) *Form and content of citation.* A citation issued under this section must be in a form approved by the municipal court clerk that includes the following information:

(1) The name, address, date of birth, and/or driver's license number, physical description, and telephone number of the person cited;

(2) The offense for which the person is charged;

(3) The date and location of the offense;

(4) A deadline to contact the municipal court;

(5) A statement requiring the person receiving the citation to appear at municipal court on or before the deadline indicated on the citation;

(6) A statement of the person's promise to respond to the citation, pursuant to V.T.C.A., Code of Criminal Procedure art. 27.14, by the deadline indicated on the citation, including a place for the person cited to provide the person's signature; and

(7) The signature of the person issuing the citation.

(d) *Pleading subsequent to issuance of citation.* All pleas arising from the issuance of a citation under this section shall be made pursuant to V.T.C.A., Code of Criminal Procedure art. 27.14.

(Ord. No. 689, § 1(b), 2-21-2012)

Sec. 23-283. - Related offenses and penalty.

(a) *Ordinance violation of promise to appear.* A person issued a citation, as authorized by this section, commits an offense if the person fails to appear or enter a plea pursuant to subsection 23-282(d) on or before the deadline to appear indicated on the citation as authorized by V.T.C.A., Penal Code art. 38.10.

(b) *Interference or obstruction of issuance.* A person commits an offense if the person interferes with or obstructs the issuance of a citation under this section.

(c) *Providing false of fictitious name.* A person commits an offense if the person gives a false or fictitious name, address, or other information to an individual authorized to issue a citation under this section.

(d) *Penalty.* Each violation under this section is a misdemeanor offense punishable upon conviction by a fine not to exceed $2,000.00 per offense. Each day shall constitute a separate offense.

(Ord. No. 689, § 1(c), 2-21-2012)

Sec. 23-284. - Notice to owner to abate.

Whenever the existence of nuisance as provided in the City's Code of Ordinances, on any lot or parcel of real estate situated within the corporate limits of the city, shall come to the attention of the city, it shall be the duty of said code enforcement officer, animal control officer, building inspector or Kyle Police Officer to prepare a written notice, identifying such property, to be sent to the person, firm or corporation owning or having possession or control of such lot or parcel of real estate, requiring the abatement, within a specified time, of such nuisance. Nuisance abatement shall include but is not limited to removing debris, weeds, brush, rubbish, decaying vegetable matter, removing junked vehicle, removing non conforming building or structure, construction to bring into compliance a building or structure so that it conforms with the building or zoning codes, removing other objectionable, unsightly or unsanitary matter of whatever nature, as the case may be, or by filling in, draining, leveling or otherwise regulating such lot or parcel of real estate, so as to prevent stagnant water standing therein, within ten days from the date of service of such notice.

(Ord. No. 689, § 2, 2-21-2012)

Sec. 23-285. - Service of notice.

Such notice as described in section 23-284 shall be served by the code enforcement officer, animal control officer, building inspector or Kyle Police Officer, by delivering such notice to the person, firm or corporation, or by leaving such notice at his place of residence or business if within the corporate limits of the city, and if a firm or corporation, by service upon any officer, agent or representative authorized by law to accept citation. If the person, firm or corporation to be served with such notice shall reside outside the limits of the city, the posting of a letter addressed to such person, firm or corporation at their post office address, if known, shall be sufficient service of such notice. The code enforcement officer, animal control officer, building inspector or Kyle Police Officer serving such notice shall make due return thereof on a copy of such notice, showing date and manner of service.

(Ord. No. 689, § 3, 2-21-2012)

Sec. 23-286. - Enforcement of notice.

In the event of failure, neglect or refusal by the owner of any such lot or parcel of real estate to cause such nuisance to be removed or abated in the manner and within the time hereto provided, the code enforcement officer, animal control officer, building inspector or Kyle Police Officer shall file a complaint in the Municipal Court of the City of Kyle. For matters that are not zoning violations, the city manager, if found to be more expedient, shall file a written report with the city council, showing due service of the notice herein provided, upon the owner of such property, and describing such property. The city council, if they are of the opinion that such nuisance is being maintained or continued, shall at once authorize, direct and empower the city manager without further notice to the owner of such lot or parcel of real estate, to proceed at once to abate such nuisance by grubbing and removing such weeds, brush, debris, rubbish and any other objectionable, unsightly or unsanitary matter of whatever nature, as the case may be, or by filling in, draining, leveling or otherwise regulating such lot or parcel of real estate, so as to prevent stagnant water standing therein, and charge the necessary cost and expense of procuring such work and improvements to the owner of the property.

(Ord. No. 689, § 4, 2-21-2012)

Sec. 23-287. - How abatement to be performed.

Any nuisance to be abated shall be done by contract awarded to the lowest qualified bidder or by labor employed by the City of Kyle and performed under the supervision of the city's building official or city manager or their duly authorized representative, as in their discretion may be deemed most expeditious.

(Ord. No. 689, § 5, 2-21-2012)

Sec. 23-288. - Lien for expense of abatement.

When such work and improvements have been completed, a statement shall be sent to the owner of the lot or parcel of real estate involved for payment within ten days of the mailing of such statement. In the event of non-payment within the specified period, the city shall cause a statement to be filed in the office of the County Clerk of Hays County, Texas, showing the cost and expense of such work, including an administrative fee of $150.00, the date performed, a brief description of the property improved sufficient to identify it, and the name of the owner thereof, if known. From the date of filing, the amount shown by such statement to have been expended by the city for the improvement of such property, together with ten percent interest annually, shall be a privileged lien thereon, second only to tax liens and liens for street improvements.

(Ord. No. 689, § 6, 2-21-2012)

Sec. 23-289. - Foreclosure of lien.

A suit may be instituted and recovery and foreclosure of the lien for any such expenditures and interest may be had in the name of the City of Kyle in any court having jurisdiction, and the statement of the city's building official or city manager provided in the preceding section, or a certified copy of such statement, shall be prima facie proof of the amount expended in any such work or improvements.

(Ord. No. 689, § 7, 2-21-2012)

Chapter 26 - PARKS AND RECREATION

ARTICLE I. - IN GENERAL

Secs. 26-1—26-18. - Reserved.

ARTICLE II. - PARKS AND RECREATION BOARD[1]

Footnotes:

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Editor's note— Ord. No. 851, § 2, adopted June 2, 2015, repealed Ord. No. 550, adopted Oct. 7, 2008, which ordinance formerly repealed art. II, §§ 26-19—26-23, pertaining to the parks and recreation board. The provisions of the restored art. II were superseded by Ord. No. 854, §§ 2—6, adopted June 2, 2015, as set out herein. Former art. II derived from the following:

Ord. No.	Section	Date
330	art. I, §§ 1—5	11- 3-1998
330-1	3	6-15-1999
330-2	art. I, §§ 1—5	3- 7-2000

Ord. No.	Section	Date
330-3	art. I, §§ 1—5	6- 3-2003
442	1—5	3- 2-2004

461	1—5	4-19-2005

Sec. 26-19. - Establishment of parks and recreation board.

The parks and recreation board is hereby created.

(Ord. No. 854, § 2, 6-2-2015)

Sec. 26-20. - Renaming the parks and recreation committee.

The parks and recreation committee shall hereinafter be known as the parks and recreation board. Any reference to or duties assigned to the "parks and recreation committee" that appear in the City of Kyle Code of Ordinances (the "Code") shall be amended to the parks and recreation board.

(Ord. No. 854, § 3, 6-2-2015)

Sec. 26-21. - General duties.

The parks and recreation board shall be responsible for providing the parks and recreation director with advice and recommendations on all policies, rules, and regulations relating to public parks and recreation programs. The director shall have the power to develop and propose to the city council rules and regulations for the proper conduct of public recreation for the city. Such rules and regulations shall become in effect upon adoption of the city council as provided by law. The parks and recreation board may act as a public forum for citizens to address concerns over city parks and recreation activities, including the comprehensive master plan. The parks and recreation board shall provide advisory oversight of public playgrounds, athletic fields, recreation centers and other facilities and activities on property owned or controlled by the city and designated as a public park, or on other properties with the consent of the owners and authorities thereof. It shall have the responsibility to recommend any form of recreation activity that will employ the leisure time of the people in a constructive and wholesome manner. The parks and recreation board shall assist the city council as needed or requested. Under certain circumstances and when deemed appropriate by the city manager and/or parks and recreation director, the parks and recreation board may review requests for permits and make a recommendation to the city council relative to said requests for use and/or reservation of city parks or city park facilities.

(Ord. No. 854, § 4, 6-2-2015)

Sec. 26-22. - Gifts and donations.

The parks and recreation board is authorized to solicit gifts and bequests of money or other personal property, or donations to be applied, principle or income, for either temporary or permanent use for playgrounds or other recreational purposes. All such gifts and bequests shall be made and received directly by the city and placed in a special account or fund established for such purposes.

(Ord. No. 854, § 5, 6-2-2015)

Sec. 26-23. - Cooperation with other agencies.

The parks and recreation board, working through the parks and recreation director, is authorized to work jointly with the other city departments and, upon approval of an agreement by the city council, with other political subdivisions to provide and establish, operate, conduct, and maintain a supervised recreation system and to acquire, operate, improve, and maintain property, both real and personal, for parks, playgrounds, recreation centers and other recreation facilities and activities. The parks and recreation board is authorized to work and cooperate with local little league, soccer, softball and similar organizations with respect to the establishment and scheduling of leagues and activities.

(Ord. No. 854, § 6, 6-2-2015)

Secs. 26-24—26-49. - Reserved.

ARTICLE III. - COMMERCIAL ENTERPRISES IN PARKS

Sec. 26-50. - Sale of goods prohibited.

It shall be unlawful for any person to peddle, sell, or offer for sale any goods, wares, or merchandise in any city park or take thereon or therein any peddler's cart or wagon, or any basket, tray, box or other receptacle or vehicle containing a stock of goods, ware, or merchandise to be sold or offered for sale, except as provided in section 26-52.

(Ord. No. 330, art. II, § 6, 11-3-1998; Ord. No. 330-2, art. II, § 6, 3-7-2000; Ord. No. 330-3, art. II, § 6, 6-3-2003; Ord. No. 442, § 6, 3-2-2004; Ord. No. 461, § 6, 4-19-2005)

Sec. 26-51. - Renting vehicles or animals, maintaining amusement devices.

It shall be unlawful for any person to rent or offer to rent to another in any city park any amusement device including, but not limited to, bicycles, motorcycles, scooters, vehicles, or animals except as provided in section 26-52.

(Ord. No. 330, art. II, § 7, 11-3-1998; Ord. No. 330-2, art. II, § 7, 3-7-2000; Ord. No. 330-3, art. II, § 7, 6-3-2003; Ord. No. 442, § 7, 3-2-2004; Ord. No. 461, § 7, 4-19-2005)

Sec. 26-52. - License to conduct business.

The parks and recreation board may review and make recommendations to the city council on any requested license, privilege, or concession for any of the acts mentioned in sections 26-50 and 26-51. The parks and recreation board may recommend conditions on such terms as to not unlawfully surrender the city's right of supervision, regulation and control, and consistent with park purposes, and as to not unreasonably interfere with the rights of the public to the enjoyment of the park. The parks and recreation board may develop and submit to the city council proposed rules and regulations for the temporary use of park land for periods not to exceed ten days, for uses referred to in sections 26-50 and 26-51. Such rules and regulations shall include the process and procedures for permit application and issuance, uses proposed to be prohibited, and proposed permit fees, if any.

(Ord. No. 330, art. II, § 8, 11-3-1998; Ord. No. 330-2, art. II, § 8, 3-7-2000; Ord. No. 330-3, art. II, § 8, 6-3-2003; Ord. No. 442, § 8, 3-2-2004; Ord. No. 461, § 8, 4-19-2005; Ord. No. 639, §§ 1, 4, 11-3-2010; Ord. No. 854, § 3, 6-2-2015)

Sec. 26-53. - Advertising.

It shall be unlawful within any city park for any person to announce, advertise or call the public's attention in anyway to any article or service for sale or hire, unless such person or entity shall have a temporary license, permit or authorization issued pursuant to this article.

(Ord. No. 330, art. III, § 9, 11-3-1998; Ord. No. 330-2, art. III, § 9, 3-7-2000; Ord. No. 330-3, art. II, § 9, 6-3-2003; Ord. No. 442, § 9, 3-2-2004; Ord. No. 461, § 9, 4-19-2005)

Secs. 26-54—26-79. - Reserved.

ARTICLE IV. - PARKS GENERAL USE

Sec. 26-80. - Definitions.

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

Activity assistant means a department employee who assists an activity leader with the care or supervision of participants.

Activity leader means a department employee responsible for the direct care or supervision of participants. The term "activity leader" does not include a person whose primary duties include administration, clerical support, food preparation, or facility maintenance.

City hall community center means the historic city hall building located at 101 South Burleson in Kyle, Texas.

City square gazebo means the city square located at 101 South Burleson in Kyle, Texas, upon which the gazebo is located.

Department means the city parks and recreation department.

Director means the city parks and recreation director.

Facility means a building or improvement operated or used by the department in conducting recreational programs.

Park means a public park dedicated to and accepted by the city for maintenance and ownership as a public park, including portions of city public parks with recreational facilities located thereon.

Park attendant means the parks and recreation director or his designate, a park patrol officer or an officer of the city police department.

Participant means a child under the age of 18 years that is enrolled in a recreational program.

Recreational program means a children's program or activity offered and supervised by the department and requiring enrollment or registration in order to participate.

Volunteer means a person assisting without remuneration in the care or supervision of participants.

(Ord. No. 442, § 10, 3-2-2004; Ord. No. 461, § 10, 4-19-2005)

Sec. 26-81. - Closing hours for city parks and park facilities.

(a) Hours for the public restrooms at any city park or city facility will be set by the parks and recreation director. Persons, groups or organizations receiving a park use permit may request extended hours for access to the restrooms, as long as the request was first put in the application. The restrooms at the concession stand, near lighted ball fields, are not considered public restrooms. The restrooms are to be locked except during such events that a park use permit has been issued to use and open the concession stand. To use and open the concession stand/restrooms must be on the application for park use permits.

(b) The hours of operation for city parks, the city square and city hall community center shall be as follows, unless otherwise modified in the park use permit:

    (1) Sunday through Thursday from 8:00 a.m. to 10:30 p.m.

    (2) Friday and Saturday from 8:00 a.m. to 12:30 a.m.

(c) The following exception shall apply, unless otherwise specifically modified in the use permit:

    (1) Events with loudspeakers, live music, or any activity which involves amplification equipment/devices of any kind shall not commence prior to 5:30 p.m., Monday through Friday, and shall terminate by 10:30 p.m., Monday through Thursday.

    (2) No activity which may disrupt normal city business/operations or neighboring residential properties shall commence prior to 5:30 p.m., Monday through Friday.

(d) The premises must be vacated and secured no later than 12:30 a.m., on Friday and Saturday, and by 10:30 p.m., Monday through Thursday.

(e) Exceptions to the provisions of this section may be considered by the city manager, upon recommendation by the parks and recreation director, on a case-by-case basis.

(Ord. No. 238, § 1, 10-18-1988; Ord. No. 330, art. III, § 13, 11-3-1998; Ord. No. 330-2, art. III, § 13, 3-7-2000; Ord. No. 330-3, art. II, § 13, 6-3-2003; Ord. No. 442, § 11, 3-2-2004; Ord. No. 461, § 11, 4-19-2005)

Sec. 26-82. - Noise regulations.

All events which will include loudspeakers, live music, or amplification equipment/devices of any kind must comply with chapter 23, article IV, pertaining to noise. The city reserves the right to ask that disruptive music be turned down.

(Ord. No. 442, § 12, 3-2-2004; Ord. No. 461, § 12, 4-19-2005)

Sec. 26-83. - Street closures.

Any non-city event which will require street closures, barricades, or diversion of traffic for any reason must be approved by city council at least 30 days in advance.

(Ord. No. 442, § 13, 3-2-2004; Ord. No. 461, § 13, 4-19-2005)

Sec. 26-84. - Prohibited activities.

The following activities are prohibited:

(1) *Animals in parks.* It shall be unlawful for any person exercising ownership, care, custody, or control of a pet or animal to allow such pet or animal, which animal has not been licensed as

required by law, upon any public property, playground, or park area located within the city. City leash laws apply within the confines of all city parks. Pets and/or animals are not permitted within the playscape areas, or any play areas that are designed for children. It shall also be unlawful for any person exercising ownership, care, custody or control of a pet or animal to allow such animal knowingly, intentional or negligently to deposit feces on any city property, unless said person removes the fees once deposited. Failure to carry feces removal supplies will be a violation of this section.

(2) *Bicycles, skateboards, rollerskates and all other modes of transportation, motorized and nonmotorized.* It shall be unlawful for any person to operate a bicycle, skateboard, roller skates or any other mode of transportation, motorized or nonmotorized in any city park upon any surface other than a vehicular road or path designed for that purpose. It shall also be unlawful to operate any mode of transportation described in this article with any wheels or tires off the surfaces. Bicyclists and skaters shall, at all times in any city park, operate their machines with reasonable regard for the safety of others, signal all turns, pass to the right of any vehicle they are overtaking and pass to the right of any vehicle they may be meeting. A bicyclist shall be permitted to wheel or push a bicycle by and over any grass area or wooded trail or in any pathway reserved for pedestrian use. If an operator's license is required to operate the vehicle on public streets, it shall be required to have same license to operate vehicle on park roads. All wheeled modes of transportation must keep all wheels on park roads or specifically designed and marked paths for that purpose.

(3) *Camping.* It shall be unlawful for any person to camp in any city park or playground, or set up any tent, shack, or other shelter, or lay out any bedroll or other sleeping equipment therein without first obtaining a permit pursuant to this article.

(4) *Fires.* It shall be unlawful for any person to build or attempt to build a fire except in authorized BBQ grills specially designed for outdoors. No person shall drop, throw or otherwise scatter lighted matches, burning cigarettes, cigars, tobacco paper or other inflammable materials within any city park.

(5) *Hunting.* It shall be unlawful in any city park for any person to hunt, trap or pursue wild life at any time. No person shall use, carry or possess any kind of trapping device in any city park. Animal control officers and their designees shall be excluded from this section when in the performance of their duties.

(6) *Littering.*

a. It shall be unlawful in any city park or city facility for any person to place or deposit any garbage, trash, discarded vegetation of any kind, or any other refuse except in receptacles designated for such purpose by the city. It shall be unlawful to place or deposit any garbage, trash, discarded vegetation of any kind or any other refuge in any city park except that which was generated within the city park grounds. City trash receptacles shall never be used to discard trash, garbage, vegetation or other refuge which is brought to the park for the purpose of disposal.

b. It shall be unlawful in any city park or city facility to fail to deposit any rubbish, refuse, garbage, or other material in receptacles provided in any public park or recreation area; where receptacles are not provided, persons shall carry rubbish or waste away from the park, and properly dispose of it elsewhere.

c. It shall be unlawful to throw, discharge, or otherwise place or cause to be placed in the waters of any swimming pool, foundation, or body of water in or adjacent to any public park or recreation area any substance, matter or thing, liquid or solid, which will or may result in the pollution of the water.

(7) *Golfing.* It shall be unlawful to participate in any golfing activity within city parks including hitting and/or discarding golf balls.

(8) *Glass containers.* It shall be unlawful for any person to bring any glass beverage container into any city park within the city, or to possess any glass beverage container in any such park.

(9) *Signs.* It shall be unlawful for any person to paste, glue, tack or otherwise post any signs, placard, advertisement or inscription whatsoever nor shall any person erect or cause to be erected any sign whatsoever on any public land or highway or roads adjacent to any park or within any park without permission from the city manager or his designate. This provision shall not apply to traffic control devices and/or signs authorized by the city council.

(10) *Swimming, boating and floating.* It shall be unlawful for any person to swim in or boat or float on any body of water at any city park except in the swimming pool and during designated hours.

(11) *Traffic.*

a. It shall be unlawful for any person:

1. To drive or operate any type of motor vehicle in any city park at a speed greater than indicated by appropriate traffic signs.

2. To operate a motor vehicle, recreational vehicle or motorcycle in any city park except on the roadway in such parks.

3. To park any motor vehicle in any city park other than on the side of the roadway or in areas designated for parking.

b. This subsection (11) shall not apply to the following persons if in the park or facility in their performance of their duties: peace officers, physicians responding to an emergency, ambulance operators and attendants, employees of the city and fire suppression personnel.

(12) *Tent stakes, etc.* Use of tent stakes or any items being inserted into the ground will be prohibited without express written permission from park director or authorized park personnel.

(Ord. No. 238, §§ 2, 3, 10-18-1988; Ord. No. 330, art. III, §§ 10—12, 14—19, 11-3-1998; Ord. No. 330-2, §§ 10—12, 14—19, 3-7-2000; Ord. No. 330-3, §§ 10—12, 14—16, 16.100, 17—19, 6-3-2003; Ord. No. 442, § 14, 3-2-2004; Ord. No. 461, § 14, 4-19-2005)

Sec. 26-85. - Prohibiting disruptive conduct.

(a) It shall be unlawful for any person to willfully interfere with, disrupt, or prevent the orderly conduct of persons utilizing the park facilities.

(b) It shall be unlawful for any person to refuse to leave the park area after being advised by a city police officer or employee that his conduct is disruptive to others and being directed by such city officer or employee to leave the park area.

(c) It shall be unlawful to conduct meetings or events which are detrimental to public health, safety and welfare or which create a nuisance within the parks. Examples of these activities are events which incite violence, riots, damage to persons or property and otherwise disturb the peace.

(Ord. No. 238, § 2, 10-18-1988; Ord. No. 330, art. III, § 20, 11-3-1998; Ord. No. 330-2, art. III, § 20, 3-7-2000; Ord. No. 330-3, art. II, § 20, 6-3-2003; Ord. No. 442, § 15, 3-2-2004; Ord. No. 461, § 15, 4-19-2005)

Sec. 26-86. - Alcoholic beverages.

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

Planned recreation or rallies means any gathering of a group of people for a function which is not a supervised or implemented activity of the city so as to include family reunions or wedding receptions. For

the purpose of this section, the designated area at any city park, city hall community center and city square gazebo shall be indicated on the permit.

(b) It shall be unlawful for any person to possess, use or consume any alcoholic beverage, as defined in the V.T.C.A., Alcoholic Beverage Code § 1.04, as amended, on, or upon any public property within 50 feet of any softball or baseball field, soccer or football field, or tennis court owned or operated by the city, which such field is being used for softball, baseball, soccer, football, or tennis purposes.

(c) It shall be unlawful for any person to possess, use, or consume any alcoholic beverage, as defined in the V.T.C.A., Alcoholic Beverage Code § 1.04, as amended, within the enclosed area of any swimming pool or upon public property within 50 feet of the enclosed area of any swimming pool that is being used for recreational purposes.

(d) Planned recreation or rallies as defined in subsection (a) of this section that contemplate the possession, use, or consumption of any alcoholic beverage, as defined in the V.T.C.A., Alcoholic Beverage Code § 1.04, as amended, may be held within a designated area of a city park, city hall, community center, or city square gazebo, upon the submission to and approval by the parks and recreation director. Such application shall be made at least 30 days preceding the event, which is the subject of the application. The application shall be submitted upon forms furnished by the city. The director shall provide written notification of any event approved under this section to the chief of police at least 14 days prior to the scheduled event.

(e) Nothing in this section shall be construed so as to prohibit the possession, use, or consumption of any alcoholic beverage, as defined in the Texas Alcoholic Beverage Code, as amended, in an area of a park appropriate for family picnics and that is not an area designated for another use, by a group while participating in a picnic or seated meal and consistent with requirements set forth in subsections (a) through (d) of this section.

(Ord. No. 238, § 5, 10-18-1988; Ord. No. 330, art. III, § 21, 11-3-1998; Ord. No. 330-2, art. III, § 21, 3-7-2000; Ord. No. 330-3, art. II, § 21, 6-3-2003; Ord. No. 442, § 16, 3-2-2004; Ord. No. 461, § 16, 4-19-2005)

Sec. 26-87. - Sports and sports equipment lost.

Any recreational items misplaced on city park grounds will become property of the city after one week if not claimed at the city administrative office.

(Ord. No. 442, § 17, 3-2-2004; Ord. No. 461, § 17, 4-19-2005)

Sec. 26-88. - Violators required to leave park.

If any person violates or fails to comply with any provision of this article, after having been advised by an authorized enforcement agent of the city to cease such violation or failure, the city may require that person to leave any public park, public recreation area, or public swimming pool.

(Ord. No. 442, § 18, 3-2-2004; Ord. No. 461, § 18, 4-19-2005)

Sec. 26-89. - Authority of park attendant to enforce regulations.

The park attendant, as well as any city police department officer, is authorized to issue warnings and citations to any person violating any rules or regulations applicable to the parks, swimming pools, or other city owned facilities. The park attendant is also designated as a park patrol officer.

(Ord. No. 442, § 19, 3-2-2004; Ord. No. 461, § 19, 4-19-2005)

Sec. 26-90. - Pool rules.

The rules for the city pool are as follows:

(1) Children under 12 years of age must be accompanied and supervised by a parent or competent person at least 18 years of age.

(2) Swimmers must wear proper attire (i.e., swimming suits or trunks). Diapers are not permitted in the pool. A clean tee shirt may be worn over proper swim attire.

(3) No running, fast walking, horseplay, or rough play is allowed in the pool complex. No pushing, throwing, dunking, splashing, riding on shoulders, chicken fighting or any games or actions that may endanger swimmers or sunbathers.

(4) Admission to the pool may be denied for any of these reasons:

   a. When an individual is apparently unable to care for themselves;

   b. Intoxication;

   c. Evidence of contagious disease;

   d. Open sores, wounds or a runny nose;

   e. Excessively brief or revealing swimsuits;

   f. Any condition or evidence which, in the opinion of the manager will jeopardize the health and safety of the pool patrons or general public.

(5) Pool managers may eject persons from the pool area for cause. In serious cases of misconduct, the parks and recreation department or city police should be called. In cases involving small children, the parents will be informed. No refunds of entry fee.

(6) Enforcement of rules.

   a. For a first offense, the rule is explained and a warning issued;

   b. For a second offense, the rule is explained and a one hour "time out" enforced;

   c. For a third offense, the person must leave for the day, with no refund of entry fee.

(7) No loitering around cashiers or lifeguards on duty, or lifeguard stands. No one, except one lifeguard, is allowed on or near lifeguard stands.

(8) The slides may be used only if user meets the height and weight requirements. Position to be maintained while going down the slide is lying flat on the back, feet first, arms crossed over chest and feet crossed. Sunglasses must be removed before using the slides. Parents may not ride on the slide with child on lap. Only one person at a time on the slide, steps or platform. Sliders should immediately swim to the nearest ladder or away from the slide area. No swimmers are allowed in the area of the pool near slides.

(9) State health code requires that all guests must shower before entering the pool.

(10) Swimmers are not to hang or pull on lifelines, ropes, nets or rims. Mistreatment or abuse of pool property or other patrons' personal property will not be tolerated. No swinging on ladders, playing on or near the ladders and no jumping off of ladders.

(11) No flips, somersaults, twists or belly flops allowed. Jump into pool facing forward and feet first only.

(12) Abusive or profane language will not be tolerated.

(13) Facemasks and goggles are permitted provided they are properly used and have nonbreakable lens. Facemasks and goggles are not permitted on the slides.

(14) No glass containers are allowed in the pool complex.

(15) No outside drinks or food is permitted. No ice chests are allowed in the pool complex. The only exception is for private parties or special use events.

(16) Smoking or tobacco use of any type is not allowed in the pool complex.

(17) No alcohol, in any form, is allowed in the pool complex.

(18) The city is not responsible for personal belongings. Please do not bring valuables to the pool complex. Locks left on pool lockers at the end of the day will be removed.

(19) The lifeguard on duty is always in charge.

(20) Children five years of age and younger must be within arm's reach of an adult while in the water.

(21) No animals will be allowed in the pool complex.

(22) The pool will be closed for thunderstorms at the first sign of lightning or thunder. The pool will reopen 30 minutes after the last thunder is heard.

(23) Flotation devices will be permitted at the manager's discretion. Inflatable beach balls, sponge balls, squirt guns, noodles or other pool toys are allowed in the pool during noncrowded conditions and at the manager's discretion.

(24) Any and all injuries occurring within the pool complex must be reported to the manager on duty immediately. Accident/incident reports must be filled out and turned in to the parks and recreation department daily.

(25) All infants and toddlers not potty trained will be required to wear swim diapers.

(26) Upon entry, every person will give their name, city of residence and phone number, even nonswimmers and sunbathers.

(27) Ten-minute safety breaks each hour. At ten minutes before the hour, each hour, all swimmers must get out of pool. This break is for the water quality to be checked, lifeguards to take a break and swimmers to take a break. The only people allowed in the pool during this break are adults in the swim lanes, swimming laps only.

(28) Certification requirement for adult supervision of day cares, summer camps and other agencies at a city aquatic facility.

a. A person who supervises children for an agency, day care facility, or camp at a city aquatic facility must first obtain the following certifications through a nationally recognized organization (such as American Red Cross or American Heart Association):

1. Basic water rescue with water module;

2. Child and adult cardiac pulmonary resuscitation; and

3. Standard first aid.

b. During any time that children under the care of an agency, day care center or camp are present at a city aquatic facility, at least two certified adults for the agency, day care center or camp must be present and responsible for the children they are supervising.

c. A day care center, agency or camp must file copies of the certifications for each adult supervisor with the city parks and recreation department prior to attending and using any city aquatic facility.

(29) Anyone age 18 and older may not supervise more than five children age six to twelve in addition to their own dependents.

(Ord. No. 461, § 20, 4-19-2005; Ord. No. 461-2, § 2, 11-15-2005; Ord. No. 461-3, § 2, 3-6-2006)

Sec. 26-91. - Lake Kyle Park rules.

The following rules and regulations shall apply to Lake Kyle Park and persons using the park or otherwise within the park shall comply with the following rules and regulations:

(1) Lake Kyle Park is open to the public during posted hours, which hours shall be set by the Parks Director and are subject to seasonal changes. Lake Kyle Park is closed to the public when the main access gate from Lehman Rd is closed.

(2) A person's presence in Lake Kyle Park when the park is closed constitutes criminal trespassing unless the person has obtained a permit to be present in the park while it is closed.

(3) No outside pets or animals, except registered service animals, are permitted within the boundaries of Lake Kyle Park.

(4) No smoking is permitted in Lake Kyle Park.

(5) No alcohol is permitted in Lake Kyle Park.

(6) No swimming is permitted in Lake Kyle Park.

(7) No hunting is permitted in Lake Kyle Park without a hunting permit obtained from Parks Department and Texas Parks & Wildlife Department (TPWD) or US Fish and Wildlife.

(8) No overnight parking or camping is permitted in Lake Kyle Park without first obtaining a permit from the parks department.

(9) No personal watercraft, with or without motors, is permitted on Lake Kyle Park without first obtaining a permit from the parks department.

(10) No fishing is permitted in Lake Kyle Park without first obtaining a valid Texas Parks and Wildlife Department freshwater fishing license, which license must be available for display to a city official or TPWD Official upon request. Exceptions and exemptions to this rule will be the same exceptions and exemptions permitted and allowed by Texas Parks and Wildlife Department.

(11) All Texas Parks and Wildlife Department rules and regulations governing freshwater fishing, as amended from time to time, will be enforced in Lake Kyle Park.

(12) Lake Kyle Park shall also be subject to the rules and regulations applicable to parks in general set forth in this chapter, as they are amended from time to time.

(Ord. No. 657, § 2, 5-17-2011)

Secs. 26-92—26-108. - Reserved.

ARTICLE V. - STANDARDS OF CARE FOR PARKS AND RECREATION DEPARTMENT PROGRAMS FOR CHILDREN

Sec. 26-109. - Authority.

The city council adopts these general administrative standards for the city parks and recreation department's youth recreational programs. These general administrative standards, or the failure in any instance or circumstance to comply with the same, shall not create any right, cause of action, or claim for damages on the part of any person.

(Ord. No. 330-3, art. II, § 23.01, 6-3-2003; Ord. No. 442, § 23.01, 3-2-2004; Ord. No. 461, § 23.01, 4-19-2005)

Sec. 26-110. - Administration.

(a) The parks and recreation department shall operate recreational programs in compliance with this section and the department's rules adopted under this article.

(b) The director or designee shall administer the programs.

(Ord. No. 330-3, art. II, § 23.03, 6-3-2003; Ord. No. 442, § 23.02, 3-2-2004; Ord. No. 461, § 23.02, 4-19-2005)

Sec. 26-111. - Enforcement.

(a) The parks and recreation director or designee may adopt standard operating procedures relating to the operation of the programs. If approved in writing by the city manager, a rule adopted under this section may be more restrictive than the minimum standards adopted by this article. These standard operating procedures may be subject to review of the city council.

(b) The director or designee shall monitor the programs for performance. Compliance with the standards adopted in this section and the rules will be a factor in determining and rating the performance of the programs.

(Ord. No. 330-3, art. II, § 23.04, 6-3-2003; Ord. No. 442, § 23.03, 3-2-2004; Ord. No. 461, § 23.03, 4-19-2005)

Sec. 26-112. - Staffing ratios.

(a) The targeted staff-to-participant ratios for recreational programs are:

(1) Programs.

a. General population.

Age	Number of Participants	Number of Staff
0—5	1—10	1
6—9	1—15	1
10—15	1—17	1

b. Programs for participants with disabilities.

Age	Number of Participants	Number of Staff
0—5	1—4	1
6—9	1—8	1

10—15	1—10	1

(2) Group swimming.

a. General population.

Age	Number of Participants	Number of Staff
Swimming pools		
0—5	1—10	1
6—9	1—15	1
10—15	1—17	1
Wading pools		
0—5	1—10	1
6—9	1—15	1
10—15	1—17	1

b. Programs for participants with disabilities.

Age	Number of Participants	Number of Staff
Swimming pools		
0—5	1—2	1
6—9	1—5	1
10—15	1—8	1
Wading pools		

	0—5	1—3	1
	6—9	1—7	1
	10—15	1—10	1

(b) Swimming activities sponsored by the parks and recreation department and taking place other than at city parks must be guarded by a certified lifeguard at a 1 to 30 ratio.

(c) There shall be at least one program staff member for each class or group enrolled in a recreational program.

(d) A volunteer who is as least 18 years old may be included in the staff-to-participant ratios.

(Ord. No. 330-3, art. II, § 23.05, 6-3-2003; Ord. No. 442, § 23.04, 3-2-2004; Ord. No. 461, § 23.04, 4-19-2005)

Sec. 26-113. - Staff qualifications.

(a) Except for camp counselors, program staff must be at least 18 years old, unless approved by the director. Camp counselors supervising youth ten years of age and under must be at least 18 years old. Camp counselors supervising youth 11 years of age and older must be at least 21 years old.

(b) All junior program staff must be at least 16 years old and should not be in charge of or left alone with a group of participants. Junior program staff may be included in the staff-to-participant ratio when working with program staff.

(c) All program staff should possess certification, or be pursuing certification, from a nationally recognized organization in the following areas:

(1) Community water safety, if applicable;

(2) Community CPR or equivalent; and

(3) First aid.

(Ord. No. 330-3, art. II, § 23.06, 6-3-2003; Ord. No. 442, § 23.05, 3-2-2004; Ord. No. 461, § 23.05, 4-19-2005)

Sec. 26-114. - Training.

(a) The parks and recreation director or designee shall establish training requirements for all program staff and volunteers who provide direct care or supervision to participants.

(b) Each program staff member who supervises children in swimming or other water activities occurring in more than two feet of water must be able to swim and shall be trained in community water safety. A person who is not counted in the minimum staff-to-participant ratio is not required to meet these requirements.

(Ord. No. 330-3, art. II, § 23.07, 6-3-2003; Ord. No. 442, § 23.06, 3-2-2004; Ord. No. 461, § 23.06, 4-19-2005)

Sec. 26-115. - Personnel restriction.

(a) A person may not be employed or serve as a volunteer in a recreational program if the person is known to have been arrested for, charged with, or convicted of:

(1) An offense classified as a felony under the Texas Controlled Substances Act, V.T.C.A., Health and Safety Code, ch. 481; or

(2) An offense listed in this subsection, which sections of the V.T.C.A., Penal Code are adopted as part of this section:

a. Title 5. Offenses against the person.

1. Chapter 19. Criminal homicide.

(i) Section 19.02, murder.

(ii) Section 19.03, capital murder.

(iii) Section 19.04, manslaughter.

(iv) Section 19.05, criminally negligent homicide.

2. Chapter 20. Kidnapping and unlawful restraint.

(i) Section 20.02, unlawful restraint.

(ii) Section 20.03, kidnapping.

(iii) Section 20.04, aggravated kidnapping.

3. Chapter 21. Sexual offenses.

(i) Section 21.06, homosexual conduct.

(ii) Section 21.07, public lewdness.

(iii) Section 21.11, indecency with a child.

4. Chapter 22. Assaultive offenses.

(i) Section 22.01, assault.

(ii) Section 22.011, sexual assault.

(iii) Section 22.021, aggravated sexual assault.

(iv) Section 22.04, injury to a child, elderly individual, or disabled individual.

(v) Section 22.041, abandoning or endangering a child.

(vi) Section 22.05, deadly conduct.

(vii) Section 22.07, terroristic threat.

(viii) Section 22.08, aiding suicide.

(ix) Section 22.09, tampering with consumer products.

(x) Section 22.10, leaving a child in a vehicle.

b. Title 6. Offenses against the family.

1. Chapter 25, Offenses against the family.

(i) Section 25.01, bigamy.

(ii) Section 25.02, prohibited sexual conduct.

(iii) Section 25.03, interference with child custody.

(iv) Section 25.031, agreement to abduct from custody.

(v) Section 25.04, enticing a child.

(vi) Section 25.06, harboring a runaway child.

(vii) Section 25.07, violation of protective order or magistrate's order.

(viii) Section 25.08, sale or purchase of a child.

(ix) Section 25.09, advertising for placement of a child.

c. Title 9. Offenses against public order and decency.

1. Chapter 42. Disorderly conduct and related offenses.

(i) Section 42.01, disorderly conduct.

(ii) Section 42.07, harassment.

(iii) Section 42.072, stalking.

2. Chapter 43. Public indecency.

(i) Subchapter A. Prostitution.

(A) Section 43.02, prostitution.

(B) Section 43.03, promotion of prostitution.

(C) Section 43.04, aggravated promotion of prostitution.

(D) Section 43.05, compelling prostitution.

(ii) Subchapter B. Obscenity.

(A) Section 43.22, obscene display or distribution.

(B) Section 43.23, obscenity.

(C) Section 43.24, sale, distribution, or display of harmful material to minor.

(D) Section 43.25, sexual performance by a child.

(E) Section 43.251, employment harmful to children.

(F) Section 43.26, possession or promotion of child pornography.

If such person has been arrested and found not guilty on the charge, or if the charge has been dismissed, such person shall not be automatically disqualified.

(b) The parks and recreation director or designee is authorized to obtain a criminal history record of any employee or volunteer working or seeking to work in a recreational program.

(Ord. No. 330-3, art. II, § 23.08, 6-3-2003; Ord. No. 442, § 23.07, app. II, 3-2-2004; Ord. No. 461, § 23.07, app. II, 4-19-2005)

Sec. 26-116. - Facility operation; physical environment.

(a) The parks and recreation department should not operate a recreational program at a facility unless the following requirements are met:

(1) The facility and equipment used in the program do not present any known fire, health or safety hazards and are kept free of accumulations of objectionable refuse and debris.

(2) The facility has undergone an annual safety inspection.

(3) The facility should generally be kept reasonably free of insects, rodents, and stray animals.

(4) If the facility is a building, the facility should be provided with clearly marked exits for use in emergency.

(5) A disaster and evacuation procedure should be posted at the facility.

(6) The facility should be used and maintained in accordance with any requirements established by city ordinances and written administrative directives approved by the city manager, and written orders issued by the fire marshal of the appropriate jurisdiction related to fire prevention. Fire drills should be conducted annually at each facility that is a building in which scheduled recreational programs are provided.

(7) First-aid kits and infection control kits should be available at the facility and taken to other locations at which the participants are engaged in program activities.

(8) First-aid guidelines should be on file, and available at the facility, and include:

a. CPR/rescue breathing sequence guidelines;

b. First-aid review; and

c. Medical emergency procedures.

(9) The facility must have a sufficient number of restrooms maintained in good repair and equipped for independent use by children, and designed to permit staff supervision as needed.

(b) Campgrounds and primitively maintained facilities shall comply with the requirements of subsection (a) of this section to the extent reasonably possible.

(Ord. No. 330-3, art. II, § 23.09, 6-3-2003; Ord. No. 442, § 23.08, 3-2-2004; Ord. No. 461, § 23.08, 4-19-2005)

Sec. 26-117. - Physical health standards.

(a) A child who is ill or injured shall be supervised until the parent or other authorized adult removes the child from the facility.

(b) A child whose illness or medical condition requires a degree of supervision by staff that would compromise the health or safety of the other participants must be kept separate from the other participants until the child is removed from the facility.

(c) A child whose illness or medical condition prevents the child from comfortably participating in program activities or places other participants at risk may not be admitted or readmitted to the facility for the duration of the illness or condition.

(d) In the case of an acute illness or injury to a child, staff shall call for an emergency vehicle to transport the child.

(Ord. No. 330-3, art. II, § 23.10, 6-3-2003; Ord. No. 442, § 23.09, 3-2-2004; Ord. No. 461, § 23.09, 4-19-2005)

Sec. 26-118. - Medication standards.

(a) A staff member may not administer medication to a participant without a written parental medication authorization. Staff may not knowingly administer medication that is not in its original container or that is past the expiration date on the container.

(b) A staff member may not administer injections. A staff member may not administer an amount of medication that is inconsistent with the prescribed dosage and parental direction.

(c) A staff member may not accept more than a one-week supply of medication for a participant and the member shall return the unused medication to the parent on the last program day of the week.

(d) Medication must be kept in a secured location that is not accessible by participants.

(e) A staff member shall maintain a medication log that includes the name of the child to whom the medication is administered, the time the medication is dispensed, and the name of the person dispensing the medication.

(Ord. No. 330-3, art. II, § 23.11, 6-3-2003; Ord. No. 442, § 23.10, 3-2-2004; Ord. No. 461, § 23.10, 4-19-2005)

Sec. 26-119. - Distribution of these standards.

(a) The parks and recreation department shall post and make available copies of these standards and the rules adopted pursuant to this section.

(b) The department shall notify the parents of each prospective participant that the recreational programs are not licensed by the state. The programs may not be advertised as child care facilities.

(Ord. No. 330-3, art. II, § 23.12, 6-3-2003; Ord. No. 442, § 23.11, 3-2-2004; Ord. No. 461, § 23.11, 4-19-2005)

Secs. 26-120—26-136. - Reserved.

ARTICLE VI. - RESERVING PARK FACILITIES

Sec. 26-137. - Use permits required.

No person, group or organization shall be entitled to exclusive use of any city park, recreational facility, city hall community center or city square gazebo, or any part thereof, owned or operated by the city unless such person, group or organization shall first obtain a permit for such exclusive use from the director or his designate. Groups of 25 people or more wishing to use, or reserve, or conduct a special event in any public park or recreation area within the city, including, but not limited to, carnivals, fairs, picnics, or barbecues, must obtain a group use permit from the city in accordance with this article.

(Ord. No. 330, art. IV, § 23, 11-3-1998; Ord. No. 330-2, art. III, § 23, 3-7-2000; Ord. No. 330-3, art. III, § 24, 6-3-2003; Ord. No. 442, § 24, 3-2-2004; Ord. No. 461, § 24, 4-19-2005)

Sec. 26-138. - Standards for issuance.

(a) Reservation/application procedures.

(1) A minimum of two weeks' notice shall be required to reserve sport field facilities or areas within a park for any function. Under special circumstances, the parks and recreation director may waive this requirement, if warranted.

(2) Reservations shall be on a first-come, first-serve basis.

(3) Reservations shall be required in writing upon a form to be provided by the city.

(4) Phone reservations will not be accepted. Confirmation of existing reservations by phone is encouraged.

(5) Reservations shall be accepted no earlier than six months prior to a specific date requested for the city hall, community center or city square gazebo, save and except annual events approved to be continuing annual events by the city council.

(6) An inventory form shall be properly filled out prior to and after any event by the user, and verified by the designated city staff.

(7) Users shall obtain keys, if necessary, from city staff on the day of the event. Keys shall be returned to city staff the next day or placed in the mail box receptacle at the front door, after securing the premises. Events scheduled for the weekend shall be planned to ensure keys are exchanged during hours that city staff is working.

(b) Any person, group or organization applying for a use permit shall pay a deposit as established by this article, unless waived by the city council, after review of and recommendation on the written request for waiver by the parks and recreation board. The director may waive fees for nonprofit community based or sponsored events open to the general public. No person, group or organization shall be entitled to the issuance of a permit. The director may refer matters to the parks and recreation board for review and recommendation to the city council if the director feels the proposed use is not appropriate. The director shall deny the permit if it affirmatively finds any of the following:

(1) The park or facility is to be used for any unlawful purpose;

(2) The time, place or manner of use of the park or facility is likely to cause substantial disturbance to persons occupying property adjoining the facility;

(3) The time, place or manner of use of the facility is likely to result in damage to city property;

(4) If the application for the permit is made such that there is not sufficient time to make the above determinations;

(5) The proposed activity or use will reasonably interfere with or detract from the general public's enjoyment of the park or recreation area;

(6) The proposed activity and use will reasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;

(7) The proposed activity will entail extraordinary or burdensome expense or personnel needs of the city;

(8) The facilities desired have been reserved for other use on the date and hour requested in the application; or

(9) The failure to clean a facility to the satisfaction of the parks and recreation board and/or parks and recreation director after a prior use of such facility regardless of whether such prior use was under a permit provided for herein, or not.

(Ord. No. 330, art. IV, § 24, 11-3-1998; Ord. No. 330-2, art. III, § 24, 3-7-2000; Ord. No. 330-3, art. III, § 25, 6-3-2003; Ord. No. 442, § 25, 3-2-2004; Ord. No. 461, § 25, 4-19-2005; Ord. No. 639, §§ 1, 5, 6, 11-3-2010; Ord. No. 854, § 3, 6-2-2015)

Sec. 26-139. - Contents of permits.

(a) The use permit shall contain the following information:

(1) The name, address and telephone number of the person, group or organization issued such permit;

(2) The dates and times for which such permit is effective;

(3) The facility or part of the facility which the permittee is authorized to use;

(4) The activity for which the permit is issued; and

(5) Such other conditions as the city manager and/or the parks and recreation director or their designate may deem appropriate to minimize disturbance to surrounding property, avoid traffic congestion, and to avoid destruction of city property.

(b) The items mentioned in subsection (a) of this section are not the only items which may be included in such permit but are the items which must be contained in such permit.

(Ord. No. 330, art. IV, § 25, 11-3-1998; Ord. No. 330-2, art. III, § 25, 3-7-2000; Ord. No. 330-3, art. III, § 26, 6-3-2003; Ord. No. 442, § 26, 3-2-2004; Ord. No. 461, § 26, 4-19-2005; Ord. No. 639, §§ 1, 7, 11-3-2010)

Sec. 26-140. - Permission required to use any playing fields.

(a) No person, group or organization shall be entitled to the exclusive use of, or shall play any game on, or otherwise make use of any playing field belonging to the city, unless written permission for using the field at the designated time is first obtained from the parks and recreation director. Use of fields on an ongoing basis must be formally approved by the city council. Fields not in use under the provisions of an issued permit are open to general use by the public.

(b) In granting or refusing such permission, the parks and recreation board, or the director, shall be guided by the following standards:

(1) Whether the field has already been reserved or applied for by someone else for approximately the same time;

(2) Whether the field is in proper condition for use;

(3) Whether the person applying for the field is of sufficient age and responsibility to exercise reasonable care in its use;

(4) Whether the proposed use and the hours requested are such that other users of the park or residents of the neighborhood will not be subjected to undue inconvenience.

(5) Any other factor which may reasonably bear upon the matter.

(Ord. No. 330-2, art. III, § 26, 3-7-2000; Ord. No. 330-3, art. III, § 27, 6-3-2003; Ord. No. 442, § 27, 3-2-2004; Ord. No. 461, § 27, 4-19-2005; Ord. No. 639, §§ 1, 8, 11-3-2010; Ord. No. 854, § 3, 6-2-2015)

Sec. 26-141. - Insurance; bond.

(a) The city and its agents disclaim all liability resulting from exclusive use of park, facilities and/or equipment for events which are open to the public. Sponsors of these public events must provide proof of insurance indemnifying the city against any liability arising from such exclusive use. However, closed events, such as but not limited to, birthday parties, family reunions and weddings, will not require the liability insurance. The proof of insurance is required at time permit is issued.

(b) The parks and recreation board may recommend and the parks and recreation director or his designate may require any applicant for a park or facilities use permit to post a bond in sufficient amount to indemnify the city against all loss, expense of special police protection, or anticipated damages to the park or its facilities or the expense of cleaning up the park or facility after the proposed activity. The posting of such bond, when requested, shall be condition precedent to the issuance of the park use permit, but such bond shall not be for an amount in excess of the anticipated city expenditures with record to the activity for which the bond is required.

(Ord. No. 330-2, art. III, § 27, 3-7-2000; Ord. No. 330-3, art. III, § 28, 6-3-2003; Ord. No. 442, § 28, 3-2-2004; Ord. No. 461, § 28, 4-19-2005; Ord. No. 639, §§ 1, 9, 11-3-2010; Ord. No. 854, § 3, 6-2-2015)

Sec. 26-142. - Revocation of permit.

A use permit may be revoked at any time by the parks and recreation director or his designate for reasons which may include, but are not limited to, misrepresentation of information given at the time of permit application, failure to comply with conditions on the permit, violation of this article or assignment of the permit to another party without the prior written permission of the parks and recreation director or his designate.

(Ord. No. 330-2, art. III, § 28, 3-7-2000; Ord. No. 330-3, art. III, § 29, 6-3-2003; Ord. No. 442, § 29, 3-2-2004; Ord. No. 461, § 29, 4-19-2005)

Sec. 26-143. - Display of permit.

The use permit must be displayed in a manner that a city agent can view it without effort. It must be displayed during the entire event, from times and dates listed on permit. Failure to display permit may result in revocation of the permit.

(Ord. No. 330-2, art. III, § 29, 3-7-2000; Ord. No. 330-3, art. III, § 30, 6-3-2003; Ord. No. 442, § 30, 3-2-2004; Ord. No. 461, § 30, 4-19-2005)

Sec. 26-144. - Appeal of denial.

(a) Any applicant denied a permit may appeal such denial to the city council by filing a request for review with the city secretary in writing within three days after written notice of such denial has been received. The city secretary shall place such denial on the agenda for the next regular meeting.

(b) Any organization or individual shall retain the right to appeal or request a waiver to any of the provisions of this article by filing a request with the city secretary for consideration by the city council. The decision of the city council shall be final.

(Ord. No. 330-2, art. III, § 30, 3-7-2000; Ord. No. 330-3, art. III, § 31, 6-3-2003; Ord. No. 442, § 31, 3-2-2004; Ord. No. 461, § 31, 4-19-2005; Ord. No. 639, §§ 1, 10, 11-3-2010)

Sec. 26-145. - Fees and deposits established.

(a) The fees and charges are as set forth in Appendix A to this Code.

(b) The director, at his sole discretion, may reduce or waive fees upon proper demonstration that the entity making the payment is a nonprofit organization and youth-oriented function with a limit of $1,000.00 total during a fiscal year and report documenting reductions and waivers.

(c) Deposits. A deposit established to protect the city against possible clean p, lost key, and repair expenses. The deposit is to be paid with cash, check or money order. Any refund of deposit will be repaid by the city with a city check within 30 working days after the event. The key is to be returned to the city the day after the event. It shall be an offense under this article for anyone to duplicate, retain or copy any such key. If the key is not returned, the entire deposit will be forfeited.

(d) All damages and cleanup charges, if any, will be deducted from the deposit prior to the city providing any refund as described under this subsection. Any and all damage or cleanup charges in excess of the deposit will be billed to the responsible person or organization for payment to the city. Should any

person or organization responsible fail to pay for any additional damage or cleanup charges within 15 days of notification by the city, that person or organization shall be barred from using the facility as deemed appropriate. Appeals pursuant to this policy shall be made to the city council. Council shall have final authority to waive or lower charges, to extend the deadline for payment, or to shorten or waive the penalty.

(Ord. No. 238, § 7, 10-18-1988; Ord. No. 330-2, art. III, § 31, 3-7-2000; Ord. No. 330-3, art. III, § 32, 6-3-2003; Ord. No. 442, § 32, 3-2-2004; Ord. No. 461, § 32, 4-19-2005; Ord. No. 639, §§ 1, 11, 11-3-2010; Ord. No. 685, § 2, 1-3-2012)

Sec. 26-146. - Fees.

(a) The following use fees as established in appendix A to this Code for the following uses:

(1) City hall community center (inside).

(2) City square (excludes community center and gazebo).

(3) City gazebo (with electricity).

(4) Sport field (softball or football).

(5) Concession stand with restrooms.

(6) Covered pavilion.

(7) City park area. The fee will depend on amount of space needed for the event. Proposals will need to be presented to the parks and recreation board and city council to establish the rate.

(8) City swimming pool.

a. Daily use fees.

1. City residents.

2. Non-city residents.

b. Season pass.

1. City residents.

2. Non-city residents.

3. City swimming pool, two-hour minimum, includes city lifeguards.

(b) *Deposits.* A deposit equal to estimated total expense of use permit issued, plus an amount as set forth in appendix A to this Code.

(Ord. No. 238, § 7, 10-18-1988; Ord. No. 442, app. I, 3-2-2004; Ord. No. 461, app. I, 4-19-2005; Ord. No. 461-1, 8-2-2005; Ord. No. 639, § 1, 11-3-2010; Ord. No. 854, § 3, 6-2-2015)

Chapter 29 - SIGN STANDARDS AND PERMITS[1]

Footnotes:

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Editor's note—Ord. No. 576, §§ 2, 3, adopted July 7, 2009, repealed former ch. 29, arts. I—V, in its entirety and enacted new regulations as herein set out. Former ch. 29 pertained to similar subject matter and derived from Ord. No. 356, §§ 1—14, 7-18-2000; Ord. No. 356-1, §§ 1, 2, 6-19-2001; Ord. No. 356-2, §§ 2, 3, 12-7-2004, and as amended by uncodified ordinances 552, §§ 2—7, 10-7-2008; Ord. No. 554, §§ 2—4, 12-2-2008.

State Law reference— Regulation of signs, V.T.C.A., Local Government Code § 216.001 et seq.

Sec. 29-1. - Purpose and goals.

(a) The purpose of this chapter is to provide uniform sign standards that perform the following:

(1) Promote a positive image of the city;

(2) Protect an important aspect of the economic base;

(3) Reduce the confusion and hazards that result from excessive and prolific use of sign displays;

(4) Ensure that no hazard is created due to collapse, wind, fire, collision, decay or abandonment; that no obstruction is created to fire fighting and police surveillance; and no traffic hazard is created by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs;

(5) Promote efficient transfer of information in sign message by providing that businesses and services may identify themselves; customers and other persons may locate a business or service; and persons exposed to signs are not overwhelmed by the number of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose; and

(6) Protect the public welfare and enhance the appearance an economic value of the landscape by providing signs that do not interfere with scenic views; do not create a nuisance to persons using the public right-of-ways; do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height, or movement; are not detrimental to land or property value; and, contribute to the special character of particular areas or districts within the city, helping the observer to understand the city and orient oneself within it.

(b) By recognizing this purpose, this chapter shall serve to strengthen the economic stability of business, cultural, and residential areas in the city; recognizing that visual clutter leads to decline in the community's appearance, in property values, and in the effectiveness of the signs.

(c) The goals of this chapter are to preserve the integrity of our community, promote pride in our neighborhoods, promote safe egress/ingress on public roadways, and encourage the effectiveness of signs.

(d) In the event of conflicts, actual or perceived, in the terms or requirements of this chapter, the most restrictive interpretation shall apply.

(Ord. No. 576, § 2(Attach., § 1), 7-7-2009)

Sec. 29-2. - First Amendment rights.

This chapter shall not be construed, applied, interpreted, nor enforced in a manner to violate the First Amendment rights of any person, and the building official shall seek the advice and recommendation of the city attorney prior to taking any action to enforce any provision of this ordinance with respect to any non-commercial sign or speech by any person.

(Ord. No. 576, § 2(Attach., § 2), 7-7-2009)

Sec. 29-3. - Enforcement.

(a) *Authority.* The building official and the code enforcement officer is hereby authorized and directed to enforce all the provisions of this chapter. For such purposes the building official has the powers of a code enforcement officer.

(b) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition which violates the provisions of this chapter, the building official may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this chapter. If such building or premises is occupied, the building official shall first present proper credentials and request entry; and if such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 576, § 2(Attach., § 3), 7-7-2009)

Sec. 29-4. - Definitions.

As used in this chapter, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless context clearly indicates otherwise:

Actively being built. The project or subdivision has continuous construction efforts underway to complete the project.

Activities and events sign. An enclosed, marquee-type sign to provide public buildings, churches (limited to places of worship only), and neighborhood associations, herein referred to as "the entity(ies)" the opportunity to post notices of meetings, activities, and other notices of interest to the entity or group it serves. The purpose of this sign is to facilitate communication within the community served by the public buildings and the churches, and within the larger neighborhoods of fifty homes or more represented by their neighborhood association.

Awning. A shelter constructed of materials on a supporting framework that projects from and is supported by the exterior wall of a building.

Banner. A sign made of fabric or any nonrigid material.

Berm (monument) sign. A sign where the frame of the sign face is set at grade with the ground as a monument or in an earthen berm. There is no clearance between the ground and the sign face.

Billboard. A sign advertising products not made, sold, used or served on the premises displaying such sign, or a sign having a height greater than 12 feet and a surface area greater than four hundred square feet.

Building official. Any officer or employee, or person, designated by the city manager to perform the duties set forth in this ordinance to be performed by the building official.

"Burma Shave" signs. A sign intended to provide information and direction to potential home buyers within a recorded subdivision in which new homes are actively being built.

Canopy. A freestanding structure with a roof but not walls.

Changeable electronic variable message sign. A sign which permits alteration of the sign's message or images by electronic means. This includes a sign using light-emitting diodes (LEDs) or other means of digital display to present a message or images.

Clearance (of a sign). The smallest vertical distance between the grade of the adjacent street curb and the lowest point of any sign, including framework and embellishments, but excluding sign supports.

Commercial. Locations where the principle use of the property is not classified as residential or multifamily.

Construction trade sign. A sign that identifies the architect, engineer, financial institution, builder, or other building trades contractor involved in a construction project at the site where the sign is located.

Curbline. An imaginary line drawn along the outermost part of back of the curb and gutter on either side of a public street, or, if there is no curb and gutter, along the outermost portion of the paved roadway, or if there is no paved roadway, along the edge of the traveled portion of the roadway.

Directional signs, traffic. An on-premise sign giving directions, instructions, or facility information and which may contain the name or logo of an establishment and no advertising copy, e.g., parking or exit and entrance signs.

Electrical sign. A sign containing electrical wiring, connections, or fixtures, or utilizing electric current, but not including a sign illuminated by an exterior light source.

Electronic message sign. A sign that includes provisions for programmable electronic message changes.

Facade. All building wall elevations, including any vertical extension of the building wall (parapet), but not including any part of the building roof.

Face or *surface.* The surface of the sign upon, against, or though which the message is displayed or illustrated on the sign.

Flashing. To light intermittently. To change colors intermittently in order to achieve a flashing, fluttering, scrolling, undulating, or rolling affect (i.e. LED displays). Scrolling of text in a single color is not considered to be flashing.

Freestanding sign. A sign that is not attached to a building but is permanently attached to the ground.

Frontage. A boundary line separating the public right-of-way from the lot.

Future development signs (temporary construction, real estate, or development sign). A freestanding or wall sign advertising the construction, remodeling, development, sale, or lease of a building or the land on which the sign is located.

Government sign. A sign installed, maintained, or used:

(1) By a city, county, state or the federal government, required or specifically authorized for the public purpose pursuant to regulations promulgated by the state or federal government;

(2) By the City of Kyle.

Gross surface area. The entire area within a single continuous perimeter enclosing the extreme limits of each sign. A sign having two surfaces shall be considered a single sign if both the surfaces are located back to back. In the event two or more signs share a single structure, i.e., directory signs, or signs on v-shaped structures, each sign or panel shall be considered separately for square footage purposes, provided that the combined area of such signs cannot exceed the total square footage allowed on a single sign.

Height (of a sign). The vertical distance between the finished grade before the sign or grade of the adjacent street curb, whichever is greater, measured to the highest point of the sign.

Human sign. A sign held by or attached to a human for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity. A person dressed in a costume for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity shall constitute a human sign. Human signs do not include T-shirts, hats, or other similar clothing.

Incidental sign. A small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises (e.g. a credit card sign or a sign indicating hours of business).

Inflatable sign. Any balloon or other device which is inflated by air or other gas and displayed outdoors. Inflatable structures primarily designed for recreational use shall not be considered to be a sign as, for example: slides, swimming pools or space walks.

Information signs. Includes bulletin boards, changeable copy directories, or signs relating solely to publicly owned institutions (city, county, state, school district) intended for use by the institution on which the sign is located.

Intersection. A place where two roads meet or form a junction. For purposes of this ordinance, sign setback distance is measured from the intersections of the curblines of two streets.

Kiosk sign or *kiosk.* A free-standing sign structure located in or adjacent to public right-of-way authorized by written agreement approved by the City Council that features a City of Kyle identification panel at the top of each structure, and displays directional information to new homes, independent school district facilities, and municipal or community events or facilities.

Marquee. A permanent roof-like structure or awning or rigid materials attached from, supported by, and extending from the facade of a building, including a false "mansard roof."

Memorial signs or tablets. Includes freestanding historical markers in accordance with state historical standards, and/or cornerstones with names and dates of construction of a building when cut into a building surface or inlaid upon it to become part of the building.

Menu boards. Freestanding or wall signs used for the purpose of informing patrons of food, which may be purchased on the premises.

Model homes sign. A temporary real estate sign placed in front of a group of model homes that is removed from the premises upon sale of the last model.

Multifamily. Locations that contain three (3) or more attached units designed for residential use including town homes and condominiums.

Multitenant center sign. A sign advertising two or more retail, wholesale, business, industrial, or professional uses (not necessarily under single ownership) utilizing common facilities including off-street parking, access, or landscaping.

Multitenant center identification sign. The portion of the sign that identifies the general name of the center or development as a whole. The sign shall include only the name and address of the development.

Nameplates. Nonelectrical, on-premises signs that communicate only the name of the occupant of the address of the premises.

Nonconforming sign. A sign that was lawfully installed at its current location prior to the adoption or amendment of this ordinance, but that does not comply with the present requirements of this ordinance.

Off-premises sign. A sign referring to goods, products or services provided at a location other than that which the sign occupies.

On-premises sign. A sign identifying or advertising the business, person, activity, goods, products, or services located on the site where the sign is installed, or that directs persons to a location on that site.

Parapet. The extension of a false front or wall above a roofline.

Point-of-sale sign. A sign advertising a retail item accompanying its display (e.g., an advertisement on a product dispenser).

Political sign. A sign advertising a political candidate or party for elective office or that advertises primarily a political message.

Portable signs. Signs not permanently attached to the ground or other permanent structure, or a sign designed to be transported by wheels including, but not limited to signs which are mounted on skids, trailers, wheels; signs converted to A- or A-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising.

Primary beneficiary. Any person who benefits from the installation, placement, construction, or alteration of a sign, including the owner or tenant of the property upon which the sign is located and the owner or operator of the business, product, service, or activity that is the subject of the sign.

Private traffic-control signs. Small traffic directional signs indicating interior circulation of parking areas on site, warn of obstacles or overhead clearance, or designate permissible parking.

Projecting signs. A sign used to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached.

Pylon signs. Freestanding signs that are supported by a structure extending from and permanently attached to the ground by a foundation or footing, with a clearance between the ground and the sign face. Pylon signs are not considered monument signs.

Real estate signs. Temporary signs advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Residential. Locations where the principal use of the property is for one and two-family dwelling units.

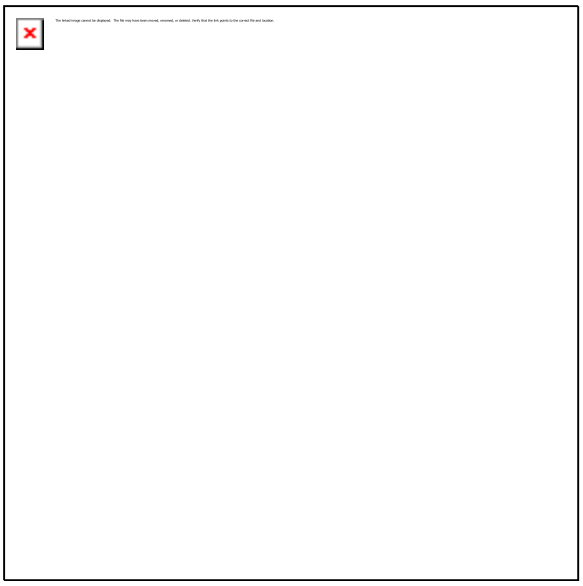
Roof sign. Any sign installed over or on the roof of a building.

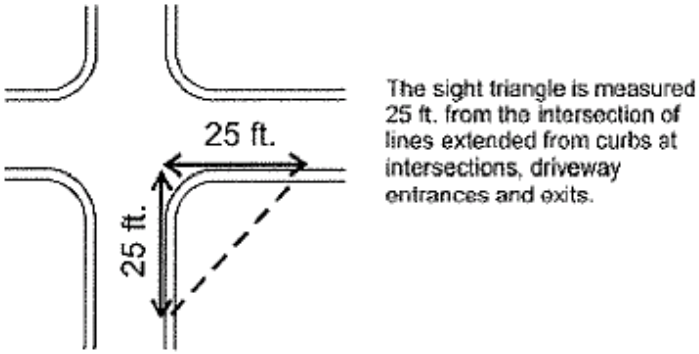
Sign. Any surface, display, design, light device, painting, drawing, message, plaque, poster, billboard or other device visible from the public right-of-way on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected, outlined or attached in any manner whatsoever that are intended or used to advertise, inform, or attract the attention of persons both on and not on that premise, excluding those lights and landscape features which display words or symbols as holiday decorations. The term "sign" also includes the supporting structure of the sign.

Sign area. Includes all lettering, wording, logos, design, symbols, framing, roofing, and cabinets, or modules, calculated according to the provisions established in this ordinance.

Sign panel. An individual sign placard displaying directional information on a sign kiosk.

Sight triangle. The area of vehicle visibility at all street intersections, which shall be clear of all obstructions that may present a hazard to traffic. The visual triangle for a street shall be described as a 45-degree triangle where the right angle sides measure at the very minimum twenty-five (25) feet. The visibility triangle shall be measured from a point at which the projected curb lines intersect.





Subdivision. For purposes of this ordinance, the subdivision in its entirety, not a phase, section, village, unit, or product line.

Subdivision development entrance signs. Defined as:

(1) Primary entrance signs;

(2) Secondary entrance signs; and

(3) Tertiary entrance signs;

and are used to define various entries of the subdivision.

Temporary sign. Any sign that is used temporarily and is not permanently mounted (i.e. on stakes or posts), and is constructed of cardboard, foam board, cloth, canvas, fabric, plywood, or similar lightweight material. A portable sign is not a temporary sign.

Temporary wall signs. An on-premises wall sign of a nonpermanent nature advertising a special event, sale, product, or service.

Wall sign. A sign attached to the facade of a building or a canopy. Wall signs include signs on or affixed to walls, windows, awnings, or other parts of the exterior of a building or canopy.

Window or door surface signs. Signs installed on or in a window or door.

Work of art. Sculpture, fountain, or similar object, and containing no reference to or image of a business or its logo, is not considered as a sign.

(Ord. No. 576, § 2(Attach., § 4), 7-7-2009)

Sec. 29-5. - Applicability.

(a) All land within the city and its extraterritorial jurisdiction (ETJ) is subject to compliance with this chapter.

(b) The sections, provisions, and regulations set forth in this ordinance shall apply to the control, use, installation, regulation, licensing and permitting of signs within the city and its ETJ.

(Ord. No. 576, § 2(Attach., § 5), 7-7-2009)

Sec. 29-6. - Permit required.

(a) *Permit required.* It shall be unlawful for any person to erect, construct, enlarge, move or convert any sign within the city or its extraterritorial jurisdiction (ETJ) without first obtaining a sign permit from and paying a permit fee unless specifically provided otherwise in this chapter. A change of business requires a new sign permit.

(b) *Compliance required.* No person may install a sign or structurally alter an existing sign except in conformity with this ordinance and other applicable federal, state, and local regulations, including, but not limited to, the building code, electrical code, and other applicable ordinances of the city. In the event of a conflict between this chapter and other laws, the most restrictive standards applies.

(c) *Permit not required.* Permits shall not be required for the following signs, provided, however, that such signs shall otherwise comply with all applicable sections of this chapter:

  (1) On-site real estate "for sale" signs not exceeding eight square feet; provided that a permit is required for a model home sign and future development signs.

  (2) Political signs located on private property with the consent of the property owner that do not exceed 36 square feet in area, are not more than eight feet in height, are not illuminated, and do not have any moving elements.

  (3) Government signs, including traffic signs, private traffic-control signs, regulation address numerals, and memorial signs.

  (4) Construction trade signs.

  (5) Garage sale signs.

  (6) No sign permit is required for a change of copy on any sign, or for the repainting, cleaning and other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified.

(d) *Primary beneficiary.* The primary beneficiary of any sign installed, moved, structurally altered, structurally repaired, maintained, or used in violation of this ordinance shall be deemed responsible for the violation of this chapter.

(e) *Building official authority.* The building official shall enforce and implement the terms of this chapter, including without limitation:

  (1) Issuing permits and collecting the fees required by this chapter;

  (2) Conducting appropriate inspections to insure compliance with this chapter;

  (3) Instituting legal proceedings, including suits for injunctive relief when necessary, to insure compliance with this chapter; and

  (4) Investigating complaints of alleged violations of this chapter.

(Ord. No. 576, § 2(Attach., § 6), 7-7-2009)

Sec. 29-7. - Application for permit.

(a) An application for a sign permit must be accompanied by the permit fee and shall include such information as is necessary to assure compliance with all appropriate laws and regulations of the city, including:

(1) The name and address of the owner of the sign.

(2) The name and address of the owner, and if different from the owner, the person in possession of the premises where the sign is located or to be located.

(3) Clear and legible drawings with description definitely showing location of the sign which is the subject of the permit and all existing signs whose construction requires permits, when such signs are on the same premises.

(4) Scale drawings showing the site plan location, dimensions, construction supports, sizes, foundation, electrical wiring, and components, materials of the sign and method of attachment and character of structure members to which attachment is to be made. The design, quality, materials and loading shall conform to the requirements of the building code. Projection, wall and temporary signs not over six square feet in area, constructed of metal or other noncombustible material, attached securely to a building or structure and not projecting more than 18 inches beyond the building wall, structure, building line or property line, shall not require an engineer certification as to its soundness. Wind pressure and dead loads shall be shown where deemed appropriate, and the building official may require structural drawings designed and sealed by a civil engineer registered by the State of Texas when it cannot otherwise be determined that the sign will be structurally sound. If building official, engineering data certified by a licensed structural engineer shall be supplied on any submitted plans.

(5) Any electrical permit required and issued for said sign.

(6) For free-standing signs, documentation demonstrating that the applicant holds general liability insurance in the amount of one million dollars. No license or permit for the installation, erection and maintenance of a freestanding sign shall be issued to any person, firm or corporation until such person, firm or corporation has filed with the building official a certificate of Insurance verifying general liability insurance in the amount of $1 million.

(7) A surety bond in the sum of $5,000.00 for the installation and erection of the sign payable to the city and providing for the indemnification of the city and any and all damages or liability which may accrue against the city for a period of one (1) year after installation, erection, demolition, repair, removal, or defects in or collapse of any sign.

(8) The permit fee.

(b) Fees for sign permits shall be as specified in appendix A, and calculations of the square footage shall include decorative trim and borders, but exclude supports, except when otherwise specified in this chapter.

(c) Expiration of sign permits:

(1) A sign permit shall expire and become void unless a request for final inspection of the sign is made no later than 180 days after the date the permit is issued.

(2) A single extension 90-day extension of the permit may be granted by the building official if requested before the expiration of the permit. Final inspection must be requested before the end of the extension period or the permit becomes void.

(Ord. No. 576, § 2(Attach., § 7), 7-7-2009)

Sec. 29-8. - Calculation of sign area.

(a) *Sign area measurement.* Sign area for all sign types is measured as follows:

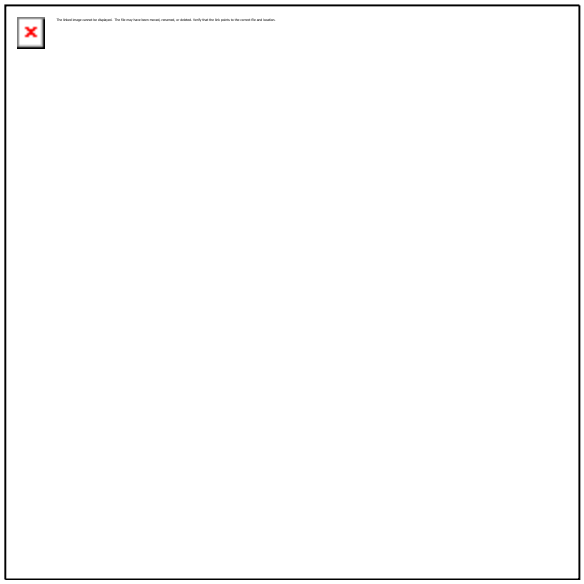
(1) Sign copy mounted, affixed, or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy, is measured as that area contained within the sum of the smallest rectangle(s) that will enclose both the sign copy and the background.

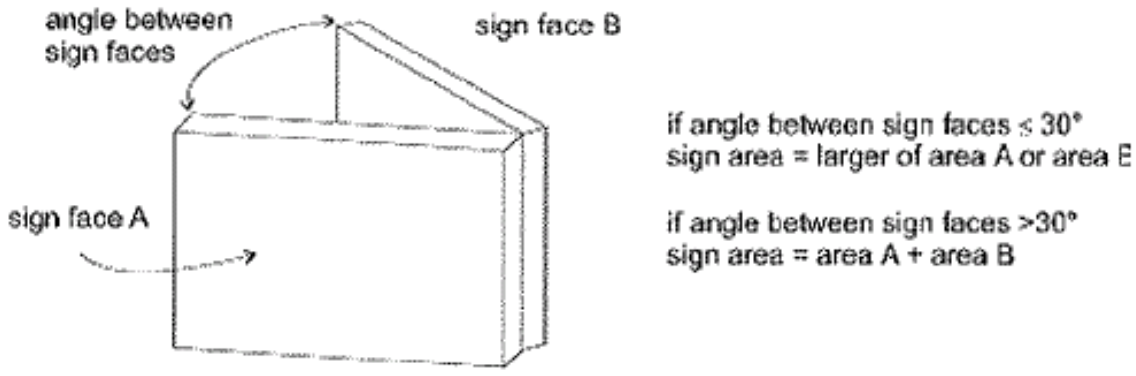
(2) Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or surface of another structure that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy, is measured as a sum of the smallest rectangle(s) that will enclose each word and each graphic in the total sign.

(3) Sign copy mounted, affixed, or painted on an illuminated surface or illuminated element of a building or structure, is measured as the entire illuminated surface or illuminated element which contains sign copy. Such elements may include, but are not limited to lit canopy fascia signs, cabinet signs, and/or interior lit awnings. Support structures and frames of a freestanding sign shall count toward the sign area.

(4) Multiface signs are measured as follows:

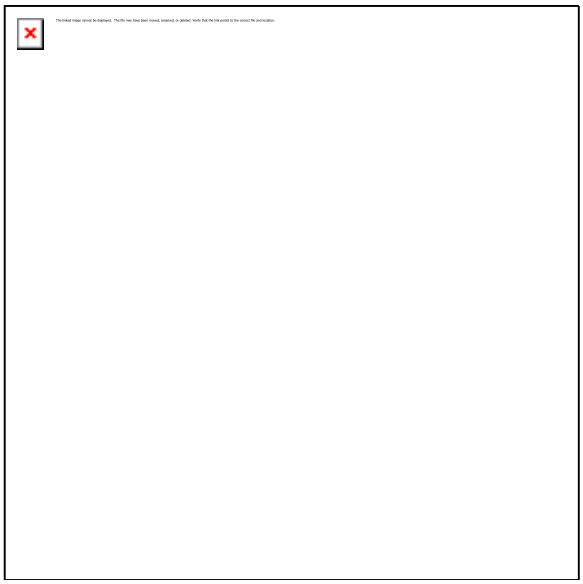
a. *Two (2) face signs.* If the interior angle between the two sign faces is 30 degrees or less, the sign area is of one sign face only. If the angle between the two sign faces is greater than 30 degrees, the sign area is the sum of the areas of the two sign faces.

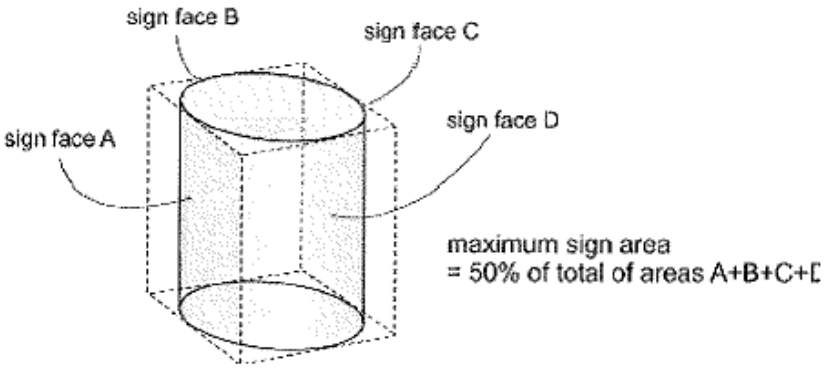




b. Three (3) or four (4) face signs. The sign area is 50 percent of the sum of the areas of all sign faces.

(5) Spherical, free-form, sculptural, or other nonplanar sign area is 50 percent of the sum of the areas using only the four vertical sides of the smallest four-sided polyhedron that will encompass the sign structure. Signs with greater than four faces are prohibited.





(6) Freestanding sign area is the entire advertising area of a sign, including framing, trim or molding and the supporting frame for monument signs and including the air space between the supporting structures for freestanding signs.

(b) *Sign height measurement.* Sign height is measured as follows:

(1) *Freestanding signs.* The height of a freestanding sign shall be computed as the distance from the base of the sign at finished grade to the top of the highest attached component of the sign. The height of any monument sign base or other structure erected to support or adorn the sign is measured as part of the sign height. If a sign is located on a mound, berm, or other raised area for the sole purpose of increasing the height of the sign, the height of the mound, berm, or other raised area shall be included in the height of the sign.

(2) *Building mounted signs.* The height of wall, fascia, mansard, parapet or other building mounted signs is the vertical distance measured from the base of the wall on which the sign is located to the top of the sign or sign structure.

(Ord. No. 576, § 2(Attach., § 8), 7-7-2009)

Sec. 29-9. - Prohibited signs.

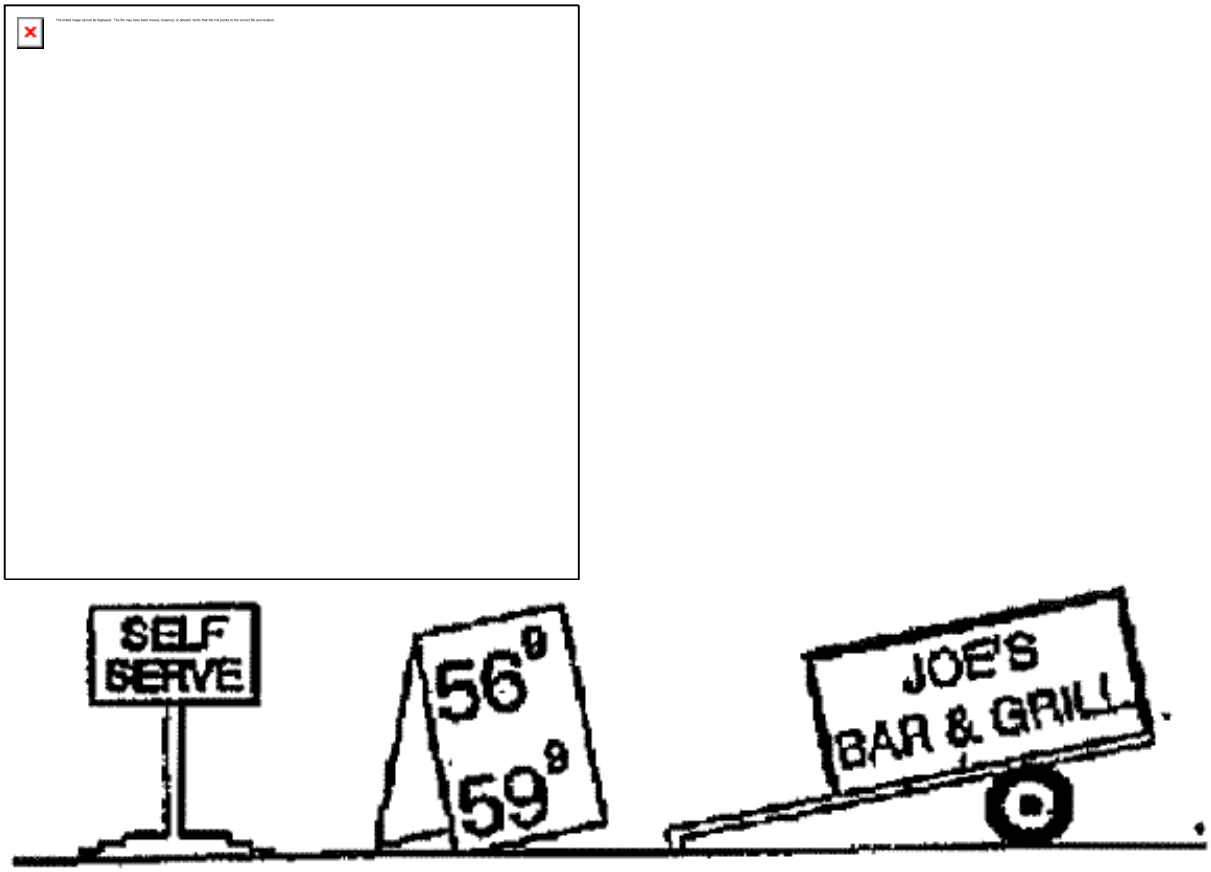
The following signs are prohibited from installation, construction, repair, alteration, location or relocation within the city, except as otherwise permitted in this chapter:

(1) Signs with flashing lights, revolving beacon lights, fluttering, undulating, swinging, or otherwise moving parts. For purposes of this ordinance, an electronically controlled changeable-copy sign is not considered a flashing sign unless it directly falls under the definition of "flashing" as defined in this chapter.

(2) Billboards.

(3) Off-premises signs, except for kiosks and any other sign specifically authorized in this ordinance that are compliant with this ordinance.

(4) Portable signs.



(5) Temporary signs except as specified in section 29-20.

(6) Signs placed on a vehicle or trailer that is parked or located for the primary purpose of displaying a sign shall be permitted.

(7) Roof signs.

(8) Signs painted on fences or roofs.

(9) Pylon signs, except as specifically provided for in section 29-16 and section 29-17.

(10) Inflatable signs larger than eight feet in any dimension.

(11) Light emitting diode (LED) displays or signs, with the limited exception of those signs that comply with subsections 29-14(e), 29-15(e), 29-16(k), 29-17(b)(6), and 29-17(c)(2)d. Such signs, when authorized, shall comply fully with the requirements of this chapter. Electronic message signs are allowed only as part of the monument sign and can have a display size no larger than 12 inches

by 72 inches, except as provided otherwise in subsections 29-14(e), 29-15(e), 29-16(k), 29-17(b)(6), and 29-17(c)(2)d. Messages shall be programmed to remain static for a period of not less than 60 seconds. Messages shall not be programmed to flash.

(Ord. No. 576, § 2(Attach., § 9), 7-7-2009; Ord. No. 667, §§ 2, 3, 8-2-2011; Ord. No. 753, § 1, 11-6-2013; Ord. No. 846, § 1, 5-5-2015)

Sec. 29-10. - Signs exempt from these regulations.

The following types of signs shall be exempt from the permitting provisions of this ordinance. However, regulations regarding sign location in a public right-of-way or public access easement shall apply. It is further specifically provided that the building official may, based upon the size, materials used in construction and other relevant factors, require the owner of any sign to show evidence of structural soundness and compliance with the safety requirements of this chapter.

(1) Any sign erected by or under the authority of the city on property owned by the city.

(2) Street identification signs, public notices, and warning signs installed by any city, county, state or federal agency.

(3) Historical markers placed by a city, county, state or national historical preservation organization.

(4) Official vehicle inspection station signs, holiday lights and decorations, or works of art.

(5) Signs located on-premises or inside a building and which are not displayed so as to be legible from a public street, including, but not limited to, such signs as credit card decals, hours of operation signs, emergency contact information, and barber poles.

(6) On-site traffic control signs on commercial properties, such as stop, yield, and similar traffic control signs containing no commercial message.

(7) "No parking" or "towing" signs authorized by city ordinance.

(8) "No dumping allowed" signs posted to deter illegal dumping not exceeding two square feet.

(9) Underground utility warning signs not exceeding one square foot in size and similar safety signs.

(10) Signs on railway property, which references the operation of such railway.

(11) Security Warning, neighborhood watch or crime watch signs under two square feet.

(12) Flags, emblems and insignia of any governmental body, including the official flag of a nation or of a state is not a sign subject to this chapter. Notwithstanding the preceding sentence, a national or state flag shall not be installed, maintained, or used in a manner that would make that flag a hazardous sign if it were a commercial flag.

(13) Corporate flags displayed on a freestanding pole, which do not exceed 35 feet in height. The flag shall not exceed 32 square feet in area. The flagpole shall be setback a minimum of 20 feet from the front property line and eight feet from the side property line.

(14) Hand held signs or signs, symbols or displays on persons or animals, except for signs that qualify as human signs.

(15) Signs located on mail boxes, newspaper vending machines and curbside residential newspaper holders which identify the owner and address of the premises or the name of the newspaper sold or subscribed to; provided that such devices are not placed so as to interfere with the safe movement of pedestrians or vehicular traffic.

(16) Signs located on outdoor machines, devices, or equipment which display the trademark, trade name, manufacturer, cost of operating or service instructions or similar information, but do not advertise the business where located. This exemption includes, but is not limited to signs on coin-operated vending machines, fuel dispensing pumps, telephone facilities, automatic teller

machines, automatic vacuum cleaners, amusement rides and similar machines, devices or equipment.

(Ord. No. 576, § 2(Attach., § 10), 7-7-2009)

Sec. 29-11. - Sign categories.

For purposes of this chapter, all property within the city's sign ordinance jurisdiction is classified into a sign category. Those properties within the city's limits are classified based upon their zoning district classification. Those properties located within the ETJ shall be classified into a sign category by the building official based upon the existing or proposed use and the zoning district most closely associated with that use. Classification into a sign category is for the purposes of signage only and does not establish vested use rights towards the assignment of zoning should the property be annexed into the city limits. In overlapping areas, the most restrictive sign regulations will apply:

(1) Single-family residential sign category includes any residential site in an agricultural (A), manufactured housing (M-1, M-2, M-3), or any single-family (SF, R-1A), townhouse (R-1-T) zoning districts or equivalent land use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(2) Multifamily residential sign category includes any site in a multifamily (R-2, R-1-C, R-3-1, R-3-2, R-3-3) zoning districts or equivalent use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(3) Commercial sign category includes any site in retail services (RS), warehouse (W), construction manufacturing (CM), entertainment (E), and transportation utilities (TU) zoning districts or equivalent use in the ETJ and the permitted nonresidential uses identified in the city's residential and multifamily zoning districts.

(4) Central business district sign category includes any site that is located within the boundaries of the central business district (CBD) zoning district.

(Ord. No. 576, § 2(Attach., § 4), 7-7-2009)

Sec. 29-12. - General provisions.

(a) *Uniform signs in multi-tenant/multi-business developments.* Wall signs displayed by two or more businesses using common parking facilities shall be uniform in construction (i.e. cabinets, channel letters, plaques) and lighting (i.e. direct, indirect).

(b) *Street address.* All freestanding signs, either berm or monument signs, shall include the street address. The street address shall not be included in the calculation of the sign area, except in such case that the street address is also the name of the center, business, or development, or in such case that the street address exceeds six square feet in size.

(c) *Setback.* A minimum setback of at least five feet from any property line is required for all signs. A sign installed in compliance with this ordinance is not required to meet building setback requirements established in a separate city ordinance; however, no sign or sign support, other than a wall sign, may be installed less than 12 feet from the public right-of-way unless it is:

(1) Less 30 inches in height above street pavement grade;

(2) Has a clearance of more than nine feet above pavement grade, provided that the sign shall have a clearance of more than 12 feet when located over a driveway;

(3) Does not extend into or over the public right-of-way unless specifically authorized under this chapter.

(d) *Visibility.* Signs shall not be constructed or installed in a manner that would interfere with visibility, create a traffic hazard, or be confused with any traffic control sign or signal.

(e) *Structural integrity.* Any sign as defined in this ordinance, shall be designed and constructed to withstand wind pressures and receive dead loads as required in the building code adopted by the city. Any sign, other than a wall sign, shall be designed, installed, and maintained so that it will withstand a horizontal pressure of 30 pounds per square foot of exposed surface.

(f) *Maximum height.* No sign shall exceed the maximum height provided for in this chapter. In determining the maximum height of a sign, no sign shall be located on a mound where the surrounding grade has been altered by more than 18 inches for purposes of artificially increasing the overall height of a sign above that allowed by the height regulations in this chapter.

(g) *Historic district.* Signs on premises within a historic district designated by the city shall be subject to the issuance of a certificate of appropriateness by the state or local historic preservation commission.

(h) *Public utility facilities.* New signs and signs being structurally altered shall maintain clearance from public utility facilities, shall not substantially interfere with drainage, and shall not be located in a utility or drainage easement. The minimum clearance from electrical lines shall be as follows: for service lines, except those serving a sign, 5½ feet horizontal and six feet vertical clearance; for distribution lines, 7½ feet horizontal and eight feet vertical clearance.

(i) *Parking, driveways, sidewalks.* Only signs required in the interest of public safety may occupy a required off-street parking or loading space or obstruct any driveway or sidewalk, except as specifically authorized herein.

(j) *Public property.*

(1) No sign shall be located on or project over public property or a street right-of-way except governmental signs, bench signs, and temporary banner signs that comply with this chapter, except where a provision in this ordinance allows such location, or with the approval by the city council of a license agreement. No portion of a freestanding sign shall be permitted to extend into the public right-of-way.

(2) No person shall, either directly or indirectly, cause or authorize a sign to be installed, used, or maintained on any utility pole, traffic signal pole, traffic signal controller box, tree, public bench, street light, or any other structure located on or over any public property or public right-of-way, located within the city's planning jurisdiction, except as authorized by this chapter.

(Ord. No. 576, § 2(Attach., § 12), 7-7-2009)

Sec. 29-13. - Illumination.

(a) *Lighting.* Sign lighting shall be installed to protect the driver of a vehicle from dangerous glare and to maintain visual clearance of all official traffic signs, signals and devices.

(b) *Glare.* Signs shall be designed, located, shielded, and directed to prevent the casting of glare or direct light from artificial illumination, upon adjacent public right-of-way and surrounding property.

(c) *Bare bulb illumination.* Bare bulb illumination is prohibited within 150 feet of any premises containing a residential use, and in other cases is limited to 25-watt bulbs at night and 33-watt bulbs during daylight hours.

(d) *Brightness limitations.* The lighting intensity of a sign, whether resulting from internal illumination or external illumination, shall not exceed 75 foot candles when measured with a standard light meter perpendicular to the face of the sign from a distance equal to the most narrow dimension of the sign.

(e) *Electrical permit.* All signs in which electrical wiring and connections are to be used shall be subject to the applicable provisions of the city's electrical codes.

(f) *Central business sign category.* In the central business sign category, neon or phosphorescent lighting shall not exceed 10 percent of the total signage allowed and may only be located in a window.

(Ord. No. 576, § 2(Attach., § 13), 7-7-2009)

Sec. 29-14. - Sign regulations relating to single-family residential sign category.

(a) *General.* No sign other than a temporary event directional sign (such as a garage sale sign, event sign, or a real estate sign) or a political sign that comply with subsection 29-6(c)(2) shall be erected on property used for single-family or duplex dwellings.

(b) *Burma shave signs.*

(1) Not more than eight on-site subdivision burma shave signs may be permitted for each recorded subdivision not to exceed four per entry into the primary entrance of the subdivision.

(2) A burma shave sign shall not exceed 16 square feet of total sign area on one side and both sides of the sign may contain signage. The sign shall not exceed six feet in height and be located out of the right-of-way in a manner that does not obstruct the visibility of vehicle ingress/egress from surrounding streets and/or properties.

(c) *Model home signs.* Model home signs are limited to a 32 square foot sign face, a height of eight feet, and to one sign for each cluster of model homes. A nameplate sign that identifies the individual product name is exempt under this subsection if it does not exceed three square feet in sign area. Signs shall be placed by permit only, and no fee shall be required.

(d) *Subdivision development entrance sign.* A subdivision development entrance sign is a sign authorized for each major project entry into a legal recorded, multi-lot, multi-sectioned, master-planned subdivision, and contains only the name of the subdivision with no other information. Subdivision entrance signs must be berm or monument signs constructed of stone, brick or other maintenance free material. The design and construction must be compatible with surrounding development. Signage may appear on both sides of the entrance roadway within the recorded or master-planned subdivision and will be soldered as one sign. The maximum allowable sign face size limitations will apply separately to each side of the street, where applicable. Lighting shall be ground lights or lights attached to the top of the sign focused downward directly on the sign. There are three types of subdivision development entrance signs: primary, secondary, and tertiary.

(1) Primary entrance sign is located at the primary entrance into the subdivision. Only one primary entrance sign is permitted for the subdivision, except that a maximum of two primary entrance signs shall be permitted if two entrances to the subdivision are located on two different major arterial roadways, as designated in the city roadway plan. In such case one primary entrance sign may be placed on each of the major arterial roadways.

a. The maximum sign area of the sign is three square feet for subdivisions containing 100 lots or less. For every 100 lots in the subdivision in addition to the first one hundred, the size can increase an additional ten square feet to a maximum size of 64 square feet of total sign face area. If the sign face is incorporated into landscape features, a wall, or architectural feature, the size of the sign face is determined by the area of the smallest rectangle within which the face of the sign can be enclosed.

b. A subdivision primary entrance sign must be located within the subdivision or at an off-premises location adjacent to an arterial roadway within 150 feet of the primary entrance to the subdivision. It shall not restrict visibility at intersections. The city may enter into a license agreement to permit a subdivision identification sign to be located on the public right-of-way. The license agreement shall be in a form acceptable to the city.

(2) Secondary entrance signs are located at entrances into the subdivision other than at the primary entrance. They are to be placed at an on-premises location within the subdivision and the sign face shall be a maximum of 16 square feet in size.

(3) Tertiary entrance signs are located at the entryway into sections within the subdivision and are permitted only in subdivisions that exceed 50 acres. they are used to identify various sections that are 25 acres or greater in size in order to enhance direction within the subdivision. These tertiary signs shall be comprised entirely of stone or masonry, with engraved lettering set within the stone. They shall be berm signs only and shall be limited to a total monument size of ten square feet. The developer shall represent in writing to the city its plan for perpetual maintenance of such signs by the homeowner's association or similar entity before a permit will be issued for such signs.

(e) *LED signs.* No LED displays, signs, or message boards are permitted in the single-family residential category, unless the sign is a pylon sign located on a middle school or high school campus and the sign complies with subsection 29-16(k).

(Ord. No. 576, § 2(Attach., § 14), 7-7-2009; Ord. No. 667, § 4, 8-2-2011)

Sec. 29-15. - Sign regulations relating to multifamily residential sign category.

(a) Signs in multifamily locations shall be limited to signs allowed in this section and in all applicable restrictions of this ordinance as well as other requirements of the code, and any other applicable law.

(b) Except as provided in this subsection, a single freestanding sign is permitted only as berm or monument signs on the same lot as the development to identify the development and its entrance. Signs must be constructed of stone, brick or other maintenance free material.

(1) Lighting shall be ground lights or lights attached to the bottom of the sign focused upward directly on the sign.

(2) The maximum size of the sign shall be nine-hundredths (0.09) square feet per linear foot of frontage, up to a maximum size of 24 square feet. A minimum size of 12 square feet is allowed for a berm sign.

(3) The maximum height of the sign shall be eight feet.

(4) In the event the development has a second entrance from a public street, a second entrance sign may be constructed, at one-half the size of the one main entry sign.

(c) Wall signs are permitted at a size to be calculated as 0.5 square feet per linear foot of frontage, not to exceed a total of 35 square feet.

(d) Window or door surface signs are allowed. The total sign area of all window and door signs shall be included in calculating the maximum wall sign area authorized at a particular location.

(e) *LED signs.* No LED displays, signs, or message boards are permitted in the multifamily residential sign category, unless the sign is a pylon sign located on a middle school or high school campus and the sign complies with subsection 29-16(k).

(Ord. No. 576, § 2(Attach., § 15), 7-7-2009; Ord. No. 667, § 5, 8-2-2011)

Sec. 29-16. - Sign regulations relating to commercial not located on Interstate 35 sign category.

(a) *Applicability.* The regulations for signs described in this section shall apply to the commercial sign category and to all businesses and civic or religious institutions, excluding home occupations and multifamily developments, located on property that does not front on Interstate 35.

(b) *General.*

(1) Except as otherwise provided in this section, a single freestanding sign is permitted only as berm or monument signs on the same lot as the development to identify the development and its

entrance. In the event the development has a second entrance form a public street, a second entrance sign may be constructed.

(2) Notwithstanding any language to the contrary, a pad site or satellite tract within a unified development, whether or not legally subdivided (such as a site for a freestanding service station or restaurant set apart from the unified development) may be considered a separate lot for purposes of this section, and one freestanding sign shall be permitted on each such site.

(c) *Materials.* Signs must be constructed of stone, brick or other maintenance free material.

(d) *Lighting.* Lighting shall be ground lights or lights attached to the bottom of the sign focused upward directly on the sign.

(e) *Dimensions for monument signs and berm signs.*

(1) Monument Signs shall not exceed nine-hundredths (0.09) square feet per linear foot of frontage, up to 24 square feet for single-user signs, or for the center identification portion of a multitenant center identification sign.

(2) A minimum size of 12 square feet is allowed for a berm sign.

(3) For a multitenant center sign for a business not located along a state highway, each tenant that has a business in the center shall also be permitted a maximum of four square feet of sign area on a multitenant center sign in the development. This area is separate from the calculation of the size of the multitenant center identification sign.

(4) For a multitenant center sign for a business located along a state highway other than Interstate 35, each tenant that has a business in the center shall also be permitted a maximum of eight square feet of sign area on a multitenant center sign in the development. This area is separate from the calculation of the size of the multitenant center identification sign.

(5) The maximum height of the monument sign shall be eight feet.

(f) *Additional regulations for freestanding berm signs.*

(1) For businesses, civic, or religious institutions, two signs are authorized on a lot with total frontage of more than 400 feet abutting a roadway, however, the second sign shall be constructed at half the size of the initial sign.

(2) A lot used together with one or more contiguous lots for a single use of unified development (for example, a shopping center), including any lots used for off-street parking, shall be considered a single lot for purposes of these regulations.

(g) *Wall signs.*

(1) Wall signs for commercial entities not located along a state highway are permitted at a size to be calculated as ten percent of the building facade of the first 15 feet of building height. The calculation applies to each exterior wall separately.

(2) Wall signs for commercial entities along a state highway are permitted at a size to be calculated as twenty percent of the building facade of the first 15 feet of building height. The calculation applies to each exterior wall separately.

(h) *Menu board signs.* Menu board signs can be freestanding or wall signs with a maximum sign area of 20 square feet and a maximum height of eight feet above grade. A menu board shall be landscaped and substantially screened from the public right-of-way. No more than two menu boards are authorized for each drive-through lane at a business.

(i) *Incidental signs.* The total sign area of all incidental signs per premises shall not exceed four square feet.

(j) *Gas price display.* For establishments that have service stations selling gasoline and/or diesel at the pump, an area can be included for changeable copy displaying gas prices. The area provided for each grade of fuel shall not exceed four square feet in size, and shall include the price and grade.

(k) *Signs located on middle school and high school campuses.*

(1) A maximum of one pylon sign may be permitted on each middle school or high school campus.

(2) The maximum area of a pylon sign is 60 square feet. The maximum height is 16 feet.

(3) Electronic message signs are allowed only as part of the pylon sign and can have a display size no larger than ten feet by three feet.

(l) *LED signs.* No LED displays or LED signs are permitted under this section, unless the sign is a pylon sign permitted under subsection (k) or is a monument message board sign.

(Ord. No. 576, § 2 (Attach., § 16), 7-7-2009; Ord. No. 667, §§ 6, 7, 8-2-2011)

Sec. 29-17. - Sign regulations relating to commercial located on Interstate 35 sign category.

(a) *Applicability.* The regulations for signs described in this section shall apply to the commercial sign category and to all businesses and civic or religious institutions, excluding home occupations and multifamily developments, located on property that fronts on Interstate 35.

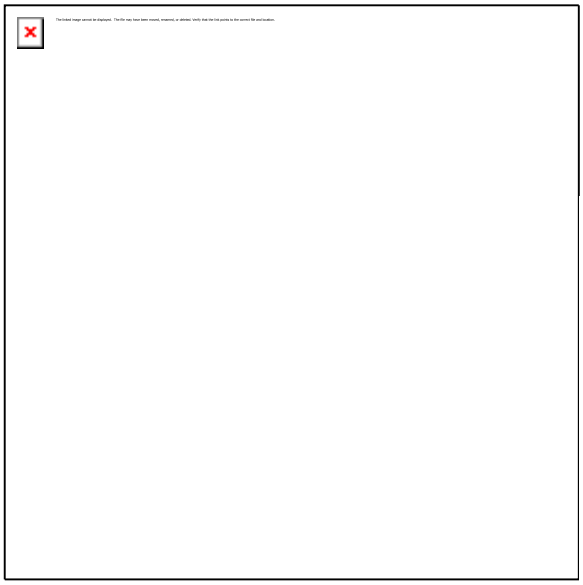
(b) *General.*

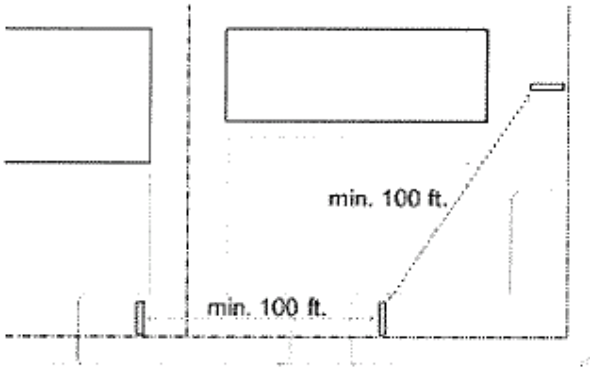
(1) A maximum of one sign, either a pylon sign or a monument sign shall be permitted along Interstate 35 per lot.

(2) The maximum area of a pylon sign is 160 square feet; maximum allowable height is 35 feet.

(3) All sign structures and their attachments to the foundation shall be fully constructed or covered by stone, brick, or stone veneer.

(4) Signage shall be spaced a minimum of 100 feet apart from any other type of sign excluding government signs.





(5) Lighting shall be either backlighting or cabinet lighting. The white or light cream area of a cabinet sign shall not exceed 40 percent of the sign cabinet.

(6) No LED displays or LED signs are permitted under this section, unless the sign is a monument message board sign, or is a pylon sign located on a middle school or high school campus. For monument sign regulations, see subsection 29-16(e). For LED display regulations for pylon signs located on middle school or high school campuses, see subsection 29-16(k).

(c) *Regulations applicable to qualifying properties.*

(1) Signs relating to singularly cohesive business developments may comply with the regulations set forth in this subsection 29-17(c) provided that all the following criteria are met. In the event the business does not comply with following criteria, the signs must be constructed in accordance with subsection 29-17(b).

a. The business development has a minimum of 1,500 feet of frontage on Interstate 35; and

b. The business development has minimum of 500,000 square feet of building area, excluding storage and/or warehouse square footage.

(2) Freestanding signs under this Section 17(C) are permitted to be either monument signs or two-sided pylon signs. The sign or signs shall be on the same lot as the development to identify the development and its entrance and must meet the following restrictions:

a. The minimum distance between freestanding signs allowed under this section shall be no less than 500 feet.

b. All sign structures and their attachments to the foundation shall be fully constructed or covered by stone, brick, or stone veneer.

c. Lighting shall be either backlighting or cabinet lighting. The white or light cream area of a cabinet sign shall not exceed 40 percent of the sign cabinet.

d. No LED displays or LED signs are permitted under this section, unless the sign is a monument message board sign, or is a pylon sign located on a middle school or high school campus. For monument sign regulations, see subsection 29-16(e). For LED display regulations for pylon signs located on middle school or high school campuses, see subsection 29-16(k).

(3) Any signage shall be placed within 1,000 feet of Interstate 35 right-of-way. In the event the development has a second entrance from a public street within the distance limitations described in this subsection, a second entrance sign may be constructed, at one-half the size of the one main entry sign.

(4) The maximum size of the sign face may be up to 210 square feet for a single-user sign or for a multitenant center sign. A minimum size of 50 square feet is allowed for tenant signs on a multitenant center sign, with up to a maximum of six tenant signs. This size of the tenant sign is separate from the calculation of the size of the multitenant center identification sign. When, as provided in this subsection 29-17(c), the center is allowed more than one freestanding sign, an individual tenant's sign in the center shall be allowed on only one of the multitenant center signs.

(5) The maximum height of the sign(s) is 55 feet.

(6) Additional regulations for freestanding signs eligible under this section only:

a. For businesses eligible for signage described in this section 29-17(c), requests for such signage not only require a sign permit, but must also be approved by the city council as to the sign's compatibility with the aesthetic standards of the community. The city council may deny or request modification of the proposed signage prior to its approval.

b. A lot used together with one or more contiguous lots for a single use of unified development (for example, a shopping center), including any lots used for off-street parking, shall be considered a single lot for purposes of these regulations. However, such signage is restricted to within 1,000 feet from the right-of-way of Interstate 35.

c. Notwithstanding any language to the contrary, a pad site or satellite tract within a unified development, whether or not legally subdivided (such as a site for a freestanding service station or restaurant set apart from the unified development) shall be considered a separate lot for purposes of this section. Such pad lot or tract shall only be eligible for a sign that complies with section 29-17(b).

(7) Changeable electronic variable message sign display on certain existing off-premises signs.

a. *In general.* Certain nonconforming off-premises signs may be modified to use changeable electronic variable message sign ("CEVMS") display technology subject to the restrictions in this section.

b. *Application.* An owner of certain nonconforming off-premises signs must submit a CEVMS sign permit application for a face modification within 60 days from the date of approval and adoption of the ordinance from which this subsection (c)(7) derives, as provided by law.

c. *Relocation site.* In conjunction with an application to convert an existing billboard to a CEVMS sign, the sign owner may apply for a one-time relocation of an existing billboard provided that the relocation site complies with the following:

    1. The relocation site is on a property adjacent to Interstate Highway 35.

    2. The relocation site is on property zoned commercial or industrial.

    3. The relocated off-premises sign is a minimum of 1,500 feet from another billboard as measured along the same side of the roadway.

d. *Expiration.* A sign permit shall be valid for one six-month period. If no construction has commenced at the site, the permit shall become void.

e. *Compliance required.*

    1. Except as provided in this section, CEVMS signs must fully comply with the size, height, spacing, setback, and other restrictions in this article for detached non-premises signs.

    2. CEVMS sign support structures must be built to comply with the building code.

    3. CEVMS signs must comply with Title 43, Texas Administrative Code, Section 21.163, "Electronic Signs," as amended.

    4. Both existing and new CEVMS signs must comply with all lighting and safety standards mandated by federal, state, or local rules or statues, including standards adopted or amended after the date of passage of these requirements. Lighting and safety standards include brightness; message duration; and proximity of the sign to other digital displays, ramps, and interchanges.

f. *Sign face exchange ratio.*

    1. For every one square foot of sign face modified to use CEVMS display technology, one square foot of detached off-premises sign face area must be removed from within the city limits.

    2. Only one CEVMS sign shall be permitted to each CEVMS permit applicant within six months from the date of approval and adoption of the ordinance from which this subsection (c)(7) derives. However, where a permit has expired, a new application may be submitted by a different sign company. The new CEVMS sign face may be no larger than 14 feet by 48 feet (672 square feet) nor exceed 42.5 feet in overall height.

g. *Location and number.*

    1. A maximum of three off-premises locations with CEVMS displays are permitted in the city. The director shall time stamp all applications upon receipt. The director shall review applications in order of submittal. If the director determines that an application is incomplete or does not meet the requirements of this section, the director shall reject the application and then review the next application.

    2. The conversion of existing off-premises advertising billboard signs to digital billboards shall only be allowed on lots with frontage to Interstate Highway 35 located within the city limits.

    3. A minimum linear of 3,000 feet shall be required between one CEVMS sign and any other CEVMS sign on the same side of the interstate, measured linearly.

4. CEVMS signs may not be located within 300 feet of any lot located in a residential district, measured from the sign face only in the direction the sign face is oriented.

5. No more than one CEVMS display per each freestanding sign structure shall be permitted. Any double-faced billboard having back-to-back surface display areas will be permitted to install a traditional display behind the digital display to conceal structure.

h. *CEVMS sign support structures.*

1. CEVMS sign support structures may not exceed an overall height of 50 feet or 42.5 feet above the nearest point on the nearest travel surface of the nearest expressway, whichever is higher, except that no CEVMS sign may be higher than the conventional sign it replaced.

2. Sign support structures and faces being converted to accommodate CEVMS signs may not be modified to change the angle of a sign face.

3. Electrical service to sign support structures with CEVMS signs must be underground between the property line and the sign.

i. *Display.*

1. All CEVMS signs must automatically adjust the sign brightness so that the brightness level of the sign is no more than 0.3 foot-candles over ambient light conditions at a distance of 250 feet from the sign. A digital display sign must be equipped with both a dimmer control and photocell that automatically adjusts the display's intensity according to natural ambient light conditions.

2. A CEVMS sign may not increase the light level on a lot in a residential district over ambient conditions without the digital display, measured in foot-candles at the point closest to the sign that is five feet inside the residential lot and five feet above the ground.

3. Before the issuance of a CEVMS sign permit, the applicant shall provide written certification from the sign manufacturer that:

i. The light intensity has been factory programmed to comply with the maximum brightness and dimming standards in this subsection; and

ii. The light intensity is protected from end-use manipulation by password-protected software or other method satisfactory to the building official.

j. *Change of message.* Changes of message must comply with the following:

1. Each message must be displayed for a minimum of eight seconds.

2. Changes of message must be accomplished within two seconds.

3. Changes of message must occur simultaneously on the entire sign face.

4. No flashing, dimming, or brightening of message is permitted except to accommodate changes of message.

k. *Malfunction.* CEVMS signs operators must respond to a malfunction or safety issue within one hour after notification and must remedy that malfunction or safety issue within 12 hours after notification. In case of sign malfunction, the digital display must freeze until the malfunction is remedied.

l. *Display of emergency information.* The city may exercise its police powers to protect public health, safety, and welfare by requiring emergency information to be displayed on digital display signs. Upon notification, the sign operators shall display: amber alerts, silver alerts, information regarding terrorist attacks, natural disasters, and other emergency situations in appropriate sign rotations. Emergency information messages must remain in rotation according to the issuing agency's protocols.

m. *Public service announcements.* Company shall permit city to place one public service announcement on each of the digital billboards for up to the equivalent time of eight-week period for each year; provided, however, that such public service announcements shall consist of one slot of at least eight seconds in the standard rotation utilized by the advertising company on the applicable digital billboards.

1. Public service announcements shall be limited to city-sponsored event announcements and noncommercial public service announcements. City shall be responsible for:

i. Providing company with its public service announcements, which may be updated by city at any time; and

ii. Any costs associated with providing company with the artwork in acceptable format.

2. The public service announcements must be submitted to the company at least five business days before the proposed display date. Content of public service announcements shall be determined in the sole discretion of the city. In addition:

i. Company shall provide use of the advertising space on the digital billboards, as reasonably necessary for emergency broadcasts, amber alerts and silver alerts; and

ii. Company and city will work cooperatively and in good faith for city to place additional public service announcement, on a space availability based on the advertising space of the digital billboards.

n. *Sunset.* This subsection (c)(7) expires in three months from the date of adoption by the city council, unless re-enacted with amendment before that date. The city council shall review this section before its expiration date.

[o. *Fee.* There is established an annual registration fee for off-premises digital display signs in the amount specified in the Appendix A fee schedule.]

(d) *Hospitals.* A licensed general hospital having 100 beds or greater and an emergency trauma center may have up to three (3) off-premises signs identifying the name of the facility and serving to direct access more efficiently to the facility. Such signs are subject to the conditions required above in subsection of this section.

(e) *Gas price display.* For establishments that have service stations selling gasoline and/or diesel at the pump, an area can be included for changeable copy displaying gas prices. The area provided for each grade of fuel shall not exceed four square feet in size, and shall include the price and grade.

(Ord. No. 576, § 2(Attach., § 17), 7-7-2009; Ord. No. 667, §§ 8, 9, 8-2-2011; Ord. No. 753, §§ 1, 2, 11-6-2013; Ord. No. 846, §§ 1, 2, 5-5-2015)

Editor's note— At the city's direction, language in Ord. No. 753, § 2, adopted Nov. 6, 2013, pertaining to a specific fee for a permit for an off-premises digital display sign, has been replaced with language directing the user to the city's fee schedule in Appendix A, and, at the editor's discretion, has been codified in § 29-17 as subsection (c)(7)o.

Sec. 29-18. - Sign regulations relating to the central business district sign category.

(a) Signs must be berm or monument signs constructed of stone, brick or other maintenance free material. For monument sign regulations see subsection 29-16(e)

(b) The design and construction must be compatible with surrounding development. Signage may appear on both sides of the sign and shall be soldered as one sign.

(c) Lighting shall be ground lights or lights attached to the top of the sign focused downward directly on the sign.

(d) Signs shall have a minimum set back of five feet from any property line.

(e) No LED displays, signs, or message boards are permitted under this section.

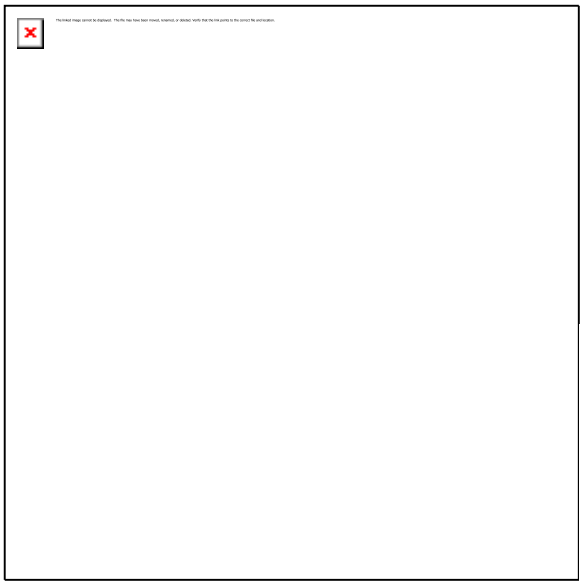
(Ord. No. 576, § 2(Attach., § 18), 7-7-2009)

Sec. 29-19. - Attached sign regulations.

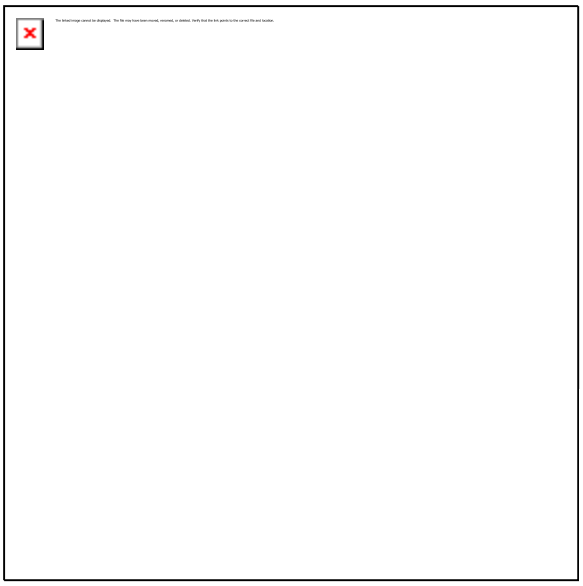
(a) *Awning signs.* The purpose of an awning sign is to provide an advertising message on the face of an awning. Awing signs shall only be allowed within commercial districts, industrial districts, the central business district.

(1) An awning may extend across the entire width of a building or tenant space. An awning may extend above the apparent roof line of the building, provided the awning extends across 75 percent of the entire width of the building facade to which it is attached. An awning shall not exceed six feet in height.

(2) The sign area on an awning shall not exceed 20 percent of the area of the awning and shall extend for no more than 50 percent of the length of the awning. A permit shall be required for an awning sign. Awning signs may be illuminated.



(b) *Canopy signs.* A canopy sign shall be no greater in size than 20 percent of the face of the canopy of which it is a part or to which it is attached and shall not extend beyond the face of the canopy either vertically or horizontally. An illuminated strip may be incorporated into the canopy. Canopy signs shall only be allowed within commercial districts, industrial districts, and the central business district.



Canopy Signs

(c) *Projecting signs.* The purpose of a projecting sign is to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached. Projecting signs shall be allowed within commercial districts, industrial districts and within the central business district.

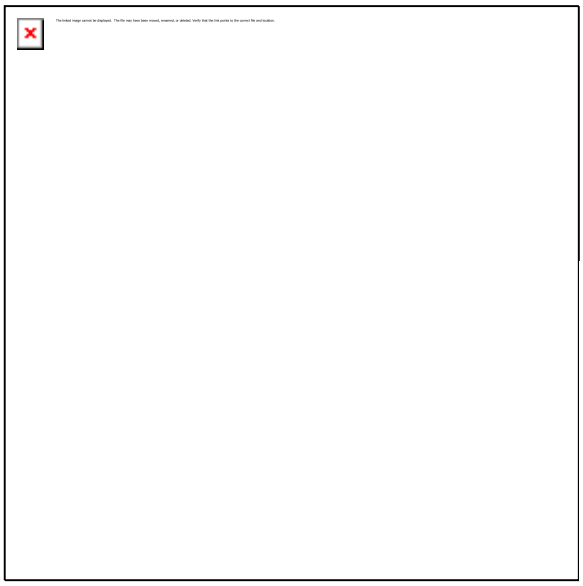
(1) *Number of signs:* One projecting sign shall be allowed for each single tenant building or for each tenant in a multi-occupancy structure. However, no tenant storefront shall have a projecting sign in combination with a wall sign on the same building elevation.

(2) *Maximum area:* A projecting sign shall not exceed 20 square feet. The plane of the message area shall not exceed 18 inches from the plane of the message area on the opposite side of the sign.

(3) *Horizontal projection:* A projecting sign shall not project more than four feet from any wall facing and shall not be closer than two feet from a curb line. A projecting sign shall not extend above the apparent roof line of the building.

(4) *Clearance:* Every projecting sign shall be a minimum of eight feet above the grade over a walking area or 14 feet over a vehicular maneuvering area. Projection signs shall not project over any property line or right-of-way line unless with an approved license agreement.

(5) A projecting sign may be illuminated.



Projecting Sign

(d) *Light mounted banner signs.* Light mounted banner signs shall only be permitted in the central business district for the advertising of permitted community events, seasonal and historic themes, or other such civic purposes; on collector level and higher classification within a residential subdivision; within master planned commercial subdivision. Such banners are limited to subdivision identification, or seasonal decorations and works of art by local artists. Such banners must be approved by the appropriate electric utility company in addition to receiving a permit from the city manager's office. No permit shall be approved for a period exceeding 30 calendar days. Light mounted banner signs shall comply with the following regulations:

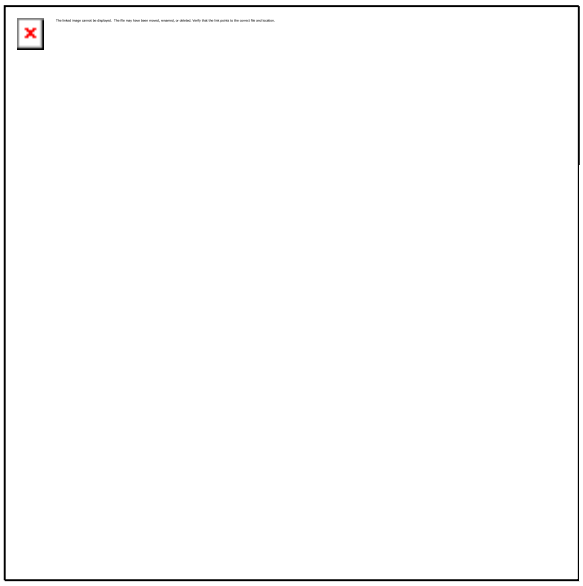
(1) Banners shall be limited to not more than one banner on any light pole.

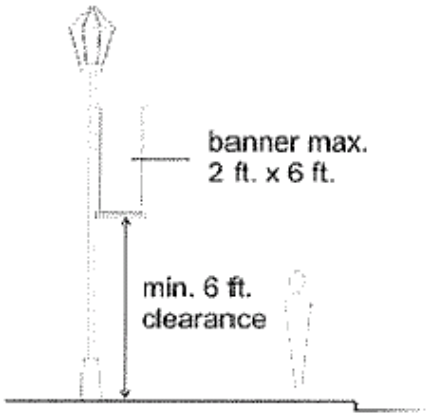
(2) Banners shall be limited to no more than two feet by six feet in exterior dimension and 12 square feet in area per banner.

(3) A minimum height of six feet as measured from adjacent grade to the bottom of the banner shall apply.

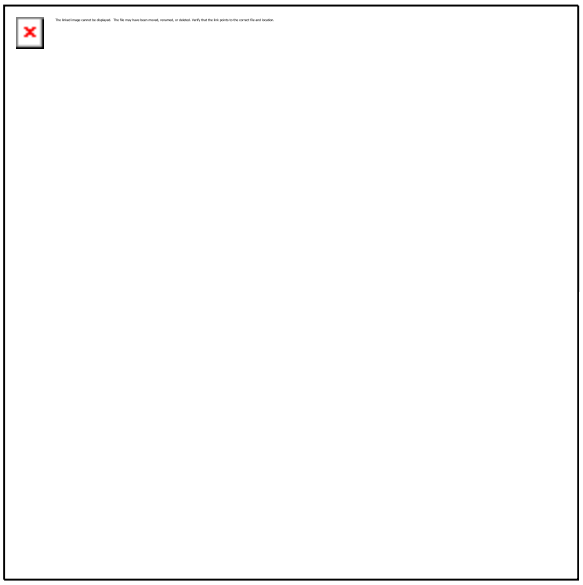
(4) Banners shall be maintained in good repair. Should they become excessively faded, tattered or torn, they shall be replaced or removed.

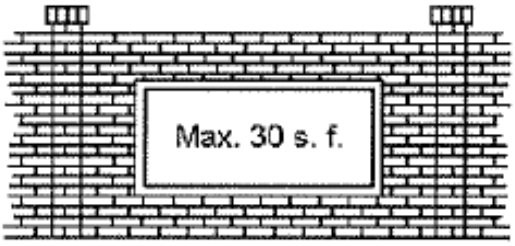
(5) Banners shall not be illuminated, except for indirect lighting associated with the main lamp of the light pole to which it is mounted.





(e) *Subdivision wall signs or plaques.* Subdivision wall signs or plaques shall not exceed 30 square feet in area. Subdivision wall signs or plaques are limited to two per subdivision entryway and may be illuminated. A subdivision wall sign or plaque shall be attached to a fence or screening wall. For purposes of this regulation, the size of the graphic and sign text shall be used to measure sign size.





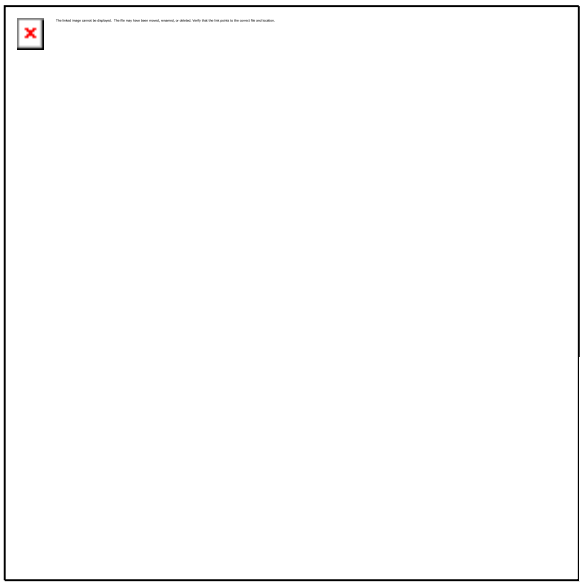
Subdivision Wall Plaque

(Ord. No. 576, § 2(Attach., § 19), 7-7-2009)

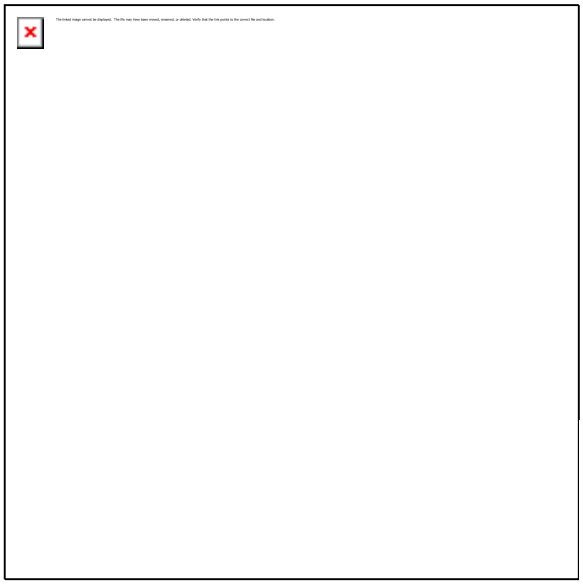
Sec. 29-20. - Temporary sign regulations.

(a) *Construction trades signs.* The purpose of a construction trades sign is to denote the architect, engineer, financial institution or building trades contractor involved in a construction project. Construction trades signs shall be categorized as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a construction trades sign for commercial locations shall not exceed 64 square feet and shall not exceed ten feet in height.



(2) The maximum area, height, spacing and setbacks of a construction trades sign for residential locations shall not exceed eight square feet and shall not exceed four feet in height.



(3) Construction trades signs shall not be erected until a building permit has been submitted for building construction and shall be removed up on completion of the construction project or occupancy of the structure, whichever is applicable.

(4) No permit or fee shall be required for a construction trades sign.

(5) Signs shall not be located in the street right-of-way, shall be placed at least twenty-five (25) feet from an intersection and a minimum of ten (10) feet from the curbline.

(6) A construction trade sign shall not be illuminated.

(b) *Future development signs.* Future development signs shall be regulated as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a future development sign shall not exceed 64 square feet and shall not exceed ten feet in height.

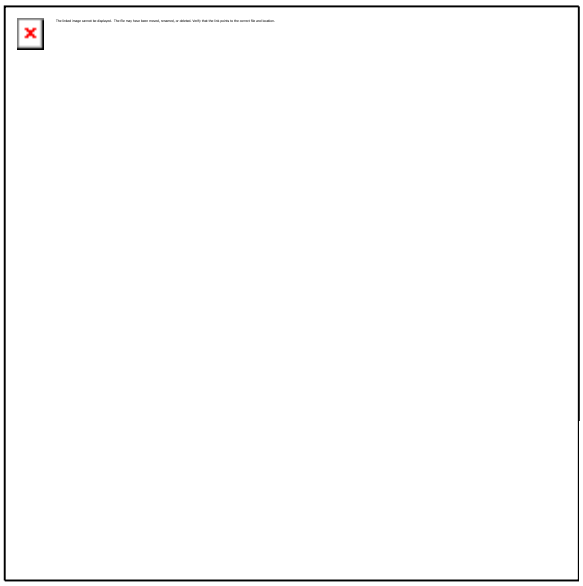
(2) A permit shall be required for a future development sign.

(3) A future development sign shall not be illuminated.

(4) A future development sign shall be removed when the project is 90 percent complete or within three years from start of construction, whichever is less. For the purpose of this provision, a subdivision shall be deemed 90 percent complete when ninety (90%) percent of the lots within the subdivision are sold.

(5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten (10) feet from the curbline.

(6) One sign shall be permitted per lot; except that one sign per major access to the development shall be authorized if a lot is used together with one or more contiguous lots for a single use or a unified development (for example, a shopping center).



Development Sign

(c) *Garage sale signs.* The purpose of a garage sale sign is to announce the sale of household possessions.

(1) Garage sale signs shall not exceed four square feet. Signs shall be allowed for a maximum of 72 consecutive hours no more than two times per calendar year.

(2) Single-family residential on-premises: One garage sale sign per street frontage shall be allowed, but only on the premises where the garage sale is being conducted and where there is an existing residential use.

(3) Neighborhood-wide garage sales: Two garage sale signs per subdivision entrance shall be allowed for a neighborhood-wide garage sale sponsored by a homeowner's association (HOA). The garage sale sign may be off premises from where the actual garage sale is conducted, but the sign shall be located on property, including a street right-of-way, that is within the limits of the homeowner's association. The HOA must be registered with the city.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Signs shall not be placed anywhere in the center median of a public or private street.

(5) No permit or fee shall be required for any garage sale sign.

(d) *Real estate signs (commercial, including multifamily).* The purpose of a commercial real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A commercial real estate sign shall not be illuminated.

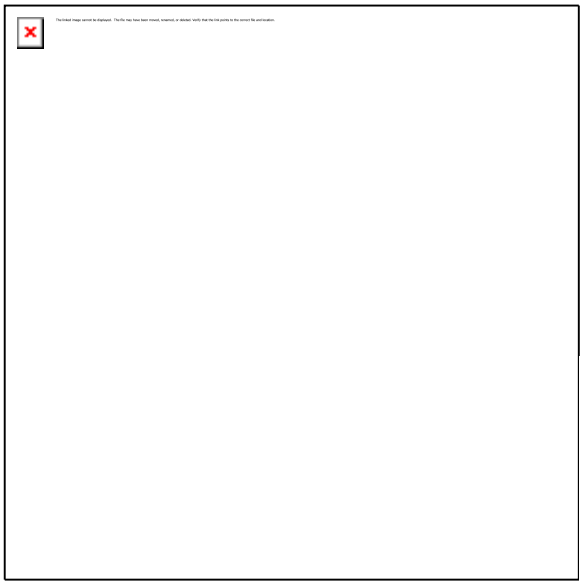
(2) The maximum area and height of a commercial real estate sign shall not exceed 64 square feet and shall not exceed ten feet in height.

(3) Commercial real estate signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) No more than one sign per 300 linear feet of street frontage may be placed on such property.

(5) Signs shall be placed at least twenty-five feet from an intersection and a minimum of ten feet from the curbline.

(6) No permit or permit fee shall be required for a commercial real estate sign.



(e) *Real estate signs (residential).* The purpose of a residential real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

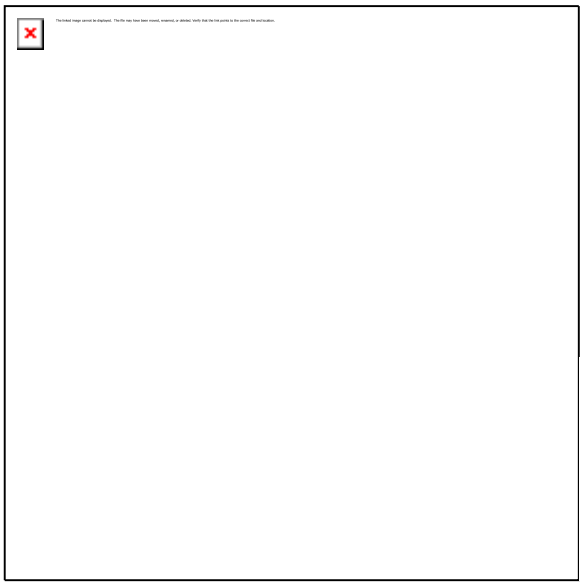
(1) A residential real estate sign shall not be illuminated.

(2) The maximum area and height of a residential real estate sign shall not exceed 12 square feet and shall not exceed six feet in height.

(3) All signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

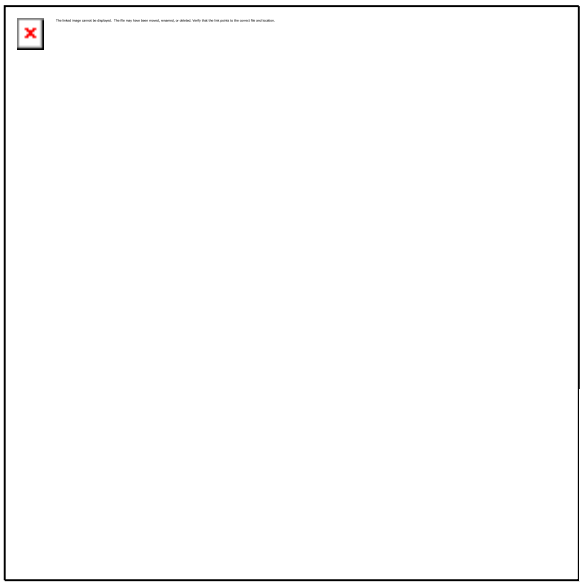
(5) No permit of permit fee shall be required for a residential real estate sign.

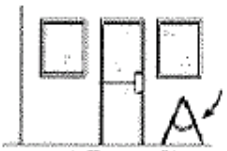


(f) *A-frame signs.* The purpose of an A-frame sign is to provide temporary advertising during business hours of a commercial occupancy.

(1) Maximum height and area shall conform to the following table:

Maximum Height and Areas of A-Frame Signs		
	Max. Area	Max. Height
Located on a sidewalk	8 s.f.	4 feet
Located in a yard	24 s.f.	8 feet





(2) Time duration: Only displayed during business hours.

(3) Placement: Only allowed on private property, but may be located on a public sidewalk, provided a width of four feet shall remain free from intrusion.

(g) *Miscellaneous temporary sign regulations.*

(1) Temporary signs advertising the opening or relocation of a business shall only be permitted for a maximum period of 30 days before and 60 days after such opening or relocation. Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

(2) Except as specifically provided otherwise in this chapter, banners shall not exceed 32 square feet, must be attached and parallel to a wall of the structure, and shall only be permitted for a period not to exceed 30 calendar days and with a period of not less than 30 days between displays.

(3) Human signs shall be allowed on private property and the untraveled public rights-of-way provided that no human sign, as defined by this ordinance, shall be displayed within five feet of a vehicular traffic lane.

(4) Except as specifically provided otherwise herein, temporary signs shall not exceed four square feet in size and shall be allowed for a maximum of 14 calendar days per event. Temporary signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Temporary signs shall not be placed anywhere in the center median of a public or private street.

(5) Open house signs do not require a permit, shall not exceed four square feet, and shall be allowed for a maximum of four hours the day of the open house. Open house signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Open house signs shall not be placed anywhere in the center median of a public or private street.

(6) Use of temporary decorations as signs, otherwise referred to as decorative festoons, meaning tinsel, strings of ribbon, small commercial flags, or streamers may be used as temporary enhancement of signage in a commercial sign category, providing these devices have no glare, no moving parts, are maintained, and comply with all codes and policy guidelines governing their safe use. No lettering is permitted on these items. Temporary decorations may be used for a period not to exceed 30 calendar days with a period not less than 30 days between displays.

(Ord. No. 576, § 2(Attach., § 20), 7-7-2009)

Sec. 29-21. - Flagpoles and commercial flags.

One flagpole is allowed per development at a maximum height of 20 feet. Commercial flags are allowed in multifamily and/or commercial developments. No text or logo is permitted on such flags as such would constitute a sign. The national or state flag and the flagpoles for the express purpose of displaying the national or state flag are exempt from this section.

(Ord. No. 576, § 2(Attach., § 21), 7-7-2009)

Sec. 29-22. - Advertising searchlight.

(a) For purposes of this section, an "advertising searchlight" means a searchlight used to direct beams of light upward for advertising purposes.

(b) Use of an advertising searchlight at any location is authorized upon issuance of a permit by the building official.

(c) The permit shall be effective for a maximum period of five days per calendar year to any business or group.

(d) An advertising searchlight shall not be operated between the hours of 1:00 a.m. and 6:00 p.m.

(Ord. No. 576, § 2(Attach., § 22), 7-7-2009)

Sec. 29-23. - Kiosk signs.

(a) Kiosk signs are intended to provide a uniform, coordinated method of providing homebuilders and developers a means of utilizing directional signs, while minimizing the negative impacts of weekend homebuilder's signs on the appearance of the city. Kiosk signs are also intended to provide service to the public on the directions to municipal facilities and parks, community events, and school district facilities.

(b) The city council may, by duly executed license agreement, grant the exclusive right to design, erect and maintain kiosk signs within the city limits and extraterritorial jurisdiction of Kyle.

(c) Kiosk signs shall be designed and constructed in accordance to the specifications contained in the aforementioned license agreement.

(d) Prior to erecting any kiosk sign, the licensee shall submit a sign location map to the building official for approval.

(e) Kiosk sign installation shall include break-away design features as required for traffic signs in the street right-of-way.

(f) Advertisement of price information shall be prohibited on kiosk signs.

(g) No additional or extraneous signs, pennants, flags or other devices for visual attention or other appurtenances shall be attached to kiosk signs.

(h) Kiosk signs shall not be illuminated.

(i) Individual sign panels on kiosks shall have a uniform design and color.

(j) Kiosk signs shall not interfere with the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of motorists, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with the visibility triangle requirements contained in the Subdivision Regulations or other visibility easements provided by code or subdivision plat.

(k) Kiosk sign may be located on private property, or other state-maintained roadways, provided written permission is obtained from the property owner.

(l) Kiosk sign panels shall be available to all developers and homebuilders operating within the city on a first-come, first-served basis. Developers and homebuilders operating November 18, 2008 within the city limits shall have first priority to lease sign panels. In the event extra panel space is available, residential developments, located outside the city limits may also lease panels.

(m) In accordance to the specifications contained in the aforementioned license agreement, a percentage of the kiosk sign panels shall be reserved for the City to use as directional signage to municipal or community facilities or locations or community events.

(n) No kiosk sign shall be placed, located, or installed on city-owned property or public right-of-way without a license agreement duly approved by the city council.

(Ord. No. 576, § 2(Attach., § 23), 7-7-2009)

Sec. 29-24. - Other sign regulations.

(a) *Activities and events sign.* An activities and events sign is a changeable copy directory allowed solely to public buildings, church buildings (places of worship only), and neighborhood associations, intended for use only by the entity where the sign is located. A maximum of one information sign shall be allowed for each neighborhood group, church, or public development complex, and it is not considered a freestanding sign in this article. Activities and events signs shall comply with the following criteria:

(1) The sign shall be constructed of a non-oxidizing metal (e.g. aluminum, stainless steel) cabinet set on a pole or on the ground as a monument, with a clear, acrylic panel inset and a locking door. The door of the sign shall remain locked except while the message is being posted.

(2) The maximum size of the cabinet shall be 12 square feet; and maximum height shall be five feet above grade.

(3) Only changeable letters shall be used and letters shall be no larger than four inches and no less than two inches in height.

(4) Such sign may have direct lighting that is placed inside the cabinet (portrait lighting); however, no backlighting or external direct lighting is permitted.

(5) Such sign shall be located at or near the entrance of the public building or church; for a neighborhood sign, such sign shall be located within the subdivision at a commonly traveled location, for example, near the neighborhood park or amenity center, the main mail station, or the main entrance to the neighborhood. Such a sign shall not be required to meet building setback requirements or setback requirements established in section 29-12, provided that it does not obscure the travel path or visibility of drivers, bicyclists, or pedestrians, as determined by the planning department. Such sign shall be located on property maintained by the neighborhood association or with a written agreement between the property owner and the neighborhood association. Such sign shall not be placed closer than 150 feet from the intersection of a collector street and a major or minor arterial street, as defined in the city roadway plan. Such signs shall be maintained by the neighborhood association in a "like-new" condition at all times.

(b) *Government sign.* Government sign(s) are permitted in all categories, subject to all laws and regulations that apply.

(c) *Memorial sign.* Memorial sign(s) may be installed in accordance with state historical standards, or as building cornerstones not to exceed eight square feet.

(d) *Private traffic-control signs.* Private traffic-control signs are not allowed for single-family residential or duplex uses, but are otherwise permitted. Signs shall not exceed four square feet in size, and may contain directions and the name or logo of the same-site user.

(e) *Window signs.* Window signs may be placed so as not to obscure more than 25 percent of the visible window area. Where multiple windows exist, fronting on the single elevation, the 75 percent visibility shall be maintained for the total window area on said elevation.

(Ord. No. 576, § 2(Attach., § 24), 7-7-2009)

Sec. 29-25. - Nonconforming signs.

(a) By the passage of the ordinance from which this chapter derives and its amendments, no presently illegal sign shall be deemed to have been legalized unless such sign complies with all current standards under the terms of this ordinance and all other ordinances of the city. Any sign which does not conform to all provisions of this ordinance but which existed on the effective date of this chapter and was lawfully constructed or installed shall be considered as a non-conforming sign. All non-conforming signs shall be permitted in the same manner as any other legally existing sign or proposed sign; provided that no sign that was constructed or installed in violation of any state or local law, or that was originally constructed or installed without a permit that was then required at such time, shall be or qualify as a non-conforming sign.

(b) A nonconforming sign shall be allowed to be continued and maintained at its existing location subject to the limitations of this section.

(c) No nonconforming sign may be enlarged or altered in a way which would increase its nonconformity; provided that the sign face may be changed in compliance with this chapter.

(d) A nonconforming sign shall be removed immediately if any of the following applies:

(1) The nonconforming sign is abandoned as defined in this subsection. Whenever any non-conforming sign no longer advertises a bona fide business or a business which has moved away or closed, a product sold, or service rendered, such sign shall be removed within 60 days. If the non-conforming sign is a wall sign, the wall sign shall be removed or painted over with a color that resembles or matches the rest of the wall of the building. If the owner of, or person responsible for the sign, or if the tenant closing a business, fails to remove the abandoned sign or paint over the wall sign, the owner of the premises shall be held responsible and the work shall be done within 30 days following written notice to do so by the building official.

(2) The building official or his/her designee determines the sign to be obsolete or substandard under any applicable ordinances of the city to the extent that the sign becomes a hazard or dangerous.

(3) A nonconforming sign, or a substantial part of it, is destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(e) Reconstruction, repair, or replacement of a nonconforming sign shall be completed no later than 90 days following the date of the damage. For purposes of this subsection, a sign, or a substantial part of a sign, is considered destroyed if the cost of repairing the sign is more than 50 percent of the cost of installing a new sign of the same type at the same location.

(Ord. No. 576, § 2(Attach., § 25), 7-7-2009)

Sec. 29-26. - Hazardous signs.

Except as otherwise provided by law or this chapter, no person may install, maintain, or use a sign that:

(1) Obstructs a fire escape, required exit, window, or door used as a means of escape.

(2) Interferes with a ventilation opening, except that a sign may cover a transom window if otherwise in compliance with the building code and fire code.

(3) Substantially obstructs the lighting of public right-of-way or other public property, or interferes with a public utility or traffic-control device.

(4) Contains or utilizes a supporting device placed on public right-of-way or other public area within the city limits and the extraterritorial jurisdiction of the city, unless the use of the public rights-of-way or other public area has been approved by the city and a right-of-way joint use agreement has been filed.

(5) Is illuminated in such a way as to create a hazard to pedestrian, bicycle, or vehicular traffic.

(6) Creates a traffic hazard for pedestrians, bicyclists, or motorists, by restricting visibility at a curb cut or adjoining public street.

(7) Has less than nine feet of clearance above street pavement grade or has less than 12 feet of clearance above a driveway, and/or is located outside the public right-of-way and within the visibility triangle at an intersection that results in impaired sight distance of users of the intersection.

(8) Violates a requirement of the electrical code.

(9) Is determined by the building inspector to be dangerous.

(Ord. No. 576, § 2(Attach., § 26), 7-7-2009)

Sec. 29-27. - Abatement of sign violations and removal of unsafe signs.

(a) Any sign that is structurally unsafe or that constitutes a hazard to the health, safety, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster damage, abandonment or other cause is hereby declared to be a public nuisance and shall be abated by demolition or removal.

(b) Should the building official or the code enforcement officer determine that any sign is not properly maintained, is unsafe or insecure or has otherwise been constructed, erected or maintained in violation of the provisions of this chapter, he shall take action as follows:

(1) Except as provided in the following paragraphs (2) and (3), the building official shall give the sign or property owner written notice to repair, remove or obtain a permit for such sign as applicable within ten days after such notice. If the sign or property owner fails to remove, repair, or obtain a permit for such sign so as to comply with all applicable standards and regulations, the building official shall cause the sign to be either removed or repaired and such cost shall be charged to and paid by the property owner. If such demolition or repair expenses are not paid by the property owner within 30 days of such billing, then such expenses shall constitute a valid lien against the property. Such notice shall also provide the sign or property owner an opportunity to bring the sign into compliance or to request a hearing before the sign control board to determine whether the sign should be repaired or removed. Such appeal must be filed in writing with the City Secretary within ten days of the notice. After consideration of all facts, the sign control board shall rule upon the appeal.

(2) The building official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

(3) Any sign located in public right-of-way may be immediately removed by the building official without notice to the owner.

(c) In addition to the above, the building official or the code enforcement officer may issue citations without giving prior notice of violation or pursue any other administrative or legal remedy in order to abate any sign which is in violation of this chapter or any other law.

(Ord. No. 576, § 2(Attach., § 27), 7-7-2009)

Sec. 29-28. - Repairs and maintenance.

All signs in the city and its ETJ shall be properly maintained in good and safe structural condition, shall be painted on all exterior parts, unless coated or made of rust resistant material, and shall be maintained in good condition and appearance at all times. Any owner or primary beneficiary failing to maintain, repair, or remove any such sign after due notices has been given shall upon conviction be guilty of a misdemeanor. The building official shall have the authority to order the painting, repair, or removal of a sign and accompanying landscaping which do not comply with this ordinance or the building codes or that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

(Ord. No. 576, § 2(Attach., § 28), 7-7-2009)

Sec. 29-29. - Appeals; exceptions to sign regulations.

(a) *Board of adjustment is established as sign control board; composition.* The board of adjustment is hereby established to serve in a dual capacity as the sign control board ("SCB").

(b) *Powers; duties of the SCB.* The city council authorizes the board of adjustment in its capacity as the SCB to sit as a board of appeals and to exercise the powers set forth in this chapter.

(c) *Appeals.* Appeals to the SCB may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the building official. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the building official and with the SCB a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the SCB all the papers constituting the record upon which the action appealed from was taken.

(d) *Appeal stays proceeding.* An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the SCB after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the SCB or by a court of record on application or notice to the building official and on due cause shown.

(e) *Hearing.* The SCB shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent.

(f) *SCB powers.*

(1) The SCB shall have the following powers:

a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official in the enforcement of this chapter.

b. To hear and decide special exceptions to the terms of this ordinance upon which the SCB is required to pass.

c. To authorize, upon appeal in specific cases, such exception from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the SCB may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building official from whose action the appeal is taken.

(g) *Limitations on the authority of the SCB.*

(1) The SCB may not grant an exception authorizing a sign where it is not otherwise allowed by this charter.

(2) The SCB shall have no power to grant an amendment to the sign ordinance. In the event that a request for an amendment is pending before the city council, the board shall neither hear nor grant any exceptions with respect to the subject property until final disposition of the sign ordinance amendment.

(3) The SCB shall not grant a request for any exception to any parcel of property or portion thereof upon which a zoning application, site plan, preliminary plan, or final plat, where required, has not been finally acted upon.

(h) *Exceptions.*

(1) The SCB may grant an exception from a requirement of the sign ordinance, if it makes written findings that:

a. The requirement does not allow for a reasonable use of the property;

b. The hardship for which the exception is requested is owing to a special condition inherent in the property itself, such as restricted area, shape, topography or physical features;

c. The special condition is unique to this property and is not generally characteristic of other parcels of land in the area; and

d. The development under the exception does not:

1. Alter the character of the area adjacent to the property;

2. Impair the use of adjacent property that is developed in compliance with the city requirements; or

3. Impair the purposes of the regulations of the sign ordinance.

(2) An exception may not be granted to relieve a self-created or personal hardship, nor for financial reasons only.

(3) The applicant bears the burden of proof in establishing the facts justifying an exception.

(i) *Vote required.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building officials, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in this chapter.

(j) *Time limitation on order permitting erection of sign.* No order of the SCB permitting the erection or alteration of a sign shall be valid for a period longer than six months, unless a sign permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(k) *Appeals from action of the SCB.* Any person or persons, jointly or severally, aggrieved by any decision of the SCB, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to the city secretary, on behalf of the city council, a petition, duly verified, appealing the decision of the SCB. Such petition shall be presented to the city secretary within ten days after the meeting date of the decision by the SCB.

(Ord. No. 576, § 2(Attach., § 29), 7-7-2009)

Sec. 29-30. - Penalty.

(a) Any individual, association, corporation or legal entity violating any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by the assessment of a fine not exceeding $2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(b) The primary beneficiary of any sign installed in violation of this section shall be presumed to have authorized or caused, either directly or indirectly, the installation, use, or maintenance of the sign in violation of this chapter.

(c) Whenever any construction, installation, alteration, or repair of a sign is being done contrary to the provisions of this ordinance, another controlling ordinance or statute governing the sign, the building official may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the city shall post a STOP WORK ORDER on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the building official. The building official or code enforcement authority may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the sign.

(d) The city and/or the city manager shall enforce this chapter by appropriate administrative action, including but not limited to, the rejection of plans, maps, plats and specifications not found to be in compliance with this ordinance and good engineering practices, and the issuance of stop work orders.

(e) Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this ordinance, or to obtain declaratory judgment, and to seek and recover court costs and attorney fees, and/or recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter

(Ord. No. 576, § 2(Attach., § 30), 7-7-2009)

Chapter 32 - SITE DEVELOPMENT

ARTICLE I. - IN GENERAL

Secs. 32-1—32-18. - Reserved.

ARTICLE II. - PLAN AND PROCEDURES

DIVISION 1. - GENERALLY

Sec. 32-19. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this article. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association. The words "used or occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

City means the City of Kyle, Texas.

Development plan means a scaled drawing representing an area of land to be improved/developed and indicating the legal boundary of said property and the nature and extent of all existing and proposed improvements to said project.

Lot means any lot, tract or parcel of land situated wholly or partially within the corporate limits of the City of Kyle, Texas, and, if served or to be served by the city water or wastewater system, within the extraterritorial jurisdiction of the city.

Site means any lot situated wholly or partially within the corporate limits of the City of Kyle, Texas, and, if served or to be served by the city water or wastewater system, within the extraterritorial jurisdiction of the city.

(Ord. No. 374, § 1, 8-7-2001; Ord. No. 676, § 1, 11-1-2011)

Secs. 32-20—32-41. - Reserved.

DIVISION 2. - PLAN

Sec. 32-42. - Required.

A site development plan as provided for in, and meeting the requirements of, this article prior to the development or construction of any improvements on any lot that is zoned other than single-family residential or two-family residential, or that is intended for any use for any purpose or occupancy other than for single-family or two-family residential occupancy.

(Ord. No. 374, § 2, 8-7-2001; Ord. No. 676, § 2, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-43. - Purpose and applicability.

The site development plan provides detailed graphic information and associated text indicating property boundaries, easements, land use, streets, utilities, drainage, off-street parking, lighting, signage, landscaping, vehicle and pedestrian circulation, open spaces, and general conformance with the master plan and ordinances of the city. A site development plan shall further be required for any development or improvement of land not otherwise requiring the subdivision of land within the city, as defined in the ordinances of the city.

(Ord. No. 374, § 3, 8-7-2001; Ord. No. 676, § 3, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-44. - Format.

The site development plan shall be drawn on sheets 24 inches by 36 inches at an engineering scale sufficient to thoroughly meet the informational requirements herein.

(Ord. No. 374, § 4(a), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-45. - Content.

The site development plan shall include all of the land proposed to be developed or improved, and any off-site improvements required to accommodate the project. The site development plan shall contain, or have attached thereto:

(1) *Cover sheet.* A cover sheet, showing the following:

a. Names, addresses and phone numbers of the record owner or developer, and authorized agents including the architect, engineer, landscape architect, and surveyor (those applicable).

b. The proposed name of the project.

c. A location map showing the relation of the project to streets and other prominent features in all directions for a radius of at least one mile using a scale of one inch equals 2,000 feet. The latest edition of the USGS 7.5-minute quadrangle map is recommended.

d. The owner's name, deed or plat reference and the property lines of any property within 200 feet of the subdivision boundaries as determined by the most recent tax rolls.

e. Certifications and signature blocks as required by the city.

f. The total acreage of the property to be developed.

g. Current zoning district as defined by chapter 53, pertaining to zoning.

(2) *Existing conditions plan.* An existing conditions plan, showing the following:

a. Boundary of existing zoning districts, if applicable.

b. The existing property lines, including bearings and distances, of the land being developed or improved. Property lines shall be drawn sufficiently wide to provide easy identification.

c. The location of existing structures and improvements, if applicable.

d. Significant trees of 12-inch caliper and larger, within the limits of the proposed on-site and/or off-site improvements.

e. Centerline of watercourses, creeks, existing drainage structures and other pertinent data shall be shown.

f. Lines delineating the regulatory 100-year floodplain, if applicable.

g. Topographic data indicating one-foot contour intervals. The contoured area shall extend outward from the property boundary for a distance equal to 25 percent of the distance across the tract, but not fewer than 50 feet nor more than 200 feet.

h. The locations, sizes and descriptions of all existing utilities, including but not limited to sewer lines, lift stations, sewer and storm sewer manholes, water lines, water storage tanks, and wells within the property, and/or adjacent thereto. Existing overhead and underground electric utilities shall also be shown.

i. The location, dimensions, names and descriptions of all existing or recorded streets, alleys, reservations, railroads, easements, building setbacks or other public rights-of-way within the property, intersecting or contiguous with its boundaries or forming such boundaries, as determined from existing deed and plat records. The existing right-of-way width of any boundary street to the property shall also be shown.

j. Location of city limit lines and/or outer border of the city's extraterritorial jurisdiction, as depicted on the city's most recent base map, if either traverses the subdivision or is contiguous to the subdivision boundary.

(3) *Erosion and sedimentation control plan.* An erosion and sedimentation control plan, showing the following:

a. Proposed fill or other structure elevating techniques, levees, channel modifications and detention facilities.

b. Existing and proposed topographic conditions with vertical intervals not greater than one feet referenced to a United States Geological Survey or Coastal and Geodetic Survey benchmark or monument.

c. The location, size, and character of all temporary and permanent erosion and sediment controls with specifications detailing all on-site erosion control measures which will be established and maintained during all periods of development and construction. Specifications should include a provision for the use of mulch tubes in place of wire silt fencing in areas deemed by city engineer to be high runoff or environmentally sensitive. This provision will not require the exclusive use of mulch tubes as an erosion control measure within the site area.

d. Contractor staging areas, vehicle access areas, temporary and permanent spoils storage areas.

e. A plan for restoration for the mitigation of erosion in all areas disturbed during construction.

f. All temporary and permanent erosion and sedimentation controls within the city shall be designed in accordance with the Austin Drainage Criteria Manual, as amended.

(4) *Site plan.* A site plan, showing all visible improvements to the land, including the following:

a. The location, dimensions, square footage, height, and intended use of existing and proposed buildings on the site.

b. The location, number and dimensions of existing and proposed parking spaces, distinguishing between standard, handicap and van handicap spaces, and calculation of applicable minimum requirements.

c. The location, type and dimensions of proposed driveways, signs and traffic control devices.

(5) *Grading and drainage plan.* A grading and drainage plan, showing the following:

a. A drainage area map delineating areas to be served by proposed drainage improvements.

b. Detailed design of all drainage facilities, including typical channel or paving section, storm sewers, detention ponds and other stormwater control facilities.

c. Accurate cross sections, plan and profiles of every drainage improvement proposed in a public utility easement and/or public right-of-way.

d. Existing and proposed topographic conditions with vertical intervals not greater than one feet referenced to a United States Geological Survey or Coastal and Geodetic Survey benchmark or monument.

e. Attendant documents containing design computations in accordance with chapter 41, pertaining to subdivision regulations, and this article, and any additional information required to evaluate the proposed drainage improvements.

f. The City of Austin Drainage Criteria Manual, as amended, (hereinafter the "manual") is hereby adopted, save and except the following:

1. Preface;

2. Paragraphs 1.2.4.E.2 and 1.2.4.E.11;

3. Paragraphs 1.2.7;

4. Paragraphs 1.4.0;

5. Paragraphs 1.5.0.3, 1.5.0.4, 1.5.0.5 and 1.5.0.6;

6. Paragraphs 8.2;

7. Appendix D; and

8. All references to the City of Austin, including its departments, boards or divisions shall be the same departments, boards or divisions within the City of Kyle. Where such departments, boards or divisions do not exist within the city, such references shall be construed to mean the city engineer or other representative authorized by the city council to perform such functions for the city.

g. All drainage systems and improvements shall conform with the provisions and requirements of the manual and good engineering practices.

h. The site grading plan shall show and include the existing ground elevations and finish construction grades, including existing ground elevations for a minimum of 100 feet onto adjoining property, width of existing street right-of-way and existing pavement width.

(6) *Utility plan.* A utility plan, showing the following:

a. The layout, size and specific location of proposed water mains and other related structures and in accordance with all current city standards, specifications, and criteria for construction of water mains.

b. The location of proposed fire hydrants, valves, meters and other pipe fittings.

c. Design details showing the connection with the existing city water system.

d. The layout, size and specific location of the proposed wastewater lines, lift stations, and other related structures, and in accordance with all current city standards, specifications, and criteria for construction of wastewater systems.

e. Plan and profile drawings for each line in public right-of-way or public utility easements, showing existing ground level elevation at centerline of pipe, pipe size and flow line elevation at all bends, drops, turns, station numbers at 50-foot intervals.

f. Detailed design for lift stations, special wastewater appurtenances, if applicable.

g. Utility demand data, and other attendant documents, to evaluate the adequacy of proposed utility improvements, and the demand on existing city utilities.

(7) *Landscape plan.* A landscape plan, showing compliance with all ordinances requiring landscaping and including the following maintenance note: The developer and subsequent owners of the landscaped property, or the manager or agent of the owner, shall be responsible for the maintenance of all landscape areas. Said areas shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free of refuse and debris. All planted areas shall be provided with a readily available water supply and watered as necessary to ensure continuous healthy growth and development. Maintenance shall include the replacement of all dead plant material if that material was used to meet the requirements of chapter 41, pertaining to subdivision regulations.

(8) Construction details. Construction details, showing (when applicable) the following:

a. Structural retaining walls and/or detention outlet structures.

b. Storm sewer manhole and covers, typical channel sections, inlets, safety end treatments and headwalls.

c. Wastewater manholes and covers, cleanouts, grease traps, pipe bedding and backfill.

d. Water valves, water meters, fire hydrants, thrust blocks, backflow prevention and concrete encasement.

e. Driveways, curbs and gutters, sidewalks, curb ramps, pavement sections and pavement repair.

f. Silt fence, rock berm, stabilized construction entrance, inlet protection.

g. Traffic controls when working in public right-of-way.

(Ord. No. 374, § 4(b), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-46. - Procedure.

A site development plan, for the development or improvement of land not otherwise subject to the subdivision of land, shall be submitted to the planning department for approval by the planning director, city engineer, and director of public works.

(1) A site development plan may be submitted to the city at any time prior to the issuance of a building permit, subject to the provisions of this article, and along with the following:

a. Completed application forms and the payment of all applicable fees.

b. A letter requesting any variances from the provisions of this article.

c. Any attendant documents needed to supplement the information provided on the site development plan.

(2) The city staff shall review all site development plan submittals for completeness at the time of application. If, in the judgment of city staff, the site development plan submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(3) City staff shall review the plan for consistency with city codes, policies and plans.

(4) It shall be the right of the applicant seeking site development plan approval, to appeal a decision of the city staff, for any reason whatsoever, to the planning and zoning commission and have a final decision rendered by the planning and zoning commission.

(5) A site development plan may be rejected at any time subsequent to submittal and prior to final written approval for failure to meet the minimum informational requirements of this article.

(Ord. No. 374, § 4(c), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-47. - Notification.

Notification shall be as follows for site development applications requesting variances or appeals of city staff decision:

(1) All owners of property (as determined by the most recent tax rolls from the county appraisal district), any part of which is located within 200 feet of the perimeter of the land to be developed, shall be notified by mail.

The city shall:

(2) Post signs along contiguous rights-of-way at each corner of the development and at intervals that do not exceed 300 feet between said corners;

(3) Publish a public notice at least once in a newspaper of general circulation in the city not fewer than 15 days nor more than 30 days prior to said public hearing; and

(4) Mail public notification forms, postmarked no fewer than 15 days prior to the appropriate planning and zoning commission hearing, shall be mailed to the owners of all property, any part of which is located within 200 feet of the perimeter of the property included within the site development plan.

(Ord. No. 374, § 4(d), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-48. - Reserved.

Editor's note— Ord. No. 738, § 2(Exh. A) adopted Aug. 20, 2013, repealed § 32-48, which pertained to approval and derived from Ord. No. 374, § 4(e), adopted Aug. 7, 2001; Ord. No. 676, § 4, adopted Nov. 1, 2011.

Sec. 32-49. - Expiration.

Under no circumstance may the expiration date be earlier than September 1, 2010. After that date, a permit or development project approval shall lapse and become void no earlier than two years for an individual permit after the date the first permit application was filed and no earlier than five years for a development project after the date the first permit application for the development project was filed, unless a longer time shall be specifically established by the city as a condition of approval, or unless, prior to the expiration, a building permit is issued and construction is commenced and diligently pursued toward completion.

(Ord. No. 374, § 4(f), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013; Ord. No. 823, § 3, 10-21-2014)

Sec. 32-49.1. - Definitions.

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

present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this article.

City means the City of Kyle, Texas.

Commended and diligently pursued toward completion means a developer has established that it has made progress toward completion of a development project by engaging in one or more of the following avenues:

(1) Submission of an application for a final plat or plan;

(2) A good faith attempt to file a permit application necessary to begin or continue toward completion of the project;

(3) The incursion of costs in developing the project (exclusive of land acquisition) that equal five percent of the most recent appraised market value of the real property in which the project is located;

(4) The posting of a bond with the city to ensure performance of an obligation that the city requires; or

(5) Payment of utility connection fees or impact fees.

Development means and begins when a developer makes application for a single permit.

Permit or *permits* means any of the following: a site development plan; a license; a certificate; approval by the city staff; registration; consent by the city staff; permit; contract or other agreement for construction related to, or provision of, service from a water or wastewater utility agency owned, operated, or controlled by a regulatory agency; or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

Person means any human being or legal entity and includes a corporation, partnership, and an incorporated or unincorporated association.

Project or *development project* means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

Regulations means whatever regulations are in place at the point a developer makes application for a single permit and govern through the rest of the development or project and include the provisions of any applicable ordinance, rule, regulation or policy and shall not include any intervening regulations between the time of a developer's application for a project's first permit and progress or completion of the project.

(Ord. No. 823, § 3, 10-21-2014)

Sec. 32-49.2. - Inception.

The expiration periods set forth in section 32-49 begin to run at the time a person:

(1) Files either a preliminary or a final site development plan with the city;

(2) Obtains one or more permits from the city;

(3) Applies for a single permit;

(4) Holds a building permit that is not older than two years;

(5) Files an application that gives the city fair notice of the person's development project and the nature of the permit sought;

(6) Exhibits progress toward completion of the project, including (1) submission of an application for a final plat or plan; (2) a good faith attempt to file a permit application necessary to begin or continue toward completion of the project; (3) the incursion of costs in developing the project

(exclusive of land acquisition) that equal five percent of the most recent appraised market value of the real property in which the project is located;

(7) Posts a bond with the city to ensure performance of an obligation that the city requires; or

(8) Makes payment of utility connection fees or impact fees.

(Ord. No. 823, § 3, 10-21-2014)

Sec. 32-49.3. - Exempted regulations.

The expiration periods of section 32-49 as set forth herein do not apply to or otherwise govern the following regulations, and the vesting provisions of V.T.C.A., Local Government Code ch. 245 are not applicable:

(1) Building permits that are at least two years old;

(2) Zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by restrictive covenants required by the city;

(3) Regulations that specifically control only the use of the land and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage or building size;

(4) Regulations for sexually oriented businesses;

(5) City or county regulations affecting colonias;

(6) Fees imposed in conjunction with development permits;

(7) Regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(8) Regulations for utility connections;

(9) Flood control regulations;

(10) Construction standards for public works located on public lands or easements; or

(11) Regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size, residential or commercial density, or the timing of a project, or that do not change development permitted by restrictive covenant required by the municipality.

(Ord. No. 823, § 3, 10-21-2014)

Sec. 32-49.4. - Other.

(a) *Series of permits.* If a series of permits is required for a project, the regulations in place at the time of the original application for the permit in the series must be the sole basis for consideration of all subsequent permits required for completion of the project.

(b) *Timing of permit application.* The city shall consider a permit application solely on the basis of the regulations that were in effect at the time the original application for a permit was filed for any purpose, including review for administrative purposes, or a plan for development of real property or plat application was filed with the city. After the application for a project is filed, the city may not shorten the duration of any permit required for the project.

(c) *Run with the land.* A permit approval shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the application.

(d) *Dormant projects.* Notwithstanding section 32-49.2 stated herein, the city may impose an expiration date on dormant projects if it can show that no progress has been made toward completion of a project. Evidence that indicates a project is dormant and that no progress has been made toward completion of a project consists of facts or circumstances that a developer has not performed or otherwise acted upon any of the actions listed under section 32-49.2. The city council may decide by majority vote that a project is dormant upon evidence indicating such and determine that the expiration date required under section 32-49 herein is no longer valid or in effect.

(e) *Expiration of permit application.* A permit application expires after 45 days if the permit applicant fails to provide the necessary information required by the application and the city provides the applicant with notice within ten days after the filing of the application. Notice shall be considered adequate if sent to the applicant by certified mail, return receipt requested, at the applicant's last known address provided by the applicant.

(Ord. No. 823, § 3, 10-21-2014)

Sec. 32-50. - Revision.

If a revision to the approved site development plan becomes necessary, whether requested by the city, planning and zoning commission or developer, then the site development plan shall be resubmitted and approved by city staff for compliance with this article.

(Ord. No. 374, § 4(g), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

Sec. 32-51. - Extension.

Site development plan approval subject to lapse may be extended if the developer submits a written request for extension and continuance of the plan as approved by the city prior to expiration. Approval of any such extension request shall be automatic one time only for a period of 12 months.

(Ord. No. 374, § 4(h), 8-7-2001; Ord. No. 676, § 4, 11-1-2011; Ord. No. 738, § 2(Exh. A), 8-20-2013)

ARTICLE I. - IN GENERAL

Secs. 38-1—38-20. - Reserved.

ARTICLE II. - STREETS AND SIDEWALKS

Sec. 38-21. - Maintenance of sidewalks on lots required.

All persons owning lots in this city upon the streets shall keep the sidewalks around the same in good condition. In failing to do so he shall be fined in any sum not less than $5.00 nor more than $100.00.

(Ord. No. 24, art. 62, 7-14-1964)

Sec. 38-22. - Parking prohibitions.

(a) *Spring Branch Drive:* It shall be unlawful for any person to stop, stand, or park any portion of a vehicle within a bike lane on Spring Branch Drive.

(b) *Exceptions:* The following vehicles are exempt from the terms of this section while engaged in the listed activity:

(1) Emergency vehicles (as defined by state law) responding to or from, or at the scene of, an emergency call;

(2) Vehicles being used to provide any municipal service such as the installation, repair or maintenance of any public street, asset or property, collection of garbage, grounds keeping, etc; and

(3) Vehicles being used to install, repair or maintain any public service or utility such as telephone, electricity, cable television, gas, water or sewer line;

(4) Vehicles parked at the mailbox station for less than five minutes.

(c) *Towing and removal.* Any vehicle, any portion of which shall be or remain standing or parked within the bike lane on Spring Branch Drive in violation of this section, the owner or driver of which vehicle has been given previous notice or citation for parking such vehicle in violation of this section, may be removed by or upon an order by a police officer. The owner of such vehicle shall be responsible for the payment of any fees incurred for the towing and/or storage of said vehicle.

(d) *Prima facie evidence.* In any prosecution charging a violation of this section governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of this section, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(Ord. No. 630, § 2, 8-3-2010)

Secs. 38-23—38-45. - Reserved.

ARTICLE III. - PEDESTRIANS

Sec. 38-46. - Use of sidewalk.

A pedestrian may not walk along and on a roadway if an adjacent sidewalk is provided and is accessible to the pedestrian. A sidewalk is accessible if the sidewalk is not obstructed, occupied or blocked in such a way as to inhibit the free flow of pedestrian foot traffic.

(Ord. No. 476, § 2, 12-6-2005; Ord. No. 476-1, § 2, 3-21-2006)

Sec. 38-47. - When no sidewalk provided.

If a sidewalk is not accessible, a pedestrian walking along and on a roadway shall if possible walk on the left side of the roadway or the shoulder of the roadway facing oncoming traffic. The pedestrian shall not impede, obstruct, or disrupt the normal and reasonable movement of vehicular traffic. When walking on the asphalt portion of a road other than to cross a road, pedestrians shall walk single file and at no time walk side-by-side. In any prosecution charging a violation of this section, proof that the defendant named in the complaint was walking side-by-side on the asphalt surface of a road, when one or more moving vehicles are present, shall constitute in evidence a prima facie presumption that traffic was impeded, obstructed, or disrupted in violation of this article.

(Ord. No. 476, § 3, 12-6-2005; Ord. No. 476-1, § 3, 3-21-2006)

Sec. 38-48. - Encroaching on or obstructing sidewalks.

(a) No person shall place, maintain, cause to be placed or maintained, or allow to remain placed or maintained, any object in such a manner as to encroach on or obstruct any portion of a sidewalk to the degree that the object impedes the free passage on and use of the entire width of the sidewalk by the public.

(b) This section does not apply to signs, barricades, or other traffic control devices lawfully in place; objects lawfully in place for the purpose of providing utilities or governmental services, such as utility lines or fire hoses; or any other object otherwise permitted or required by law to encroach upon or obstruct the sidewalk.

(c) This section does not apply to temporary, reasonable encroachments upon or obstructions of a sidewalk, such as lawnmowers, portable basketball hoops, and cars parked in driveways that also encroach upon or obstruct a sidewalk, so long as any such encroachments or obstructions are moved upon request of the city or upon request of someone who validly needs to use the full width of the sidewalk, but in no event shall such encroachments or obstructions exist overnight.

(Ord. No. 476, § 4, 12-6-2005; Ord. No. 476-1, § 4, 3-21-2006)

Sec. 38-49. - Pedestrian use of roadways or alleys.

This article does not apply to temporary, reasonable use of a roadway or alley by pedestrians, other than pedestrian traffic, so long as such use does not interfere with or obstruct traffic. Pedestrian traffic is governed by sections 38-46 and 38-47.

(Ord. No. 476, § 5, 12-6-2005; Ord. No. 476-1, § 5, 3-21-2006)

Secs. 38-50—38-71. - Reserved.

ARTICLE IV. - EXCAVATIONS

DIVISION 1. - GENERALLY

Sec. 38-72. - Overnight fencing required.

It is unlawful for any person within the limits of this city to dig, or cause to be dug, any excavation in or adjoining any highway, street, alley or sidewalk, or any unenclosed lot or square, and leave same unfenced during the night without a substantial fence at least three feet high, the boards to be not more than 12 inches apart.

(Ord. No. 24, art. 34, 7-14-1964)

Sec. 38-73. - Definitions.

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

Building inspector or *inspector* means the person, his staff or employees, or entity designated by the city to perform the duties and responsibilities set forth herein to be performed by the city, or, if none has been designated, the city manager.

Construction activity or work means and includes, but is not limited to, the causing or carrying out of any manmade change in any property or facility through building, erecting, installing, bulkheading, filling, mining, dredging, clearing, paving, grading, excavating, boring, drilling, or the addition, removal or alteration of any facility or any improvement to property, including altering of the size of any facilities, or other similar work or activity in, over, under, through, along or across the rights-of-way or streets within the city limits.

Contractor means and includes, but is not limited to, the person possessing a permit, franchise or license agreement as required under this article and all persons actually performing, directing, monitoring, managing or overseeing any construction activity, work or other such similar activity in, over, under, through, along or across any streets or rights-of-way within the city limits.

Excavation means any manmade formation of a cavity, hole or hollow by way of any means of digging, plowing, quarrying, uncovering, blasting, scooping, drilling, dredging, bulldozing, relocating or making cuts, openings, borings or other action or processes to form a cavity, hole or hollow.

Facility or *facilities* means any plant, equipment and property, including, but not limited to, duct spaces, manholes, poles, towers, utility pipes, pipes, conduits, lines, wires, transmission media, underground and overhead passageways or other equipment, structures and appurtenances which are located in, over, under, through, along or across the rights-of-way or streets.

Installation means the addition, removal, repair or alteration of any facility located in, over, under, through, along or across the rights-of-way or streets.

Owner means any person having financial interests in property or facilities located in, over, under, through, along or across streets and rights-of-way in the city, including the person directing the actions of any contractor, paying a contractor, or for whose benefit the actions of the contractor are undertaken.

Permanent structure means any facility located in, over, under, through, along or across the rights-of-way or streets within the city limits that occupies, affixes or otherwise is to remain in the same location for a period of time of more than 30 days.

Person means and includes an individual human, partnership, firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, association,

legal entity, or corporation of any kind, including, but not limited to, any provider of any utility service or public service, as those terms are defined in this section.

Public service means any business or commercial activity which is not included in the definition of the term "utility service" that requires the use of the public streets or rights-of-way for the location of any facility or equipment to provide services to persons or property situated within the city, including, but not limited to, cable television service and services using a transmission media, but excluding telephone, taxi service and solid waste collection.

Rights-of-way means the surface of, and the space above and below, any and all present and future public thoroughfares, public utility easements, public ways, public grounds, public waterways and, without limitation by the foregoing, any other public property within the corporate limits of the city.

Streets means the surface of, and the space above and below, any and all present and future public streets, avenues, highways, boulevards, drives, roads, bridges, alleys, lanes, viaducts and all other public roadways within the city limits and any highways, county roads or other public roadways for which the city has an agreement or contract to control, regulate or maintain.

Transmission media means all cables, fibers, wires, tubes, pipes or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, video or data, or other purposes, which are physically located in the rights-of-way or streets.

Utility service shall have its common meaning and shall specifically include, but not be limited to, electric, water, wastewater, gas and telephone service.

(Ord. No. 346, § 2, 2-1-2000)

Secs. 38-74—38-104. - Reserved.

DIVISION 2. - STREETS AND RIGHTS-OF-WAY

Sec. 38-105. - City jurisdiction.

The city shall have exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and rights-of-way, and may provide for the improvement thereof by paving, repaving, raising, draining, realigning, closing, or otherwise the use thereof. The provisions, without limitations, of law providing for assessments against abutting property for street improvements are expressly adopted. Such exclusive dominion, control and jurisdiction in, over, under, through, along and across the streets and rights-of-way of the city shall also include, but not be limited to, the power to regulate, locate, remove or prohibit the location, installation, alteration or removal of any type of facility or other property in, over, under, through, along or across any streets or rights-of-way. The location, alteration or removal, including the route, of all facilities within the rights-of-way or streets shall be subject to the reasonable direction of the city.

(Ord. No. 346, § 3A, 2-1-2000)

Sec. 38-106. - Permit required before obstruction; bond.

It shall be unlawful for any owner or contractor, including his agents, servants, independent contractors, or employees, to occupy or obstruct any portion of the rights-of-way or streets or to perform any construction activity, or to cause another to do the same, for any purpose in, over, under, through, along or across any street or right-of-way without first having made all applications for permits and, when required, obtained all permits therefor, together with a bond approved by the building inspector in an amount determined as herein provided, conditioned that the principal therein will discharge all claims of every

character arising from or occasioned by such occupancy or construction activity or by reason of damages or injuries sustained by persons or property because of such occupancy, construction activity, excavation or other such activity thereon and discharge all judgments obtained, together with all costs attached thereto against the city by reason of any such claim, injury or damage sustained. contractor and owner carrying on any construction activity or excavation shall keep all streets and rights-of-way adjacent to such construction activity or excavation carried on by such contractor or owner, in a clean, safe and orderly condition, and unobstructed, except as provided in this article, during all such activities, and shall restore all such streets, rights-of-way, facilities and other structures damaged, altered or injured, in any way, to as good condition as they were before the beginning of such activities. The owner or contractor may, in lieu of providing a separate bond on each permit or construction project, annually file with the city a bond providing the above required coverage to the city, which bond shall be and remain in effect for a term of one year and applicable to all work performed by the owner or contractor within the city.

(Ord. No. 346, § 3B, 2-1-2000)

Sec. 38-107. - Franchise required to abut utility services, etc.

It shall be unlawful for any person to use or occupy any street or right-of-way for the purpose of providing, abutting or adjoining other property with any utility service, public service, data, voice or video transmission service, cable television, taxi or solid waste collection service, without having first obtained a franchise or license issued and approved by the city council; except as specifically provided otherwise by state law.

(Ord. No. 346, § 3C, 2-1-2000)

Sec. 38-108. - Stop work order.

Construction activity, excavation, obstruction or other work shall cease immediately upon the issuance of a stop work order from the building inspector or from any authorized law enforcement agent of the city. It shall be unlawful to remove a stop work order placed upon a construction or work site until compliance with this article has been accomplished. No work so ordered to stop shall commence after issuance of the stop work order until the violation has been corrected and the building inspector in writing authorizes the contractor to begin again.

(Ord. No. 346, § 3D, 2-1-2000)

Sec. 38-109. - Excavation permit required.

It shall be unlawful and a violation of this article for any person, contractor or owner to maintain an existing excavation within the city or to work upon or assist in any way in the execution or operation of any such excavation, without an excavation permit having been issued by the city in accordance with this article.

(Ord. No. 346, § 3E, 2-1-2000)

Sec. 38-110. - Extension over part of right-of-way prohibited.

It shall be unlawful for the owner of any building or property abutting on any street or right-of-way in the city, or any tenant occupying such building or property, or any other person, to construct, build, operate or maintain any building, facility, or part thereof, including a show window, which extends over any part of any street or right-of-way.

(Ord. No. 346, § 3F, 2-1-2000)

Sec. 38-111. - Installation, repair of towers, posts, etc.; permit required.

It shall be unlawful to erect, remove, repair, install, build or alter, in any fashion whatsoever, any posts, poles, towers or other facilities that are erected for the purpose of bearing wires, cables or any other transmission media, or to alter in any fashion any existing posts, poles, towers or other facilities that are used in connection with any telegraph, electric light, telephone, street railway, transmission media, radio or like purpose, and none shall be erected, placed, kept or maintained upon any street or right-of-way within the city, unless a written permit shall have first been obtained from the building inspector to erect, install, remove, repair, build or alter, in any fashion whatsoever, such posts, poles, towers or other such facility.

(Ord. No. 346, § 3G, 2-1-2000)

Secs. 38-112—38-135. - Reserved.

DIVISION 3. - PERMITS

Sec. 38-136. - Application form.

Application for a permit required by division 2 of this article shall be addressed to the city secretary and made on a form furnished for that purpose, detailing the extent, character and purpose of any construction activity or other work to be performed.

(Ord. No. 346, § 4(intro.), 2-1-2000)

Sec. 38-137. - Required.

The owner or contractor for all construction activity, installations, and similar activities must have applied for and have been issued all of the permits required for the work. A permit shall not be required from any holder of a franchise, license or holder of a permanent occupation permit to perform any minor alteration of an existing facility necessary to initiate service, repair service or for routine maintenance to an individual customer's property unless the repair or maintenance requires excavation or temporary closure of nonresidential traffic lanes. The types of activities which must have a permit issued pursuant to this article are as follows:

(1) *Excavation of right-of-way or street.* Any person considering excavation, cutting, boring, digging or demolition activity in, over, under, through, along or across the streets or rights-of-way shall, in advance of same, submit a design plan to the city for review and comment and shall secure proper permits and/or approvals and pay the fees as required.

(2) *Construction activity in right-of-way or street.* Any person considering adding, repairing, removing or altering any facility or foliage, whether owned by such person or not, in, over, under, through, along or across the streets or rights-of-way within the city limits shall, in advance of same, submit a design plan to the city for review and comment and shall secure proper permits and/or approvals and pay the fees as required.

(3) *Permanent structures occupying rights-of-way or streets.* The owner of all permanent structures, appurtenances, or facilities located in, over, under, through, along or across the streets or rights-of-way shall, in advance of installation, placement or construction thereof, submit a design plan and specifications as required herein and as required by the building inspector for review and comment, and shall secure the proper permits and/or approvals and pay fees as required. The owners of permanent structures, appurtenances or facilities located in, over, under, through, along or across the streets or rights-of-way at the time of passage of the ordinance from which this article is derived shall have 60 days to submit an application for a permit and secure such

permit before enforcement action may be taken. One application may include all the owner's permanent structures, appurtenances and facilities that are located in, over, under, through, along or across the streets or rights-of-way of the city.

(4) *Temporary obstruction of the right-of-way or street.* Any person desiring to temporarily occupy or obstruct any portion of any street or right-of-way for the purpose of placing thereon material or rubbish for or from construction activities, obstructing any portion of any street or right-of-way for any purpose whatsoever connected with any construction activities or erection, installation, removal, alteration or repair of any facility or other structure or excavation that will temporarily obstruct any street or right-of-way, shall apply to the building inspector for a permit for such temporary obstruction and shall secure the proper permits, approvals and pay fees as required.

(Ord. No. 346, § 4A, 2-1-2000)

Sec. 38-138. - Fees.

In the event an application is made for a permit to perform any construction activity in any of the streets or rights-of-way, such permit shall be subject to the following permit fees to cover the costs and expenses of the city. Acceptance of any such permit shall constitute an acceptance by the permittee of the conditions of the permit and any of the obligations and duties to repair any cut, damage, injury or excavation in full compliance with the requirements set forth in article V of this chapter. Payment for each such permit shall be made with the application for the permit. No permit shall be issued for less than the required permit fee.

(Ord. No. 346, § 4B, 2-1-2000)

Sec. 38-139. - Minimum fee—Construction.

The fee for each permit required pursuant to this article for any construction activities, other than excavations, including, but not limited to, installation, removal, repair, addition or other alteration of any facilities or foliage in the rights-of-way or streets, shall be as provided in appendix A to this Code, plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the city for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the construction process.

(Ord. No. 346, § 4B(1), 2-1-2000)

Sec. 38-140. - Same—Excavation.

The fee for each permit required pursuant to this article for any drilling, boring or cutting, or otherwise, any excavation of any portion of the rights-of-way or streets shall be as provided in appendix A to this Code, plus the amount of any other permit fees and any engineering or other professional fees reasonably incurred by the city for and with respect to such permit. In the event that the permit is recommended for issuance, an additional fee per calendar month for the duration of the permit shall be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the excavation process.

(Ord. No. 346, § 4B(2), 2-1-2000)

Sec. 38-141. - Professional fees.

In addition to the permit fees in this division, the city shall be fully reimbursed for all reasonable costs associated with activities in the streets or rights-of-way pursuant to this article that require inspection, plan review or any other reasonable overview or action by an engineer or other professional. All engineer and

other professional fees shall be paid prior to issuance of a permit. Permits shall not be issued to, and may not be maintained by, any person owing engineer or other professional fees to the city.

(Ord. No. 346, § 4B(3), 2-1-2000)

Sec. 38-142. - Plumbing fees.

Any person who desires to install, repair or alter any pipes, lines, tubes or pipes for which any water, solid waste, gas, oil or other such product may flow, in or under the rights-of-way or streets, shall submit to the building inspector the plans and specifications showing the proposed improvements. It shall be the duty of the building inspector, when such plans and specifications have been submitted, to cause a qualified plumbing inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the plumbing inspector shall be paid by the applicant before such permit is issued.

(Ord. No. 346, § 4B(4), 2-1-2000)

Sec. 38-143. - Electrical fees.

Any person who desires to build, erect, alter, install, repair or remove any poles, posts, towers or other similar facilities for which any wires, cables, electrical wires or transmission media are located or will be located shall submit to the building inspector plans and specifications showing the proposed improvements and existing conditions on such poles, posts, towers or such similar facility. It shall be the duty of the building inspector, when such plans and specifications have been submitted, to cause a qualified electrical inspector to make an inspection of the proposed improvements. An inspection fee equal to the estimated time required for the inspections multiplied by 1.2 times the cost per hour of the electrical inspector shall be paid by the applicant before such permit is issued.

(Ord. No. 346, § 4B(5), 2-1-2000)

Sec. 38-144. - Certificate of occupation fees.

The fee for each certificate of occupation required pursuant to this article for a permanent structure to occupy any rights-of-way or streets shall be as provided in appendix A to this Code, per year per linear foot of street or right-of-way so occupied and such fee shall be paid in advance annually from the original date of the issuance of the certificate of occupation.

(Ord. No. 346, § 4B(6), 2-1-2000)

Sec. 38-145. - Fee for temporary obstruction of the right-of-way.

A fee and special assessment for temporary obstruction or occupation of any right-of-way or street shall be as provided in appendix A to this Code, per day of obstruction, to reimburse the city for costs of increased supervision and overview of such sight while such obstruction exists, plus any costs or charges for special assignment of police officers to monitor, escort, or otherwise provide services to help protect the public from the construction activities or excavation and any other similar expenses reasonably incurred by the city for and with respect to such temporary obstruction. Such requirement shall not excuse, diminish or waive the duty of the owner or contractor to conduct any such obstruction or excavation, and to erect warning signs, devices and barricades, in a manner to protect the general public, pedestrians and motorist.

(Ord. No. 346, § 4B(7), 2-1-2000)

Sec. 38-146. - Duration.

All activities or construction authorized by a permit issued under this article shall be commenced within six months after the date of issuance of the permit and thereafter be continuously prosecuted to completion, or such permit shall be void and the person to whom the permit was issued must make a new application before commencing or continuing any further activities or construction. Each permit issued shall be issued for a specific time period with a maximum period of one year, after which period the permit shall be void and the person to whom the permit was issued must make a new application for a new permit for each succeeding year or portion thereof. If the permit is allowed to expire, the person shall apply for and procure a new permit, paying the fee therefore as before, prior to proceeding with any such work.

(Ord. No. 346, § 4C, 2-1-2000)

Sec. 38-147. - Contents of applications.

Applications for permits required by this article shall be made to the building inspector and must be made in writing by the person to do the work, the contractor, or his authorized agent, that will be submitted in duplicate upon forms provided to the building inspector for that purpose. An application for such permit may be deposited at the office of the city secretary for delivery to and action by the building inspector. Such application shall contain:

(1) *Contents.* The date submitted, name and address of owner and contractor, and as follows:

   a. Date application is submitted;

   b. Name, address, phone, fax and other pertinent information of owners and name of all contractors, including subcontractors employed or that will be employed, to perform any portion of any construction activity or excavation;

   c. Name of person actually presenting the application to the inspector;

   d. Name, address, phone, fax and other pertinent information of the persons designated to be the 24-hour contact or emergency contact at all times while the permit is active (the applicant must immediately notify the building inspector in writing, if such emergency contact changes, and no later than 24 hours after such change, to maintain an active permit);

   e. Exact location and legal description of any property, streets or rights-of-way where the construction activities or excavation is proposed to occur;

   f. To the extent that information can be reasonably obtained, all design plans shall show the following:

      1. The location of other permanent structures, facilities and utilities which will be crossed or paralleled within eight feet of the location of the proposed permanent structure, identifying the owners thereof;

      2. Include the topography of the area to be affected and other development; and

      3. Protective measures, considered necessary to create a reasonable transition to, and protection of, the adjacent property and facilities.

(2) *Fees.* A fee, appropriate to the number and kinds of installations, alterations, removals or construction activities to be made or activities to be performed.

(3) *Proof of insurance.* Proof of liability insurance or bond in the amount of not less than $500,000.00 personal injury and property damage:

   a. An applicant must provide proof of liability insurance in the required amount;

b. The coverage must be on an occurrence basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards as applicable to the size and type of project;

c. Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than 30 days before canceling, failing to renew, or reducing policy limits; and

d. The applicant shall file the required original certificate of insurance or bond prior to any commencement of work.

(4) *A description of the work to be performed.* Where deemed necessary by the inspector to accomplish the objectives of this article, applications shall be accompanied by as many copies of specifications, plans and a complete layout drawn to scale and in detail to show the nature and character of the work to be performed as the inspector may deem necessary. The plan or diagram shall show the manner in which the installations or construction activities are to be made or the character of any of the repairs to existing installations or construction activities. When such plans, specifications and layout are demanded, it shall be a violation of this article for any person to perform construction activities or install any part of the electrical, plumbing, cables, facilities or structure or perform further excavation or construction activity until the appropriate inspector approves such installation or construction activity.

(5) *Estimated duration.* Estimated duration of any construction activity, installation and/or excavation which will result in the disturbance or modification of any rights-of-way, streets or property and the exact locations for each such disruption or disturbance, including an estimation of the duration of each disruption or disturbance at each location.

(6) *Excavations.* If any site is to be excavated, the application must include:

a. The purpose or reason for the removing or moving of the soil;

b. The quantity in cubic yards of soil to be moved or removed;

c. The location where the soil will be moved or deposited;

d. Identification of each building, residence or structure within 150 feet of the proposed excavation;

e. A positive statement that the proposed excavation shall not block, encumber or close any street or disturb the lateral support thereof;

f. A positive statement that the proposed excavation is not and shall not be located in an area which has a public record restrictions or covenants prohibiting such a use of the property;

g. The proposed slopes and lateral supports to be used in the excavation shall be set forth;

h. The present and proposed arrangements made for surface water drainage;

i. The safety precautions to be installed and maintained at the site, such as fences around the excavation, traffic control devices and drainage systems to keep the excavation from collecting water within or creating a hazard to workers, travelers and citizens;

j. Specifications of all materials to be used in repair of the excavation;

k. The intended use or condition of the land upon completion of the excavation process; and

l. Such other pertinent data as the building inspector may require.

(7) *Permanent structure.* If a permanent structure is to be added or remain within any street or right-of-way, the owner of such structure must complete an application for certificate of occupation for the permanent occupation of the right-of-way, including:

a. The person or firm which will operate or maintain the permanent structure;

b. The origin point and the destination of the permanent structure;

c. A description of the substance to be transported through the permanent structure;

d. Engineering plans, drawings and/or maps with summarized specifications showing the horizontal and vertical location of all permanent structures, including covering depths, poles, towers, etc. and the location of any shutoff valves or other such disconnect locations, where applicable. If the city has computer generated mapping system, the applicant will provide final as built plans in a format compatible with uploading into the city's system;

e. A description of the consideration given to matters of public safety and the avoidance, as far as practicable, of existing inhibited structures and congregated areas;

f. Detailed cross section drawings of all streets, rights-of-way and easement crossings to be affected;

g. The design criteria under which the permanent structure will be constructed and maintained; and

h. Any other pertinent data as the building inspector may reasonably require.

(8) *Certificate telecommunications provider.* If the applicant for a permit purports to be a telecommunications entity, in addition to the above required information, the application shall include:

a. Specifications as to the form of transmission media to be utilized;

b. Design plans and specification concerning the transmission media;

c. A copy of the certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority from the public utilities commission authorizing local exchange telephone service in the city;

d. Verification of current payment of all fees and right-of-way fees to the public utilities commission; and

e. Other such pertinent information as the inspector may reasonably require.

(Ord. No. 346, § 4D, 2-1-2000)

Sec. 38-148. - Review of application.

(a) The city council shall have the power and reserves the authority to refuse to issue a permit under this article, including a certificate of occupation, to any person, contractor or owner who has not complied with this article, has previously failed to comply with the terms, requirements or standards of any prior permit issued for a similar project, or who has failed to provide insurance and bond as required.

(b) The city council shall have the power and reserves the authority to refuse any permit, or to modify or amend any application for permit, where the particular location, by reason of the nature of such particular location, the character and value of the permanent improvements already erected on or approximately adjacent to the particular location, and the use of which the land and surroundings, when in the building inspector's opinion, or on appeal to the city council in the city council's opinion, the excavating, operation of an excavation or addition or alteration of any such proposed facility on such particular location or construction activity would:

(1) Constitute a nuisance;

(2) Be injurious to public health;

(3) Be a public hazard to the inhabitants as a whole, or to a substantial number of its inhabitants or travelers;

(4) Be a disadvantage to the city in its planned growth; or

(5) Otherwise have a negative impact on the property values of property within the city.

(Ord. No. 346, § 4E, 2-1-2000)

Sec. 38-149. - Factors to be considered.

In considering and reviewing all plans submitted and applications for permits, including a certificate of occupation, the building inspector shall be guided by the general purpose of orderly municipal planning, avoiding conditions or the doing of any act constituting or creating a nuisance, health hazard or endangering the public safety. As an aid in accomplishing these purposes, the following points shall be considered by the inspector in reviewing applications for permits; however, such aids shall not be exclusive in the inspector's consideration and ultimate recommendation:

(1) The plan's compliance with all provisions of this article and other ordinances of the city;

(2) The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood;

(3) The relationship of the development to adjacent uses in terms of harmonious use and design, maintenance of property values, and negative impacts;

(4) The provision of a safe and efficient vehicular and pedestrian circulation system;

(5) Surface water drainage and water drainage facilities of the excavation or installation, including soil and earth erosion by water and wind;

(6) Lateral supports of the excavation, including protections for existing buildings, facilities, streets and other property to be affected thereby;

(7) Conditions in which the excavation, construction activities or installation are to be maintained and safeguards to be taken to prohibit creating a nuisance, health or safety hazard, attractiveness to children, and features provided to dispense with the endangering of the lives and property of the public;

(8) Proposed use or condition of land upon completion of excavation process, construction activity or installation;

(9) Protection, access and encumbrance such installation, construction activity or excavation will have upon existing facilities and the location of the facilities in reference to the proposed excavation or installation, including the size, quantity, location and permanent nature of the all facilities currently located or proposed to be located therein; and

(10) Such other facts as may bear or relate to the coordinated, adjusted and harmonious physical development of the city.

In arriving at the ultimate recommendation, the inspector may attach such special conditions thereto as may be reasonably necessary to attain the overall purpose of this article.

(Ord. No. 346, § 4F, 2-1-2000)

Sec. 38-150. - Appeals.

Appeals from the denial or granting of a permit, including a certificate of occupation, shall be made to the city council.

(1) If an application for a permit is refused, the applicant may, not later than ten days from the date of receiving notice of such refusal, appeal to the city council by directing a letter to the city council setting forth therein the date of denial of the permit and the reasons the permit should be granted.

(2) If the inspector grants the permit, any citizen of the city who is or may be injured or damaged thereby may, within ten days of the recommendation to grant the permit, appeal to the granting of the permit to the city council, by directing a letter to the city council addressed to the office of

the city secretary, at the city hall, setting forth therein the date of the action by the inspector and the reasons the person appealing believes that he has been or will be injured by the action from which he is taking such appeal.

(3) Upon the filing of such appeal, the right to operate under any such permit shall be suspended until final determination by the city council.

(4) The city council shall, on receiving such notice of appeal, direct the city secretary to place it on the city council's work agenda to be considered in the due order of city business. The city secretary shall then notify the applicant and any other appellant as to the date and place where the city council will consider the appeal and publish a notice one time in the official newspaper at least five days before the date when the city council will consider the appeal.

(5) The city council on considering the appeal may, by majority vote of all members in attendance and voting, either grant or refuse to grant the permit. The decision of the city council shall be the final decision and binding on all parties.

(Ord. No. 346, § 4G, 2-1-2000)

Sec. 38-151. - Conditions for permit.

All permits, including certificates of occupation, shall be issued based upon the representations made within the application for the permit, information provided from the applicant, information known to the inspector and/or city council, and all plans and specifications submitted with the application. Violations of any conditions of the permit or the general conditions listed herein shall constitute a forfeiture of all rights and privileges granted by the permits. The following general conditions of permit are in addition to the specific conditions identified in the specific permit:

(1) Permit holders may not deviate from the plans and specifications approved with the permit without prior written permission from the building inspector and amendment of such permit.

(2) Permit holders must comply at all times with the requirements of this article and other applicable city ordinances as well as state and federal laws.

(3) No permit issued under the terms of this article shall ever be transferred, sold, assigned, or otherwise disposed of in any manner to any other person without the written consent of the building inspector.

(4) No permit shall be issued for less than the required permit fees.

(5) Bonds must be maintained at all times applicable to the permitted project.

(6) All applications for permit must contain complete and accurate information, plans and specifications for the project.

(7) No work shall be done under any permit issued under this article except as stated in the permit and in compliance with state and federal laws. The permittee shall ensure compliance at all times therewith.

(8) The building inspector shall at all times have authority to inspect the project site and stop all work not in conformity with the permit, ordinances of the city, or state or federal law. A copy of all permits shall be maintained at the construction site and made available for inspection at all times when construction or installation work is occurring. It shall be a violation of this article to interfere with a building inspector in the performance of his duties.

(9) Any changes to the information provided in the application approved by the building inspector must be submitted to the building inspector within 72 hours after the information has changed to amend the permit and, if such changes are of a sufficient degree to cause reconsideration, the building inspector shall have the same authority as in an original application to approve or deny such amendments.

(10) Approval of a permit does not constitute an agreement to undertake construction activities contrary to state, federal or city requirements.

(11) No permanent structure shall remain in the rights-of-way or streets without all proper permits and a current occupation permit authorizing permanent occupation.

(Ord. No. 346, § 4H, 2-1-2000)

Sec. 38-152. - Revocation of permit.

Any permit, including a certificate of occupation, issued under this article may be canceled if a notice to cease operations or activities thereunder is issued, and such notice is not immediately complied with. Any such noncompliance shall constitute grounds for immediate revocation of any and all permits, or portions thereof, for the project, when the following conditions exist:

(1) A violation of any condition of the permit;

(2) A violation of any provisions of this article or any other applicable ordinance or law relating to the specifications of the permit, excavations, construction or installation of the type of facility being installed, repaired, altered or removed;

(3) Failure to cease construction activities or correct such violations as directed by the building inspector; or

(4) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

(Ord. No. 346, § 4J, 2-1-2000)

Sec. 38-153. - Appeals from permit revocation or other action.

A permit holder, including a person having a certificate of occupation, pursuant to this article, who is aggrieved by a revocation or any other action by the building inspector regarding such permit, may appeal to the city council. The appeal shall be made by filing with the city secretary a written notice thereof within ten calendar days from the date of the revocation of the permit, or other action appealed from, including, but not limited to, notices to repair and stop work orders. A fee as provided in appendix A to this Code shall be collected for processing the appeal. The aggrieved person shall be given a hearing before the city council, in due order of business, after which the city council may affirm, modify or overrule the inspector's decision. Written notice of the time and place of such hearing shall be served upon the permit holder at least five days prior to the date set for such hearing. Notice of the hearing may be given by personal delivery thereof to the permit holder or by deposit in the United States mail in a sealed envelope with postage prepaid, addressed to such person at the address appearing in the application or notice of appeal. All work shall be stopped at the construction site while the appeal is pending.

(Ord. No. 346, § 4K, 2-1-2000)

Sec. 38-154. - Franchise holders.

Utility service providers and public service providers having a current franchise or license agreement with the city shall be governed by the terms of the franchise or license agreement and shall not be required to: obtain an additional certificate of occupation or permit; post additional bond or insurance; and shall be exempt from paying any permit fees when required hereby to obtain a permit; but shall otherwise be subject to, bound and governed by each and every term and provision of this article except as explicitly exempted in the franchise or license agreement. Where the terms and conditions of the franchise or license agreement conflict with the provisions of this article, the terms and conditions of the franchise or license agreement

shall govern. Unless otherwise exempted by a current franchise, license agreement or state law, the utility service provider or public service provider shall:

(1) Complete all applications for permits required herein but shall not be required to pay the fees;

(2) Provide the city the information required in the application;

(3) Coordinate with the city as directed by the building inspector based upon the size of the project and construction activities;

(4) Apply for all permits not less than five working days prior to commencing any activity for which a permit must be issued as required by this article; and provide an estimation of time for completion of each project.

(Ord. No. 346, § 4L, 2-1-2000)

Sec. 38-155. - Exception to certain fees.

Telecommunications entities that are certificated telecommunications providers, certificated by the state to service the city, and that pay the city compensation as required by V.T.C.A., Local Government Code ch. 283, shall be exempt from such fees as are set forth therein upon verification from the public utilities commission that the telecommunications entity seeking a permit is, at the time of application, a certificated provider holding a current certificate of convenience and necessity to service the city, and is paying the city compensation as required by V.T.C.A., Local Government Code ch. 283. The telecommunications entity shall be subject to all other provisions of this article for which the entity is not exempt.

(Ord. No. 346, § 4M, 2-1-2000)

Sec. 38-156. - Bond and liability.

A person considering any construction activity, installation of facilities, excavation, cutting, boring, digging or demolition activity in, over, under, through, along or across the streets or rights-of-way within the city, and who is not under a written contract, franchise, license or other express written agreement with the city, shall post a bond, make a cash deposit with the city, or provide other suitable forms of financial security as determined by the building inspector in an amount that approximates the projected costs of inspection, observation, labor, equipment, materials, and overhead associated with the permit work, and the restoration, reconstruction and repair of the cut, work or excavation in compliance with the standards and requirements set forth in article V of this chapter. Such security shall be posted prior to the issuance of a permit and the start of construction.

(1) *Bond required.* A good and sufficient bond shall be filed with the application for the permit required by this article, executed by a bonding company, which bond shall be approved by the building inspector as to form and sufficiency and shall be in the sum of not less than $2,000.00. The bond shall be conditioned, among other things, that the contractor shall faithfully, at his own expense, furnish all proper materials, tools and appliances, and perform, execute, construct and complete all such work undertaken by such contractor, and observe and comply with the specifications, requirements and provisions of this article. The bond shall be and remain in effect at all times in which the excavation or construction activities are commenced or in progress.

(2) *Maintenance provisions in bond.*

a. Every permittee issued a permit under this article shall be bound and obligated to construct all work, and use such materials in the construction thereof, so that the same shall be in as good or better condition that prior to the work, and will remain in such as good or better condition for and during a period of not less than one year from and after the date of completion of the work, free from all cracks, breaks, disintegration, undue wear, scaling or departures from true line or grade, or other defects which might impair the permanence or

usefulness of the work or construction activity or surrounding facilities, streets or rights-of-way; however, such cracks as may appear in expansion joints, or cuts between blocks, shall not be deemed to be defects unless in the opinion of the building inspector such cracks are excessive in opening or deflecting of surface.

b. Each such bond issued pursuant to this article shall continue in effect for and during the maintenance period of one year following the completion of the work, construction activity or repair.

c. Each bond issuer shall promptly adjust, pay and settle all legitimate claims for damages or injuries that may result by reason of carelessness or negligence in the manner of performing the work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof.

d. Each permittee and bond issuer shall hold the city free and harmless from liability on all claims for damages that are based upon, that arise from, or that are related to, the work or construction, or the condition thereof during the maintenance period, or that arise by reason of carelessness or negligence of the permittee, owner, or contractor, in the manner of performing such work, construction activity or excavation, or by reason of any defects therein caused or arising from careless, negligent or imperfect construction or repair thereof, or otherwise by reason of the work or construction.

(3) *Withdrawal of surety on bond.* On written notice to the building inspector and the contractor, any surety on a bond issued pursuant to this article may withdraw from all liability thereon on account of any and all future work undertaken by the contractor and for which excavation or construction activity was not begun before the delivery of the notice. After receipt of such notice, the contractor shall not begin any new work unless and until the contractor shall provide and procure the approval of a new bond in the same manner as required for the first bond. No bond or surety may be withdrawn after the permitted work is commenced.

(4) *Emergency conditions.* In the event emergency conditions warrant immediate response by an affected person, the building inspector may waive and/or modify normal standard procedures outlined herein to promulgate standards or requirements to expeditiously address the resolution of the emergency conditions; provided that, in any such event, the contractor shall obtain a permit for such work on the first business day of the city following performance of the work.

(5) *Decision binding on contractor and sureties.* The decision of the building inspector shall be binding and conclusive on the contractor and the sureties on all such bonds as to when any work or construction was actually commenced.

(6) *Liability of the contractor and sureties for defective work.* A contractor whose work, construction activities or excavations are completed, or caused to be completed, the city shall, on completion of such work and receipt of a certified bill of the cost thereof approved by the city manager, pay to the city, on its order, the cost of the work. The sureties on the contractor's bond shall be liable for all items and amounts listed in the certified bill of costs submitted to the contractor by the city. In the event the contractor, or the surety on any bond, shall fail and refuse to timely pay any such certified bill to the city, the contractor and such surety shall be and become liable to the city for its attorney fees and costs of collection.

(7) *Liability of contractor and sureties for maintenance and repair work.* If any defect in the work or construction develops during the one year guaranty period established by this article, which, in the opinion of the building inspector, is due in any measure to defects of workmanship or material, the contractor shall remedy, repair and reconstruct such work, and/or any part thereof, as may be required by the building inspector, and such work shall be known as maintenance and repair work, and the surety on the contractor's bond shall be fully liable for any default of such contractor under this section.

(Ord. No. 346, § 5, 2-1-2000)

Sec. 38-157. - City facilities and lands.

City facilities and lands shall not be altered, obstructed or occupied without the express written permission of the city. Facilities not owned by the city shall not be located closer than ten feet laterally, and shall not be located above or below any city-owned facility located underground, without express written permission from the city. Additionally, no facilities may be located in, over, under, through, along or across any parks, recreational land or other similar city-owned property, which is not a street or street right-of-way, without the express written permission of the city.

(Ord. No. 346, § 6, 2-1-2000)

Sec. 38-158. - Duties and responsibilities.

The contractor and the owner, and any other person to whom a permit is issued, shall, during the period for which the permit is issued, and as provided in section 38-156, have all of the duties and responsibilities identified in this article, other applicable ordinances of the city, and as provided for in state and federal law. The owner, its agents, assigns, contractors and subcontractors installing the facilities, shall continually have the duties identified in this article for so long as facilities or property, under the control of any such owners, and any subsequent owners thereof, are located in the rights-of-way or streets, to perform pursuant to the terms of this article.

(1) *Duty to barricade and protect.* The owner and the contractor, and every person to whom a permit is issued under this article, shall have a duty to ensure that each contractor, subcontractor, employee, agent or assignee:

   a. Prosecutes such work diligently and in a good and workmanlike manner; and

   b. Safeguards and protects the public upon or using the street, right-of-way, or other place where the work is being performed, from accidents, injury or damage by placing barriers, lights and other sufficient safeguards, including a watchman, if necessary, around all cuts, openings, excavations, installation sight and materials, implements and tools used in connection with the construction activity, and shall conform to the provisions of this article and all requirements of the building inspector during the prosecution and completion of such work.

   All barricades and barriers shall be erected and maintained in compliance with accepted industry practices and applicable safety standards. The owner and the contractor shall be responsible for the costs and expenses of all such barricades, barriers and watchmen.

(2) *Supervision of work.* It shall be the duty of the owner, the contractor, and the supervisor of the work site, who shall cause to be made any hole, cut, trench, excavation, mound, embankment, installation or other obstruction in any street or right-of-way, to carefully guard or cause to be guarded such hole, trench, excavation, mound, embankment, installation or other obstruction while the same may exist and not to suffer the same to remain beyond a time reasonably sufficient for the completion of the construction or removal of the obstruction, and to repair the portion of such street or right-of-way or any facility or property affected thereby so as to restore the same to as good or better condition than existed just previous to such activity.

(3) *Duty to promptly repair.* It shall be the duty of the owner, the contractor and the supervisor of the work site, on whose behalf the hole, trench, mound, excavation, construction activity, installation or other obstruction or intrusion shall be made, or has been made, in the streets or rights-of-way of the city, to protect the same while such condition exists and to promptly repair the same so as to leave the street or right-of-way in as good or better condition than as before the work. All facilities, streets, sidewalks or other structures or property damaged, altered or injured, in any fashion, shall be restored with similar material and workmanship to that existing before the same was damaged, altered or injured through any actions of the owner, contractor or person employed

in any fashion thereby. All work shall be done to the satisfaction of the building inspector whose duty it shall be to inspect the same after it has been done.

(4) *Removal and reconstruction where work defective.* All construction activities undertaken in the streets and rights-of-way of the city are declared to be wholly subject to the exclusive control of the city, and whenever, in the opinion of the building inspector, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or material or because not true to lines or grades or specifications required therefor, then upon written demand or notice from the building inspector, such contractor or the owner shall promptly remedy, complete or remove and reconstruct such incomplete or defective construction all as the building inspector may require, and these provisions shall also comprehend and apply to all repairs, installations and maintenance activities. If the contractor or owner shall fail or refuse so to do within a reasonable time as specified in writing by the building inspector, then, if the building inspector shall so order, such work may, at the expense of the owner and contractor, be completed, corrected or removed and wholly or partially reconstructed by the city, or its instance, in such manner as in the opinion of the building inspector may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the provision of this article and the direction of the building inspector.

(5) *Excavation.* All excavations in the streets and rights-of-way are declared to be wholly subject to the rules, regulations, directions and control of the city, and whenever, in the opinion of the building inspector, any such work shall not be in compliance herewith, the permit, and article V of this chapter then upon written demand or notice from the building inspector, such owner and contractor shall promptly remedy, complete or fill the excavation all as the building inspector may require. All excavations made into any street or right-of-way shall be repaired to as good or better condition than such street, right-of-way or other property was in prior to such excavation. Any excavation located in or over the rights-of-way or streets within the city shall and does constitute a nuisance when maintained or permitted to exist by any person in an unwholesome or nauseous condition, or in a manner by which stagnant water accumulates, or in a manner in which water collects where it is possible and probable stagnant water accumulates, or in a manner in which water collects where it is possible and probable mosquitoes will breed, or in a condition where rats could harbor, or in a manner and condition constituting a breeding place for flies, or in a manner and condition where filth, garbage, trash, debris or other discarded material accumulates and is deposited, or is maintained or permitted to exist in an unfenced, open condition, accessible to children or other members of the public, or is maintained and worked in such a manner as to disturb, effect or destroy the lateral support of or block or otherwise impede traffic on any street, alley, road or rights-of-way, or that is maintained or permitted to exist in any condition which constitutes a possible and probable medium of transmission of disease to or between human beings, or to be maintained or permitted to exist any one or more of the conditions enumerated in this section.

(6) *Relocation of facilities.* All persons placing facilities in the rights-of-way or streets or owning, operating or maintaining facilities in, over, under, through, along and across the rights-of-way or streets of the city shall be responsible for the relocation and costs of relocation of such facilities when the public health, safety or a public purpose requires relocation, or when such facilities are located therein without a permanent occupation permit, license or franchise as appropriate for the occupation.

a. *Permanent relocation.* Upon 30 days' written notice by the city, the owner of a facility shall, at the owner's expense, begin relocation of its facilities that are within a right-of-way or street, when deemed necessary by the city for the public health or safety, or for any public purpose, or to permit the widening, straightening or improvement of a street, drainage, water or sewer project, or any other public works project. The notice by the city may specify the new location for the owner's facilities along the rights-of-way or streets. The city shall have the right to move any facilities within the rights-of-way or streets to cure or otherwise address a public health or safety concern, to accomplish a public purpose, or to widen, straighten or improve a street, water or sewer projects or other public works projects, or when no permit for

occupation has been granted and the owner refuses to move the facilities. The owner shall pay the costs and expenses of moving the facilities.

b. *Temporary relocation.* Upon 30 days' written notice by the city, the owner of a facility shall temporarily relocate any portion of its facilities within the rights-of-way or streets at the owner's own expense when deemed essential by the city for the public's health and safety or to permit construction activities of the city, or water or sewer projects or any other public works project. The notice by the city shall specify the affected areas where the facilities are located and the area for temporary relocation of the owner's facilities along the rights-of-way or streets. The city shall have the right to move any facilities within the rights-of-way or streets to cure or otherwise address a public health or safety concern, to widen or straighten streets, water or sewer projects or other public works projects or construction activities where the owner refuses to move the facilities. The city shall assess the reasonable costs and expenses of moving the facilities against the owner.

c. *Temporary removal of aerial wires.* The owner of aerial wires, on the request of any person, shall remove or raise or lower aerial wires within the city temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited parties, and the owner of the wires may require such payment in advance. The owner shall be given not less than five business day's advance notice to arrange for such temporary wire changes.

(7) *Traffic interference.* The owner and contractor shall endeavor to minimize disruptions to the efficient use of the rights-of-way and streets by pedestrians and vehicular traffic, and the rights-of-way and streets shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. Prior to blocking any street or right-of-way the owner and/or contractor shall obtain a permit as required herein.

(8) *Maintenance of facilities.* The owner of any facility and person holding a certificate of occupancy, license or franchise shall be responsible for ensuring the continued maintenance, repair, removal of any nuisances and other such upgrades or repairs to maintain such facility in a safe and good workman like condition. Any vegetative growth interfering with such facilities that is determined by the building inspector to be a nuisance shall be removed, cut or cleared at the sole cost and expense of the owner of the facility or holder of the certificate of occupancy, license or franchise. Circumstances and conditions that impose an threat to the public health, safety or welfare shall be promptly remedied by the owner, and a known emergency condition that exists and is determined to require immediate attention so as not to reasonably allow for notice under this section may be immediately abated by the city, and notice of the abatement and costs for the expenses incurred will be forwarded to the owner or holder of the certificate of occupation, franchise or license for reimbursement to the city as required in section 38-160.

(9) *Tree trimming.* The owner of facilities located within the rights-of-way or streets shall not trim any trees upon or overhanging the rights-of-way without first obtaining a permit as provided herein. All activities and costs necessary to protect and preserve the facilities from damage due to trees shall be the responsibility of the owner of such facilities.

(10) *Violations; notice; failure to abate.*

a. In the event the building inspector shall determine that a situation exists which is an immediate threat to the health, safety and well-being of the general public and that immediate action is necessary, said building inspector may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or contractor committing such violation.

b. In the event the building inspector determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or contractor is absent or fails to immediately remedy the situation, the city manager may, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare, including ordering repair or abatement of the nuisance. In such

event, the city may also prosecute an action in any court of competent jurisdiction to recover its costs.

c. In the event any owner or contractor shall fail or refuse to remedy any of the conditions or violations indicated by the building inspector within ten days after notice is sent, or immediately if determined by the city to be an emergency and the owner or contractor is absent or fails to immediately respond, the city may do such work or cause the same to be done, and pay therefor, and charge the expenses in doing or having such work done or improvements made, to the owners of the facility, or the contractor performing construction activities, whereupon such charge shall be a personal liability of the owner and/or the contractor to the city.

d. Notices served upon an owner or contractor may be verbal, or may be served on such owner or contractor by an officer or employee of the city delivering a written notice to an employee or officer of such owner or contractor at their respective place of business, or may be by letter addressed to such owner or contractor at their post office address, or if personal service may not be had, or the owner and contractor's address be not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the city, by posting a notice on or near the site or location of each facility or property upon which the violation relates, or by posting notice on a placard attached to a stake driven into the ground on the property or facility to which the violation relates and addressed "Facility Improvements" "To Whom It May Concern," and such publication shall be deemed sufficient notice.

e. In the event any owner or contractor is mailed a notice in accordance with subsection (4) of this section and the United states Postal Service returns the notice as refused or unclaimed the validity of the notice is not affected, and the notice is considered as delivered.

f. Notices provided by mail or by posting as set forth in subsection (10)d of this section may provide for yearround abatement of the nuisance and inform the owner that should the owner commit any other violation of the same kind that pose a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may abate the violation at the owner's expense and assess the costs against the property.

g. Appeals from a decision of the building inspector identifying a violation or nuisance shall be filed in writing with the city secretary within five days after the notice to abate a nuisance or notice of a violation of this article is given. The procedures for appeal shall otherwise be the same as required in section 38-150.

(11) *Emergencies.* In the case of fire, disaster, or other emergency threatening life or property, as determined by the city, the city may remove or repair only the part of the facility required to be removed or repaired to remove such threat; provided, however, the city shall first use its reasonable efforts to immediately notify the owner of such threat and allow the owner to remove or repair the part of the facility required to be removed or repaired to remove such threat. In such event, neither the city, nor any agent, contractor or employee thereof shall be liable to the owner or its customers or third parties for any damages caused them or the facility, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the facility.

(Ord. No. 346, § 7, 2-1-2000)

Sec. 38-159. - Right to inspect.

For the purposes of administering and enforcing this article, the building inspector and authorized law enforcement entities (herein "inspecting official") shall have the right to enter into and upon any lands within the city limits, in or upon which excavation, installation, repairs or any other construction activities exist or on any lands on which operations are being conducted in creating an excavation, repair or installation, to

examine and inspect such lands and excavations, repairs or installations, to determine whether such operations are in violation of this article and to further determine whether all permits have been secured as required.

(1) *Cessation of operations/stop work order.* If the inspection provided for in this section reveals that the excavation, installation, repair or construction activity is being operated or maintained in violation of the permit issued, including a certificate of occupation, the inspecting official may immediately give notice in writing to the person in charge at the site, or the owner thereof, to stop all work or construction activities, setting forth therein the reason for the issuance of the stop work order. If no such person is available, the leaving of such a written notice, on the equipment located at the site or upon a stake at the entry of the site where the excavation, installation, repair or construction activity is occurring, shall be deemed compliance with this section.

(2) *Time limitation for correction.* After issuance of the notice as provided for in subsection (1) of this section, there shall be no further operation of the excavation, installation, repair or any other construction activity until the violations complained of by the inspecting official have been remedied. Except that the violation shall constitute an immediate threat to the public health or safety, the owner and contractor shall have three days from the date of receipt of the complaint notice from the inspecting official to remedy the violations complained of and to request the inspection by the inspector to verify that the violations complained of have been remedied and that the construction activity is ready for additional inspection.

(3) *Failure to remedy violation.* In the event a contractor or owner fails to remedy the violation complained of, the building inspector shall notify the city manager of the violations discovered and request that the city council hold a hearing to consider revocation of the contractor's and owner's permit as provided in this article. A continuation of work or operation of the construction activity, other than to remedy the violation complained of, after written notice has been received by the contractor or owner to cease the construction activity shall constitute a violation of this article.

(4) *Right to repair or correct.* The city may immediately repair any site or location within the streets or rights-of-way at the contractor's and owner's expense:

a. Where there exists:

1. A known condition which constitutes a nuisance;

2. A dangerous or hazardous condition; or

3. An eminent threat to the public health, safety or welfare;

b. When the contractor or owner is performing construction activities, excavations, installations or repairs without the appropriate permit; or

c. When the contractor or owner is performing construction activities, excavations, installations or repairs contrary to the terms of this article, other applicable ordinances, state or federal law and refuses to correct such situation immediately upon direction from the building inspector.

(Ord. No. 346, § 8, 2-1-2000)

Sec. 38-160. - Costs.

The reasonable costs and expenses for repairing, reconstructing or correction of any construction activity, excavation, addition, removal or alteration of a facility or any other alteration thereof to any street, right-of-way, or facilities located thereon, within the city, without a permit or express written contract or written agreement with the city, shall be charged against the persons, the corporation, company, or entity actually responsible for the actions; the owners responsible for the work or for whose benefit such activity was undertaken which caused the damage to the street or right-of-way; and/or the permittee in whose name the permit to perform such activities was issued.

(Ord. No. 346, § 9, 2-1-2000)

Sec. 38-161. - City rights reserved.

Nothing is this article grants permission for the occupation, obstruction, excavation, repair or alteration of any street or right-of-way of the city, and any such use shall be subject to consent of the city at its sole discretion. Additionally, nothing in this article shall be construed as an assumption by the city, its officers and employees, of any responsibility to supervise construction activities, ensure adequate safety precautions by contractors or to protect any owners or customers of any facilities located in, over, under, through, along or across the rights-of-way or streets, or the owners of any property abutting, adjacent or within the rights-of-way or streets from any damages caused to the facilities located therein or as the result of the construction activities thereto. Further, the city reserves the right to vacate any street or right-of-way at its sole discretion. If the city vacates or otherwise abandons a right-of-way or street or any portion thereof, the city, with or without notice to any permittee, may cancel any permits for such portion of a right-of-way or street without compensation or reimbursement to the permittee for any expenses associated with moving any facilities located therein, unless otherwise agreed in writing. The owner and, as applicable, the contractor shall be solely liable and responsible for any and all injuries and/or damages arising or resulting from any excavation, boring, trench, work or occupation of any street or right-of-way by or on behalf of such owner or contractor.

(Ord. No. 346, § 10, 2-1-2000)

Sec. 38-162. - Enforcement.

(a) The civil and criminal provisions of this article shall be enforced by those persons or agencies designated by municipal authority and may be enforced by any law enforcement agent of the city.

(b) If applicable, default and revocation of any and all permits granted to allow construction activities in the streets or rights-of-way subject to the procedural guidelines herein and any agreement which applies to the right-of-way user, may be permanently enforced subject to any limitations imposed by federal or state law.

(c) In imposing the penalties and the amount, the city may weigh all applicable factors, such as damages caused by the violation, reasons for the violation, the seriousness of the violation, and all other factors. The minimum fee and penalty that shall be payable by any utility service, public service provider, owner or person that shall be found to have been occupying a street or right-of-way, in violation of this article, shall be double the amount per lineal foot of such occupancy for each year of such prior unauthorized occupancy.

(d) Monetary civil penalties and injunctive relief may be imposed in the manner prescribed by either local or state law.

(e) The city council may order specific performance of any actions required by this article or required by a franchise, license or permit or any other agreement or authorization.

(Ord. No. 346, § 11, 2-1-2000)

Sec. 38-163. - Court proceedings.

Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this article, to obtain declaratory judgment, and to seek and recover court costs, attorney fees, and/or damages, including but not limited to, damages or costs incurred by the city to undertake any construction, repair, alteration or other activity necessary to bring about compliance with a requirement regarding the streets or rights-of-way and established pursuant to this article and other applicable ordinances of the city.

(Ord. No. 346, § 13, 2-1-2000)

Sec. 38-164. - Indemnity.

Owners and contractors shall indemnify, defend, and hold the city and its officers, employees and agents harmless from and against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused by the negligent act, error, or omission of any agent, officer, director, representative, employee, affiliate, or subcontractor of the owner, contractor or permittee installing, repairing, or maintaining facilities in the rights-of-way or streets.

(Ord. No. 346, § 14, 2-1-2000)

Secs. 38-165—38-181. - Reserved.

ARTICLE V. - SPECIAL PROVISIONS FOR CONSTRUCTION IN CITY STREETS AND RIGHTS-OF-WAY

Sec. 38-182. - Permit.

The person in charge of this installation shall have a copy of the permit and its attachments on the job at all times. Deviations to the approved permit must have prior approval of the city. Utilities having a franchise with the city shall not be required to obtain permits for street cuts but shall coordinate with the city as advisable based on the size of the utility project and work.

(Ord. No. 346, exh. A, § 1, 2-1-2000)

Sec. 38-183. - Existing utilities.

The exact location of any utilities or facilities that may conflict with the proposed installation should be field verified by the installer during construction. contractor will be responsible for verifying the location both horizontal and vertical of all affected facilities whether by posthole or hand digging prior to any excavation or boring.

(Ord. No. 346, exh. A, § 2, 2-1-2000)

Sec. 38-184. - Safety.

Warning and protective devices including flagmen, and watchmen as necessary, shall be used to prevent creation of a traffic hazard and to ensure the safety of the public as advisable and prudent considering the scope of the work. When provided, such devices and flagmen shall be in accordance with the Manual of Uniform Traffic Control Devices.

(Ord. No. 346, exh. A, § 3, 2-1-2000)

Sec. 38-185. - Employee parking restrictions.

Parking of employee's cars and trucks on both sides of the pavement will be prohibited and all such vehicles shall be parked on one side of the road and in no instance closer than a minimum of eight feet from the edge of the pavement.

(Ord. No. 346, exh. A, § 3, 2-1-2000)

Sec. 38-186. - Construction material in right-of-way.

All construction equipment and materials stored on city right-of-way shall be limited to work in progress and stored in such a manner and at such locations (a minimum of 30 feet from nearest traffic lane) as not to interfere with the safe passage of traffic.

(Ord. No. 346, exh. A, § 3, 2-1-2000)

Sec. 38-187. - Method of construction.

Trench width shall be held to a minimum and backfilled to a density approximating that of the adjacent soil in a manner satisfactory to the city. The fill material shall be installed in six-inch layers, each compacted to 95 percent density. A six-inch concrete slab shall be placed over the trench to extend 12 inches on each side of the trench. The top of the slab shall be two inches below the top of paving. Alternatively, a six-inch layer of asphalt may be substituted and compacted to the finished grade of adjacent pavement.

(Ord. No. 346, exh. A, § 4, 2-1-2000)

Sec. 38-188. - Concrete slab design.

The slab shall be reinforced with six-inch by six-inch No. 6 wire mesh. The wire mesh shall be supported properly throughout the placement to maintain its position approximately equidistant from the top and bottom surface of the slab. Portland cement (high-early-strength) type III, making 2500 psi concrete at three days or as directed by the city, shall be used. The slab shall be cured and closed to traffic as per state specifications. (This section shall not apply if six inches of asphalt is substituted for the concrete.)

(Ord. No. 346, exh. A, § 5, 2-1-2000)

Sec. 38-189. - Asphalt.

If asphalt is not substituted, the concrete shall be thoroughly cleaned and a tack coat of asphalt shall be applied. Then hot mix asphaltic concrete (type D) as specified in item 340 of the Texas Highway Department Manual, shall be applied and compacted. If six inches of asphalt is substituted, the asphalt shall meet the foregoing specifications.

(Ord. No. 346, exh. A, § 6, 2-1-2000)

Sec. 38-190. - Access.

Ingress and egress at all private and public streets and drives will be provided at all times.

(Ord. No. 346, exh. A, § 7, 2-1-2000)

Sec. 38-191. - Right-of-way—Street restorations.

All excess excavation, materials, supplies, etc., shall be removed from the right-of-way after installation is complete and the right-of-way reshaped to its original section including fertilizing, seeding and/or sodding as may be required when existing grass has been disturbed.

(Ord. No. 346, exh. A, § 8, 2-1-2000)

Sec. 38-192. - Same—Street damage.

The owner, contractor and permittee will be responsible for any damage to the rights-of-way or streets, including but not limited to the pavement structure, caused by settlement due to pavement cuts. Contractors are responsible for obtaining exact facility locations from all utilities prior to excavation. Such liability shall extend for a period of one year from the date the repair of such pavement cut is completed.

(Ord. No. 346, exh. A, § 9, 2-1-2000)

Sec. 38-193. - Excavation.

(a) Prior to beginning any excavation, trenching or digging which may damage a pipeline, cable, wire or any other such apparatus or facilities located in, over or under the streets or rights-of-way of the city, the owner or contractor shall first obtain a permit before excavation and contact all of the owners of the such pipeline, cable, wire or other facility and determine if the proposed excavation will cause damage thereto.

(b) If physical contact is made with, or damage or injury is suspected to, any pipeline, cable, wire or other such apparatus or facilities during any excavation, trenching, digging or other construction activities, the person or contractor making the physical contact with, or suspecting the damage or injury to, the pipeline, cable, wire or other apparatus or facilities shall immediately contact the building inspector and the owner of the pipeline, cable, wire or other apparatus or facilities for any necessary inspections and repairs.

(c) If, during any excavation, trenching or digging, the person or contractor so excavating, trenching or digging notices or suspects damage or injury to any lateral supports to streets or other facilities in the rights-of-way, streets or adjacent properties, such person shall immediately contact the city and, if applicable, owner of the property for any necessary inspections and repairs.

(d) All persons to whom permits may be granted to excavate the streets or rights-of-way shall, at their own cost and expense, deliver at such place as may be designated by the building inspector for such purpose all such surplus earth, dirt, stone, gravel or other material coming out of such excavation as shall be necessary for the purpose of refilling the same.

(Ord. No. 346, exh. A, § 10, 2-1-2000)

Sec. 38-194. - Erosion.

Erosion control measures (i.e., silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. Permittee shall be responsible for stormwater management erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing.

(Ord. No. 346, exh. A, § 11, 2-1-2000)

Sec. 38-195. - Weekends or holidays.

Construction work to be accomplished on weekends, nights or holidays will proceed at the discretion of the building inspector; provided that emergency work required to be undertaken on weekends, nights, holidays and outside of normal business hours shall be undertaken and completed in compliance with this article and the chapter, and the contractor shall obtain a permit therefor on the first business day following the date of such work.

(Ord. No. 346, exh. A, § 12, 2-1-2000)

Sec. 38-196. - Notice.

The permittee, contractor or subcontractor shall notify the building inspector not more than 24 hours after any damage to other utilities, facilities, or other appurtenances or property, whether public or private. Once a permit has been issued, the permittee must notify the building inspector at least 48 hours prior to commencing any work or construction activity permit in such permit.

(Ord. No. 346, exh. A, § 13, 2-1-2000)

Sec. 38-197. - Liabilities.

The city assumes no responsibility for conflict with existing utility lines, pipelines, highway appurtenances or natural obstacles. Permittees, contractors and owners shall be responsible for the workmanship and any damages by a contractor or subcontractor.

(Ord. No. 346, exh. A, § 14, 2-1-2000)

Secs. 38-198—38-217. - Reserved.

ARTICLE VI. - TRAIN DEPOT

DIVISION 1. - GENERALLY

Sec. 38-218. - Definitions.

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

Member means a voting member of the train depot board.

Train depot or *depot* means the historic city train depot and the surrounding grounds relocated on the northeast corner of the intersection of Front Street and Center Street in the city. Hereafter, this area, including the surrounding grounds, referred to as train depot or depot.

Train depot board means the city train depot board of directors created in chapter 2, article III, division 3.

(Ord. No. 445, § 1, 4-6-2004)

Secs. 38-219—38-244. - Reserved.

DIVISION 2. - COMMERCIAL ENTERPRISES

Sec. 38-245. - License requests.

The train depot board may review and make recommendations on any requested license, privilege or concession at the train depot and surrounding grounds to the city manager or his designate. The train depot board may condition its recommendation on such terms as to not unlawfully surrender the city's right of supervision, regulation and control, and as not to unreasonably interfere with the rights of the public to enjoy the train depot.

(Ord. No. 445, § 8, 4-6-2004)

Sec. 38-246. - Rules for temporary use of depot.

The train depot board may develop and submit to the city council proposed rules and regulations for the temporary use of the train depot. Such rules and regulations shall include the process and procedures for permit application and issuance, uses to be prohibited and proposed permit usage fees, if any.

(Ord. No. 445, § 9, 4-6-2004)

Secs. 38-247—38-270. - Reserved.

DIVISION 3. - GENERAL USE

Sec. 38-271. - Hours of operation.

(a) A use permit must be obtained through appropriate channels by any party utilizing the depot and specific times of use must be noted on the permit.

(b) Hours available for public use will be:

  (1) Sunday through Thursday 8:00 a.m. to 10:30 p.m.

  (2) Friday through Saturday 8:00 a.m. to 12:30 p.m.

(c) The following exceptions shall apply to times used:

  (1) Events with loudspeakers, live music or any activity which involves amplification equipment and/or devices of any kind shall not begin prior to 5:30 p.m. Monday through Friday, and shall end by 10:30 p.m. Monday through Thursday.

  (2) No activity which may disrupt normal city business and/or operations or neighboring residential properties shall begin prior to 5:30 p.m. Monday through Friday.

(d) The train depot and surrounding grounds must be secured and vacated no later than 10:30 p.m. Monday through Thursday and by 12:30 a.m. on Friday and Saturday.

(Ord. No. 445, § 10, 4-6-2004)

Sec. 38-272. - Noise regulations.

All events which includes loudspeakers, live music or amplification equipment/devices of any kind must comply with chapter 23, article IV, pertaining to noise.

(Ord. No. 445, § 11, 4-6-2004)

Sec. 38-273. - Street closures.

Any event, which will require street closures, barricades or diversion of traffic for any reason, must be approved by the city manager in advance.

(Ord. No. 445, § 12, 4-6-2004)

Sec. 38-274. - Prohibited activities and uses.

The following activities and uses are prohibited in the train depot and on the surrounding grounds. Other activities and uses prohibited by other city, state or federal ordinances, laws and restrictions will also be prohibited.

(1) *Sale of goods.* It shall be unlawful for any person to peddle, sell or offer for sale any goods, wares or merchandise in the train depot or on the surrounding grounds. It shall also be unlawful to take a peddler's cart or wagon, or any basket, tray, box or any other receptacle or vehicle containing a stock of goods, ware or merchandise to be sold or offered for sale, except as provided in division 2 of this article and in section 38-305.

(2) *Renting vehicles, animals or amusement devices.* It shall be unlawful for any person to rent or offer to rent to another at the train depot or on the surrounding grounds any amusement device including, but not limited to bicycles, motorcycles, scooters, vehicles or animals except as provided in division 2 of this article and in section 38-305.

(3) *Use of false identification or false name.* It shall be unlawful for any person to register or furnish a false name or any false information for the purpose of permit issuance. This includes addresses and phone numbers.

(4) *Disruptive conduct.* It shall be unlawful for any person to willfully interfere with, disrupt or prevent the orderly conduct of other persons utilizing the train depot or surrounding grounds.

(5) *Refusal to vacate premises.* It shall be unlawful for any person to refuse to leave or vacate the train depot or surrounding grounds after being advised by a city police officer or city employee that their conduct is disruptive to others or premises is closed, such as after posted hours of operation.

(6) *Advertising.* It shall be unlawful with the train depot and surrounding grounds for any person to announce, advertise or call the public's attention in anyway to any article or commercial service for sale or hire, unless such person or entity shall have a temporary license or permit issued pursuant to this article.

(7) *Animals.* It shall be unlawful for any person exercising ownership, care, custody or control of a pet or animal to allow such pet or animal, which has not been licensed as required by law, upon or within the train depot and surrounding grounds. City leash laws apply within the train depot and on the surrounding grounds. Chapter 26, pertaining to parks and recreation, will govern other aspects of the animals while on the train depot's surrounding grounds.

(8) *Bicycles.* It shall be unlawful for any person to ride a bicycle, scooter, skateboard, roller skates or roller blades, or any other wheeled modes of movement except on vehicular road or path designed and designated for that purpose.

(9) *Camping.* It shall be unlawful for any person to camp in the train depot surrounding grounds. This includes setting up any type of tent, shack or other shelter, or lay out a bedroll or other sleeping equipment.

(10) *Fires.* It shall be unlawful for any person to build or attempt to build a fire except in BBQ grills specially designs for outdoors. No person shall drop, throw or otherwise scatter lighted matches,

burning cigarettes, cigars, tobacco paper or other flammable materials within the train depot and surrounding grounds.

(11) *Littering.* It shall be unlawful for any person to place or deposit any garbage, trash, discarded vegetation of any kind or any other refuse in the train depot or surrounding grounds except in receptacles designated for such purposes. City trash receptacles shall never be used to discard trash, garbage, vegetation or other refuse, which is brought to the train depot for the purpose of disposal.

(12) *Signs.* It shall be unlawful for any person to paste, glue, tack or otherwise post any signs, placard, advertisement or inscription whatsoever nor shall any person erect or cause to be erected any sign whatsoever on any public land or highway or roads adjacent to the train depot and surrounding grounds without permission from the city manager or their designate.

(Ord. No. 445, § 13, 4-6-2004)

Sec. 38-275. - Alcoholic beverages.

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

Planned recreation or rallies, functions or events means any gathering of a group of people for a period of time which is not a supervised or implemented activity of the city. This may include, but not limited to, family reunions, wedding receptions and social gatherings.

(b) It shall be unlawful for any person to possess, use or consume any alcoholic beverage, as defined in the Texas Alcoholic Beverage Code, as amended, in or upon any public property within 50 feet of organized youth activities, or activities sponsored by the city that is specifically involving children and youth under the age of 18 years. This includes the enclosed area and grounds surrounding the train depot.

(c) Planned recreation or rallies, functions and events, as herein defined, that contemplate the possession, use or consumption of any alcoholic beverage, as defined in the Texas Alcoholic Beverage Code, as amended, may be held within a designated area of the train depot upon the submission to and approval of the train depot board, subject to review by the city council. Such application shall be made at least 30 days prior to the event, with all details written on the application. The train depot board shall provide written notification of any event approved under this section to the chief of police at least 14 days prior to the scheduled event.

(d) For the purpose of this section, the designated area within the train depot and surrounding grounds will be indicated on the use permit.

(e) Nothing in this section shall be construed so as to prohibit the possession, use or consumption of any alcoholic beverage, as defined in the Texas Alcoholic Beverage Code, as amended, in an area of the train depot and surrounding grounds and consistent with the requirements set forth in subsections (a) through (d) of this section.

(Ord. No. 445, § 14, 4-6-2004)

Secs. 38-276—38-298. - Reserved.

DIVISION 4. - RESERVATIONS

Sec. 38-299. - Use permits—Required.

No person, group or organization shall be entitled to exclusive use of the train depot or surrounding grounds, unless such person, group or organization shall first obtain a permit for such exclusive use.

(Ord. No. 445, § 15, 4-6-2004)

Sec. 38-300. - Same—Standards for issuing.

(a) An application for a use permit for the train depot must be submitted to the city manager or his designate prior to consideration of any use of the depot by any person, group or organization.

(b) The written reservation form, supplied by the city, must be accepted by the city manager or their designate.

(c) A refundable security deposit shall accompany the written reservation form to be considered and accepted.

(d) Phone reservations will not be accepted. Confirmation of existing reservations by phone is encouraged.

(e) Reservations shall be accepted no earlier than six months prior to a specific date requested, save and except annual events approved to be continuing by the train depot board.

(f) Users shall obtain keys, if necessary, from city staff on the day of the event. Keys shall be returned to city staff the next day. Events scheduled for the weekend shall be planned to ensure that keys are issued during city staff hours of operation.

(g) Written requests to have the usage fee and/or the security deposit amount reduced or waived must be reviewed and approved by the city manager or their designate. If the city manager deems it appropriate, the train depot board may review the request at their next regular meeting.

(h) Use permits shall be denied if any of the following should occur:

  (1) The use is for any unlawful purpose;

  (2) The time or manner of use is likely to cause substantial disturbance to person occurring adjoining areas or properties;

  (3) The time or manner of use is likely to result in damage to city property;

  (4) The proposed activity or use will interfere with or detract from the general public's enjoyment of the train depot and the surrounding grounds;

  (5) The proposed activity will entail extraordinary or burdensome expenses or personnel needs of the city;

  (6) The failure to clean any city facility to the satisfaction of the city after a prior use of any city facility;

  (7) Applicant has outstanding statement/invoices for other facility use permits; or

  (8) The proposed activity and use will interfere with or detract from the promotion of public health, welfare, safety or recreation of the city.

(i) Any and all permitting requirements listed under this section may be waived at the sole discretion of the city manager for city events and/or city-sponsored events utilizing the train depot.

(Ord. No. 445, § 16, 4-6-2004)

Sec. 38-301. - Occupancy permit.

(a) Any person, group or organization wishing to apply for an occupancy permit for the train depot and/or the surrounding grounds, must first submit a written proposal to be reviewed and approved by the city manager. Upon the city manager's recommendation, the written proposal request shall be reviewed

and approved by the train depot board. Upon the train depot board's recommendation, the city council shall review and approve the written proposal request.

(b) The city council shall provide final determination of all applications for train depot occupancy permits.

(c) Occupancy permits may be issued for a period not to exceed 12 months.

(d) Occupancy permit requests must be accompanied by a proposal as to type of uses, hours of operation, rental and usage fees proposed and any other information requested by the city manager, the train depot board and/or the city council.

(e) A separate occupancy permit agreement document shall be prepared and agreed upon by the applicant and the city. Said agreement shall contain basic terms of the permit and any and all other conditions placed upon the permittee as deemed appropriate by the city council.

(f) Failure of the occupancy permit holder to comply with the occupancy permit agreement will result in revocation of occupancy permit.

(Ord. No. 445, § 17, 4-6-2004)

Sec. 38-302. - Insurance and bond.

(a) The city and its agents disclaim all liability resulting from use of the train depot and surrounding grounds for events which are open to the public. Sponsors of these public events must provide proof of insurance indemnifying the city against any liability arising from such exclusive use. The proof of insurance is required at the time permit is issued.

(b) The train depot board, the city manager or their designate may require any applicant for a use permit or occupancy permit to post a bond in sufficient amount to indemnify the city against all loss, expense of special police protection, anticipated damages to the train depot and surrounding grounds or the expense of cleaning up after the proposed activity. The posting of such bond, when requested, shall be conditioned precedent to the issuance of the use permit or occupancy permit, but such said bond shall not be for an amount in excess of the anticipated city expenditures with record to the activity for which the bond is required.

(c) Closed events, such as but not limited to birthday parties, family reunions and weddings, will not require the liability insurance or bond.

(Ord. No. 445, § 18, 4-6-2004)

Sec. 38-303. - Permit—Revocation.

Use permits or occupancy permits may be revoked by the city manager or his designate for reasons which may include, but not be limited to, misrepresentation of information given at the time of permit application, failure to comply with conditions on the permit and/or agreeing, violation of this article or assignment of the permit to another party without the prior written approval of the city manager.

(Ord. No. 445, § 19, 4-6-2004)

Sec. 38-304. - Same—Display.

The use permit or occupancy permit must be displayed in a manner that a city agent can view it without effort. It must be displayed during the entire event, from times and dates listed. Failure to display permit may result in revocation of permit.

(Ord. No. 445, § 20, 4-6-2004)

Sec. 38-305. - Fee structure.

(a) The train depot board shall develop and submit to the city council an appropriate fee and deposit structure for use and/or occupancy of the train depot, with said fee structure being formally approved and/or authorized by city council.

(b) All checks and/or cash deposits will be deposited into the general fund, not held to be returned later.

(c) The key must be returned to city staff within 24 hours after event. Failure to do so will result in a lost, or portion of lost, of the deposit.

(d) An inventory report will be filled out prior to and after the event. Any damages or expenses incurred by the city will be deducted from the deposit. Damages and expenses will be determined and calculated by the city manager or their designate.

(e) In general, the user must leave the train depot and the surrounding grounds the same way he found it, or expenses to return it to that state will be deducted from the deposit.

(f) Whenever the expenses or damages exceed the amount of the deposit, an itemized invoice/statement will be mailed to the user. Said invoice/statement is due, paid in full, within 30 days of issuance.

(g) The amount of the deposit to be refunded will be requested and processed within 30 working days of the event.

(Ord. No. 445, § 21, 4-6-2004)

Sec. 38-306. - Use fees.

The following use fees are established and the fee is in appendix A to this Code, fee schedule:

(1) Freight room (large meeting room).

(2) Ticket room (smaller meeting room).

(3) Upstairs loft (upstairs meeting room).

(4) Surrounding grounds.

(5) Concession sales.

(Ord. No. 445, app. I, 4-6-2004)

Sec. 38-307. - Security deposit.

A refundable security deposit as established in appendix A to this Code will be required at the time application is submitted.

(Ord. No. 445, app. I, 4-6-2004)

Secs. 38-308—38-330. - Reserved.

ARTICLE VII. - NAMING OF PUBLIC PLACES[1]

Footnotes:

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Editor's note— Ord. No. 747, adopted Oct. 2, 2013, added to the Code provisions designated XX.01—XX.04, but did not specify manner of inclusion. For purposes of classification and to preserve the style of this Code, and at the editor's discretion, these provisions have been included as Art. VII, §§ 38-331—38-334.

Sec. 38-331. - Definitions.

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

Naming means the initial name associated with a public place.

Public place means a public place is any facility, building, park, roadway or portion there of such as meeting rooms, trails, benches, pavilions, alcoves, medians and the like that occupy a defined space that could be associated with a particular identity and are constructed for the public benefit.

Renaming means assigning a new name to a public place that already is known by another name.

Naming significance means the level to which a name is appropriate to a certain place based on the natural, cultural, geographical, historical, social or familial significance to the area.

(Ord. No. 747, 10-2-2013)

Sec. 38-332. - General.

(a) The council shall be the final authority on the naming or renaming of any public place and shall memorialize said naming or renaming by the passage of a resolution of the governing body.

(b) The council shall be duly authorized to remove the name of any public place should removal be affirmed by the same.

(c) Before the council will take a vote to ratify a resolution naming or renaming a public place, a public hearing must be held before the city council. This may occur at the same meeting as consideration of the resolution naming or renaming.

(d) Existing names of public places carry recognition and should take priority over considerations for renaming except in special circumstances as determined by the council.

(e) Recommendations to name or rename a public place, if not initiated by council, must originate by application. To be considered by council, the item must be sponsored by a seated councilmember per naming procedure in section 38-334.

(f) An exemption to the naming of public places shall be the naming of roads or a subdivision as a result of an approval and recordation of a subdivision plat.

(g) Donations shall not be construed to obligate the council to name any public place except by agreement as duly authorized by the council.

(Ord. No. 747, 10-2-2013; Ord. No. 851, § 3, 6-2-2015)

Sec. 38-333. - Naming criteria.

(a) The more prominent a public place, the more significant the naming should be.

(b) Names should be appropriate to the particular public place by reflecting native wildlife, history, flora, fauna, geographic area, natural or geological features, or honoring individuals or families significant to Kyle as determined by council.

(c) Consideration should be given to reflecting the city's ethnic and cultural diversity.

(d) Corporate naming in exchange for due consideration shall be allowed on a case by case basis, but only by agreement for a defined term as approved by council.

(e) The following questions should be considered for determining naming significance:

(1) Will the name have historical, cultural and social significance for generations to come?

(2) Will the name engender a strong and positive image?

(3) Will the name memorialize or commemorate people, places or events that are of enduring importance to the community or the nation?

(4) Will the name engender significant ties of friendship and mutual recognition and support within the community or with those outside of the community?

(5) Will the name be identified with some major achievement or the advancement of the public good within the community or the nation?

(6) Will the name be particularly suitable for the facility based on the location history of the facility or the surrounding neighborhood?

(7) Will the name have symbolic value that transcends its ordinary meaning or use and enhance the character and identity of the facility?

(8) Will the naming request that accompanies a financial gift result in the undue commercialization of the facility?

(Ord. No. 747, 10-2-2013)

Sec. 38-334. - Naming procedure.

(a) A request shall be submitted in writing to the city manager requesting naming or renaming of a public place. This shall be considered the application.

(b) Council shall hold a public hearing on the proposed naming or renaming.

(c) Council may adopt the naming or renaming of the public place after duly holding a public hearing and with an affirmative vote of its body to pass a resolution declaring the naming or renaming.

(d) Council reserves the right to initiate naming or renaming at its own discretion per section 38-332.

(Ord. No. 747, 10-2-2013; Ord. No. 851, § 3, 6-2-2015)

Editor's note— Ord. No. 851, § 3, adopted June 2, 2015, partially repealed Ord. No. 747, specifically repealing provisions pertaining to council advisory committee such that all duties and responsibilities of this committee fall to the city council. At the editor's discretion, former subsections (b)—(f) of § 38-334, detailing the path of a naming request through the appropriate council advisory committee, have been removed entirely, and the remaining subsections relettered and amended as necessary.

Chapter 41 - SUBDIVISIONS[1]

Footnotes:

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Charter reference— Planning and development, art. X.

State Law reference— Regulation of subdivisions and property development, V.T.C.A., Local Government Code § 212.001 et seq.

ARTICLE I. - IN GENERAL

Sec. 41-1. - Definitions.

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

Abutting means adjacent; joining at a boundary.

Administrator means the city engineer, director of public works or other person designated by the city to administer the regulations and provisions of this chapter.

Alley means a minor public right-of-way that is primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

Block means a unit of land bounded by streets or a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity to development.

Building setback line means a line beyond which building foundations or any building extension other than roof overhang not exceeding 18 inches must be set back from the property line.

Crosswalkway means a public right-of-way, between property lines, for pedestrian circulation.

Cul-de-sac means a local street with only one street outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

Dead-end street means a portion of a street or a road with only one street or road outlet.

Developer. See *Subdivider*.

Double fronting lot means a lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

Easement means a grant of one or more of the property rights by the property owner to and/or for the use by the public, corporation or another person or entity.

Easement, avigation, means an air-rights easement, which protects air lanes around airports.

Easement, drainage, means an easement required for the installation of stormwater sewers or drainage ditches, and/or required for the preservation or maintenance of a natural stream or watercourse or other drainage facility.

Engineer means a person authorized under the Texas Engineering Registration Act to practice the profession of engineering.

Flood means a general and temporary condition as partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source.

Flood protection elevation, regulatory. See the flood hazard area regulations in chapter 17, article II.

Homeowners' association means a community association, other than a condominium association, which is organized in a development in which individual owners share common interests in open space or facilities.

Interior lot means a lot other than a corner lot.

Lot means an undivided tract or parcel of land, identified by a number or symbol and designated as a distinct and separate tract on a fully approved subdivision plat properly filed of record.

Lot area means the total area within the lot lines of the lot excluding any street rights-of-way.

Lot corner means a lot or parcel of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

Lot depth means the distance measured from the front lot line to the rear lot line. Where the front and rear lot lines are not parallel, the lot depth should be measured by drawing lines from the front to the rear lot lines, at right angles to the front lot line every ten feet, and averaging the length of these lines.

Lot line means a line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

Major subdivision means any subdivision not classified as a minor subdivision.

Master development plan means a graphic representation and narrative description of a large area of land intended for eventual development in phases. The plan may involve a single parcel or a number of contiguous parcels. It should show proposed land use, street classification, parks and open space, major public facility sites, floodplains and waterways, major drainage and utility improvements, and other features deemed necessary or appropriate by the administrator to depict critical on-site and off-site relationships that coordinate the development with the community's overall plan and adjoining undertakings.

Minor plat means a proposed plat with four or fewer lots, with said lot or lots fronting on an existing street, and not requiring the creation of any new street or the extension of municipal facilities.

Mobile home park means a site with required improvements and utilities for the longterm parking of mobile homes, which may include services and facilities for the residents.

Owner. See *Subdivider*.

Parkway means that portion of the right-of-way between the curb and the right-of-way line.

Person means any individual, association, firm, corporation, governmental agency, political subdivision or other legal entity.

Plan, comprehensive, means the comprehensive plan of the city and adjoining areas adopted by the planning and zoning commission and approved by the council, including all its revisions. The plan indicates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, and other public and private developments and improvements, to include detailed plans for water, sewer, etc.

Plan, concept, means a rough concept map of a proposed subdivision with sufficient accuracy to be used for the purpose of discussion, classification, and comment.

Plan or plat package means and includes all drawings, instruments, written specifications, reports, test results, covenants, and other similar items required in this chapter.

Plan, preliminary, means a preliminary plan indicating the proposed layout of a subdivision that is submitted to the review authority for consideration and preliminary approval.

Planned development means a development provided for by chapter 53, pertaining to zoning wherein certain yards, areas and related standards may be varied and a variety of land uses associated on a tract, the plan of which is subject to approval by the planning and zoning commission and council.

Planning and zoning commission means the duly designated planning commission of the city acting as the planning and zoning commission having responsibilities as delegated by the city council including, but not limited to, land use review concerning comprehensive planning, zoning, and subdivision of land.

Plat means a map representing a tract of land, showing the boundaries and location of individual properties and streets.

Plat drawing means a drawing or drawings depicting the proposed subdivision layout itself, along with associated certifications, dedications and related notations.

Plat, final, means the final map of all or a portion of a subdivision, which is presented to the proper review authority for final approval.

Predesign conference means a conference between a developer and the city planning staff, held prior to application for approval of a plat, for the purposes of exchanging information and identifying potential problems with a proposed development.

Replatting means the alteration of any part or all of any lot, block or tract of a previously platted subdivision.

Residential lane means a street which, by its design, discourages through traffic and which may afford the only vehicular access to lots abutting thereon, which lots shall be restricted to residential use as set forth for only certain zoning districts in chapter 53, as amended, pertaining to zoning.

Staff or *city staff* means the employees, and the professionals providing services to the city, authorized or permitted by the council to undertake any duty or to provide any review, work or service contemplated by the terms of this chapter to be undertaken by city personnel.

Street means a public right-of-way, however designated, which serves one or more of the following purposes:

(1) *Major thoroughfare, arterial street* or *expressway.* A major thoroughfare, arterial street or expressway primarily provides vehicular circulation to various sections of the city.

(2) *Collector street.* A collector street primarily provides circulation within neighborhoods, to carry traffic from local streets to arterial or major thoroughfare streets, or to carry traffic through or adjacent to commercial or industrial areas.

(3) *Marginal access.* A marginal access or frontage street is a street, which is parallel to and adjacent to an arterial street and primarily provides access to properties abutting these types of streets.

(4) *Local street.* A local street is a street designed primarily for access to abutting residential property. A local street does not include roadways that carry through traffic, but will generally be intersected frequently by collector streets.

Street width means that distance from back of curb to back of curb.

Subdivider means any person, or agent thereof, dividing or proposing to divide land so as to constitute a subdivision, as defined herein. The term "subdivider" shall be restricted to include only the owner, equitable owner, or authorized agent of such owner or equitable owner, of land sought to be divided.

Subdivision means a division of any tract of land, situated within the corporate limits of the city or within its extraterritorial jurisdiction, into two or more parts for the purpose of laying out any addition to the city, or for laying out suburban lots or building lots, or any lots, and streets, alley, access easements, public utility easements, or parks or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" does not include divisions of land in parcels of five acres or more, unless any such division of five acres or more includes the planning or development of a new street or access easement, or public utility easement.

Surveyor means a registered professional land surveyor authorized by state statute to practice the profession of surveying.

Utility easement means an interest in land granted to the city, the public generally or to a private corporation, for installing and maintaining utilities across, over or under private land.

(b) Words and terms not expressly defined herein are to be construed in accordance with customary usage in municipal planning and engineering practices.

(Ord. No. 296, art. I, § 3, 10-1-1996; Ord. No. 439, art, I, § 3, 11-24-2003)

Sec. 41-2. - Authority and dedications.

(a) This chapter is adopted by the city pursuant to the police powers of general law cities, and under authority of the Constitution and general laws of the state including, but not limited to, V.T.C.A., Local Government Code § 212.001 et seq.

(b) In accordance with the city's police powers and authority, and as specifically authorized by V.T.C.A., Local Government Code § 212.001 et seq., and other applicable laws, the planning and zoning commission and the city council, as a condition of subdivision plat or replat approval, may require the owners and developers of land who desire to subdivide, plat or replat land for urban development, to provide for building setback lines, to dedicate streets, alleys, parks, easements or other public places or facilities of adequate width and size and to coordinate street layouts and street planning with the comprehensive plan, with other municipalities, and with county, state and federally designated highways, as they may deem best in the interest of the general public.

(Ord. No. 296, art. I, § 1, 10-1-1996; Ord. No. 439, art. I, § 1, 11-24-2003)

Sec. 41-3. - Purpose.

The purpose of this chapter is to provide for orderly, safe and healthful development to promote the health, safety and general welfare of the community. From and after the passage of the ordinance from which this chapter is derived, all plats and subdivisions of land within the corporate limits of the city, and all plats and subdivisions of land outside the corporate limits of the city that the councilmembers may be petitioned to include within the corporate limits of the city by an extension of said corporate limits, and all tracts within the city's extraterritorial jurisdiction shall conform to the rules and regulations of this chapter.

(Ord. No. 296, art. I, § 2, 10-1-1996; Ord. No. 439, art. I, § 2, 11-24-2003)

Sec. 41-4. - Application and administration.

This chapter shall be applied to and govern all applications for subdivision approval made after the effective date of the ordinance from which this chapter is derived. This chapter shall be applied and administered in coordination with all other applicable ordinances, codes, development and standards and regulations. The provisions hereof shall also be applied and administered in conjunction with the adopted comprehensive plan, the adopted water and sewer plan and all other such official plans.

(Ord. No. 296, art. I, § 4, 10-1-1996; Ord. No. 439, art. I, § 4, 11-24-2003)

Sec. 41-5. - Flood damage prevention.

All subdivisions shall comply with all ordinances applicable to drainage and the prevention of floods, including, but not limited to, chapter 17, article II, pertaining to flood hazard area regulations.

(Ord. No. 296, art. I, § 5, 10-1-1996; Ord. No. 439, art. I, § 5, 11-24-2003)

Sec. 41-6. - Applicable to existing unrecorded subdivisions.

This chapter shall apply to any proposed subdivision submitted for approval prior to the effective date of the ordinance from which this chapter is derived, but which the owner or developer suffers or permits an approved concept plant, preliminary plat or final plat for the subdivision to expire under the terms and conditions of the prior applicable subdivision ordinance. All subdivision plats submitted for approval prior to the effective date of the ordinance from which this chapter is derived shall, except as provided in the preceding sentence, comply with the provisions of the preexisting Ordinance Nos. 137 and 149, as applicable. Provided further by resolution of the council, after recommendation by the planning and zoning commission, the time for recording the final plat of a previously approved subdivision may be extended an additional 90 days upon demonstration of good cause by the owner or developer of the subdivision. Save and except the terms and provisions of this chapter for vacating, amending, correcting or altering a recorded subdivision plat, this chapter shall not apply to a subdivision for which a final plat was approved and recorded under a previous city ordinance from 1965 to the effective date of the ordinance from which this chapter is derived.

(Ord. No. 296, art. I, § 6, 10-1-1996; Ord. No. 439, art. I, § 6, 11-24-2003)

Sec. 41-7. - Requirements for permits.

Unless an existing subdivision has obtained approval and recorded a final plat or unless such subdivision has obtained a resolution, as described in section 41-6, and said exception is adopted and filed of record, no building, repair, plumbing or electrical permit shall be issued by the city for any structure on a lot, tract or parcel of land in the subdivision; provided, however, in the case of the granting of an exception, such permit shall be issued in accordance with the specific requirements of the exception as set forth in the resolution.

(Ord. No. 296, art. I, § 7, 10-1-1996; Ord. No. 439, art. I, § 7, 11-24-2003)

Sec. 41-8. - Acceptance of streets and utilities.

The city shall not repair, maintain, install or provide any streets or public utility services in any subdivision unless a resolution has been adopted and filed of record pursuant to section 41-6 or a final plat has been adopted and filed of record in accordance with the requirements of this chapter; provided, however, in case an exception has been granted, the repairs, maintenance, installation and provision of streets or public utility services shall be in accordance with the specific requirements of that exception as set forth in the resolution.

(Ord. No. 296, art. I, § 8, 10-1-1996; Ord. No. 439, art. I, § 8, 11-24-2003)

Sec. 41-9. - Utility services.

(a) The city shall not sell or supply any water or wastewater services to or within any subdivision platted after the date hereof, for which a final plat has not been approved and filed of record unless a resolution has been adopted and filed of record pursuant to section 41-6; provided, however, in case an exception has been granted, the city shall sell and supply water or wastewater services in accordance with the specific requirements of that exception as set forth in the resolution.

(b) No water and/or wastewater connection shall be made by the city until the requirements as to the installation of water and wastewater mains have been complied with within the block facing the street on which the property is situated. This includes satisfactory testing of lines serving the property for which a connection request is made.

(Ord. No. 296, art. I, § 9, 10-1-1996; Ord. No. 439, art. I, § 9, 11-24-2003)

Sec. 41-10. - Exceptions.

(a) It is the expressed intent of this chapter that all sections and parts should be complied with, except in those instances when the provisions of this section are applicable. It is further the intent of this chapter that the granting of an exception to this chapter (i.e., a variance from the requirements hereof) shall not be a substitute for the amending of this chapter.

(b) The planning and zoning commission may recommend to the council that an exception from these regulations be granted when, in its opinion, undue hardship will result from requiring strict compliance. In considering, recommending and granting an exception, either the planning and zoning commission or the council shall prescribe such conditions that it deems necessary or desirable in the public interest. In making the findings required in subsection (c) of this section, both bodies shall take into account, at least, the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such exception upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

(c) No exception shall be granted unless the following conditions are met:

  (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would have a substantial adverse impact on the applicant's reasonable use of his land;

  (2) That the granting of the exception will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and

  (3) That the granting of the exception will not have the effect of preventing the orderly subdividing of other land in the area in accordance with the provisions of this chapter.

(d) Such findings of the planning and zoning commission and council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the meeting at which such exception is recommended and granted.

(e) Exceptions may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice served.

(Ord. No. 296, art. I, § 10, 10-1-1996; Ord. No. 439, art. I, § 10, 11-24-2003)

Sec. 41-11. - Compliance with exception.

In any case where a final plat has not been approved or recorded but an exception has been obtained upon recommendation of the planning and zoning commission and a resolution of the council, the subdivision must comply with all conditions and requirements of the exception where these vary with this chapter. In all other instances, the subdivision shall comply with the requirements of this chapter. Unless the subdivision fully complies with the conditions set forth in this section, the city shall not issue the permits, repair, maintain, install or provide streets or public utility services to the subdivision.

(Ord. No. 296, art. I, § 11, 10-1-1996; Ord. No. 439, art. I, § 11, 11-24-2003)

Sec. 41-12. - Compliance.

No person shall create a subdivision, as herein defined, without complying with the provisions of this chapter. All plats and subdivision of any land shall conform to state and federal laws and applicable city ordinances.

(Ord. No. 296, art. I, § 12, 10-1-1996; Ord. No. 439, art. I, § 12, 11-24-2003)

Sec. 41-13. - Enforcement.

The city attorney shall institute appropriate action in a court of competent jurisdiction to enforce the provisions of this chapter, or the standards referred to herein, with respect to any violation thereof, which occurs within any area subject to all or a part of the provisions of this chapter.

(Ord. No. 296, art. I, § 13, 10-1-1996; Ord. No. 439, art. I, § 13, 11-24-2003)

Secs. 41-14—41-44. - Reserved.

ARTICLE II. - PROCESSING OF PROPOSED SUBDIVISIONS

Sec. 41-45. - Advice and cooperation.

Advice and cooperation in the preparing of plats will be reasonably given by the planning and zoning commission and appropriate members of the city staff.

(Ord. No. 296, art. II, § 1, 10-1-1996; Ord. No. 439, art. II, § 1, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-46. - Fees.

(a) Fees and charges shall be collected by the city secretary in advance of the filing of any concept plan, short form plat, preliminary plan package, final plat package, or replat application with the city for processing and consideration. No such plan, plat, preliminary plan, final plat or replat shall be approved until all fees required therefor have been paid. No action by the planning and zoning commission or the council shall be valid until such fees are paid.

(b) A receipt must be obtained from the proper officer specifying that the fees provided for herein have been paid prior to the submission of any plat to the planning and zoning commission. The receipt shall be attached to the formal request for plat review and processing.

(c) No filing fee shall be refunded because a preliminary plan, final plat, or any other plat or plan is later withdrawn or disapproved.

(d) The amounts to be charged shall be established by ordinance of the city council and adjusted from time to time as necessary to sustain efficient planning and development services and comply with laws and regulations.

(Ord. No. 296, art. II, § 2, 10-1-1996; Ord. No. 439, art. II, § 2, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-47. - Applications.

Requests for approval of plats must be filed with the city, in writing, on a form prescribed by the city. An application for subdivision plat approval shall not be deemed to be made until a complete application package has been filed with the city. The filing date of an application for approval of a plat is the date on which the following items are filed with the city:

(1) Complete, signed application form;

(2) Copy of receipt for filing fees;

(3) All other certificates, plans, documents and instruments required by this chapter; and

(4) The required number of copies of proposals, having the form and content specified in this chapter for the plat package shall be as follows:

Stage of Review	Information in Narrative Form	Plat Maps
Concept plan package	2	20
Preliminary plan package	2	20
Final plat package	2	20

(Ord. No. 296, art. II, § 3, 10-1-1996; Ord. No. 439, art. II, § 3, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-48. - Concept plan package (CPP).

(a) A developer may elect not to submit a concept plan for a minor subdivision (as defined by this article) or for any division of land where the proposed development of the tract is not to occur in phases.

(b) Concept plan packages are helpful for identifying and resolving potential problems and deficiencies that might otherwise cause the planning and zoning commission to recommend disapproval of a preliminary plan or recommend approval with conditions. The intent of the concept plan is to provide an opportunity for the planning and zoning commission to be provided information and to offer comments relating to the concept plan.

(c) If the proposed subdivision constitutes a phase or section of a large tract, which is intended to be subsequently subdivided as additional phases or sections of the same subdivision or development, the concept plan shall include the entire area, showing the tentative proposed layout of all phases of development, streets, blocks, drainage, water sewage, parks, schools and other improvements for such areas.

(Ord. No. 296, art. II, § 5, 10-1-1996; Ord. No. 439, art. II, § 4, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-49. - Short form subdivision.

A subdivision may receive approval by city staff if it meets the following conditions:

(1) The lots must abut a dedicated and accepted public street for the required lot frontage;

(2) Topography of the tract is such that drainage-related facilities will not be required;

(3) Water and sewer mains of sufficient capacity are adjacent, or on the property, for tapping with service lines;

(4) All requirements in these regulations regarding preliminary and final plats shall be complied with, where applicable, without exception (i.e., without a variance from the requirements of this chapter).

(Ord. No. 296, art. II, § 7, 10-1-1996; Ord. No. 439, art. II, § 5, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-50. - Administrative approval of plats.

The planning director, city engineer and director of public works may administratively approve a minor plat, as defined herein, without consideration by the planning and zoning commission and council.

(Ord. No. 296, art. II, § 8, 10-1-1996; Ord. No. 439, art. II, § 6, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-51. - Preliminary plan package (PPP).

(a) [*When required.*] A Preliminary subdivision plat is not required, where the subdivider elects to submit only a final subdivision plat, accompanied by public improvement construction plans.

(b) *Staff review.* The preliminary plan shall be reviewed by appropriate members of the city staff for compliance with this and applicable ordinance and policies. A report shall be prepared and submitted to the planning and zoning commission and applicant prior to the next regular commission meeting date. The report shall provide the comments received as part of the review by the staff and any other concerned entities. Such report should include comments relative to the proposed subdivision's compliance with the comprehensive plan and other master plans.

(c) *Planning and zoning commission review.* After the preliminary plan is deemed administratively complete, the planning and zoning commission shall recommend approval or disapproval of the preliminary plan or recommend conditional approval with modifications. A conditional approval recommendation can include the requirements and specific changes the planning and zoning commission determines necessary for the plan to comply with this chapter, or the conditional approval recommendation can be specifically given by the planning and zoning commission as an expression of recommended acceptance of the layout submitted on the preliminary plan as a guide to the installation of streets, drainage, water, sewer and other required improvements and utilities and to the preparation of the final or recorded plat.

(d) *Extension of plan term.* The term of a preliminary plan shall be extended if the following conditions are met before the initial term or an extension of the term expires:

  (1) The council approves a final plat for a phase of the subdivision that is reasonable in size and layout and finds that the final plat substantially conforms to the preliminary plan; and

  (2) The developer begins construction of the subdivision improvements required for the section or phase for which the final plat was approved.

(e) *Recommendation not approval.* Approval of a preliminary plan, by the planning and zoning commission shall not constitute automatic approval of the final plat.

(f) [*Documentation from county 911 addressing division.*] A preliminary plan shall be considered incomplete and not subject to the commission's review without a letter of acceptance or documentation from the Hays County 911 Addressing Division demonstrating that the street layout and names proposed on the preliminary plan comply with the applicable county criteria.

(Ord. No. 296, art. II, § 9, 10-1-1996; Ord. No. 439, art. II, § 7, 11-24-2003; Ord. No. 439-3 § 2, 9-19-2006; Ord. No. 739, § 2(Exh. A), 8-20-2013; Ord. No. 823, § 4, 10-21-2014)

Sec. 41-51.1. - Expiration.

Under no circumstance may the expiration date be earlier than September 1. 2010. After that date, a permit or development project approval shall lapse and become void no earlier than two years for an individual permit after the date the first permit application was filed and no earlier than five years for a development project after the date the first permit application for the development project was filed, unless a longer time shall be specifically established by the city as a condition of approval, or unless, prior to the expiration, a building permit is issued and construction is commenced and diligently pursued toward completion.

(Ord. No. 823, § 4, 10-21-2014)

Sec. 41-51.2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this article.

City means the City of Kyle, Texas.

Commended and diligently pursued toward completion means a developer has established that it has made progress toward completion of a development project by engaging in one or more of the following avenues:

(1) Submission of an application for a final plat or plan;

(2) A good faith attempt to file a permit application necessary to begin or continue toward completion of the project;

(3) The incursion of costs in developing the project (exclusive of land acquisition) that equal five percent of the most recent appraised market value of the real property in which the project is located;

(4) The posting of a bond with the city to ensure performance of an obligation that the city requires; or

(5) Payment of utility connection fees or impact fees.

Development means and begins when a developer makes application for a single permit.

Permit or *permits* means any of the following: a site development plan; a license; a certificate; approval by the city staff; registration; consent by the city staff; permit; contract or other agreement for construction related to, or provision of, service from a water or wastewater utility agency owned, operated, or controlled by a regulatory agency; or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

Person means any human being or legal entity and includes a corporation, partnership, and an incorporated or unincorporated association.

Project or *development project* means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

Regulations means whatever regulations are in place at the point a developer makes application for a single permit and govern through the rest of the development or project and include the provisions of any applicable ordinance, rule, regulation or policy and shall not include any intervening regulations between the time of a developer's application for a project's first permit and progress or completion of the project.

(Ord. No. 823, § 4, 10-21-2014)

Sec. 41-51.3. - Inception.

The expiration periods set forth in section 41-51.1 begin to run at the time a person:

(1) Files either a preliminary or a final site development plan with the city;

(2) Obtains one or more permits from the city;

(3) Applies for a single permit;

(4) Holds a building permit that is not older than two years;

(5) Files an application that gives the city fair notice of the person's development project and the nature of the permit sought;

(6) Exhibits progress toward completion of the project, including (1) submission of an application for a final plat or plan; (2) a good faith attempt to file a permit application necessary to begin or continue toward completion of the project; (3) the incursion of costs in developing the project (exclusive of land acquisition) that equal five percent of the most recent appraised market value of the real property in which the project is located;

(7) Posts a bond with the city to ensure performance of an obligation that the city requires; or

(8) Makes payment of utility connection fees or impact fees.

(Ord. No. 823, § 4, 10-21-2014)

Sec. 41-51.4. - Exempted regulations.

The expiration periods of Sec. 41-51.1 as set forth herein do not apply to or otherwise govern the following regulations, and the vesting provisions of V.T.C.A., Local Government Code ch. 245 are not applicable:

(1) Building permits that are at least two years old;

(2) Zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by restrictive covenants required by the city;

(3) Regulations that specifically control only the use of the land and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage or building size;

(4) Regulations for sexually oriented businesses;

(5) City or county regulations affecting colonias;

(6) Fees imposed in conjunction with development permits;

(7) Regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(8) Regulations for utility connections;

(9) Flood control regulations;

(10) Construction standards for public works located on public lands or easements; or

(11) Regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size, residential or commercial density, or the timing of a project, or that do not change development permitted by restrictive covenant required by the municipality.

(Ord. No. 823, § 4, 10-21-2014)

Sec. 41-51.5. - Other.

(a) *Series of permits.* If a series of permits is required for a project, the regulations in place at the time of the original application for the permit in the series must be the sole basis for consideration of all subsequent permits required for completion of the project.

(b) *Timing of permit application.* The city shall consider a permit application solely on the basis of the regulations that were in effect at the time the original application for a permit was filed for any purpose, including review for administrative purposes, or a plan for development of real property or plat application was filed with the city. After the application for a project is filed, the city may not shorten the duration of any permit required for the project.

(c) *Run with the land.* A permit approval shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the application.

(d) *Dormant projects.* Notwithstanding section 41-51.1 stated herein, the city may impose an expiration date on dormant projects if it can show that no progress has been made toward completion of a project. Evidence that indicate a project is dormant and that no progress has been made toward completion of a project consists of facts or circumstances that a developer has not performed or otherwise acted upon any of the actions listed under section 41-51.3. The city council may decide by majority vote that a project is dormant upon evidence indicating such and determine that the expiration date required under section 41-51.1 herein is no longer valid or in effect.

(e) *Expiration of permit application.* A permit application expires after 45 days if the permit applicant fails to provide the necessary information required by the application and the city provides the applicant with notice within ten days after the filing of the application. Notice shall be considered adequate if sent to the applicant by certified mail, return receipt requested, at the applicant's last known address provided by the applicant.

(Ord. No. 823, § 4, 10-21-2014)

Sec. 41-52. - Final plat package (FPP).

(a) *Staff review.* The final plat shall be reviewed by appropriate members of the city staff for compliance with this and other applicable ordinances and policies. A report shall be prepared and submitted to the planning and zoning commission prior to the next regular commission meeting date stating the comments of the subdivision review, including comments received as part of the review of utility companies and other concerned entities. Such a report should include comments relative to the proposed subdivision's compliance with the comprehensive plan and other master plans.

(b) *Planning and zoning commission.* The planning and zoning commission shall act on and administratively complete final plat within 30 days of the date the final preliminary plat application is filed with the city. If the planning and zoning commission shall determine that the plat is in proper form, that the arrangement of the development proposed for the property being subdivided is consistent with zoning regulations, if applicable, and that the subdivision complies with the provisions of this chapter and other applicable ordinances and policies, it shall recommend approving the plat.

(c) *Approval of plat by sections.* A subdivider, at his option, may obtain approval of a portion or a section of a subdivision, provided he meets all the requirements with reference to such portion or section in the same manner as is required for a complete addition. In the event a subdivision and the final plat thereof is approved in sections, each final plat of each section shall substantially conform to the preliminary plan, carry the name of the entire subdivision, but is to be distinguished from each other section by a distinguishing letter, number or subtitle. Lot numbers shall run consecutively and names shall be consistent throughout the entire subdivision, even though such subdivision may be finally approved in sections.

(d) [*Documentation from county 911 addressing division.*] As a condition of final plat approval and acceptance, the developer shall provide documentation from the Hays County 911 Addressing Division demonstrating that the street layout and names on the final plat comply with the applicable county criteria; further, the developer shall provide electronic or digital subdivision data to the county 911 addressing division in a format approved by the county 911 addressing division.

(Ord. No. 296, art. II, § 10, 10-1-1996; Ord. No. 439, art. II, § 8, 11-24-2003; Ord. No. 439-3, § 3, 9-19-2006; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-53. - Procedures after final plat approval.

(a) *Certificate of approval.* The final plat shall be approved for recording after approval by the planning and zoning commission. The council's approval of the final plat shall authorize execution of certificates of approval on the final plat and duplicate originals of the final plat as provided in this chapter.

(b) *Coordination with county.* The approved final plat for any subdivision located outside the corporate limits of the city but within the extraterritorial jurisdiction shall also be submitted to the planning and zoning commissioners court of the county for approval before filing, unless provided otherwise by interlocal cooperation agreement then in effect between the city and the county. After action by the planning and zoning commissioners court, or if no action by the planning and zoning commissioners court is required, the final plat with duplicate originals shall be returned to the city bearing all appropriate signatures and seals. A copy of the interlocal agreement between the city and the county for the processing of subdivisions may be obtained from the city manager.

(c) *Final plat copies.* After approval of the final plat, one reproducible Mylar sepia and the required number of duplicate originals of the final plat shall be furnished to the city complete with all necessary signatures. All figures and letters shown must be plain, distinct and of sufficient size to be easily read, and must be of sufficient density to make a lasting and permanent record.

(d) *Final plat term.* A final plat shall be recorded within 12 months after approval by the planning and zoning commission and if not so recorded such plat approval shall expire. Prior to such final plat being recorded, subdivision improvements must be completed in accordance with the approved construction plans and accepted by the city council or the subdivider shall obtain and provide to the administrator an acceptable performance and a payment bond, letter of credit or escrow account to secure that the required infrastructure and public improvements in the subdivision are completed within 12 calendar months including the city's cost for collecting the guaranteed funds and administering the completion of the improvements, in the event the subdivider defaults, hereinafter referred to as "fiscal surety, assurance, or guarantee"). Such bond, letter of credit or escrow shall be payable to the city in an amount equal to 110 percent of the estimate of construction costs as approved by the city engineer for constructing such infrastructure and improvements as approved by the city.

(e) *Fiscal surety.* Fiscal surety required by this section shall comply with the following, as applicable to the type of surety:

(1) *Performance and payment bonds.* The developer shall post a performance and a payment bond with the city, as set forth herein, in an amount equal to 110 percent of the estimated construction costs for all remaining required improvements, using the standard city form.

(2) *Escrow account.* The developer shall deposit cash, or other instrument readily convertible into cash at face value, either with the city or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of the city. The amount of the deposit shall equal 110 percent of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the developer shall file with the city an agreement between the financial institution and the developer guaranteeing the following:

a. That the funds of said escrow account shall be held in trust until released by the city and may not be used or pledged by the developer as security in any other matter during that period.

b. That in the case of a failure on the part of the developer to complete said improvements, the financial institution shall immediately make the funds in said account available to the city for use in the completion of those improvements.

Such escrow account agreement shall be prepared using the standard city form.

(3) *Letter of credit.* The developer shall provide a letter of credit from a bank or other reputable institution or individual. This letter shall be submitted to the city and shall certify the following:

a. That the creditor does guarantee funds equal to 110 percent of the estimated construction costs for all remaining required improvements.

b. That, in the case of failure on the part of the developer to complete the specified improvements within the required time period, the creditor shall pay to the city immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.

c. That this letter of credit may not be withdrawn, or reduced in amount, until approved by the city according to provisions of this section.

Such letter of credit shall be prepared using the standard city form.

(4) *Cost estimates.* A licensed professional engineer licensed to practice in the State of Texas shall furnish estimates of the costs of all required improvements to the city engineer who shall review the estimates in order to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

(5) *Surety acceptance.* The bank, financial institution, insurer, person or entity providing any letter of credit, bond or holding any escrow account, pursuant to this section, shall meet or exceed the minimum requirements established by city ordinance and shall be subject to approval by the city as provided in the ordinances of the city.

(6) *Sufficiency.* Such surety shall comply with all statutory requirements and shall be satisfactory to the city attorney as to form, sufficiency, and manner of execution as set forth in this section. All such surety instruments shall be both a payment and performance guarantee.

(f) *Time limit for completing improvements.* The period within which required improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the city, exceed one year from date of final plat approval.

(1) The planning and zoning commission may, upon application of the applicant and upon proof of hardship, recommend to the council extension of the completion date set forth in such bond or other instrument for a maximum period of one additional year. Such hardship may include delays imposed due to city projects. An application for extension shall be accompanied by an updated estimate of construction costs prepared by a licensed professional engineer, licensed to practice in the State of Texas. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to 110 percent of the updated estimate of construction costs as approved by the city engineer.

(2) The council may at any time during the period of such surety instrument accept a substitution of principal sureties upon recommendation of the planning and zoning commission.

(g) *Failure to complete improvements.* Approval of final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within one year of final plat approval, unless otherwise approved by the city. In those cases where a surety instrument has been required and improvements have not been completed within the terms of said surety instrument, the city may declare the applicant and/or surety to be in default and require that all the improvements be installed, as well as exercise any other remedy available under law or the fiscal surety.

(h) *Inspection and acceptance of improvements.* The city engineer and/or city construction inspector shall inspect all required improvements, to insure compliance with city requirements and the approved construction plans.

(1) When all required improvements have been satisfactorily completed, the city engineer and/or city construction inspector shall either:

a. Accept, in writing, the improvements as having been satisfactorily completed; or

b. Issue a punch list to the applicant denoting items remaining to be completed.

(2) The city engineer and/or city construction inspector shall have ten working days to complete this inspection upon notification by the applicant.

(3) The city engineer and/or city construction inspector shall issue the report within ten working days of the date of inspection.

(4) The failure to perform the inspection or issue the report with[in] the ten working days shall not constitute city acceptance of the improvements or any defects in the improvements, nor shall such failure constitute a waiver of any rights the city may have under this section, state law, or an assurance filed pursuant to this section.

(5) The city shall not accept dedications of required improvements or release or reduce a performance bond or other assurance until such time it is determined that:

a. All improvements have been satisfactorily completed, as determined by the city engineer after performing an inspection.

b. One Mylar set of as-built plans has been submitted to and approved by the city engineer and/or city construction inspector, along with a statement prepared by a licensed professional engineer that all improvements have been installed and constructed in accordance with the submitted as-built plans.

c. Copies of all inspection reports, shop drawings and certified test results of construction materials have been submitted to and approved by the city engineer and/or city construction inspector.

d. Two copies of maintenance bonds meeting the requirements of this article have been provided.

e. Electronic copy containing computed generated Auto CAD drawings of all public improvements shown on the construction plans, and all lot lines shown on the plat; have been submitted to the city engineer and/or city construction inspector to update city maps.

f. Documentation is provided from Texas Department of Licensing and Regulation that the improvements are acceptable.

g. Any and all other requirements identified in the final plat process have been satisfied.

h. An approved address plat provided by Hays County.

(i) *Reduction or release of improvement surety instrument.*

(1) A surety instrument may be reduced with the approval of the city engineer and or city construction inspector, and the director of finance, upon actual construction of required improvements by a ratio that the improvement bears to the total public improvements required for the subdivision, as determined by the city engineer and/or public works director.

(2) Before the city shall reduce said surety instrument, the applicant shall provide a new or revised surety instrument in an amount equal to 110 percent of the estimated cost of the remaining required improvements.

(3) The substitution of a new or revised surety instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the applicant as specified in the performance surety instrument.

(4) In no event shall a surety instrument be reduced below ten percent of the principal amount of the original estimated total costs of improvements for which surety was given, prior to completion of all required improvements.

(5) The city shall not release a surety instrument unless and until all the conditions of this section have been met.

(j) *Maintenance bond required.*

(1) Before the release of any surety instrument guaranteeing the construction of required subdivision improvements, or prior to release of the final plat for recording where subdivision improvements were made prior to the filing of the final plat for recordation, the developer shall furnish the city engineer with a maintenance bond or other surety to assure the quality of materials, workmanship, and maintenance of all required improvements including the city's costs for collecting the guaranteed funds and administering the correction and/or replacement of covered improvements.

(2) The maintenance bond or other surety instrument:

a. Shall be satisfactory to the city attorney as to form, sufficiency, and manner of execution.

b. Shall clearly state both the applicant and the city as joint obligees.

c. Shall cover all facilities requested for city acceptance, including water, wastewater, street, drainage improvements and erosion control.

d. Shall be in an amount equal to 35 percent of the cost of improvements for the two calendar years from the date of city council acceptance of operation and maintenance of the subdivision. A statement of construction value or final pay estimate shall be provided to the engineering department to support said warranty and maintenance bond amounts.

e. Shall require the surety to notify the city at least 30 days prior to the expiration of the maintenance bond or other surety instrument.

(3) In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure or any neglected maintenance of any required improvement occurs within the period of coverage, the city may declare said bond or surety instrument to be in default and require that the improvements be repaired or replaced.

(4) Whenever a defect or failure of any required improvement occurs within the period of coverage, the city shall require that a new maintenance bond or surety instrument be posted for a period of two full calendar years sufficient to cover the corrected defect or failure.

(k) *Acceptance of improvements.* Before the city council accepts the subdivision improvements by resolution the applicant shall comply with subsections 41-53(h) and (j).

(l) *Building permits.* The approved final plat must be recorded in the records of Hays County and all the required streets, drainage, utilities and other infrastructure and public improvements for the subdivision must be completed and accepted as built in compliance with all applicable city requirements, prior to any building permit being issued for any home or building within the subdivision.

(Ord. No. 296, art. II, § 9, 10-1-1996; Ord. No. 439, art. II, § 9, 11-24-2003; Ord. No. 565, §§ 1—3, 4-7-2009; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-54. - Obligation by city for maintenance.

Approval of the plat shall not impose any duty upon the city concerning the maintenance of improvements of any such dedicated parts until the director of public works or his authorized representative shall have signed a statement for the acceptance of same.

(Ord. No. 296, art. II, § 12, 10-1-1996; Ord. No. 439, art. II, § 10, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-55. - No city obligation to furnish improvements.

The acceptance of a final plat, bond, letter of credit, or cash escrow by the city does not in any manner obligate the city to finance or furnish any storm sewers, drainage structures, street, water or wastewater improvements or any other improvements within the approved subdivision, except under the provisions provided herein. The city may in its discretion, but shall not be required to, use any bond, letter of credit, or cash escrow deposit provided or made for a subdivision to complete all or any part of the utilities, streets, drainage or other improvements in the subdivision for which the final plat was recorded. Further, if insufficient bond, escrow or letter of credit funding is available to complete all the required improvements within the subdivision, the city may use any such funds to complete only certain improvements selected in the sole discretion of the city council.

(Ord. No. 296, art. II, § 13, 10-1-1996; Ord. No. 439, art. II, § 11, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-56. - Resubmission of plats.

(a) *Conformance with preliminary plan.* Unless the subdivider wishes to resubmit for preliminary plan processing, the final plat shall conform substantially to the preliminary plan as approved.

(b) *Resubmission because of change or delay.* In the event that either or both of the following conditions occur during the processing of a subdivision plat, the planning and zoning commission may recommend or council may require resubmission as a preliminary plan or final plat:

(1) *Significant change.*

a. *Pending concept plan or preliminary plan subject to city regulations.* This section shall only apply to plans or plats legally filed and pending approval before the county commissioners court which have not been submitted to the city for review and approval as a result of not being within the city's jurisdiction at the time the pending series of plans or plats were submitted to the county. Such plans or plats shall be referred to herein as a "county project in progress."

1. *Purpose.* Submission of a concept plan, preliminary plan and final plat to the city shall be required when substantial changes to a county project in progress have occurred during the county platting process.

2. *Revision of preliminary plan.* If one or more of the following changes to a project in progress has been made between the filing or approval of a concept plan and the filing or approval of a preliminary plan, the concept plan previously submitted to the county shall be submitted to the planning and zoning commission and council to ensure compliance with city regulations. The following are deemed substantial changes requiring submission to the city:

(i) Any change that causes the preliminary plan to be significantly inconsistent with the city's master plan for the property.

(ii) More than a 20 percent change in the overall concept or design of the development or layout of the lots.

(iii) Any change in land use categories that total more than 20 percent of the land area.

(iv) Any change in the total number of residential or nonresidential lots totaling more than 20 percent of the total number of lots for any individual category of lots.

(v) Any change in classification of arterial or collector streets or in alignment of arterial or collector streets of more than 150 feet.

(vi) Any change in parkland that totals more than 20 percent of the proposed parkland area.

(vii) Any change in detention pond or drainage channel location by more than 150 feet.

(viii) Any change in phase timing by more than one year.

(ix) Any change that would require a variance from the county regulations.

3. *Revision of final plat.* If one or more of the following changes to a county project in progress has been made between the filing or approval of a preliminary plan and the filing or approval of a final plat, the concept plan and preliminary plan previously submitted to the county shall be submitted to the planning and zoning commission and council to ensure compliance with city regulations. The following are deemed substantial changes requiring submission to the city:

(i) Any change that causes the final plat to be significantly inconsistent with the city's master plan.

(ii) Any change in land use categories that total more than five percent of the land area.

(iii) Any change in the total number of residential or nonresidential lots totaling more than five percent of the total number of lots for any individual category of lots.

(iv) Any change in classification of arterial or collector streets or in alignment of arterial or collector streets of more than 75 feet.

(v) Any change in parkland that totals more than five percent of the proposed parkland area.

(vi) Any change in detention pond or drainage channel location by more than 75 feet.

(vii) Any change in drainage channel location by more than 75 feet.

(viii) Any change in phase timing by more than one year.

(ix) Any change that would require a variance from the county's regulations.

4. *Procedure for submission.*

(i) A concept plan that is required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-48 and 41-108.

(ii) A preliminary plan that is required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-51 and 41-109.

(iii) Construction plans and final plats that are required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-53 and 41-110.

(iv) For cause shown, the city council may waive the requirement for resubmission of a revised plan or plat.

5. *Current regulations govern.* If a concept plan or preliminary plan of a county project in progress is required to be resubmitted under this section, the subdivision shall be governed by the regulations, ordinances, rules, expiration dates, or other properly adopted requirements of the city in effect at the time of the submission to the city.

b. *Revisions to pending preliminary plan or final plat.* This section shall apply to concept plans, preliminary plans or final plats legally filed and pending approval before the planning and zoning commission or city council which substantially vary from the previously filed and

approved plan or plat. Such plan or plat shall be referred to herein as a "city project in progress."

1. *Purpose.* Submission of a revised concept plan or preliminary plan to the city shall be required when substantial changes to a city project in progress are proposed on an approved concept plan or preliminary plan.

2. *Revision to preliminary plan.* If one or more of the following changes to a project in progress has been made between the filing or approval of a concept plan and the filing or approval of a preliminary plan, the concept plan previously submitted to the planning and zoning commission or city shall be resubmitted to the planning and zoning commission and council to ensure compliance with city regulations. The following are deemed substantial changes requiring resubmission:

   (i) Any change that causes the preliminary plan to be inconsistent with the city's master plan for the property.

   (ii) More than a five percent change in the overall concept or design of the development or layout of the lots.

   (iii) Any change in land use categories that total more than five percent of the land area.

   (iv) Any change in the total number of residential or nonresidential lots totaling more than five percent of the total number of lots for any individual category of lots.

   (v) Any change in classification of arterial or collector streets or in alignment of arterial, collector or minor streets of more than 150 feet.

   (vi) Any change in parkland that totals more than five percent of the proposed parkland area.

   (vii) Any change in detention pond or drainage channel location by more than 150 feet.

   (viii) Any change in phase timing by more than one year.

   (ix) Any change that would not be consistent with the original intent of the approving body, or would require a variance.

3. *Revision to final plat.* If one or more of the following changes to a city project in progress has been made between the filing or approval of a preliminary plan and the filing or approval of a final plat, the concept plan and preliminary plan previously submitted shall be resubmitted to the planning and zoning commission. The following are deemed substantial changes requiring submission to the city:

   (i) Any change that causes the final plat to be inconsistent with the city's master plan.

   (ii) Any change in land use categories that total more than one percent of the land area.

   (iii) Any change in the total number of residential or nonresidential lots totaling more than one percent of the total number of lots for any individual category of lots.

   (iv) Any change in classification of arterial or collector streets or in alignment of arterial, collector, or minor streets of more than 75 feet.

   (v) Any change in parkland that totals more than one percent of the proposed parkland area.

   (vi) Any change in detention pond location by more than 75 feet.

   (vii) Any change in drainage channel location by more than 75 feet.

   (viii) Any change in phase timing by more than one year.

(ix) Any change that would not be consistent with the original intent of the approving body, or would require a variance.

4. *Procedure for submission.*

(i) A concept plan that is required to be submitted to the city under this section shall be resubmitted pursuant to the procedure set forth in sections 41-48 and 41-108.

(ii) A preliminary plan that is required to be resubmitted to the city under this section shall be submitted pursuant to the procedure set forth in sections 41-51 and 41-109.

(iii) Construction plans and final plats that are required to be submitted to the city under this section shall be submitted pursuant to the procedures set forth in sections 41-53 and 41-110.

(iv) For cause shown, the city council may waive the requirement for resubmission of a revised plat.

5. *Current regulations govern.* If a concept plan or preliminary plan of a city project in progress is required to be resubmitted under this section, the subdivision shall be governed by the regulations, ordinances, rules, expiration dates, or other properly adopted requirements of the city in effect at the time of the resubmission to the city.

(2) *Extended delay in processing.* When the developer does not complete the review process within 12 months from the date of approval of the preliminary plan, extensions may be granted by the planning and zoning commission for good cause, for additional six-month periods.

(Ord. No. 296, art. II, § 14, 10-1-1996; Ord. No. 439, art. II, § 12, 11-24-2003; Ord. No. 439-1, § 2, 10-5-2004; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-57. - Vacating plats.

(a) Upon approval by the planning and zoning commission and the city council, the owner of a tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat; provided that the planning and zoning commission and the council may establish requirements as may be reasonable in the discretion of the city to protect the public interest.

(b) If lots in a plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of the lots in the plat with approval obtained in the manner prescribed for the original plat.

(c) No plat shall be vacated except upon the approval of the planning and zoning commission and the council and the recording of the approved instruments vacating such plat in the office of the county clerk of the county. The county clerk shall write legibly on a vacated plat the word "vacated" and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

(d) On the execution and recording of the vacated instrument, the vacated plat has no effect; provided that when necessary to protect the public welfare or preserve the benefits or integrity of any street, utility, park or other public improvement plan that has moved forward in reliance on such plat, the planning and zoning commission and council may require that any right-of-way, parkland, public property, or easement shown on such plat be dedicated to the city by separate instrument.

(e) In the event of any conflict between the terms and provisions of this section and V.T.C.A., Local Government Code § 212.013, the terms and provisions of V.T.C.A., Local Government Code § 212.013 shall govern to the extent of such conflict.

(Ord. No. 296, art. II, § 15, 10-1-1996; Ord. No. 439, art. II, § 13, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-58. - Replatting.

(a) *Procedural requirements.* The replatting of any existing subdivision, or any part thereof, shall meet the procedural requirements provided for herein for a new subdivision, except as provided in subsection (b) of this section. The subdivision standards imposed are those in effect at the time the application for replat is requested and, in the event of any conflict between this section and V.T.C.A., Local Government Code §§ 212.014 and 212.015, the terms and provisions of such sections shall govern to the extent of the conflict.

(b) *Without vacating.*

(1) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

a. Is signed and acknowledged by only the owners of the property being replatted;

b. Is approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the planning and zoning commission, and is subsequently approved by the council; and

c. Does not attempt to amend or remove any covenants or restrictions.

(2) In addition to compliance with subsection (b)(1) of this section, a replat without vacation of the preceding plat must conform to the requirements of this section if:

a. During the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or

b. Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

(3) Notice of the hearing required under subsection (b)(1) of this section shall be given before the 15th day before the date of the hearing by:

a. Publication in an official newspaper or a newspaper of general circulation in the county; and

b. By written notice, with a copy of subsection (b)(4) of this section attached, forwarded by the planning and zoning commission to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(4) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the planning and zoning commission. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the planning and zoning commission prior to the close of the planning and zoning commission's public hearing.

(5) In computing the percentage of land area under subsection (b)(4) of this section, the area of streets and alleys shall be included.

(6) Compliance with subsection (b)(4) and (5) of this section is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than

single or duplex-family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

(Ord. No. 296, art. II, § 16, 10-1-1996; Ord. No. 439, art. II, § 14, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Sec. 41-59. - Amendments.

(a) *Purpose.* The planning and zoning commission and the council may approve and issue an amending plat, which may be recorded and is controlling over the preceding plat without vacation of that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

(1) To correct an error in a course or distance shown on the preceding plat;

(2) To add a course or distance that was omitted on the preceding plat;

(3) To correct an error in a real property description shown on the preceding plat;

(4) To indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;

(5) To show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

(6) To correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;

(7) To correct an error in courses and distances of lot lines between two adjacent lots if:

a. Both lot owners join in the application for amending the plat;

b. Neither lot is abolished;

c. The amendment does not attempt to remove recorded covenants or restrictions; and

d. The amendment does not have a material adverse effect on the property rights of the other owners in the plat;

(8) To relocate a lot line to eliminate an inadvertent encroachment of a building or other improvements on a lot line or easement;

(9) To relocate one or more lot lines between one or more adjacent lots if:

a. The owners of all those lots join in the application for amending the plat;

b. The amendment does not attempt to remove recorded covenants or restrictions; and

c. The amendment does not increase the number of lots; or

(10) To make necessary changes to the preceding plat to create six or fewer lots in the subdivision or part of the subdivision covered by the preceding plat if:

a. The changes do not affect applicable zoning and other regulations of the municipality;

b. The changes do not attempt to amend or remove any covenants or restrictions; and

c. The area covered by the changes is located in an area that the municipal commission or other council of the municipality has approved, after a public hearing, as a residential improvement area.

(b) *Application for amendment.* The amended plat may be submitted without approval of a preliminary plan or construction plans. The plat, prepared by a surveyor, and engineer if required, and bearing their seals shall be submitted to the administrator with a completed application and all required fees,

for approval before recordation of the plat. Legible prints, as indicated on the application form, shall be submitted to the city engineer along with the following:

(1) Completed application forms and the payment of all required fees.

(2) Certification from all applicable taxing authorities that all taxes due on the property have been paid.

(3) Any attendant documents needed to supplement the information provided on the plat.

(4) The city engineer shall require the following note on the amended plat:

> This subdivision is subject to all general notes and restrictions appearing on the plat of _____ Lots _____ recorded at Vol. _____ Page _____ of the Plat Records of Hays County, Texas.

(c) *Required notice.* Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat.

(d) *Conflicts between terms and provisions.* In the event of any conflict between the terms and provisions of this section and V.T.C.A., Local Government Code § 212.016, the terms and provisions of V.T.C.A., Local Government Code § 212.016 shall govern to the extent of such conflict.

(e) *Expiration.* Approval of an amended plat shall expire if said plat is not recorded in the plat records of the county within 12 months of approval.

(Ord. No. 296, art. II, § 17, 10-1-1996; Ord. No. 439, art. II, § 15, 11-24-2003; Ord. No. 739, § 2(Exh. A), 8-20-2013)

Secs. 41-60—41-76. - Reserved.

ARTICLE III. - SPECIAL PROJECT PROVISIONS

Sec. 41-77. - Based on approved comprehensive plan.

Opportunity is provided for innovative site design and development responses to new market demands. The use of improved techniques for land development is often difficult under traditional land use regulations. Proper private development of infill areas, as well as advantageous development of large areas of substantially vacant land, require a flexible approach to be available both to the city and to the landowner. Any such innovative site design shall be based upon an approved comprehensive plan that is consistent with applicable city plans and services. The standards and specifications for required infrastructure and improvements shall be equal to or greater than the minimum standards and specifications adopted by the city; and no such proposed project or development shall have or obtain any vested right save and except the comprehensive plan, the standards and specifications for the development and improvement of the property are approved by separate ordinance of the city.

(Ord. No. 296, art. III, 10-1-1996; Ord. No. 439, art. III, intro., 1-24-2003)

Sec. 41-78. - Planned developments.

(a) *Provisions for approval.* All planned development projects shall conform to the provisions and procedures set forth for conventional subdivisions in this chapter; provided that a detailed development plan must be submitted for review at the time of preliminary plan submittal and the project must be finally approved by ordinance. Such developments shall be otherwise submitted for approval in the same manner as any other plat.

(b) *Purposes.* Planned developments are intended to provide:

(1) Opportunities for innovative projects and development with emphasis on quality, including but not limited to establishing a quality living and/or work environment.

(2) Conservation of energy and natural resources.

(3) A maximum choice of types of environment, dwelling and/or business units.

(4) An integration of open space and recreation areas with residential and/or office, retail, commercial and/or industrial development.

(5) A pattern of development which preserves unique environmental assets, trees and other outstanding natural features.

(6) A creative approach to the use of land and its related physical development.

(7) An efficient use of land requiring smaller networks of utilities and streets, thereby lowering development, maintenance and housing costs.

(c) *Master plan.* Planned developments shall be required to be submitted and considered for approval based upon a master plan establishing comprehensive and detailed plans for the development.

(1) *Within corporate limits.* A planned development within the corporate limits of the city shall be submitted and considered in conjunction with the requirements of chapter 53, pertaining zoning, and shall, prior to final approval, satisfy both the requirements of this chapter and chapter 53, pertaining zoning. The final approval of the zoning for a planned development shall constitute the approval of such planned development pursuant to this chapter.

(2) *Extraterritorial jurisdiction.* Upon the application of the owner, a planned development may be approved within the extraterritorial jurisdiction of the city, provided that the developer enters into a comprehensive, detailed written agreement with the city that provides detailed and comprehensive standards for:

a. The development of the property;

b. The construction of all infrastructure, improvements and buildings within the development;

c. The provision of utility and other public services;

d. Funding the upkeep and maintenance of all private facilities;

e. Reimbursement of the city for its costs and expenses for providing water and wastewater services to the property;

f. Restrictive covenants sufficient to control the population densities and to restrict the uses of the property in conformance with the subdivider's master plan and approved planned development;

g. An agreement for the annexation of the property or the phased annexation of the property prior to its conveyance to the end user; and

h. Such other provisions as the subdivider and the city may agree based upon all the applicable facts and circumstances.

(d) *General infrastructure.* The requirements, standards and specifications provided in this chapter, and/or incorporated herein by reference, with respect to utilities, parks and greenbelts, drainage and stormwater management and all other improvements, infrastructure and amenities shall, except as in this section specifically provided otherwise, be applicable. When based upon sound engineering and construction practices, innovative techniques and combinations may be employed for the intended purpose of such combination exceeding the minimum standards required by this chapter.

(e) *Streets.* On planned development projects, private interior streets to be used only as local or collector streets within the development shall have a minimum pavement width of 30 feet face to face of curb. Any such private streets may not conflict with streets identified in the city's comprehensive plan. If a

potential exists for a private street to become a public street, the dedicated right-of-way and/or easements created for the private street should be the same width as the right-of-way required for a local street.

(f) *Instruments of covenants.* Instruments of covenants, governing the proposed planned developments to include maintenance and operation, will be approved by the city attorney and the administrator to ensure there are no conflicts with city codes.

(g) *Exceed minimum requirements.* This section shall apply to development proposals which vary the arrangement of landscaping, buildings, lots, open space, access, and/or relationships between uses required in this chapter and chapter 53, pertaining to zoning. A planned development shall not be used to obtain approval of gross densities, gross impervious coverages, lower specifications or standards, or land uses that are inconsistent with this chapter and chapter 53, pertaining to zoning; rather it is the intent of this section that a planned development will, in the aggregate, equal or exceed the minimum criteria and standards otherwise applicable to the development.

(Ord. No. 296, art. III, § 1, 10-1-1996; Ord. No. 439, art. III, § 1, 11-24-2003)

State Law reference— Development plat requirements, V.T.C.A., Local Government Code § 212.045.

Sec. 41-79. - Townhouses.

Applications for the approval of a townhouse subdivision shall meet the requirements specified in section 41-78 for planned developments and the provisions of chapter 53, zoning, applicable to townhouses. Such sections of chapter 53, zoning, as applicable to subdivisions and lots, are incorporated herein by reference as a part of this chapter.

(Ord. No. 296, art. III, § 2, 10-1-1996; Ord. No. 439, art. III, § 2, 11-24-2003)

Sec. 41-80. - Manufactured home subdivision.

All manufactured and mobile home parks and other subdivisions shall comply with this chapter except where specifically superseded by the city's codes and ordinances dealing with manufactured and mobile home subdivisions. A manufactured or mobile home park is a subdivision subject to this chapter.

(Ord. No. 296, art. III, § 3, 10-1-1996; Ord. No. 439, art. III, § 3, 11-24-2003)

Sec. 41-81. - Private facilities.

When an applicant proposes that any part of a subdivision, planned development, or any other development of land include any private park, street, amenity or improvement normally dedicated to the city, a property owner's association (or comparable mechanism) shall be created, whereby:

(1) *Maintenance.* Total responsibility for maintenance in perpetuity of such private improvements is borne by the association.

(2) *Funding program.* A program is established whereby the association can accomplish the maintenance of private facilities.

(3) *Discretion.* Private streets will generally not be approved except in limited circumstances (e.g., a subdivision for townhouses, cluster homes and portions of planned developments, as appropriate). The approval of private streets in a subdivision shall be in the discretion of the city council, and require a waiver by the city council of the provisions of this chapter requiring the dedication of public right-of-way for streets. The city council may, in its discretion, waive the

requirement for the public dedication of right-of-way for some, but not all, streets in a subdivision. In those subdivisions where private streets are permitted, the developer shall be required to grant to the city an easement for the provision, regulation and control of public utilities and services, and a separate easement for the provision of public safety and emergency services.

(4) *Community postal box.* All subdivisions shall provide covered and lighted community postal box locations within the subdivision and meet all United States Postal Service requirements. All subdivisions shall provide off-street parking of a minimum of five spaces to allow residence ability to park off street to check mail at community postal box.

(Ord. No. 296, art. III, § 4, 10-1-1996; Ord. No. 439, art. III, § 4, 11-24-2003)

Sec. 41-82. - Rural subdivision standards.

(a) *Purpose.* The provisions of this section are designed and intended to permit development of undeveloped agricultural land while preserving the rural character of the area until such time as development of a more intensive urban nature is appropriate and can be supported by the necessary public facilities and services. These design standards modify, and/or reinforce other requirements found in these regulations. By qualifying other particular requirements of these regulations, these rural subdivision design standards ensure minimum conditions for establishing a low density rural living environment while providing the necessary foundation upon which more intensive urban development can occur in the future.

(b) *Applicability.* The requirements contained in this section shall apply to all land within the jurisdictional limits of the city that is outside the utility service area of the city for water and/or wastewater services, and for which the provision of such services will be accommodated through the use of individual, privately owned systems. No land or property within the city's certificated service area shall be entitled to be developed pursuant to this section, except upon a waiver given by the city council. Further, except as specifically qualified in this section, all other standards, terms, conditions and provisions of this chapter shall apply to such rural subdivisions.

(c) *Streets.* All streets within rural subdivisions shall be designed and constructed in accordance with the requirements for rural streets set forth in the city's construction standards and specifications for roads, streets, structures, and utilities. The right-of-way required shall be the same as for all other subdivisions.

(d) *Blocks.* Blocks in rural subdivisions shall not exceed 1,500 feet in length and shall adequately accommodate two tiers of lots arranged back to back.

(e) *Lots.* All lots in rural subdivisions shall:

(1) Be greater than one acre in area;

(2) Have a minimum width at the front property line of 130 feet; and

(3) Be designed so that all access is provided from a local street except access may be permitted from a major thoroughfare or street; state highway, farm to market road or ranch road; or numbered/or named county roadway if a minimum driveway centerline spacing of 200 feet is provided between driveways.

(f) *Easements and dedications.* In addition to all other right-of-way dedications and/or easements required by this chapter, all rural subdivisions shall be required to dedicate not less than an additional ten feet of right-of-way along that portion of all property abutting:

(1) Major thoroughfares;

(2) State highways, farm to market or ranch roads; or

(3) Numbered county roads.

(g) *Utilities.*

(1) *Wastewater collection systems.* For all rural subdivisions where public wastewater utility services are not available, the city reserves the right to require the installation of improvements required for nonrural subdivisions in accordance with the provisions of these subdivision regulations, when public wastewater services are available within one-quarter mile of the subdivision, the city is coordinating with the private sector to extend a public wastewater system to within one-quarter mile of the subdivision within two years, or the extension of urban services to within one-quarter mile of any portion of the subdivision is scheduled in the city's capital improvements program to occur within five years from the date of preliminary plan approval.

(2) *Water distribution system.* To enhance the overall efficiency and service level for water distribution in rural subdivisions, the city will cooperate with existing nonmunicipal water utility providers in the city's extraterritorial jurisdiction. Through joint coordination and planning both the city and the nonmunicipal water utilities will work towards ensuring the availability throughout the jurisdiction of this chapter of a water distribution system that satisfies the fire flow requirements.

a. Rural subdivisions designed for other than single-family detached residential development shall satisfy the applicable state and city fire flow standards;

b. All single-family detached residential rural subdivisions shall install water distribution system improvements meeting the design requirements of this chapter, and:

1. Where a public water system capable of providing required fire flows to the development is located within one-quarter mile of any part of the subdivision, then it shall be the responsibility of the developer to extend service and connect to the public utility in order to provide fire protection to the development; or

2. For all rural subdivisions, which are not to be served by a public water supply, the subdivider must show proof of a safe and adequate water supply.

(h) *Additional provisions.* In addition to any and all other provisions of this chapter, prior to any resubdivision of a rural subdivision being approved by the city, the level of improvements and urban services required by this chapter for nonrural subdivisions shall be available to and satisfied by the resubdivided property.

(Ord. No. 296, art. III, § 5, 10-1-1996; Ord. No. 439, art. III, § 5, 11-24-2003)

Secs. 41-83—41-107. - Reserved.

ARTICLE IV. - PLAT PACKAGES, FORM AND CONTENT

Sec. 41-108. - Concept plan package (CPP).

The concept plan package shall contain the following:

(1) *Maps and narrative.* Maps and associated narrative information that will adequately explain all substantial aspects of the proposed development as it exists at the preliminary design and concept stage.

(2) *Phased development.* If the development of a single tract or parcel of land is to occur in phases, the concept plan package should cover all phases of development, indicating how development is proposed or anticipated to occur.

(3) *Facility location.* A proposed concept plan shall indicate a coordinated development strategy. As applicable, the concept plan package shall indicate preliminary location and arrangements for:

a. Streets. General widths and rights-of-way; access and frontage proposals; bridges and culverts.

b. Water. Major lines.

c. Sewer. Overall service system with preliminary location of force mains and lift stations, if applicable.

d. Major utility easements locations.

1. Power;

2. Gas;

3. Sewer trunk; and

4. Water.

e. Major drainage system elements.

1. On-site elements; and

2. Off-site elements.

f. Flood hazard areas.

g. Land use and zoning proposals.

h. General lot layout and street frontage arrangements.

i. Sites for schools, parks and other public facilities.

j. Information related to traffic management and engineering.

(4) *Public plans.* The developer's plan should take into account current public plans for the elements covered in subsection (3) of this section. The planning and zoning commission and council review will include city policy, good engineering practices, and public plans, including:

a. Comprehensive plan;

b. Area and neighborhood plan;

c. Water master plan;

d. Wastewater master plan.

(Ord. No. 296, art. IV, § 1, 10-1-1996; Ord. No. 439, art. IV, § 1, 11-24-2003)

Sec. 41-109. - Preliminary plan package (PPP).

(a) *Package.* The required number of copies of the preliminary plan package of the proposed subdivision shall be submitted to the city with an application for subdivision processing.

(b) *Drawings.* Twenty copies of the preliminary plan drawing, prepared on sheets that are 24 inches by 36 inches, of the proposed subdivision shall be submitted to the city with an application for subdivision processing.

(c) *Scale.* All drawings shall be drawn at a minimum scale of 100 feet to an inch.

(1) When more than one sheet is necessary to accommodate the entire area of the subdivision plus other associated information, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat.

(2) On the plan drawing sheet or index sheet there shall be a vicinity concept drawing to indicate the general location of the subdivision. The plan and vicinity concept drawing shall graphically indicate the physical relationship (distance) of the corner of the subdivision (adjacent to a public right-of-way) to a physical point, acceptable to the city engineer as a visible reference and datum marker, and to property ownership patterns in the vicinity.

(d) *Required certificates.* The following certificate shall be placed on the plat:

Recommended as administratively complete:

_____ _____

City Engineer and/or Director Of Public Works

_____

Date

(e) *Plat notes.* The plat drawing shall show or be accompanied by the following general information:

(1) The names of the owner and/or subdivider, the name of the registered professional land surveyor responsible for the survey, and the name of the licensed professional engineer responsible for the design of the plat.

(2) The proposed name of the subdivision (which must not be so similar to that of an existing subdivision as to cause confusion).

(3) Names of contiguous subdivisions and the owners of contiguous parcels of unsubdivided land, together with a notation as to which contiguous properties are platted and the volume and page number of the recorded subdivision plat.

(4) Description by metes and bounds prepared from an accurate boundary survey of the subject property, with bearings and distances, referenced to survey lines and established subdivision. The description shall close and be based on an actual field survey with an adjusted closure of a minimum of one part in 10,000.

(5) A draft of the dedicated instrument, which may include protective covenants whereby the subdivider proposes to regulate land use or development standards in the subdivision.

(6) A statement from the developer that the appropriate utility companies have been furnished copies of the proposed preliminary plan for their review.

(7) Subdivision boundary line, indicated by heavy lines, and the computed acreage of the subdivision.

(8) Date of preparation, scale of plat and north arrow.

(9) A number to identify each lot or site and each block. Number of lots and blocks shall be in accordance with a systematic arrangement.

(10) Location of the city limit line and the outer border of the city's extraterritorial jurisdiction, if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.

(11) Topographical information prepared from a field survey or United States Geological Survey Maps. Topographical information shall include contour lines on a basis of five vertical feet, in terrain with a slope of two percent or more, and on a basis of two vertical feet in terrain with a slope of less than two percent. All elevations shall be referenced to the United States Geological Survey benchmark system.

(12) From the property line and within a distance of 500 feet:

a. Location of boundary and property lines;

b. Width and location of platted streets and alleys and easements. Streets, alleys and lots in adjacent subdivisions (at least for a distance of 500 feet shall be shown in dashed lines.

(13) Physical features of property, including location of watercourses, ravines, bridges, culverts, present drainage structures and other features pertinent to the subdivision.

(14) Existing utilities, watercourses, and flood elevations and boundaries:

a. Existing utilities within the subdivision including the size of sewer and water. Existing utilities outside the subdivision should be shown if they affect the proposed subdivision.

b. The exact location, dimensions, description and flow line of existing watercourses and drainage structures within the subdivision.

c. Regulatory flood elevations and boundaries of floodprone areas, including floodways using the official existing flood insurance rate map (FIRM) or calculations when not shown on flood insurance rate map.

(15) Proposed locations or sites of the following:

a. The exact location, dimensions, description and name of all proposed streets, alleys, parkland, including acreage, and other public areas, reservations, easements or other rights-of-way, blocks, lots and other sites within the subdivision. Proposed streets shall not be shown over lands of adjacent owners unless written agreements permitting this are presented with the plat. The names of streets are to conform whenever possible to existing street names. In the case of branching streets, the lines of departure shall be indicated.

b. On-site and related off-site drainage system elements, when direct access to an existing drainageway is unavailable.

c. Water system elements.

d. Wastewater system elements.

(16) The computed acreage of land within the right-of-way of proposed streets, the total number of proposed lots in the subdivision, and the total number of proposed lots for each proposed land use or zoning classification.

(f) *Texas Commission on Environmental Quality review.* Design of proposed system elements subject to regulation by the Texas Commission on Environmental Quality (TCEQ) shall be certified by the design engineer that systems comply with all applicable regulations of the Texas Commission on Environmental Quality.

(Ord. No. 296, art. IV, § 2, 10-1-1996; Ord. No. 439, art. IV, § 2, 11-24-2003)

Sec. 41-110. - Final plat package (FPP).

(a) *Package.* The required number of the final plat package (FPP) of the proposed subdivision shall be submitted to the city with an application for subdivision processing.

(b) *Drawings.* Twenty copies of the final plat package of any proposed subdivision shall be submitted with an application for subdivision plat processing.

(c) *Engineer seal.* All engineering plans and engineering calculations shall bear the seal and signature of a state licensed engineer.

(d) *Specifications.* The specifications for the final plat (drawings) shall conform to the requirements of subsection (g) of this section.

(e) *Confirmation.* The developer shall confirm the written proposals submitted in accordance with subsection (g) of this section.

(f) *Plat notes.* The final plat drawing shall show or be accompanied by the information required for the preliminary plan and as set forth in subsection (g) of this section.

(g) *Construction plans.* The final plat package for a subdivision must include the construction plans. Construction plans, regardless of when filed, must be approved by the city engineer/director of public works before authority to proceed is given or building permits are issued. The construction and engineering plans for a subdivision shall include the following site improvement data, either separately or combined:

(1) *Streets and right-of-way.* Four copies of plans and profile sheets showing all streets, alleys, sidewalks, crosswalkways with construction details.

(2) *Sanitary sewer.*

a. Four copies of the proposed wastewater plan, showing required contours and the location and dimensions of existing sanitary sewer lines to be used by the subdivision.

b. Four copies of plans and profiles of proposed sanitary sewer lines, indicating depths, sizes and grades of lines.

c. When a lift station and force main are proposed, four copies of proposed plans and specifications.

(3) *Water.*

a. Four copies of the proposed plat showing the location and size of existing water lines and fire hydrants to be used by the subdivision.

b. Four copies of plans and profiles (12-inch pipe and larger) on all proposed water lines and fire hydrants, showing depths, sizes and grades of the lines.

c. When a separate water system other than the city's will serve the subdivision, four copies of the plans, including fire hydrants, of the proposed system.

(4) *Drainage.*

a. Four copies of the proposed plan, overlaid on previously required topographic (mapped) information. All street widths and grades shall be indicated on the plan, and runoff calculations shall be indicated on the outlet and inlet side of all storm sewers, and at all points in the street at changes of grade or where the water enters another street, storm sewer or drainage ditch. Drainage easements shall be indicated.

b. A general location map of the subdivision showing the entire watershed (a copy of the appropriate portions of a United States Geological Survey quadrangle is satisfactory).

c. Calculations showing the anticipated stormwater flow, including watershed area, percent impervious cover, and time of concentration. When storm sewer is proposed, calculations shall be submitted showing basis for design.

d. When storm sewer is proposed, complete plans, profiles and specifications shall be submitted, showing complete construction details.

e. When conditions upstream or downstream from an existing channel or proposed storm sewer do not permit maximum design flow, high water marks, based on a 100-year frequency, shall be indicated based on conditions.

(5) *Construction plans.* Plats shall be accompanied by four copies of the construction plans sufficient to build all the necessary infrastructure for the proposed subdivision, including water, sewer, storm drain, streets, curb and gutter and any other necessary improvements. The plans shall consist of plan and profile sheets in a standard engineering size of 22 inches by 36 inches and plotted to a maximum scale of 50 feet to one inch horizontal and five feet to one inch vertical. These plans shall be developed by a licensed professional engineer under the laws of the state and be sealed by the engineer before final submittal to the city. All details shall conform to city standard details unless otherwise approved by the city engineer and/or the director of public works. All engineering design on the plans shall conform to accepted engineering standards for public infrastructure construction.

(6) *Street design.* Street design shall be based on soil testing and shall show the type and width of paving proposed for the streets. Curbs, gutters and drainage structures shall be in accordance with current design standards adopted by the city.

(h) *Stormwater.* A final plan for proposed fills and other structure-elevating techniques, levees, channel modifications, stormwater detention ponds, and other methods to alleviate flood hazard and/or erosion-related hazards shall be submitted.

(i) *Flood prevention.* See chapter 17, article II, pertaining to flood hazard area regulations, for requirements related to flood damage prevention.

(j) *Setback lines and distances.* Front building setback line on all lots and sites; side and rear yard building setback line shall be shown on the plat.

(k) *Proposed uses.* Designations of the proposed uses of land within the subdivision shall be shown for churches, schools, parks or other special uses.

(l) *Number of lots.* The number of lots and proposed land use of the proposed subdivision shall be shown.

(m) *Tax receipts.* Receipts showing that all city and county property taxes, then due, have been paid.

(n) *Restrictive covenants.* All proposed deed restrictions. The applicant will provide satisfactory proof of ownership of property to be subdivided, or provide written proof of permission from the owner to subdivide.

(o) *Texas Commission on Environmental Quality review.* Design of proposed system elements subject to regulation by the Texas Commission on Environmental Quality (TCEQ) shall be certified by the design engineer that systems comply with all applicable regulations of the Texas Commission on Environmental Quality.

(p) *Certifications.* The following certifications shall be considered as minimum phrasings to be placed on the final plat drawing or accompanying sheets. Plat drawings shall bear the signature of the person or officer making the acknowledgment to the notary.

(1) *Owner certification.*

a. For a natural person acting in his own right.

State of Texas

County of Hays

KNOW ALL MEN BY THESE PRESENTS, That I OWNER, owner of DEEDED ACREAGE, acres of land out the ORIGINAL SURVEY, Hays County, Texas, as conveyed to me by deed dated _____, and recorded in Volume, Page _____, Hays County Deed Records, DO HEREBY SUBDIVIDE Subdivision Acreage acres of land out of the Original Survey (Note: If the subdivision lies in more than one survey, determine the acreage in each survey and repeat for each original survey within the subdivision) to be known as the Subdivision Name, in accordance with the plat shown hereon, subject to any and all easements or restrictions heretofore granted, and do hereby dedicate to the public (or: "owners of the property shown hereon" for private streets) the use of the streets and easements shown hereon.

WITNESS MY HAND, this the _____ day of _____, A.D., 20_____.

_____

(Owner's Name) Owner/Individual

State of Texas

County of Hays

This instrument was acknowledged before me on [date] by [name or names of person or persons acknowledging].

Seal (Signature of Notary)

_____

Notary Public, State of Texas

My commission expires:_____

b. For a corporation.

KNOW ALL MEN BY THESE PRESENTS, That I Corporation Name, a corporation organized and existing under the laws of the State of Texas, with its home address at Address, City, State, owner of Deeded Acreage acres of land out of the Original Survey, Hays County, Texas, as conveyed to it by deed dated, and recorded in Volume _____, Page _____, Hays County Deed Records, DOES HEREBY SUBDIVIDE Subdivision Acreage acres of land out of the Original Survey (Note: If the subdivision lies in more than one survey, determine the acreage in each survey and repeat for each original survey within the subdivision), to be known as the Subdivision Name, in accordance with the plat shown hereon, subject to any and all easements or restrictions heretofore granted, and do hereby dedicate to the public (or owners of the property shown hereon for private streets) the use of the streets and easements shown hereon.

IN WITNESS WHEREOF the said Corporation Name has caused these presents to be executed by its Corporate Title, Name, and thereunto duly authorized,

_____,

(Owner's Name) Owner

State of Texas

County of Hays

This instrument was acknowledged before me on [date] by [name of officer], [title] of [name of corporation acknowledging] a [state of incorporation] corporation, on behalf of said corporation.

Seal (Signature of Notary)

_____

Notary Public, State of Texas

c. Public officer, trustee, executor, administrator, guardian, etc.

State of Texas

County of Hays

This instrument was acknowledged before me on [date] by [name of representative], [title] of [name of entity or person represented].

Seal (Signature of Notary)

_____

Notary Public, State of Texas

My commission expires: _____/_____/_____

d. Partnership.

State of Texas

County of Hays

This instrument was acknowledged before me on the [date] by [name of acknowledging partner or partners], partner(s) on behalf of [name of partnership], a partnership.

Seal (Signature of Notary)

_____

Notary Public, State of Texas

My commission expires:_____/_____/_____

(2) *Surveyor certification.*

State of Texas

County of _____

I, the undersigned, a registered professional land surveyor in the State of Texas, hereby certify, that this plat is true and correct, that it was prepared from an actual survey of the property made under my supervision on the ground, and that all necessary survey monuments are correctly set or found as shown thereon.

_____

Registered Professional Land Surveyor

(3) *Engineer certification.*

State of Texas

County of _____

I, the undersigned, a licensed professional engineer in the State of Texas, hereby certify that proper engineering consideration has been given this plat.

_____

Licensed Professional Engineer

(4) *City engineer certification.*

State of Texas

County of Hays

I, the undersigned, City Engineer of the City of Kyle, hereby certify that this subdivision plat conforms to the requirements of the subdivision ordinance and hereby recommend approval.

_____

City Engineer

(5) *County health department certification (extraterritorial jurisdiction on-site wastewater treatment only).* Certification statement as required under the county subdivision regulations.

(6) *Director of public works certification.*

I, the undersigned, director of public works of the City of Kyle, hereby certify that this subdivision plat conforms to the requirements of the City of Kyle subdivision ordinance and hereby recommend approval.

_____

Director of Public Works

(7) *Planning and zoning commission certification.*

This final plat has been submitted to and considered by the planning and zoning commission of the City of Kyle, Texas, and is hereby approved by such planning and zoning commission.

Dated this _____ day of _____, 20_____.

_____

Chairperson

(8) *The county subdivision regulations (extraterritorial jurisdiction).* Certifications as required under the county subdivision regulations.

(9) *Certification of the city secretary.* The following certificate shall be placed on the plat for execution after it has been finally approved by the city council:

I hereby certify that the above and foregoing plat of _____ Addition to the City of Kyle, Texas, was approved by the city council of the City of Kyle on the day of _____, 20_____. Said addition shall be subject to all the requirements of the subdivision ordinance of the City of Kyle, Texas.

Witness my hand this _____ day of _____, 20_____.

_____

City Secretary

(10) *Owner additional certification.* When avigation easements and/or releases are required pursuant to this chapter, then the following certificate shall be required:

I, (we), the undersigned, owner(s) of the land shown on this plat, hereby acknowledge that certain navigation easement(s) and/or release(s) were made to the City of Kyle and run with the title to all subdivided parcels within this subdivision.

_____

Owner(s)

(Ord. No. 296, art. IV, § 3, 10-1-1996; Ord. No. 439, art. IV, § 3, 11-24-2003)

Secs. 41-111—41-133. - Reserved.

ARTICLE V. - STANDARDS AND SPECIFICATIONS

Sec. 41-134. - General requirements.

(a) *Standards and plans.* All construction plans and accepted subdivision improvements shall conform to the following standards and specifications, unless an exception is expressly approved by resolution of the council:

(1) *Conformity with comprehensive plan.* The subdivision shall be consistent with the adopted comprehensive plan of the city, if any, and the parts thereof, as amended, from time to time.

(2) *Connecting streets.* If a tract is subdivided, parcels shall be arranged to allow for the opening of future streets, as provided for herein.

(3) *Prohibition of reserve strips.* No subdivision or addition showing reserve strips of land controlling the access to public ways or adjoining properties will be approved either in whole or in part, unless such strips are in compliance with the law and are not detrimental to the public health, safety and welfare.

(4) *Inspection of construction.* All construction work, such as street grading, street paving, storm sewers, stormwater detention facilities, curbs and gutters, sanitary sewers and water mains, performed by the owner, developer or contractor shall be subject to inspection during construction by the proper authorities of the city. All construction shall be completed in compliance with the construction specifications of the city in effect at time of subdivision approval. Said specification shall be on file in the office of the city engineer. No construction work shall commence on any subdivision without a written notice to proceed being issued by the city; and no construction work shall proceed on any weekend or city holiday without the prior written agreement of the city and the contractor or developer paying the city's costs and expenses for the required construction inspection, including overtime pay and benefits.

(5) *Street names and addresses.* Street addressing (odd-even), street naming (consistent with connecting street names, avoiding duplication), subdivision naming and related matters shall be subject to council approval and shall comply with such standards and regulations as are in effect from time to time.

(6) *Subdivision construction standards.* All subdivisions shall comply with the city's typical construction standards in effect at the time of the application for plat approval. Construction detail standards for concrete, sanitary sewer, water lines and associated facilities shall be separately adopted from time to time by the city council acting by resolution. Variations in standards shall be based on field conditions and the professional judgment of the city engineer.

(b) *Dedication of land.* The developer shall dedicate or convey title to the land needed for improvements required for a subdivision. All such dedication instruments, deeds and easements shall be to the city as grantee.

(c) *Costs of installation.* All required improvements shall be constructed at the developer's cost, with no contribution from the city, except as specified in this chapter and chapter 50.

(d) *Appeals.* Appeals may be taken to the planning and zoning commission and the city council by the owner and/or developer as to actions of the city engineer or director of public works, whether on preliminary or final review of a proposed plan.

(Ord. No. 296, art. V, § 1, 10-1-1996; Ord. No. 439, art. V, § 1, 11-24-2003)

Sec. 41-135. - Blocks.

(a) *Generally.* In general, intersecting streets determining block lengths shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets or contemporary and accepted subdivision practices.

(b) *Length.* Blocks shall be not more than 1,000 feet in length, and shall be, at minimum, bounded on either end of the long axis by a local street. Block length, up to 1,200 feet, may be approved for good and sufficient reasons (example: curvilinear streets or paved alleys). Blocks which contain lots afforded access only by a residential lane shall contain no more than ten such lots on a single block face, shall be not more than 300 feet in length, and shall be of such configuration that no portion of any building on any such lot will be more than 300 feet from the right-of-way of a local residential street to which the residential lane is connected.

(c) *Commercial and industrial.* Industrial and commercial subdivisions may under appropriate circumstances include blocks longer than 1,000 feet. A master plan or preliminary plan of the subdivision depicting proposed land use shall demonstrate reasonable provisions in the street layout for the public health and safety, particularly the circulation of emergency vehicles and anticipated truck traffic.

(Ord. No. 296, art. V, § 2, 10-1-1996; Ord. No. 439, art. V, § 2, 11-24-2003)

Sec. 41-136. - Lots.

(a) *Area requirements.* Within the corporate limits of the city, the required lot area, width, setback line, side yard and rear yard requirements shall be established by chapter 53, zoning, based on uses proposed by the developer. Such limited provisions of chapter 53, zoning, as to lot layout, size and setbacks are incorporated herein by reference as subdivision regulations (see chart 1). The minimum residential lot size in the city's extraterritorial jurisdiction shall be 9,600 square feet. All lots to be served by a septic system shall have a lot size that is the larger of 20,000 square feet or the minimum lot size required by the county rules for on-site sewage facilities, whichever is greater, and conform to the county rules for on-site sewage facilities.

Chart 1

Land Use District	Front Setback (in feet)	Side Setback (in feet)	Corner Lot at Side Street or Alleyway Setback (in feet)	Street Side Yard Setback (in feet)	Rear Setback (in feet)	Min. Lot Square Feet Area	Min. Lot Street Line Width (in feet)	Height Limit (in feet)
A	25	25	25	25	25	43,500	150	45
UE	25	25	25	25	25	22,500	100	45
R-1-1	30(9)	7	10	15	25	8,190(1)	80(1)	35
R-1-2	30(9)	5	10	15	25	6,825(1)	65(1)	35
R-1-A	25	5(2)	10	15	15	4,550(1)	35	35

R-1-T	(3)	(3)	10	15	(3)	2,844(3)	35	35
R-1-C	(4)	(4)	10	15	(4)	9,000(4)	80	45
R-2	25(9)	7	10	15	25	9,000	80	35
R-3-1	25	15	15	15	25	(5)	80	35 (6)
R-3-2	25	20	15	15	25	(5)	80	45(7)
R-3-3	25	7	15	15	25	(13)	90	45(7)
M-1	25	7	15	15	25	8,190	80	35
M-2	25	7	25	25	25	8,190	80	35
CBD-1	25(8)	(8)	15	15	(8)	(8)	(8)	35 (8)
CBD-2	0	0	0	0	0	2,500	25	45
RS	25	10	15	15	15	6,000	50	45
W	25	25	25	25	25	9,000	80	45
CM	25	50	50	50	50	43,500	150	45
E	25	25	15	15	15	6,000	50	45(14)
TU	25	7	15	15	15	(10)	(10)	(10)
B	25	25	25	15	15	(11)	(11)	(11)
PUD	(8)	(8)	(8)	15	(8)	5 acres	(8)	(8)

Notes: The footnotes in parentheses in Chart 1 refer to the footnotes of Chart 1 in chapter 53.

(b) *Access.* Each lot shall front upon a public street or, in the case of a planned development, have access to a public way by access easement sufficient to meet the requirements of the fire code adopted by the city, governing access to buildings by fire apparatus. The frontage of each single-family detached residential, commercial, industrial and other lot on a public street shall not be less than that required

by chapter 53, zoning, the provisions of which for the frontage of lots on a public street are incorporated herein by reference; provided that the minimum required frontage on a public street for single-family-detached residential lots situated on a cul-de-sac shall be 35 feet.

(c) *Side lot lines.* Side lot lines in residential subdivisions shall be substantially at right angles to straight streets lines and radial to curved street lines. Except for culs-de-sac lots, street frontage shall not be substantially less in width than the width of the lot at building site location. The ratio of the lot depth to the average lot width shall not be greater than a 5:1 ratio.

(d) *Extra depth and width.* Where a lot in a residential area backs up to a railroad right-of-way, a high pressure gasoline, oil or gas line, an industrial area, or other land use which has a depreciating effect on the residential use of property, and where no marginal access street or other street is provided, additional depth may be required by the planning and zoning commission. In no case shall a residential lot depth in excess of 175 feet be required. Where a residential lot sides to any of the situations stated in this subsection, additional width shall be required by the planning and zoning commission, but in no event shall a width in excess of 120 feet be required.

(e) *Lot arrangement.* Lots for residential use should not front on or be contiguous at a side lot line to major thoroughfares or expressways. Lot arrangement in case of nonresidential uses is subject to the review and approval of the planning and zoning commission and council so that traffic congestion and movement problems are minimized whenever possible. Double fronting lots or lots with a side lot line contiguous to major thoroughfares or expressways may be allowed, after evaluation of the resulting exposure (i.e., fence, berm, wall) adjacent to the street.

(f) *Subsequent platting.* At the option of the subdivider of a commercial and industrial subdivision, with recommended approval of the planning and zoning commission and approval of the council, the subdivider may plat all streets, easements, and minimum building lines, and at a subsequent date, plat the lots as individual subdivision plats consistent with the initial platting of streets and utilities.

(Ord. No. 296, art. V, § 3, 10-1-1996; Ord. No. 439, art. V, § 3, 11-24-2003)

Sec. 41-137. - Streets.

(a) *Layout.* Adequate streets shall be provided by the subdivider and the arrangement, character, extent, width, grade, and location of each shall conform to the comprehensive plan of the city, if any, and other applicable plans, and shall be considered in their relation to existing and planned streets, to topographical conditions, public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served. In particular, subdivision layout should provide for a minimum practical number of intersections with major arterials, and those intersections should be with collector streets at intervals of not less than 800 feet.

(b) *Relation to adjoining streets.* Where necessary to the street circulation pattern within a neighborhood, existing streets in adjoining areas shall be continued and shall be at least as wide as such existing streets and in alignment therewith. Practical downsizing of streets will be permitted where obvious transition is from high to low traffic frequency and there are no comprehensive plan thoroughfare requirements.

(c) *Projection of streets.* Where adjoining areas are not subdivided, the arrangement of streets in the subdivision shall make provision for the future projection of streets into such unsubdivided areas, unless otherwise provided by the comprehensive plan. Subdivision plat design shall provide for the location of a reasonable number of street openings to adjoining properties. Such an opening shall occur at least every 1,000 feet or in alignment with existing or proposed subdivision streets along each boundary of the subdivision. An exception may be granted to this requirement if a natural or manmade barrier, such as a thoroughfare, railroad, etc., prevents its implementation. The developer shall convey or dedicate land to the appropriate public entity for the future projection of collector and larger streets into adjoining, unsubdivided areas. For the future projection of local streets, the developer shall either dedicate land or convey to the city, by general warranty deed, a fee simple on condition subsequent estate in one or more lots. If the city, by resolution of the council, ever determines that the property will

not be needed for street extension, the grantor (or successor) shall have the right to reenter and assume ownership of the property. A residential lane shall connect only to another residential lane or to a local residential street, either existing or proposed to be constructed concurrently with the residential lane in a single phase of development, and shall not be constructed as a dead-end residential lane provided to connect with a future street in adjacent land.

(d) *Intersections.* Off-center street intersections will not be approved, however jogs with centerline offsets of more than 180 feet may be submitted for consideration.

(e) *Curvilinear streets.*

(1) Street classification.

Street Classification	Minimum Curve Radius to Centerline of Street (in feet)
Local street	275
Collector street	375
Arterial street	725
Major thoroughfare	1,000

(2) The planning and zoning commission and the council may approve local residential streets with smaller radii than those required in subsection (e)(1) of this section in special circumstances (consistent with the use of the street).

(f) *Half streets.* No new half streets shall be platted except in the case where such a street is to be a major thoroughfare.

(g) *Street intersections.*

(1) More than two streets intersecting at one point shall not be permitted.

(2) No street shall intersect any other street at an angle of less than 60 degrees and curb radii at the corner shall be adjusted accordingly.

(3) Major thoroughfare intersections shall have property line corner chords with a minimum tangent distance of 30 feet.

(4) Curb radii at intersections, including alley openings, shall be a minimum of 25 feet, measured from face of curb, except in commercial or industrial developments where the radii shall be a minimum of 30 feet.

(h) *Culs-de-sac.*

(1) Streets ending in a cul-de-sac shall generally not exceed 600 feet in length, nor 200 feet in the case of a residential lane.

(2) Minimum cul-de-sac dimensions shall be as follows:

Usage Area	Pavement Radius (in feet)	Right-of-Way Radius (in feet)
Residential	45	55
Commercial/industrial	50—65	60—75

(i) *Comprehensive plan street.* Where subdivision embraces a street as shown on the comprehensive plan of the city, such street shall be platted consistent with the location, purpose and width indicated by the comprehensive plan.

(j) *Local streets.* Minor streets shall be laid out to discourage use by through traffic.

(k) *Pavement and right-of-way width.*

(1) Minimum standards. All pavement widths referred to in the table in this subsection are from curb face to curb face. Where a range of pavement or right-of-way width is shown, such decision shall be made during the subdivision approval process. Direct access from abutting property to arterial streets and major thoroughfares will be restricted.

Standard Category	Pavement Width (in feet)	Right-of-Way Width (in feet)
Residential lane	28	60
Local street	30—36	60
Collector street	38	60
Arterial street	44—48	80
Major thoroughfare	66—70	100—120

(2) Depending on traffic patterns, densities, needs and other related factors, the city can require:

a. Additional pavement width and/or right-of-way width for major thoroughfares, including expressway sections.

b. If a street pavement section is divided, the total width of each of the pavement sections shall not be less than the widths in subsection (k)(1) of this section.

c. Additional right-of-way in vicinity of intersections of collector, arterial and major thoroughfare roadways to adequately accommodate turning movements and/or property access needs.

d. Additional easements needed to provide for utilities.

(3) If a street within a subdivision serves as an entrance to the subdivision at an intersection with a collector street, the entry street within the subdivision shall be a divided street for a distance of not less than 150 feet into the subdivision from the intersection with the collector street, with the required additional right-of-way and pavement widths.

(l) *Typical sections.*

(1) Subject to the requirements of the subsection (l)(2) of this section, typical street sections shall be based upon projected traffic volume, existing soil conditions, drainage condition and requirements. The design shall be in conformance with good engineering practices, this section and the recommendations of a geotechnical analysis of the site. The street sections shall be based on a 20-year life and the following loading shall be used as a minimum design standard:

a. Residential lane and alleys 20,000, 18 Kip axle repetitions.

b. Local street 20,000, 18 Kip axle repetitions.

c. Collector street 100,000, 18 Kip axle repetitions.

d. Arterial street 400,000, 18 Kip axle repetitions.

e. Major thoroughfare 500,000, 18 Kip axle repetitions.

(2) Notwithstanding subsection (l)(1) of this section, minimum requirements for typical street sections may be approved and adopted by the city council from time to time and if the requirements specified in any such minimum standards shall exceed the requirements resulting from the application of the subsection (l)(1) of this section then, in that event, such minimum standards shall govern.

(m) *Street grades.*

(1) Streets other than local streets shall have a maximum grade of eight percent, unless the city engineer shall concur that the natural topography requires steeper grades, in which case a ten percent grade may be used, if the site distance is adequate and there are no intersections at the top or bottom of the grade within the calculated stopping distance based upon the speed limit plus ten miles per hours.

(2) Local streets may have a maximum grade of ten percent.

(3) All streets must have a minimum grade of at least 0.5 of one percent.

(4) Centerline grade changes with an algebraic difference of more than two percent shall be connected with vertical curves of sufficient length to provide sight distance on major streets as required for 45 mile per hour traffic; and sight distance on minor streets and local residential streets as required for 30 mile per hour traffic.

(5) Whenever a cross slope is necessary or desirable from one curb to the opposite curb, such cross slopes shall not exceed 12 inches in 30 feet. Streets designed with super elevated curves shall conform to the standard highway design for such curves.

(n) *Bonded contractor.* All street construction shall be performed by a bonded contractor.

(o) *Signs and markers.* The developer shall pay the cost of purchasing and installing all required posts, signs and markers for all streets, which posts, signs and markers shall comply with the Texas Department of Transportation Uniform Traffic Control Manual.

(p) *Perimeter streets.* The developer's obligations concerning perimeter streets are as follows:

(1) *Local, collector streets.*

a. Dedicate land for one-half of the required right-of-way of an adjacent local and collector street; and

b. Pay the improvements costs or build one-half of the required width of adjacent local and collector streets, including curbs, gutters and storm drainage.

(2) *Arterial and larger streets.*

a. Dedicate a proportional share of the right-of-way for arterial and larger streets; and

b. Pay the improvements costs for or build a proportional share of the required street width for arterial and larger streets, including curbs, gutters and storm drainage, not to exceed the amount that would be required for one-half of a collector street.

(3) *Designated, state or federal roadways.*

a. Dedicate a proportional share of the right-of-way;

b. Pay the improvements cost for, or build, a proportional share of the required street width as required by the Texas Department of Transportation, including curbs, gutters and storm drainage, not to exceed the amount that would be required for one-half of a collector street;

c. Pay the improvements cost for, or build, improvements required by a traffic impact analysis for the development; and

d. Secure said obligations by a letter of credit, escrow account, or other means approved by city council.

(p1) *Exception for homesteads.*

(1) Financial obligations to improve perimeter roads as set forth in this article may be waived or reduced by the city manager or designee for property owners subdividing their property for the sole purpose of creating a homestead under the following terms and conditions:

a. A property owner must be subdividing property for the sole purpose of creating a homestead on an area of land no larger than one acre;

b. The property being subdivided for homestead purposes cannot be subdivided into more than two tracts or parcels;

c. Only single-family homes as defined by the city's zoning ordinance (chapter 53, Code of Ordinances) may be allowed on the property subdivided to be used as a homestead; and

d. A waiver of the city manager or designee shall be in writing and filed with the city secretary, and the city council may be informed of all waivers.

(2) If a waiver is not granted by the city manager or designee, the property owner denied such waiver shall have the right to appeal the denial of waiver to the city council. A public hearing to determine whether a property owner should be granted a waiver shall be conducted before the city council. By majority vote, the city council may grant such waiver.

(q) *Monuments.*

(1) The surveyor responsible for the plat shall place permanent monuments in accordance with the standards of the state board of registration for professional land surveyors.

(2) The location of monuments shall be shown on the final plat.

(3) All lot corners and street rights-of-way shall be set with a marker of a permanent nature (i.e., iron rod, pipe, etc.).

(4) All monuments shall be in place at the time of acceptance of utilities and streets.

(r) *Installation costs.* The developer shall pay all costs for the installation of streets in a subdivision, including those streets and related drainage structures that are deemed by the planning and zoning commission and/or the council to be required because:

(1) A substantial amount of traffic will be generated from, to or through the subdivision because of existing and/or future conditions;

(2) The city's comprehensive plan, or street plan, indicates a need for certain major thoroughfares through or adjacent to the subdivision; or

(3) The city's ordinances requires the installation of frontage roads or similar special access arrangements.

(Ord. No. 296, art. V, § 4, 10-1-1996; Ord. No. 439, art. V, § 4, 11-24-2003; Ord. No. 819, §§ 3, 4, 8-19-2014)

Sec. 41-138. - Curbs and gutters.

(a) *Required.* Curbs and gutters shall be required to be constructed on all streets. Standard curb and gutter profiles shall be required for all streets except as provided otherwise in this section. Reinforced concrete ribbon curbs having a width of not less than 18 inches may be substituted for standard curbs and gutters in a large lot subdivision, or estate size lot subdivisions designed and platted for single-family residences; provided that:

(1) No lot within the subdivision will be less than one acre in size;

(2) Standard curbs and gutters are not found by the city to be necessary or desirable for drainage and stormwater control; and

(3) Standard curbs and gutters shall be installed for any street or part thereof as advisable for drainage and stormwater control.

(b) *Intersections.* Standard curbs and gutters shall be constructed at each corner upon each block to which curbs and gutters are constructed; except for streets in subdivisions in which lay-down curbs are permitted under subsection (a) of this section.

(c) *Valley gutters.* Concrete valley gutters shall be constructed across all alleys at street intersections.

(Ord. No. 296, art. V, § 5, 10-1-1996; Ord. No. 439, art. V, § 5, 11-24-2003)

Sec. 41-139. - Crosswalks.

Crosswalkways ten feet in width shall be dedicated where deemed necessary by the planning and zoning commission and/or council to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities. Crosswalkways shall be provided, when required by a development, with a concrete sidewalk six feet wide constructed to city specifications and ramped at street intersections.

(Ord. No. 296, art. V, § 6, 10-1-1996; Ord. No. 439, art. V, § 6, 11-24-2003)

Sec. 41-140. - Watershed and flood prevention.

(a) *Watershed protection.* The watershed provisions contained herein are deemed necessary for the following reasons:

(1) The watersheds within the city's jurisdiction contribute significantly to the city's drinking water supply.

(2) Waterways and their associated watersheds within the city's jurisdiction represent significant recreational and aesthetic resources and contribute to the city's public health.

(3) The future of the city is dependent on an adequate quality and quantity of water, a pleasing natural environment, recreational opportunities in close proximity to the city as well as the protection of people and property from the hazards of flooding.

(4) All watersheds within the city's jurisdiction are vulnerable to nonpoint source pollution and sedimentation resulting from development activities.

(5) All watersheds within the city's jurisdiction are undergoing development or are facing development pressure.

(6) If watersheds within the city's jurisdiction are not developed in a sensitive and innovative manner, water resources, natural environment, and recreational characteristics may be irreparably damaged.

(7) Protection of critical environmental features is necessary to protect water quality in those areas most susceptible to pollution.

(8) It is important to protect the water supply and the natural environment of all watersheds for existing and future generations of citizens of the city.

(9) The city may adopt additional appropriate development rules and regulations for the purpose of protection of the watersheds and aquifers within its jurisdiction as a facet of its overall program for the control and abatement of pollution resulting from generalized discharges of pollution which are not traceable to a specific source, such as urban runoff from rainwater; and for the abatement of the risks related to flooding within the watersheds.

(b) *Stormwater management.* In order to achieve the purposes in subsection (a) of this section, this section provides for stormwater management systems. All development plans and subdivision plats submitted to the city shall comply with the provisions of this article and section and any other applicable regulations; specifically, the city's construction standards and specifications for roads, streets, structures and utilities and applicable Texas Commission on Environmental Quality rules. Plats of developed property on which no new structures or additional impervious coverage is planned shall be exempt from the provisions of this section.

(1) *Stormwater management system requirements.* The planning and zoning commission shall not recommend approval for any plat, plan or subdivision which does not meet the minimum requirements of this chapter in making adequate provision for control of the quantity of stormwater and/or groundwater runoff to the benefit of both future owners of property within the subdivision and other lands within the watershed. It shall be the responsibility of the subdivider to design and construct a system for the collection and transport of all stormwater runoff flowing onto and generated within the subdivision in accordance with:

a. The requirements of these regulations.

b. Chapter 17, article II, pertaining to flood hazard area regulations.

c. Good engineering practices.

d. Approved plans.

e. The principles of stormwater law established by the state water code.

(2) *Basic design objectives.* In general, the stormwater management system shall be designed and constructed in a manner which promotes the development of a network of both natural and built drainageways throughout the community so as to:

a. Retain natural floodplains in a condition that minimizes interference with floodwater conveyance, floodwater storage, aquatic and terrestrial ecosystems and groundwater and surface water.

b. Reduce exposure of people and property to the flood hazard and nuisance associated with inadequate control of runoff.

c. Systematically reduce the existing level of flood damages.

d. Ensure that corrective works are consistent with overall city goals.

e. Minimize erosion and sedimentation problems and enhance water quality.

f. Protect environmental quality, social well-being and economic stability.

g. Plan for both the large flooding events (25-year and 100-year) and the smaller, more frequent flooding (two-year and ten-year) by providing both major and minor drainage systems.

h. Minimize future operational and maintenance expenses.

i. Reduce exposure of public investment in utilities, streets and other public facilities (infrastructure).

j. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public.

k. Acquire and maintain a combination of recreational and open space systems utilizing floodplain lands.

l. Preserve natural drainage patterns and limit the amount of impervious cover so as to prevent erosion, maintain infiltration and recharge of local seeps and springs, and attenuate the harm of contaminants collected and transported by stormwater.

(3) *General design requirements.*

a. The storm drainage system shall be separate and independent of any sanitary sewer system and its use shall not interfere with the operation and maintenance of road networks or utility systems.

b. Each lot, site and block within the subdivision shall be adequately drained as prescribed in the city's construction standards. Any use of retaining walls or similar construction shall be indicated on the preliminary plan and the city engineer may require construction plans.

c. No subdivision shall be approved which would permit building within a regulatory floodway of any stream or watercourse. The planning and zoning commission may, when it deems necessary for the protection of the health, safety or welfare of the present and future population, recommend the subdivision and/or development of any property which lies within a designated regulator floodplain of any stream or watercourse be prohibited.

d. No lot or building site within a subdivision shall derive sole access to a public street across a waterway unless such access shall be constructed to remain open under 25-year design storm conditions.

e. Areas subject to inundation under design storm conditions shall be indicated with the minimum floor elevation of each lot so affected on a certified copy of the preliminary plan submitted. The planning and zoning commission may, when it deems necessary for the protection of the health, safety or welfare of the present and future populations, recommend placing restrictions on the subdivision, regarding the design and use of areas within a drainageway. The council shall not approve any subdivision of land within the floodplain of any stream or watercourse unless the applicant demonstrates that the subdivision and all development anticipated therein will comply with the requirements of this chapter and chapter 17, article II, pertaining to flood hazard area regulations.

f. Design of all drainage facilities, including streets, inlets, storm sewers, outfall, culverts and ditches, shall conform with the city's construction standards and specification for roads, streets, structures, and utilities.

g. All facilities shall be designed to intercept, detain and transport the projected runoff from the two-year, ten-year and 25-year frequency storm. Overflow and/or transport provisions shall be provided for 100-year storms.

h. Projected runoff rates for the design of drainage facilities shall be based on the expected ultimate developed state of the upstream contributing area. Said ultimate developed state shall be based on the maximum intensity allowable under existing zoning as applicable, the city's comprehensive plans, and approved plans within the contributing area.

i. All development establishing impervious cover or otherwise modifying an existing site shall incorporate facilities to prevent any increase in the peak rate of runoff from a two-year, ten-

year and 25-year frequency storm. The city engineer may waive this requirement under one or more of the following circumstances:

1. Approved off-site storage is provided for the required regulation of peak flows and adequate conveyance of stormwater flows from the site to the off-site storage facility is demonstrated.
2. Development of a one-, two- or three-family residential structure on any legally platted lot creates no more impervious ground cover than 30 percent of the gross lot surface area exclusive of any area within the 100-year floodplain.
3. Certified engineering data and calculations are presented which demonstrate the absence of adverse impact on all downstream conveyances and property between the downstream property line and the receiving major waterway.
4. Certified engineering data and calculations are presented which fully describe, explain and justify recommended alternative to detention.
5. The increase in runoff does not exceed ten percent of the existing condition runoff up to a maximum increase of five cubic feet per second, and said runoff does not affect adjoining property.
6. The property is adjacent to a major waterway and in the judgment of the city engineer, waiver of detention requirements will not result in an increase in the peak flood flow of the major waterway.

Waiver of this requirement for any reason shall not relieve the owner of responsibility under civil law to adjacent and downstream property owners.

j. Design of major drainageways through a subdivision and major structures such as box culverts or bridges across a major drainage channel shall be coordinated with the requirements of the county when any portion of the subdivision lies outside the city limits.

k. Drainage channels.

1. The limits of the 25-year and 100-year storm event shall be determined for watercourses draining 50 acres or more. Calculations for storm events shall utilize generally recognized backwater computational methods and actual field channel and overbank configuration.
2. No importation of fill material or channel modifications shall be undertaken within the area of the 100-year floodplain without written approval of the city engineer. Such approval shall be based upon certified engineering data and calculations furnished by the applicant.
3. All constructed or modified earthen channels shall be limited to areas outside the boundary of subdivision and shall be designed utilizing a side slope of 33 percent, or flatter, to allow for future maintenance and promote adequate slope stability. As a minimum, all slopes shall be hydro-mulched and seeded with erosion control matting, sodded, or seeded. Prior to lapse of two-year warranty period all disturbed areas shall have substantial vegetative growth and ground cover.

l. Streets and storm sewer.

1. All street sections shall be in accordance with city standards. The allowable design drainage capacity for stormwater flow at the gutter shall be no deeper than one inch above the top of the curb.
2. Depth of flow in streets is to be controlled to allowable levels by modification of crossfall, gradient changes, or the placement of curb inlets, and storm sewers or the use of other appropriate, city engineer approved, alternatives for streets where ribbon curb is permitted by section 41-138.

m. Bridges and culverts.

1. All bridge and culvert structures shall be designed to carry and/or contain the upstream runoff from a 25-year storm.

2. Runoff from a 100-year storm shall not top the road surface at bridge or culvert crossings for an arterial or thoroughfare crossing and shall not exceed a depth of six inches on a local street crossing.

3. All bridge and culvert structures shall be designed such that the structural integrity of the roadway shall not be diminished by a 25-year or 100-year storm event.

n. Computations, plans and construction.

1. Plans and computations for proposed drainage facilities shall be certified with the seal of the design engineer, and submitted to the city engineer for acceptance prior to approval of construction plans.

2. Computations for all drainage-related design shall be submitted with the plans for review. Data submitted shall include a drainage area map, a summary of methodology employed and resulting data, land use and runoff coefficient assumptions, and other pertinent hydrologic and hydraulic data.

3. The city shall make such inspections as are deemed necessary to ensure proper installation.

4. Following construction, but prior to acceptance of improvements or issuance of a building permit, the design engineer shall furnish one set of reproducible record plans for each project, bearing certification by a licensed professional engineer.

5. Neither the review nor approval of such plans nor the inspection of the completed work will create any liability on the part of the city.

o. Building permits and utility connections.

1. Plans submitted for building permits and/or utility connections, other than single-family residential or duplex construction and those projects already in compliance with this chapter, shall include the necessary drainage-related facilities designed and provided for in compliance with this chapter and the city's construction standards.

2. Plans and design calculations for all drainage facilities shall be submitted to the city engineer for acceptance prior to issuance of any permit within the development or subdivision.

p. Drainage easements.

1. General requirements. Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, or where a detention/filtration facility is required, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the lines of such watercourse or facility, and of such width and construction to contain the design storm and required freeboard. When parking lots or other approved use areas serve a dual function, including detention, those areas shall be designated on the plat as detention areas.

2. Design requirements.

(i) Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements at least 20 feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. Easements shall be indicated on the plat. Drainage easements shall be carried from the road to a natural watercourse or to other drainage facilities.

(ii) When a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage rights must be secured and filed of record, documented on the plat, and drawn on the construction plans.

(iii) Low-lying lands along watercourses subject to flooding or overflowing during storm periods shall be preserved and retained in their natural state as drainageways except where modification can be shown to benefit the community and as approved by the council. All development activity within the regulatory floodplain must comply with the city's and the Federal Emergency Management Agency (FEMA) floodplain management regulations.

(iv) All sedimentation, filtration, detention and/or retention basins and related appurtenances shall be situated within a drainage easement. The owners of the tracts upon which are located such easements, appurtenances, and detention facilities shall maintain same and be responsible for their upkeep. Notice of such duty to maintain shall be shown on the plats.

q. Drainage facilities shall be designed to serve the entire subdivision. For all subdivisions, design of drainage facilities shall be completed with other required construction plans in order to ensure adequate drainage easements and other reservations on the plat.

r. The requirements set forth herein are not intended to be exhaustive and wherever it is necessary to make additional requirements in order to maximize the effectiveness of the drainage plan in question, such requirements shall be made by the planning and zoning commission. Variances to these requirements may be allowed pursuant to this chapter only when said variance will not result in drainage-related problems sought to be prevented by these regulations.

(4) *Industrial uses.*

a. An applicant proposing any industrial use, as defined in the city comprehensive plan or chapter 53, pertaining to zoning, and which is not completely enclosed within a building, must provide a pollutant attenuation plan which:

1. Proposes methods to capture all surface water runoff from developed areas to contain and filter pollutants generated on-site.

2. Controls dust and other particulate matter generated on-site, to meet the state commission on environmental quality standards for urban areas.

b. The design of storage facilities for hydrocarbon or hazardous substances, including leak detection systems, spill containment areas or other control measures shall meet the following requirements:

1. Underground storage facilities. Facilities for the underground storage of static hydrocarbon or hazardous substances shall be of double walled construction or of an equivalent method approved by the city engineer. Methods for detecting leaks in the wall of the storage facility shall be included in the facility's design and review prior to issuance of appropriate permits for construction.

2. Aboveground storage facilities. Facilities for the aboveground storage of static hydrocarbon or hazardous substances shall be constructed within controlled drainage areas that are sized to capture 1½ times the storage capacity of the facility and that direct any spillage to a point convenient for collection and recovery. The controlled drainage area shall be constructed of a material suitably impervious to the material being stored.

c. All transport facilities for hydrocarbons and hazardous substances shall be approved by the city engineer.

(5) *Minimum criteria for issuance of floodplain development permit.* Pursuant to chapter 17, article II, pertaining to flood hazard area regulations, as amended from time to time, and similar provisions enforced by the county, a floodplain development permit shall be required such that:

a. Development or alteration of the floodplain shall result in no increase in water surface elevation of the design storm of the waterway.

b. Development or alteration of the floodplain shall not create an erosive water velocity on or off the site. The mean velocity of stream flow at the downstream end of the site after development or alteration shall be no greater than the mean velocity of the stream flow under existing conditions.

c. Development or alteration of the floodplain shall be permitted by equal conveyance on both sides of the natural channel.

d. Relocation or alteration of the natural channel shall not be permitted without an environmental assessment, including a stream rehabilitation proposal.

e. The toe of any fill shall parallel the natural channel to prevent an unbalancing of stream flow in the altered floodplain.

f. To ensure maximum accessibility to the floodplain for maintenance and other purposes, and to lessen the probability of slope erosion during periods of high water, maximum slopes of filled area shall not exceed a 3:1 ratio for 50 percent of the length of the fill and a 6:1 ratio for the remaining length of the fill. The slope of any excavated area not in rock shall not exceed a 4:1 ratio. Vertical walls, terracing and other slope treatments will be considered if no unbalancing of stream flow results.

g. Whenever feasible, the integrity of the natural waterway channel will be protected.

h. A landscape plan shall be required, and shall include plans for erosion control of cut and fill slopes, restoration of excavated areas and tree protection where possible, both in and below the fill area. Landscaping should incorporate natural materials (earth, stone, or wood) on cut or fill slopes whenever possible.

i. The effects of existing or proposed public and private improvements shall be used in determining water surface elevations and velocities.

j. Any alteration of the floodplain shall not cause any additional expense in current or projected capital improvements, nor should said alteration cause additional maintenance costs to be incurred by the city.

(c) *Minimum requirements.* This subsection establishes further general and minimum standards. In the event of any conflict between any of the following and any other requirement of this section, the higher standard shall govern and control:

(1) *Drainage structures.* Drainage structures shall be constructed in compliance with this chapter and in such locations and of such size and dimensions to adequately serve the subdivision and associated drainage area. The developer shall be responsible for all costs for the installation of the drainage system required to accommodate the needs of the subdivision being developed, to include the carrying of existing water entering or leaving the subdivision.

(2) *Right-of-way.* In new subdivisions, the developer shall provide all the necessary easements and rights-of-way required for drainage structures, including storm sewer and open, paved or riprapped channels.

(3) *Storm sewers and curb inlets.* Storm sewers shall be provided and curb inlets located so as to properly drain all streets and intersections.

(4) *Standards.* The design, size, and location of all storm drainage facilities shall equal or exceed the city's minimum construction standards and be approved by the city engineer and director of public works. All storm sewer shall be constructed of reinforced concrete pipe or box.

a. *Drainage ditches.* Only open, paved or improved drainage ditches, as accepted by the planning and zoning commission and council, shall be constructed across a portion or the entire subdivision being developed.

b. *Storm sewer.* Water entering into the streets, in excess of what gutters will carry at maximum flow, shall be diverted into storm sewers. Capacity of storm sewers and channels shall be calculated by Manning's formula or other methods approved by the city engineer or director of public works.

(5) *Detention.* Except for existing single-family residences on legally platted lots, all subdivisions and development establishing impervious cover or otherwise modifying an existing site shall incorporate facilities to prevent any increase in the peak of runoff from the two-year, ten-year and 25-year frequency storms.

(Ord. No. 296, art. V, § 7, 10-1-1996; Ord. No. 439, art. V, § 7, 11-24-2003)

Sec. 41-141. - Utility easements.

(a) *Rear and side lots.* Each block that does not contain an alley shall contain or have access to a utility easement at the rear of each lot, or at other appropriate locations, reserved for the use of all public utility lines, conduits and equipment. In the case of rear lot locations, the utility easements shall be no less than ten feet in width. In side lot locations, the utility easements shall be no less than five feet in width. Unless abutting an alley, water and wastewater utility easements in the rear are not favored and will not be approved except under special circumstances.

(b) *Drainage.* Required drainage easements shall allow for a minimum of 15 feet in width in addition to any width required for a drainageway structure. This easement may be split between drainageway sides but one side (easement) may be no less than ten feet in width unless access and maintenance provisions are provided by other dedicated right-of-way. All public utility easements shall also be dedicated for use as drainage easements.

(c) *Utilities.* The developer shall arrange with the appropriate utility department and/or company for the payment and/or refund of construction costs of each utility involved.

(d) *Easements abutting streets.* A 15-foot wide easement abutting the right-of-way of each street shall be dedicated as an easement for utilities, drainage and excavation and/or embankments.

(e) *Electrical, telephone and other lines.* All electrical, telephone, cable television and similar lines shall be placed underground. Such lines shall be installed in accordance with the regulations and requirements established by each utility or service company, as applicable, and city ordinance. As authorized by V.T.C.A., Local Government Code ch. 212, the city council may waive this requirement for good cause, and permit such lines to be installed above ground.

(Ord. No. 296, art. V, § 8, 10-1-1996; Ord. No. 439, art. V, § 8, 11-24-2003)

Sec. 41-142. - Water and wastewater.

(a) *Water mains.* Water mains shall be a minimum of eight inches in diameter. Water mains smaller than eight inches may be constructed to serve blocks with no more than six dwelling units, taking into account:

(1) The recommendation of the design engineer for the developer;

(2) Peak demands for domestic and irrigation use of water;

(3) Fire protection and hydrant coverage;

(4) Growth and development possibilities for the area; and

(5) Approval of the city engineer and director of public works.

(b) *Sewer mains.* Sewer mains shall be a minimum of eight inches in diameter.

(c) *Sewer cleanouts.* Each home or building drain shall be provided with a cleanout near the junction of the building drain and building sewer in accordance with the plumbing code. A sewer yard line clean out shall be installed by the subdivider at the junction of each sewer yard line and the city service line.

(d) *Construction period.* Water and sewer lines, including short side and long side taps, shall be installed during the construction phase of the subdivision. The subdivider will bring all valves and manholes within the subdivision boundary to grade prior to final acceptance.

(e) *Fire hydrants.* Fire hydrants shall be used at the end of culs-de-sac.

(f) *Septic tanks.*

(1) No subdivision may be developed for any lots to be served by a septic tank if public sewer service is available within one-quarter mile of any boundary of the tract or tracts of land out of which the subdivision is proposed to be developed.

(2) No permit shall be issued for the installation of a septic tank on any lot, tract or parcel within the jurisdiction of the city if adequate sewer service is available within 500 feet of the property line of the lot to be sewered.

(3) No subdivision of lots within the city, or within the extraterritorial jurisdiction of the city, which depends in whole or in part on septic tanks or a septic tank system shall be approved unless the subdivision qualifies under subsection (f)(1) of this section and the lots meet the greater of the minimum lot size required by state regulations or the county rules for on-site sewage facilities, whichever is larger.

(Ord. No. 296, art. V, § 9, 10-1-1996; Ord. No. 439, art. V, § 9, 11-24-2003)

Sec. 41-143. - Sidewalks.

(a) *Required.* Sidewalks are required in residential subdivisions and will be required as appropriate to the area and use in commercial and industrial subdivisions. Sidewalks shall be not less than four feet in width and shall be two feet from curb. Such sidewalks shall be installed and constructed on both sides of each residential street and be situated wholly within the dedicated right-of-way.

(b) *Parkways.* Parkways shall be excavated, or filled, as required to result in a three to one grade or as detailed on approved construction plans.

(c) *Americans with disabilities.* Sidewalks shall conform to the city construction standards and meet all requirements of the state accessibility standards.

(Ord. No. 296, art. V, § 10, 10-1-1996; Ord. No. 439, art. V, § 10, 11-24-2003)

Sec. 41-144. - Alleys.

(a) *Generally.* Alleys need not be provided unless they are recommended by the planning and zoning commission and approved by the council. Where alleys are provided the pavement width shall be not less than 20 feet, and in no case shall the right-of-way width of such an alley be less than 27 feet.

(b) *Alleys and easement intersections.* Where alleys or utility easements intersect, or turn at right angles, a diagonal of not less than ten feet from the normal intersection of the property or easement line shall be required. The diagonal length of intersections of alleys and/or utility easements at other angles must be approved by the city.

(c) *Dead-end alleys.* Dead-end alleys shall not be permitted except if future development provides for the extension of the alleys, in which case temporary turnarounds will be provided.

(Ord. No. 296, art. V, § 11, 10-1-1996; Ord. No. 439, art. V, § 11, 11-24-2003)

Sec. 41-145. - Drive approaches.

Drive approaches shall be in conformance with standards approved and adopted by the council from time to time; provided that if no applicable standard has been adopted such approaches shall be designed pursuant to acceptable engineering practices and approved by the city engineer. The city may impose a more restrictive standard than contained in any such standard or design proposal, in conjunction with review of a subdivision plat, if anticipated development under the standards will result in a dangerous or unsafe condition to the public.

(Ord. No. 296, art. V, § 12, 10-1-1996; Ord. No. 439, art. V, § 12, 11-24-2003)

Sec. 41-146. - Streetlights.

(a) *Street classification.* Streetlights shall be placed in accordance with the placement criteria in this section. Streetlights shall be located as follows:

(1) At the intersection of two arterial streets, an arterial and a collector street, and at the intersection of two collector streets;

(2) At any intersection where the traffic count is projected to reach 7,000 vehicles per day;

(3) In the turnaround of culs-de-sac where the cul-de-sac length is longer than 300 feet; and

(4) Pursuant to a street lighting plan submitted and approved in conjunction with application for subdivision plat approval pursuant to this chapter; which plan shall, generally, provide not less than one streetlight for each 500 linear feet of streets within or abutting the subdivision.

(b) *Safety considerations.* Streetlights shall, additionally, be placed to illuminate street curves, significant topographic conditions, and other safety hazards.

(c) *Spacing.* Streetlights shall be placed in accordance with the following spacing requirements:

(1) Typical spacing of lights shall be one per intersection at the intersections described in subsection (a)(1) of this section;

(2) Lights shall be provided along arterial and collector streets, with a maximum spacing between lights of 300 feet;

(3) If the block length is over 600 feet but less than increments of 300 feet, the light shall be placed in mid-block to the degree practical;

(4) In a cul-de-sac turnaround, if the cul-de-sac length is longer than 300 feet;

(5) Streetlights shall be placed in the subdivision in compliance with the finally approved lighting plan.

(d) *Light size.*

Street Type	Light Size/Lumens
Thoroughfare (heavy traffic)	400w/50,000
Arterial (medium traffic)	250w/27,000
Collector	175w/7,000

Residential (low traffic)	100w/9,500

(e) *Subdivision lighting plan.*

(1) The developer shall submit a streetlight plan as a part of the final subdivision plat package in conjunction with the utility plans and in conformance with these standards.

(2) The staff shall review, coordinate with the electric utility, and recommend street lighting plans to the planning and zoning commission and council.

(3) Metal poles shall be required for all street lighting and the developer shall pay all utility company charges for street lighting (e.g., underground, metal poles, special fixtures, charges for electricity, etc.) at the final plat phase.

(4) Installation will be completed during the construction of the other infrastructure and public improvements, or, with city approval, coordinated with building permits issued in the area. Priority shall be given to arterial and collector streets in the subdivision to facilitate circulation; within each block face, when 50 percent of lots have been permitted, lights shall be installed. The developer shall give security as necessary to ensure installation of lighting required but scheduled for future installation. This light installation schedule may be accelerated in accordance with an agreement made with the developer whereby the developer pays the city the full cost of power during the time period necessary to reach this level of permitting.

(5) The planning and zoning commission and the council may disapprove any subdivision where the developer fails to comply with the standards set forth in this section.

(f) *Private street lighting.* In those instances when the criteria in this section do not warrant streetlight placement in a particular location where a property owners association, commercial or industrial property desire additional lighting, the city encourages privately funded and privately maintained lights by neighborhood residents and property owners. All privately funded lights shall be totally owned and maintained by the private property owners or residents. All utilities shall be entirely paid for by the private property owner or residents. The city shall never be obligated to pay for the maintenance or utilities of any privately funded light. Such lighting may be placed within easements where not inconsistent with the easement use, but shall not be placed within dedicated public right-of-way.

(Ord. No. 296, art. V, § 13, 10-1-1996; Ord. No. 439, art. V, § 13, 11-24-2003)

Sec. 41-147. - Parkland dedication.

(a) *Definitions.* For the purposes of this section, the following terms, phrases and words shall have the meaning ascribed to them in this subsection.

Hike and bike trail means a strip of land that is dedicated for a trail or pathway for pedestrian circulation, alternative transportation and recreational uses, that is not less than ten feet in width, and that has installed, or is planned to have installed, certain improvements, including but not limited to an all-weather (concrete or asphalt) trail or pathway that is not less than six feet in width, designed and constructed in compliance with standards and specifications adopted and maintained by the city.

Neighborhood park means a public park provided for a variety of outdoor recreational opportunities located within a residential subdivision or within a close proximity or convenient distance of the majority of residences to be served thereby so that the residential subdivision or subdivisions so located shall be the primary beneficiaries of these facilities. These parks are generally smaller in size, being less than 15 acres.

Park means any public park, playground, pool, water-feature, lake, waterway, recreation or open space area, or hike and bike trail including a parking lot within such areas, which is operated, maintained and

controlled by the city, and heretofore platted, dedicated, or designated as a public park within the city and its extraterritorial jurisdiction. These parks are generally larger in size, 15 acres or larger, and regionally located throughout the city. Land dedicated for public school land, which contains a park or park land as defined herein shall be considered a park for the purposes of this section but only to the extent of the actual land dedicated for such a park.

Private park means a recreation area or open space land within a residential area which are not available for public use or which are intended primarily for exclusive use by residents of the residential area, by members of a homeowners association or other organizations. A private park shall be considered a park for purposes of this section but only to the extent necessary for planning purposes. A private park does not meet the cash payment nor park land dedication requirements of this section.

Residential area means any area within a subdivision plat which in whole or in part is platted for the development of dwelling units or residences, whether the same be single- family, multifamily, owner-occupied or rental dwelling units and including townhouses, condominiums and apartments.

(b) *Park land fee.* The developer of any residential subdivisions or developments within the city and its Extraterritorial jurisdiction §shall pay a park land fee which shall be paid for each residential lot or dwelling unit within the subdivision or development at or prior to the time the final plat is submitted to the city for final signature approvals and recording in the public records. The park land fee shall be uniform and sufficient to acquire land for parks sufficient to serve the needs of the community as prioritized in the adopted parks, recreation and open space master plan. The park land fee shall be applicable to residential developments and dwelling units, or living unit equivalents (LUE) and shall be computed on the basis of $600.00 per dwelling unit, LUE. The park land fee shall not apply to developments of five dwelling units or less, unless such development is a phase, section, or part of a development plan that will include more than five lots when completed.

(c) *Park land dedication in lieu of park land fee.*

(1) An owner responsible for payment of the park land fee under this section may be required at the discretion of the city council to meet the requirements of subsection (b) in whole or in part by a park land dedication as set forth in subsection (c)(2) hereunder.

(2) Whenever a final plat is submitted to the city for final signatures and filing of record with the County Clerk of Hays County for development of a residential area in accordance with this ordinance, or a planned development or other development subject to this ordinance and the comprehensive planning and zoning ordinance of the city, unless earlier waived by the city council such plat shall contain a clear fee simple dedication of an area of land to the city for park purposes, which area shall equal one (1) acre for each 75 proposed dwelling units (LUE), and the dedication by fee or easement of land for hike and bike trails. Except as found appropriate and necessary by the city council for the hike and bike trail, all dedication of land shall be in a single parcel. The council and commission may deem that non-contiguous parcels are permissible in accordance with the regulations set forth herein. Any proposed plat submitted to the city for approval where a park land dedication is being substituted for the required park land fee as provided by this section shall show the area proposed to be dedicated. If a provision of this section for park land dedication conflicts with a provision for a hike and bike trail, the park land dedication requirements shall govern and control except when waived or varied by the city council to provide for hike and bike trails.

a. The council declares the development of an area smaller than five acres for public park purposes as impractical.

b. No plat showing dedication of less than five acres shall be approved unless the Council, upon recommendation of the commission, approves a variance to this requirement by resolution.

c. Dedication required by this subsection shall be made by the filing of the final plat clearly showing such park land dedication and by separate deed in a form acceptable to the city. The fully executed deed shall be delivered to the city at or prior to the time the final plat is submitted to the city for final signature approvals and recording in the public records. If the

actual number of completed dwelling units exceeds the figure upon which the original dedication is based, additional dedication shall be required in the amount required by this section as amended, and shall be made by payment of cash instead of the land amount provided by subsection 41-147(b) and 47-147(d)(1).

(3) Before any payment of park land fee, the council must find after review of the commission and at the public hearing at which the subdivision is considered for final approval, that payment of the park land fee bears a substantial relation to the health, safety, general welfare and morals of the community and that there is not a substantial and compelling interest of the community that would be better served by substituting a park land dedication for the park land fee required of the subdivision. In order to determine whether or not the need or benefit is sufficient to require the dedication, such factors as the size of lots in the subdivision, the economic impact of the subdivision, density of population, the amount of private park land contained in the subdivision, and the amount of open land consumed by the development shall be considered. The director of parks and recreation and the city parks and recreation committee shall be informed of all new subdivisions, which are submitted for approval and of all existing subdivisions, which are submitted for replatting, expansion, or redevelopment.

(4) Dedication of land for hike and bike trails:

b. Land shall be dedicated in fee simple or by easement by instrument acceptable to the city for hike and bike trails along all creek, natural drainage ways, selected tree lines as provided in the city adopted parks, recreation and open space master plan, unless specifically waived by the city council after review by the parks committee and the Commission. Land that is required to be dedicated in fee simple under this section, and that is not within an easement, shall be credited to the park land dedication requirements. Land that is dedicated by easement or that is within the right of way of any street, drainage or utility easement shall not be credited to the park land dedication requirement. The maximum distance between access points to trails shall be no more than 1,000 feet.

c. Whenever a final plat is filed for development of any retail, commercial or industrial area in accordance with this section, or other comprehensive planning and zoning ordinance of the city, such a plat shall contain a clear dedication by fee simple, or by easement, if found appropriate by the city council, of an area of land to the city for a hike and bike trail, under the same terms, conditions and requirements as are applicable to residential plats.

(5) No area of land or facility shall be dedicated to the city for park land purposes unless approved and accepted by the city council.

(d) *Park development fee.*

(1) In addition to the required payment of park land fee as set forth in subsection 41-147(b) or the dedication of land as set forth in subsection 47-147(c), as applicable, the developer or his successor shall pay a park development fee to the city which shall be paid for each residential lot or dwelling unit within the subdivision or development at or prior to the time the final plat is submitted to the city for final signature approvals and recording in the public records. The park development fee shall be set from time to time by city ordinance and shall be sufficient to provide for the development of amenities and improvements on dedicated parks within the city. The park development fee shall be applicable to residential developments and dwelling units, or living unit equivalents (LUE) and the park development fee shall be computed on the basis of $600.00 per dwelling unit (LUE) in the development or subdivision. The park development fee shall not apply to developments of five dwelling units or less, unless such development is a phase, section, or part of a development plan that will include more than five lots when completed.

(2) In lieu of payment of the required park development fee, the developer, with approval of the parks director, may construct the park improvements. All public park improvements shall meet the minimum requirements set forth in the adopted the city parks, recreation and open spaces master plan. All development plans and specifications for the construction of said park improvements shall meet the minimum design and construction standards on file with the parks and recreation

department, be sealed by a landscape architect registered in the State of Texas and be reviewed and approved by the parks director prior to construction.

a. The developer shall financially guarantee the construction of such park improvements by providing performance and payment bonds, an irrevocable letter of credit, or other similar security that is deemed acceptable to the parks director and that complies with the requirements of this ordinance for fiscal guarantees for required subdivision improvements, except as provided otherwise in this section, prior to the recording of the final plat for the subdivision.

b. The developer and contractor constructing the park improvements shall be required to execute a license agreement using the city's standard for prior to beginning work on the park improvements.

c. Performance and payment bonds shall name the city as a beneficiary and shall cover 100 percent of the estimated construction cost of such park improvements as shown in a construction contract executed by the developer.

d. The period within which required park improvements must be completed shall be incorporated in the surety instrument and shall not in any event, without prior approval of the city, exceed one year from date of final plat approval.

e. As a condition of city acceptance of the park improvements, the developer shall be required to provide a two year maintenance bond that is equal in amount to 100 parks and that complies with the requirements of this section for maintenance bonds for required subdivision improvements, except as provided otherwise in this section, of the construction cost of said park improvements and a manufacturer's letter stating the main play structure and safety surface was installed in accordance with the manufacturer's installation requirements.

f. As a condition of city acceptance of the park improvements, the developer shall also provide the city a copy of the application and subsequent inspection report prepared by the Texas Department of Licensing and Regulation or their contracted reviewer for compliance with the Architectural Barriers Act, codified as Article 9102, Texas Civil Statutes, as amended.

g. All park improvements may be inspected by the city while construction is in progress and the developer shall provide the city with reasonable access to perform such inspections. Once construction of the park improvements are complete as determined by the park director, the developer shall convey such improvements to the city free and clear of any lien or other encumbrances by instrument acceptable to the city. The developer shall provide documentation satisfactory to the parks director demonstrating that the improvements and land are free and clear of any lien or other encumbrances. The parks director shall accept the park improvements in writing after inspection and upon the determination that the park improvements have been satisfactorily completed, the park improvements and underlying park land are free and clear of any lien or encumbrance, the developer has complied with subsections 41-147(d)(2)e. and f., and the developer has executed the required instrument to convey the park improvements to the city.

(e) *Prior dedication.*

(1) Credit shall be given for payment of park land and park development fees or for park land dedications paid or dedicated pursuant to the existing zoning ordinance or subdivision ordinance of the city at the time a development was accepted by the city.

(2) If a park land and park development fee or park land dedication requirement arose prior to the passage of this section, that dedication requirement shall be controlled by the ordinance in effect at the time such obligation arose, except that an additional park land and park development fee or an additional park land dedication shall be required if the actual density of the dwelling units constructed on the property is greater than the former assumed density. An additional park land fee, or park land dedication, and park development fee shall be determined by the increase in density and shall be based on the ratio set forth in subsections (b) and (c) of this section.

(3) At the discretion of the city, acting through its council, any former gift of park land to the city, which was not required by any provision of this ordinance, the zoning ordinance or other applicable laws, may be credited on a per acre basis toward eventual park land dedication requirements imposed on the donor of such land. The council shall consider the recommendation of the commission in exercising its discretion under this section.

(f) *Comprehensive plan considerations.* Land designated in the comprehensive plan as being suitable for development by the city for a major recreational center, park, or other public use, may be reserved for a period of one year after the preliminary plan is approved by the council if, within two months after such approval, the council advises the subdivider of its interest in acquiring the land or of the interest of another governmental unit to acquire the land, at the appraised value of the land at the time of purchase. A failure by the council to notify the subdivider shall constitute a waiver of the right to reserve the land. Any waiver of the right to reserve the land shall no longer be effective if the preliminary plat shall expire without adoption of a final plat.

(g) *Dedicated fund.*

(1) There is hereby established a dedicated fund for the deposit of all sums paid for park land fees and park development fees. This fund shall be known as the "park lands dedicated fund." All monies set aside in said park lands dedicated fund shall be used exclusively for park land acquisition and park and recreational development and/or improvements in new or existing parks within the city.

(2) The city shall account for all sums paid the park lands dedicated fund with reference to the individual plats involved and the contributing developer. Any funds paid for such purposes must be expended by the city on a "first-in, first-out" basis within ten years from the date received by the city for acquisition or development and/or improvement of parks within the City of Kyle.

(3) The park lands dedicated fund may be placed in a "treasury fund" established by the city, so long as accounting procedures maintain a separate account for the proceeds in a manner allowing for the purposes set forth herein and that assures that such funds will not be disbursed for any purposes not set forth in this section.

(4) Park land and park development payments may be used only for the acquisition, development, and/or improvement of park land located within the city limits or the city's extraterritorial jurisdiction. In determining the allocation of funds derived from the payment of park land and park development fees, the council shall allocate such funds to parks in the same area as the development giving rise to the park land and park development fees, or in close proximity thereto.

(5) The council may allocate park land and park development fee funds at its discretion to any park within the city limits or the city's extraterritorial jurisdiction after there is a review by the commission and a finding by the council that there is a substantial and compelling interest of the community requiring a different allocation than that prescribed in subsection 41-147(g)(4).

(h) *Additional requirements.*

(1) Any land dedicated to the city under this section must be suitable for recreational purposes, such as for parks, playgrounds, hike and bike trails and usable open space. The following characteristics of proposed area are presumed unsuitable:

a. Any area which is located within the 100-year flood plain.

b. Any areas of unusable topography or slope which render more than 25 percent of the area unusable for organized recreational activities, or due to unusual circumstances relating to subsoil, slope or topography, the development of the property for park or recreational purposes would be unusually difficult or expensive.

c. Areas encumbered by overhead utility lines or easements of any type which might limit the opportunity for park and recreation development.

d. Land sites encumbered by hazardous and or municipal waste materials or dump sites.

(2) The characteristics described in subsections 41-147(h)(1)a.—d. may be grounds for refusal of any preliminary or final plat.

(3) Drainage areas may be accepted as a part of a park if the channel is constructed in accordance with the city engineering standards, and if no significant area of the park is cut off from the access by such channel; provided, however, that the developer may provide vehicular access by a bridge or similar structure. The percentage or portion of park land dedication hereunder may include 50 feet on each side of any well-defined creek or waterway subject to the approval of the city.

(4) Each park must have ready access to an improved public street. The park entrance must be visible to the public.

(5) Permanent property boundary markers required. The developer shall be obligated to place survey markers at all corners of the park land, which has been located by a license and professional surveyor. The markers will be four-inch diameter PVC pipe recessed 12 inches in the ground. They will contain a &half:-inch iron pipe or rebar and be filled with concrete flush with the ground.

(6) The park site being dedicated shall be free of trash and debris. If the condition of the dedicated park land is disturbed during construction of subdivision improvements, then the subdivider shall be responsible for returning the dedicated land to its previous condition prior to or at the time of final plat filing. The public improvements to be constructed per the applicable subdivision plat will not be accepted by the city until such time that the above conditions have been met.

(7) The following utility connections shall be completed by the developer, and such connections shall not count as a credit toward park land or park development fee or park land dedication requirements:

a. *Water meter.* A two-inch metered water supply located 12 feet behind the curb in a location determined by the parks director.

b. *Waste-water stub.* A six-inch gravity-feed waste-water (sewer) stub or two-inch pressurized sewer line and electricity line located 10 feet behind the curb in a location determined by the parks director.

(8) Unless provided otherwise herein, an action by the city shall be by the council, after consideration of the recommendation of the commission and the parks and recreation committee.

(i) *Updating of dedication fees, improvement costs and other requirements.* The requirements described within this section as related to fees, development costs, population and park land level of service may be updated from time to time on a basis of current conditions. The parks committee shall consider and make periodic recommendations to the city council on such conditions.

(Ord. No. 296, art. V, § 14, 10-1-1996; Ord. No. 439, art. V, § 14, 11-24-2003; Ord. No. 439-4, § 2, 8-4-2009; Ord. No. 665, § 2, 7-19-2011)

Secs. 41-148—41-177. - Reserved.

ARTICLE VI. - DEVELOPMENT FRONTING INTERSTATE 35

Sec. 41-178. - Definitions.

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

Access means vehicular access, both automobile and truck.

Fronting means a tract or parcel of land that adjoins or abuts the right-of-way of Interstate Highway 35.

(Ord. No. 296, art. VI, § 1, 10-1-1996; Ord. No. 439, art. VI, § 1, 11-24-2003)

Sec. 41-179. - Administrative procedures.

(a) *Approval of access.* No final plat may be approved or building permit issued until it is demonstrated that the Texas Department of Transportation has approved the access method (i.e., frontage road or ramps) for the property being platted, zoned or permitted.

(b) *Interstate Highway 35 Access.*

(1) An application for approval of a means of access to Interstate Highway 35 may not be filed until such application has been approved by Texas Department of Transportation, unless such application specifically provides that the application shall not be effective until such approval is obtained by the applicant. Upon filing of application for approval of means of access to Interstate Highway 35 by an applicant, the administrator shall place the request on the agenda of the next regular meeting of the planning and zoning commission; deadlines for filing of these requests shall be the same as for preliminary subdivision plat.

(2) The planning and zoning commission shall not finally act upon the application until such time as the Texas Department of Transportation has approved the application and, after arriving at a decision on the request, shall forward its recommendation for action to the council for action.

(3) The finding of the council shall be final.

(Ord. No. 296, art. VI, § 2, 10-1-1996; Ord. No. 439, art. VI, § 2, 11-24-2003)

Sec. 41-180. - Standards and specifications.

Frontage roads and ramps shall be constructed in accordance with the plans and specifications approved by the Texas Department of Transportation and the city.

(Ord. No. 296, art. VI, § 3, 10-1-1996; Ord. No. 439, art. VI, § 3, 11-24-2003)

Sec. 41-181. - Frontage road right-of-way.

(a) *Dedication.* The owner of any property developed or subdivided which fronts or touches on Interstate Highway 35, for which sufficient right-of-way does not exist according to the Texas Department of Transportation records, shall be required to dedicate the additional right-of-way required for the construction of frontage roads, not to exceed a width of 60 feet, along the entire frontage of such property.

(b) *Traffic circulation plan.* An owner or developer of property fronting Interstate Highway 35 desiring to develop, subdivide, or obtain a building permit on said property must submit a plat or development plan to the city for approval. The plat must address the right-of-way for the frontage road, access to Interstate Highway 35, and internal circulation for the platted property.

(c) *Construction.* The owner of any property developed or subdivided and which fronts or touches on any portion of Interstate Highway 35, for which a frontage road has not been constructed, shall be required to construct the frontage road along the entire frontage of such property.

(Ord. No. 296, art. VI, § 4, 10-1-1996; Ord. No. 439, art. VI, § 4, 11-24-2003)

EXHIBIT A. - REGULATIONS FOR PLATTING AND SUBDIVIDING LAND WITHIN THE PLUM CREEK PUD[2]

ORDINANCE NO. 308

An ordinance of the City of Kyle, Texas, establishing the requirements, regulations and procedures for platting and subdividing land within the plum creek planned unit development; stating the public purpose; providing definitions; providing for fees and filing and processing plats; establishing standards and specifications; providing for remedies and variances; providing a severability, effective date and open meetings clause; and providing for related matters.

Be it ordained by the city council of the City of Kyle, Texas, that:

Footnotes:

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Editor's note—Printed herein is Plum Creek planned unit development ordinance, as adopted by the city council, on July 22, 1997. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

Sec. 1. - Authority.

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, including, but not limited to, V.T.C.A., Local Government Code chs. 42, 212, 380, and 481; and V.T.C.A., Water Code ch. 26.

Sec. 2. - Purpose.

The purpose of the ordinance is to provide for the orderly, safe, healthy, and economic and commercial development of the area within that area of the city and the city's extraterritorial jurisdiction hereinafter specified and defined as the "Plum Creek Planned Unit Development" to promote the health, safety, and general welfare of the community, and for the good government, order, trade and commerce of the city; and to accomplish such public purposes by requiring that all land within the Plum Creek planned unit development shall be subdivided and platted in compliance with this ordinance.

Sec. 3. - Definitions.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning ascribed to them in this section:

Administrator [means] the city engineer and/or director of public works, or other person(s) designated by the city to administer the regulations and provisions of this ordinance.

Alley [means] a minor public or private right-of-way, either two-way or one-way, located through the interior of blocks and providing vehicular and service access to the side or rear of properties.

Building official or building inspector [means] any person, employee or agent designated and authorized by the city to issue permits for the construction or improvement of buildings and structures; and in the appropriate context, any such person authorized to inspect work and improvements to buildings and structures for compliance with the building codes and ordinances of the city.

Building scale [means] the relationship between the mass of a building, the individual elements of the building and its surroundings, including the width of the street, open space, and mass of surrounding buildings.

Building setback line [means] the line within a property defining the minimum horizontal distance between a building and the adjacent street line.

Build-to line [means] a line parallel to the street right-of-way which dictates the minimum and maximum front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to line does not apply to building projections or recesses.

Buffer [means] an area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the use of trees, shrubs, berms and/or fences, and designed to limit views and sound from the site to adjacent properties and vice versa.

City [means] the City of Kyle, Texas.

Commission [means] the planning and zoning commission of the city.

Common open space [means] a parcel or parcels of land or an area of water, or a combination of land and water, which may include floodplain and wetland areas, within a development site and intended for the use and enjoyment of residents of the development and, where designated, the community at large.

Crosswalk way [means] a public right-of-way, six feet or more in width between property lines, which provides pedestrian circulation.

Cul-de-sac [means] a street having but one outlet to another street, and terminated on the opposite end by a vehicular turnaround.

Dead-end street [means] a street, other than a cul-de-sac, with only one outlet.

Developer. See "PUD subdivider."

Development [means] buildings, utilities, roads, and other structures; construction; and excavation, dredging, grading, filling, and clearing or removing vegetation.

Engineer [means] a person duly authorized, under the provisions of the Texas Engineering Registration Act, as heretofore or hereafter amended, to practice the profession of engineering.

Extraterritorial jurisdiction [means] that territory outside the corporate limits of the City of Kyle which is within the jurisdiction of the city by virtue of V.T.C.A., Local Government Code ch. 42.

Flood [means] a temporary rise in stream level that results in inundation of areas not ordinarily covered by water.

Floodway [means] the channel of a watercourse and portions of the adjoining floodplain which are reasonably required to carry and discharge the regulatory flood.

Formal application [means] the filing with the city of the required number of copies of an application that meets all of the requirements of this and other applicable ordinances, including requisite documentation, and accompanied by the filing fee as set forth in Ordinance No. 293, as amended, or otherwise required by city ordinance.

Front porch [means] an unairconditioned roofed structure attached to the front of a house. The front porch will have a minimum depth of six feet and minimum width of eight feet. Side and rear porches are not subject to these requirements. A front porch may include ramps for handicapped access.

Front yard [means] that portion of a lot extending from the front face of a building towards and to the front lot line.

Human scale [means] the relationship between the dimensions of a building, structure, street, open space, or streetscape element and the average dimensions of the human body.

Impervious cover [means] roads, parking areas, buildings, and other impermeable construction covering the natural land surface; this shall include, but not be limited to, all streets, driveways and buildings within a subdivision.

Lot [means] a parcel of land which is designated as a distinct and separate tract, and which is identified by a tract or lot number or symbol on a subdivision plat approved in the manner required by V.T.C.A., Local Government Code ch. 212, and this ordinance, which has been properly filed of record; and which is, or in the future may be, offered for sale, conveyance, transfer or improvement.

Modified grid street pattern [means] an interconnected system of streets which is primarily a rectilinear grid in pattern; however, it can be modified in street layout and block shape so as to avoid a monotonous repetition of the basic street/block grid pattern.

Multifamily [means] any use of lots or tracts on which are built three or more dwelling units, within one building.

Neighborhood [means] a subdivision comprised primarily of residential lots with boundaries which are defined on a plat, parcel map, or subdivision map recorded in the office of the county clerk.

Off-street parking [means] vehicular parking outside the street right-of-way. Each parking space shall have adequate drives, aisles, and turning and maneuvering areas for access and usability.

On-street parking [means] vehicular parking contained on the street pavement (public and private streets) located outside the travel lanes. Parking spaces shall be designated and be located parallel or at an angle to the street center line.

Owner [means] a person, corporation, partnership or other legal entity which is the legal or equitable owner of land.

Phase I property [means] that part of the property located south of County Road 171, which consists of approximately 1,247.5 acres as set forth in exhibit "A" to this ordinance which is on file in the city secretary's office.

Plum Creek planned unit development [means] phase I as planned and shown on the Plum Creek planned unit development master plan (the "Plum Creek PUD").

Planned unit development district/PUD district [means] a zoning designation for an area within the Plum Creek PUD which must comply with the site development standards for such designated area.

Planned unit development subdivision, PUD subdivision or *subdivision* [means] a division of any tract of land situated within a planned unit development within the corporate limits, or within the city's extraterritorial jurisdiction, into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition of any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parts or other portions, intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. [The term] "subdivision" includes resubdivision. A PUD subdivision may, but is not required to, include a mix or combination of land uses within its boundaries (e.g. industrial, commercial, residential).

Plat [means] a map representing a tract of land, showing the boundaries and location of individual properties and streets.

Plat drawing [means] a drawing or drawings depicting the proposed subdivision layout itself, along with associated certifications, dedications and related notations.

Plat, final [means] the final map of all or a portion of a subdivision which is presented to the proper review authority for final approval; and which map or plat as approved by the commission and the city council, with or without amendments, shall be required for the development of land within the Plum Creek PUD.

Plat, preliminary [means] a preliminary map indicating the proposed layout of a subdivision which is submitted to the review authority for consideration and preliminary approval.

Plum Creek PUD master plan [means] a graphic representation or map of the proposed plan for development of phase I property which includes the use of several PUD districts and subdivisions in stages,

depicting the proposed land uses, major street layout, parks and open space, and other features as may be deemed necessary or appropriate by the administrator.

Property owners association [means] an organization made up of the property owners in the area, which is responsible for maintenance of private streets, alleys, and the open spaces not conveyed to the city, and which shall have the authority to make and collect assessments sufficient to operate and maintain private streets, alleys and open spaces.

PUD subdivider [means] any person or any agent thereof, dividing or proposing to divide land so as to constitute a PUD subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be subdivided.

Person [means] any individual, association, firm, organization, company, corporation, proprietorship, partnership, trust, governmental agency, or political subdivision.

Rear yard [means] that portion of a lot extending from the rear face of a building towards and to the rear lot line.

Regulatory flood [means] a flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The regulatory flood generally has a flood frequency of approximately 100 years as determined from an analysis of floods on a particular stream and other streams in the same general region.

Regulatory flood protection elevation [means] the elevation of the regulatory plus one foot of freeboard to provide a safety factor.

Right-of-way [means] land dedicated or reserved for streets, utilities, or other public facilities.

Setback distance [means] the distance beyond which a building must be set back from any property line, another building or structure, setback lines or other line(s) or location as established by this ordinance.

"Shall," "must," "will," "should," and *"may."* The words "shall," "must," and "will," are always mandatory. The words "should," and "may" are discretionary.

Street [means] the entire width included in any public right-of-way which is open for the use of the public, however designated, and which serves one or more of the following purposes:

(1) An "arterial street" primarily provides vehicular circulation to various sections of the city.

(2) A "collector street" provides circulation within neighborhoods, to carry traffic from local streets to arterial streets, or to carry traffic through or adjacent to commercial or industrial areas.

(3) A "marginal access street" is a street which is parallel and adjacent to an arterial street, which primarily provides access to abutting properties and protection from through traffic.

(4) A "minor or local street" is a street designed primarily for access to abutting residential property.

(5) A "boulevard" is a short to long distance, medium speed circulation corridor, that traverses a residential or commercial urban area and segregates the slower traffic and parking activity from through traffic.

(6) An "avenue" is a short to long distance, medium speed connector that traverses a residential or commercial urban area or neighborhood.

(7) A "residential street" is a small-scale, low speed local connector providing frontage to low to medium density residential and neighborhood commercial buildings and properties.

Streetscape [means] the built and planted elements of a street which define its character.

Street width [means] the portion of a street available for vehicular traffic and which is the portion between the faces of curbs.

Subdivision [means] the subdivision of any tract, lot, piece, or parcel of land, or any portion in two or more parts for the purpose of laying out suburban and/or urban lots or building lots. Subdivision also includes vacation and resubdivision of any tract, lot, piece, or parcel of land.

Surveyor [means] a licensed state land surveyor or a registered public surveyor as authorized by state law to practice the profession of surveying.

Traffic calming measures [means] road design elements intended to slow the speed of vehicular traffic. The following traffic calming measures shall be permitted:

(1) "Chicane" means a staggered roadway around tree groupings, at the end of a parking lane, or other feature, intended to slow traffic speed.

(2) "Gateway" means a narrowed threshold at a road intersection, with an optional median, intended to slow traffic speed.

(3) "Throttle" means a road narrowed at a tree grouping, at the end of a parking lane, or other feature intended to slow traffic speed.

(4) "Roundabout" is a one way circular traffic rotary intersection, which reduces the need for traffic lights, allowing up to four streets to converge at a single point and at acute angles, and which are intended to move traffic through an intersection in a smooth and orderly fashion while lessening traffic delays.

(5) "Speed plateau" means a slightly elevated section of road pavement over short duration, intended to slow traffic speed.

(6) "Neckdown" means a staggered roadway at an intersection or other point intended to slow traffic speed.

Shared driveway [means] a paved vehicular access designed to residential driveway standards, which extends to and branches off of several homes; which is privately owned and maintained and does not require a turn around area at the end of the driveway.

Utility easement [means] an interest in land granted to the city, to the public generally, and/or to a private utility corporation, for installing or maintaining utilities across, over or under private land, together with the right to enter thereon with machinery and vehicles necessary for the maintenance of said utilities.

Zero-lot-line lot [means] a long and narrow single family lot that has a side wall along or near one of the lot lines so that a ten-foot minimum yard is created on the other side of the lot.

Any office referred to in this ordinance by title means the person employed or appointed by the city in that position, or his duly authorized representative, and includes any person designated to perform the duties of such office. Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices.

Sec. 4. - Special provisions.

(A) No permit shall be issued by the city for the installation of septic tanks upon any lot in a subdivision for which a final plat has not been approved and filed of record, or upon any lot in a subdivision in which the standards contained in this ordinance or referred to herein have not been complied with in full.

(B) No building, repair, plumbing or electrical permit shall be issued by the city for any structure on a lot in a subdivision for which a final plat has not been approved and filed of record, nor for any structure on a lot within a subdivision in which the standards contained herein have not been complied with in full.

(C) The city shall not repair, maintain, install or provide, or permit such repair, maintenance or installation of, any streets or public utility services in any subdivision in which the standards contained herein or referred to herein have not been complied with in full.

(D) The city shall not sell or supply any water, or sewage service within a subdivision for which a final plat has not been approved or filed of record, nor in which the standards contained herein or referred to herein have not been complied with in full.

(E) If any subdivision exists for which a final plat has not been approved or in which the standards contained herein or referred to herein have not been complied with in full, and the city council shall pass a resolution reciting the fact of such noncompliance or failure to secure final plat approval, and reciting the fact that the provisions of paragraphs (A), (B), (C), and (D) of this section will apply to the subdivision and the lots therein, the city secretary shall, when directed by the city council of the city, cause a certified copy of such resolution under the corporate seal of the city to be filed in the deed records of the county or counties in which the subdivision or part thereof lies. If full compliance and final plat approval are secured after the filing of such resolution, the city secretary shall forthwith file an instrument in the deed records of such county or counties which declares paragraphs (A), (B), (C), and (D) [of this section] no longer apply, and releases the subdivision and the lots therein from the provisions as set forth in the resolution reciting the facts of such noncompliance.

(F) The provisions of this section shall not be construed to prohibit the issuance of permits for any lots upon which a residence building exists and was in existence prior to passage of this Plum Creek PUD subdivision ordinance, nor to prohibit the repair, maintenance, or installation of any street or public utility service for, to or abutting any lot, the last recorded conveyance of which prior to passage of this ordinance was by metes and bounds, and/or any subdivision, or lot therein, recorded or unrecorded, which subdivision was in existence prior to passage of this ordinance and pursuant to the city's Subdivision Ordinance No. 296 [chapter 41 of this Code], or the predecessor ordinance. Furthermore, the provisions of this section shall not apply to the issuance of permits for the construction or maintenance of structures which are located in an area which has not been subdivided or for which a final plat has not been approved and filed of record, if said structures are required to provide functional service to a lot(s) located in a subdivision in which the final plat has been approved and filed of record pursuant to the city's Subdivision Ordinance No. 296 [chapter 41 of this Code], or the predecessor ordinance.

(G) Any right, privilege, or remedy granted by this ordinance to the person obtaining or holding an approved permit shall run in favor of such person's successors in interest and assigns. Any duty or obligation of or remedy against such person arising from this ordinance shall inure to such person's successors in interest and assigns.

(H) The subdivision of land within phase I, pursuant to this ordinance and the Plum Creek planned unit development master plan approved by the city council, shall be required only to meet the requirements and development standards approved by the city council.

Sec. 5. - Variances.

The city council may authorize a variance from these regulations or the requirements and development standards approved by the city council for the Plum Creek PUD when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the city council shall prescribe only conditions that it deems necessary to or desirable in the public interest. In making the findings herein below required, the city council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. No variance shall be granted unless the city council finds that:

(A) There are special circumstance or conditions affecting mixed use planning practices affecting land involved such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land; and

(B) A substantial and irrevocable commitment of resources uniquely suited and pursuant to the approved Plum Creek PUD cannot be substantially recovered except by developing the property substantially as proposed; and

(C) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and

(D) The granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area; and

(E) The granting of the variance will not have the effect of preventing or adversely impacting the orderly subdivision of other land in the Plum Creek PUD area in accordance with the provisions of this ordinance.

An application for a variance shall be submitted to the planning commission, who shall forward a recommendation to grant, grant with conditions, or deny, to the city council. The findings of the city council, together with the specific facts upon which such finding are based, shall be incorporated into the official minutes of the city council meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety, and welfare may be secured and substantial justice done. Pecuniary hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.

Sec. 6. - Preliminary conference for subdivision of the Plum Creek PUD.

The owner of a large area known as the Plum Creek property proposes to stage development of the property in two phases, with phase I being the Plum Creek planned unit development which will be comprised of several subdivisions. Prior to the filing of a preliminary plan for any subdivision, the owner/subdivider of the proposed Plum Creek PUD area shall consult with and present the Plum Creek PUD master plan to the administrator for comment and advice on the procedures, specifications, and standards required by the city for the development of a subdivision within the Plum Creek PUD within the city or its extraterritorial jurisdiction. The purpose of this preliminary conference is to review:

(A) The owner's Plum Creek PUD master plan for the proposed property.

(B) The zoning status of the property to be subdivided.

(C) The availability of utilities for the property to be subdivided.

(D) The city's plans or policies that might affect the property to be subdivided.

(E) Processing of Plum Creek PUD subdivisions.

(1) The administrator shall check the Plum Creek PUD master plan as to its conformity with the city's master plan, major street plan, land use plan, Plum Creek PUD zoning ordinance [chapter 53, exhibit A] and the standards and specifications set forth in this ordinance.

(2) Pertinent copies of the Plum Creek PUD master plan shall be submitted to the building inspector and administrator who shall check the same for conformity with the standards and specifications set forth by this ordinance.

(3) The administrator shall return the Plum Creek PUD master plan data to the commission with his suggestions as to modifications, additions or alterations of such data.

(4) Within 30 days after the request for consideration of the Plum Creek PUD subdivision ordinance is filed, the commission shall approve or disapprove such ordinance, or approve it with modifications, and forward it to the city council for its consideration. Formal filing of the Plum Creek PUD subdivision ordinance shall not be effective until all supporting documentation is provided to the city.

(5) Approval of a Plum Creek PUD subdivision ordinance by the city council shall be deemed an expression of approval of the general layout submitted on the Plum Creek PUD master plan as a guide to the installation of major streets, water, sewer and other required improvements, to the proposed location categories of land uses (e.g. residential, commercial, industrial) and to the preparation of applications for preliminary plans for Plum Creek PUD subdivisions.

(6) Approval of the Plum Creek PUD master plan shall be effective for 15 years; provided that such master plan shall expire unless at least ten percent of phase I has been platted and fully developed within five years from the date such master plan is approved by the city council.

(7) If the development of phase I has not been completed pursuant to the Plum Creek PUD master plan, after 15 years of effective approval of the Plum Creek PUD master plan, the city council with the recommendation of the commission may, upon the application of the owner, extend the approval for an additional five-year period. Provided, however, that the owner/developer shall make a good faith effort to develop 20 percent of the property within the first five years; 50 percent of the property within the first ten years; and 75 percent of the property within the 15-year period. If the owner/developer has demonstrated a good faith effort to meet the development schedule but has been unable to, he may request and be granted an extension by the city for the additional five years.

(8) If the Plum Creek PUD subdivision ordinance is disapproved by the commission, the applicant may appeal the commission's decision to the city council in writing within 15 days. The city council shall consider the appeal within 30 days of the applicant's appeal. Reversal of the commission's decision shall require the approval by a simple majority of the council.

Sec. 7. - Preliminary conference for preliminary plat.

The platting process described in sections 7 through 9 is described sequentially. However, if a developer has a relatively simple plat, in which all or most of the subdivision requirements are in place, the process can be simplified by combining various phases of the process upon agreement by the administrator. The preliminary conference can be used to explore ways to shorten the platting process upon agreement by the administrator. Prior to the official filing of a preliminary plat, the subdivider should consult with and present a proposed plan of subdivision to the administrator for comments and advice on the procedures, specifications, and standards required by the city for the subdivision of land.

Sec. 8. - Preliminary plat and accompanying data.

(A) *General.* The subdivider shall cause a preliminary plat for a subdivision within the Plum Creek PUD to be prepared by a surveyor or engineer in accordance with this ordinance and with the Plum Creek PUD master plan.

(B) *Time for filing and copies required.* The subdivider shall file 20 copies of the plat together with the original, with the commission at least ten days prior to the date at which formal application for the preliminary plat approval is made to the commission.

(C) *Filing fees.* Such plat shall be accompanied by a filing fee as required by city ordinance. No action by the commission shall be valid until the filing fee has been paid. This fee shall not be refunded should the subdivider fail to make formal application for preliminary plat approval or should the plat be disapproved.

(D) *Formal application.* Formal application for preliminary plat approval shall be made by the subdivider in writing to the commission at an official meeting.

(E) *Form and content.* The plat shall be drawn on sheets 24 inches wide and 36 inches long with a binding margin of not less than one inch on the left side of the sheet and margins of the other three sides of not less than one-half inch, or suitable equal approved by the city engineer. The plat shall be drawn to a scale of 100 feet to one inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat. The plat shall show the following:

(1) Names and address of the subdivider, record owner, engineer and/or surveyor.

(2) Proposed name of the subdivision, which shall not have the same spelling as or be pronounced similar to the name of any other subdivision located within the city or within five miles of the city.

(3) Names of contiguous subdivisions and the owners of contiguous parcels of unsubdivided land, and an indication of whether or not contiguous properties are platted.

(4) Description, by metes and bounds, of the subdivision.

(5) Primary control points or descriptions, and ties to such control points to which all dimensions, angles, bearings, block numbers and similar data shall be referred.

(6) Subdivision boundary lines, indicated by heavy lines, and the computed acreage of the subdivision.

(7) Existing sites as follows:

(a) The exact locations, dimensions, names and descriptions of all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the subdivision, intersecting or contiguous with its boundaries or forming such boundaries.

(b) The exact locations, dimensions, descriptions and names of existing or recorded residential lots, parks, public areas, permanent structures and other sites within or contiguous with the subdivision.

(c) The exact locations, dimensions, descriptions, and flow lines of existing watercourses and drainage structures within the subdivision or on contiguous tracts.

(d) Regulatory flood elevations and boundaries of flood prone areas, including flood ways, if known.

(8) The proposed locations, dimensions, descriptions and names of all proposed streets, alleys, drainage structures, parks, other public areas, reservations, easements or other rights-of-way, block lots and other sites within the subdivision.

(9) A preliminary plan for a water system, including all major lines and system elements.

(10) A preliminary plan for on-site sewage disposal systems, including disposal site for land subject to flooding or sanitary sewers with grade, pipe size and points of discharge.

(11) A preliminary plan of the drainage system with grade, pipe size, and location of outlet.

(12) A preliminary plan for proposed fills or other structure elevating techniques, levels, channel modifications and other methods to overcome floor or erosion related hazards.

(13) Date of preparation, scale of plat and north arrow.

(14) Topographical information shall include contour lines on a basis of five vertical feet in terrain with a slope of two percent or more and on a basis of two vertical feet in terrain with a slope of three percent.

(15) A number or letter to identify each lot or site and each block.

(16) Front building setback lines on all lots and sites. Side yard building setback lines at street intersections and crosswalk ways.

(17) Location of city limits lines, the outer border of the city's extraterritorial jurisdiction, and zoning district boundaries, if they traverse the subdivision, form part of the boundary of the subdivision, or are contiguous to such boundary.

(18) Vicinity sketch or map at a scale of not more than 100 feet to an inch which shall show existing subdivisions, streets, easements, rights-of-way, parks and public facilities in the vicinity, the general drainage plan and ultimate destination of water and possible storm sewer, water, gas, electric, and sanitary sewer connections by arrows.

(F) *Processing of preliminary plat.*

(1) The administrator shall check the preliminary plat as to its conformity with the Plum Creek PUD master plan, major street plan, land use plan, and the standards and specifications set forth by the Plum Creek PUD zoning ordinance [chapter 53, exhibit A] (after it is approved by the city) and other applicable code requirements.

(2) Pertinent copies of the preliminary plat data shall be submitted to the building inspector, city engineer, and director of public works and they shall check the same for conformity with the standards and specifications set forth by ordinance and code.

(3) The administrator shall return the preliminary plat data to the commission with their suggestions as to modifications, additions or alterations of such plat data.

(4) Within 30 days after the preliminary plat is formally filed, the commission shall approve or disapprove such plan or approve it with modifications, and forward its comments and recommendations to the city council. Formal filing of the preliminary plat shall not be effective until all supporting documentation is provided to the city.

(5) The city council shall consider the preliminary plat that has been reviewed by the planning commission and its recommendation for approval or conditional approval, or lack thereof. Within 30 days of the city council's initial consideration of a preliminary plat package that has been approved, conditionally approved or disapproved by the commission, the city council shall either approve or disapprove such preliminary plat or conditionally approve it with modifications as provided for in this ordinance. In the event the city council disapproves a plat previously approved by the commission, or approves a plat previously disapproved by the commission, or adds or deleted conditions for approval, the plat shall be promptly reconsidered by the commission in light of the city council's action.

(6) Approval of a preliminary plat by the city council shall be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the installation of streets, water, sewer and other required improvements and utilities, and to the preparation of the final or record plat. Conditional approval of a preliminary plat shall not constitute automatic approval of the final plat.

(7) Approval of a preliminary plat shall be effective for two years unless reviewed by the commission and the city council in the light of new or significant information which would necessitate a revision of the preliminary plat. If the commission and the city council should deem changes in a preliminary plat as necessary, it shall so inform, in writing, the subdivider.

(8) If no development has occurred which would affect the proposed plat, after two years of effective approval the commission and the city council may, upon the application of the subdivider, extend the approval an additional year.

Sec. 9. - Final plat.

(A) *Form and content.*

(1) The final plat and accompanying data shall conform to the preliminary plat as approved by the commission and city council, incorporating any and all changes, modifications, alterations, corrections and conditions as imposed by the commission and city council. No final plat shall be considered by the commission or city council unless a preliminary plat has first been approved by the commission and city council. Very simple plats, identified at the preliminary conference, may be submitted in final form without going through the preliminary plan process. However, the final plat shall be accompanied by all information required at submission of the preliminary plat.

(2) The final plat shall be drawn on sheets 24 inches wide and 36 inches long with a binding margin on the left side of the sheet of not less than one inch and margins of not less than one-half inch on the other three sides, or suitable equal approved by the city engineer. The plat shall be drawn to scale of 100 feet to one inch. When more than one sheet is necessary to accommodate the entire area, an index sheet showing the entire subdivision at an appropriate scale shall be attached to the plat. When requested by the administrator, the subdivider shall provide a complete copy of all such plats, plans and design specifications on CAD disks or in other such electronic format as then customarily in use by civil engineers within Travis and Hays Counties.

(3) The final plat shall be submitted in such manner as is required by the commission, and shall contain all of the features required for preliminary plats in section 7 [8] above, and it shall be

accompanied by site improvement data bearing the seal of an engineer and detailed cost estimates.

(4) The final plat and accompanying site improvement data and detailed cost estimates shall be approved by the administrator.

(5) In addition to the various requirements for the preliminary plat, the final plat shall also include the following:

(a) The exact locations, dimensions, names and descriptions of all existing or recorded streets, alleys, reservations, easements, or other public rights-of-way within the subdivision, intersecting or contiguous with its boundary or forming such boundary, with accurate dimensions, bearing or deflecting angles and radii, area, and central angle, degree or curvature, tangent distance and length of all curves where appropriate.

(b) The exact locations, dimensions, descriptions and name of all proposed streets, alleys, drainage structures, parks, other public areas, reservations, easements, or other rights-of-way, blocks, lots, other sites within the subdivision with accurate dimensions, bearings or deflecting angles and radii, area, and central angle, degree or curvature, tangent distance and length of all curves where appropriate.

(c) (i) Approval of the planning commission of the city:

This plat of _____ has been submitted to and considered by the Planning Commission of the City of Kyle, Texas, and is hereby approved by the Commission.
Dated this _____ day of _____, 20_____.
_____
By:
ATTEST:
_____
Secretary

(ii) Approval of the City Council of the City:

This plat of _____ has been submitted to and considered by the City Council of the City of Kyle, Texas, and is hereby approved by the Commission.
Dated this _____ day of _____, 20_____.
_____

By:
ATTEST:
_____
Secretary

(d) Certification of the surveyor responsible for surveying the subdivision area, attesting to its accuracy:

State of Texas	/s/
County of Hays	/s/
I, the undersigned, a (Registered professional engineer/public surveyor) in the State of Texas, hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under may supervision on the ground.	
[Engineer of Surveyor's Seal]	By: _____
	Registered Professional Engineer/or/
	Registered Public Surveyor

(e) A certificate by the engineer responsible for the preparation of the final plan and supporting data, attesting to its accuracy:

State of Texas	/s/
County of Hays	/s/
I, the undersigned, a registered professional engineer in the State of Texas, hereby certify that proper engineering consideration has been given this plat.	
[Engineer's Seal]	

	By: _____
	Registered Professional Engineer

(6) When submitted, the final plat shall be accompanied by the following site improvement data. All plans and engineering calculations shall bear the seal and signature of an engineer.

(a) Streets, alleys, sidewalks, crosswalk ways & monuments. Three copies or plans and profiles of all streets, alleys, sidewalks, crosswalk ways, and monuments, and three copies of detained cost estimates.

(b) Sanitary sewers.

(i) Three copies of the proposed plat, showing five-foot contours and the proposed location and dimensions of existing sanitary sewer lines.

(ii) Three copies of plans and profiles of proposed sanitary sewer lines, indicating depths and grades of lines.

(iii) Three copies of detailed cost estimates.

(c) Water lines.

(i) Three copies of the proposed plat, showing five-foot contours and location and size of existing water lines and fire hydrants.

(ii) Three copies of plans and profiles of all proposed water lines and fire hydrants, showing depths and grades of lines.

(iii) Three copies of detailed cost estimates.

(d) Storm drainage.

(i) Three copies of the proposed plat, indicating five-foot contours. All street widths and grades shall be indicated on the plat, and runoff figures shall be indicated on the outlet and inlet side of all drainage ditches and storm sewers, and at all points in the street at changes of grade or where the water enters another street or storm sewer or drainage ditch. Drainage easements shall be indicated.

(ii) A general location map of the subdivision showing the entire watershed (a USGS quadrangle is satisfactory).

(iii) Calculations showing the anticipated stormwater flow, including watershed area, percent runoff, and time of concentration. When a drainage ditch or storm sewer is proposed, calculations shall be submitted showing basis for design.

(iv) When a drainage channel or storm sewer is proposed, complete plans, profiles, and specifications shall be submitted, showing complete construction details.

(v) When conditions upstream or downstream from a proposed channel or storm sewer do not permit maximum design flow, high water marks based on a 25-year frequency, shall be indicated based on existing conditions.

(vi) Three copies of detailed cost estimates.

(vii) The final plat shall also include the following:

(A) Owners acknowledgment.

State of Texas	/s/
County of Hays	/s/
I [we], the undersigned, owner(s) of the land shown on this plat, and designated herein as the _____ subdivision to the City of Kyle, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, watercourses, drains, easements, and public places thereon shown for the purpose and consideration therein expressed.	
	By: _____
	Owner

State of Texas	/s/
County of Hays	/s/
Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein stated.	
Given under my hand and seal of office this _____ day of _____, 20_____.	
	>By: _____
	Notary Public

(B) Certification of the planning commission.

I, the undersigned, Chairman of the Planning Commission of the City of Kyle, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of the City as to which the Commission's approval is required.	
	By: _____

	Chairman

(B) *Processing of final plat.*

(1) If desired by the subdivider and approved by the commission and city council, the final plat may constitute only that portion of the approved preliminary plat which the developer proposes to record and develop. However, such portions shall conform to all the requirements of this ordinance.

(2) After the subdivider is notified of the approval of the preliminary plat and at least 15 business days prior to the planning commission meeting, the subdivider's engineer shall submit to the commission 20 copies of the final plat of the subdivision or portion thereof.

(3) No final plat will be considered unless a preliminary plat has been submitted. However, if an approved plat has been duly recorded and the subdivider wishes to increase the size of the lots by combining two or more lots or by combining one lot with a portion of the adjacent lot in such manner that no portion of a lot remains smaller that the original lots, no preliminary plat will be necessary.

(4) A final plat of an approved preliminary plat or a portion thereof (that is consistent with the requirements of the preliminary plat or a portion thereof) shall be submitted to the commission within two years of the date of approval of preliminary plat, otherwise the approval of the commission and city council shall become null and void, unless an extension of time is applied for and granted by the commission and city council.

(5) When the final plat is submitted to the commission for approval, it shall be accompanied by the fees required in the ordinances of the city. That portion of the fees required for recording fees can be paid by means of a check or checks payable to the county clerk in the amount of the recordation fee for filing the final plat.

(6) Within 30 days after the final plat is formally filed, the commission shall approve or disapprove such plat and forward its recommendation to the city council.

(7) The city council shall act on the final plat within 30 days after the approval by the commission, or after the approval by reason of nonaction of the commission. If the plat is not disapproved by the council within 30 days, it shall be deemed to have been approved by the council. A certificate showing the filing dates hereunder and the failure to take action thereon within the period prescribed shall, on demand, be issued by the commission or the council, as the case may be, and such certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required.

(8) After the final plat has been finally approved and the subdivider has constructed all the required improvements and such improvements have been approved, and a maintenance bond filed as hereinafter provided; or after the plat has been finally approved and the subdivider has filed the security and maintenance bond hereinafter provided, the commission shall cause the final plat to be recorded with the county clerk or clerks in the county or counties in which the subdivision lies. The commission shall also cause the check or checks for the recordation fee or fees deposited at the time the final plat was filed for approval to be delivered with the final plat to the county clerk. No plat shall be filed for record without written consent of the subdivider. If subdivider fails to provide such written consent within 30 days of the date of final approval of the plat, the commission may at any time thereafter cancel such approval.

(C) *Plat amendments.* The city council may, upon recommendation of the commission, approve an amended plat provided said plat is signed by all affected parties, and such approval and issuance shall not require notice, hearing, or approval of other lot owners. This subsection shall apply only if the sole purpose of the amending plat is:

(1) To correct an error in any course or distance or property description shown on the prior plat or add any course or distance omitted on the prior plat;

(2) To indicate monuments set after death, disability, or retirement from practice of the engineer or surveyor charged with responsibilities for setting monuments;

(3) To show the proper location or character of any monument which has been added or changed in location or character or which originally was shown at the wrong location on the prior plat;

(4) To correct any other types of scrivener or clerical error or omission as previously approved by the commission or council;

(5) To correct an error in courses and distances of lot lines between two adjacent lots where both lot owners join in the application for plat amendment and neither lot is abolished, provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat; or

(6) To relocate a lot line in order to cure an inadvertent encroachment on a lot line or easement. In no event shall a plat amendment be allowed which amends, adds, or deletes restrictive covenants, unless approved by all of the lot owners in the subdivision.

Sec. 10. - Where subdivision is unit of a larger tract.

Preliminary and final plats of land within the Plum Creek PUD shall reasonably conform with the Plum Creek PUD master plan, show the proposed layout of streets, blocks, drainage, water, sewerage, and other improvements for the area being platted in compliance with this ordinance. The Plum Creek PUD master plan and the approved subdivision plats shall be filed in the permanent files of the city. All subdivisions platted within the Plum Creek PUD shall reasonably conform to the approved overall layout as provided in the Plum Creek PUD master plan, unless such master plan is modified by the subdivider/developer with the approval of the commission and city council.

Sec. 11. - Guarantee of performance.

(A) If under section 9, paragraph (B)(8) of this ordinance the subdivider chooses to construct the required improvements prior to recordation of the final plat, all such construction shall be inspected while in progress by the appropriate city department, and shall be subject to approval by the city engineer. A certificate by such officer and the developer/subdivider stating that the construction conforms to the specifications and standards contained in or referred to herein must be submitted to the administrator prior to acceptance of the required improvements by the city as built. After construction of the improvements is completed and prior to the acceptance of such improvements by the city for maintenance, the subdivider or its contractor shall file with the city a maintenance bond, executed by a surety company holding a license to do business in the State of Texas, and acceptable to the city, in an amount equal to 35 percent of the cost of the improvements required, as estimated by the administrator, and on the condition that the subdivider will maintain such improvements in good condition for a period of one year after final acceptance of the completed construction by the city. Such bond shall be approved as to form and legality by the city attorney.

(B) If under section 9, paragraph (B)(8) of this ordinance the subdivider chooses to file security and a maintenance bond in lieu of completing construction prior to final plat approval, he may utilize any of the following methods of posting security. If the subdivider chooses to file security, the plat shall not be approved unless the subdivider has done one of the following:

(1) Has filed with the city a bond executed by surety company holding a license to do business in the State of Texas, and acceptable to the city, as approved as to form and legality by the city attorney, in an amount equal to the cost of the improvements required by this ordinance, as estimated by the director of public works, conditioned that the subdivider will begin to construct such improvements within one year after approval of such plat, and pursue the work in a timely manner excluding acts of God, with a completion date for such improvements within two years from the date of final plat approval; or

(2) Has placed on deposit in a bank or trust company selected by the subdivider and approved by the city, in a trust account a sum of money equal to the estimated cost of all site improvements required by this ordinance. The estimated cost of improvements shall be the cost as estimated by the director of public works. Selection of the trustee shall be subject to approval by the city, and the trust agreement shall be approved as to form and legality by the city attorney.

(3) Has furnished fiscal security in the form of a letter of credit obtained by the subdivider in an amount equal to the estimated cost of all site improvements required by this ordinance. The administrator shall provide an estimate of the cost of improvements. The subdivider shall obtain the letter of credit from a financial institution approved by the city and subject to approval as to form and legality by the city attorney.

(C) If either type of security is filed by the subdivider under paragraph (B) of this section, the filing of such security shall be accompanied by a maintenance bond executed by a surety company holding a license to do business in the State of Texas, and acceptable to the city, and issued upon completion and the acceptance of the improvements by the city, in an amount equal to 35 percent of the cost of the improvements required, as estimated by the director of public works, under the condition that the subdivider will maintain such improvements in good condition for a period of one year after final acceptance of the completed construction by the city, as provided in paragraph (D) of this section. Such bond shall be approved as to form and legality by the city attorney.

(D) If either type of security is filed by the subdivider under paragraph (B) of this section, the director of public works shall inspect the construction of improvements while in progress, and he shall inspect such improvements upon completion of construction. After final inspection, he shall notify the subdivider and the city attorney in writing as to his acceptance or rejection of the construction. He shall reject such construction only if it fails to comply with the standards and specifications contained or referred to herein, or otherwise in effect pursuant to applicable resolution or ordinance of the city. If he rejects such construction, the city attorney shall on direction of the city council proceed to enforce the guarantees provided in this ordinance.

(E) Where good cause exists, the director of public works may extend the period of time for completion under paragraph (B) of this section for an additional period of time not to exceed 12 months if the subdivider has not completed the required site improvements or completed such improvements in compliance with this ordinance. No such extension shall be granted unless security as provided in such paragraph (B) has been provided by the subdivider covering the extended period of time.

(F) Security but not maintenance guarantees shall be released by the city when all requirements for approval have been met and the improvements have been accepted. Maintenance guarantees shall expire one year after the date of final acceptance provided that no corrective work and/or repairs are in progress and no claim by the city is pending.

Sec. 12. - Standards and specifications.

No preliminary or final plat shall be approved by the commission, and no completed improvements shall be accepted by the director of public works, unless they conform to the following standards and specifications:

(A) *General.*

(1) *Conformity with city's comprehensive plan and Plum Creek PUD zoning ordinance [chapter 53, exhibit A].* The subdivision and its improvements shall conform to any relevant comprehensive plans, codes and the Plum Creek PUD zoning ordinance of the City of Kyle [chapter 53, exhibit A].

(2) *Provision for future subdivisions.* If a tract is subdivided into parcels larger than ordinary building lots, such parcels shall be arranged to allow for the opening of future streets.

(3) *Reserve strips prohibited.* There shall be no reserve strips controlling access to land dedicated or intended to be dedicated to public use.

(B) *Streets.*

(1) *Street layout.* Adequate streets shall be provided by the subdivider and the arrangement, character, extent, width, grade, and location of each shall conform with Plum Creek PUD master plan, and shall be considered in their relation to existing and planned streets, to topographical conditions, to public safety and convenience, and in their appropriate relationship to the proposed uses of land to be served by such streets. The street layout shall be devised for the most advantageous development of the entire Plum Creek PUD development.

(a) *Generally.* The street system should generally consist of a rectilinear pattern of blocks with a hierarchy of public streets and service alleys, common greens, and landscaped rights-of-way accommodating automobiles, public transit, bicycles and pedestrians. Except as approved by the commission and the city council, the street layout should form an interconnected system of streets. The use of cul-de-sacs and other roadways with a single point of access are discouraged. Blocks shall be designed to have a maximum length of 1,200 feet, from intersection to intersection. Rear service alleys are a preferred element in the design of the neighborhood. Industrial and commercial subdivisions should be designed to have a maximum length of 1,000 feet.

(b) *Local streets.* Local streets approved in the Plum Creek PUD subdivision may be public or private. If private streets are proposed, the street shall:

(i) Ensure that public access is not restricted except as agreed to by the city;

(ii) Provide adequate access for emergency vehicles and for school buses as necessary;

(iii) Provide that construction standards and specifications are satisfactory to the city;

(iv) Ownership and maintenance shall be the responsibility of the private owner or deeded to and maintained by the property owners association.

(c) *Private streets and alleys.* All streets and alleys shall be dedicated to public use unless they are designated as private. All private streets and alleys shall be shown on all plans, but they will be allowed where they are found to be more appropriate due to the type and density of development or other applicable factors. All private streets and alleys shall be conveyed to and maintained by the property owners association.

(2) *Relation to adjoining street system.* Where practical to the Plum Creek PUD neighborhood street pattern, existing streets in adjoining areas shall be continued, and shall be at least as wide as such existing streets and in alignment therewith.

(3) *Projection of streets.* Where adjoining areas are not subdivided, the arrangements of streets in the subdivision shall make provision for the proper projection of streets into such unsubdivided area, where practical for the Plum Creek PUD.

(4) *Street jogs.* Whenever practically possible, street jogs with centerline offsets of less than 125 feet should be avoided.

(5) *Half-streets or adjacent streets.* In case of collector, minor, or marginal access streets, no new half-street shall be platted.

(6) *Street intersections.* Street intersections shall be constructed at an angle of no less that 60 degrees. When necessary, a safety measure, such as a landscaped island, shall be introduced which safely channels left-turn movements into a nearly perpendicular pattern. No more than two streets intersecting at one point shall be permitted, except as approved by the city engineer and based on sound transportation planning principals.

(7) *Dead-end streets.* Dead-end streets shall be prohibited except as short stubs to permit future expansion.

(8) *Culs-de-sac.* In general, culs-de-sac shall not exceed 600 feet in length, and shall have a turnaround of not less than 45 feet of right-of-way radius in residential areas, and not less than 45 feet of right-of-way radius in diameter in commercial areas and 60 feet of right-of-

way radius in industrial areas. Medians with a maximum width of 13 feet of right-of-way radius may be landscaped, where practical and reasonable.

(9) *Marginal access streets.* Where a subdivision has frontage on an arterial street, there shall be provided a marginal access street on both sides or on the subdivision side of the arterial street, if the arterial street borders the subdivision, unless the adjacent lot backs up to the arterial streets, or unless the commission determines that such marginal access streets are not desirable under the facts of a particular case for adequate protection of the lots and separation of through and local traffic.

(10) *Streets on comprehensive plan.* Where a subdivision embraces a street as shown on the comprehensive plan of the city, such street shall be platted in the location and of the width indicated by the comprehensive plan. Modification to street platting indicated by the comprehensive plan may be administratively approved by the director of public works if the owner or subdivider provides sufficient information related to the need for the revision in order to preserve the integrity of the Plum Creek PUD.

(11) *Minor street.* Minor or local streets shall be laid out so as to discourage their use by through traffic.

(12) *Pavement width and right-of-way.* Pavement widths and rights-of-way shall be as follows:

(a) Arterial streets shall have a right-of-way width of at least 80 feet, with a pavement width of at least 44 feet, and a minimum curve radius of 725 feet.

(b) Collector streets shall have a right-of-way width of at least 60 feet, and a pavement width of at least 36 feet, and a minimum curve radius of 375 feet.

(c) Local streets shall have a right-of-way width of at least 60 feet, and a pavement width of at least 36 feet, and a minimum curve radius of 275 feet.

(d) Nonresidential marginal access streets shall have a right-of-way width of at least 60 feet, and a pavement width of at least 36 feet.

(e) Residential marginal access streets shall have a right-of-way width of at least 60 feet, and a pavement width of at least 36 feet.

(f) Pavement width and rights-of-way, and minimum design criteria for boulevards, avenues, and residential streets, shall be as set forth in the schedule A located at the end of this section 12.

(13) *[Pavement widths forming adjacent subdivision.]* Pavements widths and rights-of-way of streets forming part of the adjacent subdivision shall be as follows:

(a) Where the PUD design warrants such requirements, the subdivider shall dedicate a right-of-way of 80 feet in width for new adjacent arterial streets, and 36 feet of such right-of-way shall be paved.

(b) New adjacent collector, minor, or marginal access streets shall conform to paragraph (B)(12) of this section.

(c) Where the proposed subdivision abuts upon an existing street or half-street that does not conform to paragraph (B)(12) of this section, the subdivision shall dedicate right-of-way sufficient to make the full right-of-way width conform to paragraph (B)(12) [of this section], and there shall be paved so much of such right-of-way as to make the full pavement width comply with paragraph (B)(12) [of this section]. Before any pavement is laid to widen existing pavement, the existing pavement shall be cut back two feet to assure an adequate subbase and pavement joint.

(14) *Curbs.* Curbs shall be installed by the subdivider on both sides of all interior streets, and on the subdivision side of all streets forming part of the boundary of the subdivision. Horizontal ribbon curbs and four-inch roll curbs shall be permitted where the Plum Creek PUD design

and drainage conditions warrant such use. The use of ribbon curbs and four-inch roll gutters shall be subject to the review and approval of the administrator.

(15) *Street names.* Names of new streets shall not duplicate or cause confusion with the names of existing streets, unless the new streets are a continuation of or in alignment with existing streets, in which case names of existing streets shall be used.

(16) *Traffic calming measures.* The use of traffic calming measures intended to moderate the speed of vehicular traffic within the subdivision will, generally, be permitted throughout the Plum Creek PUD. Traffic calming measures at roadway intersections include gateways, roundabouts and neckdowns. Traffic calming measures designed along roadway sections include chicanes, throttles and speed plateaus.

(17) *Streetlights.*

(a) *Street classification.* Streetlights shall be placed in accordance with the following placement criteria. Streetlights shall be located:

(i) At the intersection of two arterial streets, an arterial and a collector street, and at the intersection of two collector streets;

(ii) At any intersection where traffic count is projected to reach 7,000 vehicles per day;

(iii) In the turnaround of culs-de-sac where cul-de-sac length is longer than 300 feet; and

(iv) Pursuant to a street lighting plan submitted and approved in conjunction with application for subdivision plat approval pursuant to this ordinance; which plan shall, generally, provide not less than one streetlight for each 500 linear feet of streets in or abutting the subdivision.

(b) *Safety considerations.* Streetlights shall, additionally, be placed to illuminate street curves, significant topographic conditions, and other safety hazards.

(c) *Spacing.* Streetlights shall be placed in accordance with the following spacing requirements:

(i) Typical spacing of lights shall be one per intersection at the intersections described in subsection (a)(i) above;

(ii) Lights shall be provided along arterial and collector streets, with a maximum spacing between lights of 300 feet;

(iii) If block length is over 600 feet but less than increments of 300 feet, the light shall be placed in mid-block to the degree practical.

(iv) In a cul-de-sac turnaround, if the cul-de-sac length is longer than 300 feet.

(v) Streetlights shall be placed in the subdivision in compliance with the finally approved lighting plan.

(d) *Light size and type.*

Street Type	Light Size/Lumens	Light Type
Thoroughfare (heavy traffic)	400w/50,000	SV
Arterial (medium traffic)	250w/27,000	SV
Collector	175w/7,000	MV or

(Residential and low traffic)	100w/9,500	SV

(e) *Subdivision lighting plan.*

(i) The developer shall submit a streetlight plan as a part of the final subdivision plat package in conjunction with the utility plans and in conformance with these standards.

(ii) The staff shall review, coordinate with the electric utility, and recommend street lighting plans to the commission and council.

(iii) Metal poles shall be required for all street lighting and the developer shall pay all additional utility company charges for street lighting, e.g., underground, metal poles, special fixtures, charges for electricity, etc., at the final plat phase.

(iv) Installation will be completed during the construction of the other infrastructure and public improvements, or, with city approval, coordinated with building permits issued in the area. Priority shall be given to arterial and collector streets in the subdivision to facilitate circulation; within each block face, when 50 percent of lots have been permitted, lights shall be installed. The developer shall give security as necessary to assure installation of lighting required but scheduled for future installation. This light installation schedule may be accelerated in accordance with an agreement made with the developer whereby the developer pays the city the full cost of power during the time period necessary to reach this level of permitting.

(v) The commission and the council may disapprove any subdivision where the developer fails to comply with the standards set forth in this section.

(f) *Private street lighting.* In those instances when the above criteria do not warrant streetlight placement in a particular location where a property owners association, commercial or industrial property desire additional lighting, the city encourages privately funded and privately maintained lights by neighborhood residents and property owners. All privately funded lights shall be totally owned and maintained by the private property owners or residents. All utilities for privately funded lights shall be entirely paid for by the private property owner or residents. The city shall never be obligated to pay for the maintenance or utilities of any privately funded light. Such lighting may be placed within easements where not inconsistent with the easement use, but shall not be placed within dedicated public right-of-way.

(18) *Street signs and markers.* Street signs shall be installed by the subdivider at all street intersections within or abutting the subdivision. Such signs shall be of a type approved by the city, and shall be installed in accordance with standards of the city. Provided, however, that upon written request from the subdivider/developer, the city engineer may approve design modifications to city requirements for signs and markers, if such change comports with sound engineering practices and judgment, and is consistent with the public health, safety and welfare.

(19) *Paving surfaces.* Streets shall be paved with a minimum of 1½ inches of compressed hot mix with a minimum of eight inches of base over a proper subbase or a suitable alternative. Alternative paving material such as concrete pavers, brick, and stone shall be permitted when acceptable under sound engineering practices and approved by the director of public works; provided that all such street improvements and infrastructure installed and constructed within the Plum Creek PUD shall, when constructed and/or installed, meet or exceed the applicable specifications and construction standards then in effect within the city.

(C) *Alleys.*

(1) Width and paving. Alleys may be installed if approved by the administrator. Alleys of not less than 20 feet in right-of-way width and pavement width shall be installed by the subdivider in all business and industrial areas where practical. In residential areas, alleys not less than 20 feet in right-of-way width, with a paved surface of not less than 12 feet in width, shall be optional. All alley paving shall be done in accordance with city standards. Alleys shall be approximately parallel to the frontage of the street. All alleys, if constructed, must be paved as outlined in [sub]section [(C)](5) below. All alleys shall be maintained by the property owners association for the area.

(2) Intersecting alleys or utility easements. Where two alleys or utility easements intersect or turn at a right angle, a cutoff of not less than ten feet from the normal intersection of the property or easement line shall be provided along each property or easement line where practical.

(3) Dead-end alleys. Dead-end alleys shall not be permitted except if future development provides for the extension of the alleys, in which case temporary turnarounds will be provided.

(4) In all alleys, underground easements for electric and telephone lines shall be provided by subdivider.

(5) Alley design criteria shall be as set forth in the schedule A located at the end of this section 12.

(6) All alleys in the Plum Creek PUD shall be private alleys and shall be maintained by the property owners association.

(7) The typical alley section in the Plum Creek PUD shall be based upon projected traffic volume, existing soil conditions, drainage conditions and requirements. The design shall be in conformance with generally accepted engineering practices. The alley section shall be based on criteria which meet or exceed the loading criteria of 20,000 18 KIP axle repetitions.

(D) *Utilities easements.*

(1) Each block that does not abut an alley as provided for in paragraph (C) of this section shall have utility easements platted on each lot adjacent to the right-of-way of each street abutting the block. Such easements shall be reserved for the use of all public utility lines, conduits, and equipment. These utility easements shall be 7½ feet in width, shall be continuous for the entire length of the block and shall parallel the street line frontage of the block. Such easements shall be considered a part of the lot area for purposes of minimum lot-size requirements of this ordinance. Normal curb exposure shall be required where utility easements intersect streets.

(2) Electrical distribution lines within phase I that serve but that are outside of platted subdivisions, may temporarily remain as overhead lines. [The term] "temporarily" means for the duration of time when the area outside the subdivision remains unplatted. Three-phase electric transmission lines within the subdivision are permitted to be overhead but all utilities constructed and installed within any subdivision must be underground. Excluded from this provision are facilities typically sited above ground, such as meter boxes, lift station, transformers, and other similar items.

(E) *Sidewalks.* Sidewalks shall be installed as follows:

(1) Sidewalks are required in residential subdivisions and will be required as appropriate to the area in commercial and industrial areas. Sidewalks shall be not less than four feet in width and may adjoin the curb or may be separated from the curb by a landscape planting strip. Such sidewalks shall be installed and constructed on both sides of each residential street. Sidewalk shall be situated wholly within the dedicated right-of-way.

(2) Utility assignments shall be arranged so that utilities are not located underneath sidewalks except to cross perpendicularly for distribution.

(3) Parkways and landing ways shall be excavated, or filled, as required to result in not more than a three to one grade, or as detailed on approved construction plans. Landing walks of width not less than 18 inches may be installed at the rear of the curb.

(4) Americans with disabilities. Sidewalks shall conform to the city construction standards and meet all requirements of the Americans with Disabilities Act.

(F) *Watershed and flood prevention.*

(1) *Watershed protection.* The watershed provisions contained herein are deemed necessary for the following reasons:

(a) The watersheds within the city's jurisdiction contribute significantly to the city's drinking water supply.

(b) Waterways and their associated watersheds within the city's jurisdiction represent significant recreational and aesthetic resources and contribute to the city's public health.

(c) The future of the city is dependent on an adequate quality and quantity of water, a pleasing natural environment, recreational opportunities in close proximity to the city as well as the protection of people and property from hazards of flooding.

(d) All watersheds within the city's jurisdiction are vulnerable to non-point source pollution and sedimentation resulting from development activities.

(e) All watersheds within the city's jurisdiction are undergoing development or facing development pressure.

(f) If watersheds within the city's jurisdiction are not developed in a sensitive and innovative manner, water resources, natural environment, and recreational characteristics may be irreparably damaged.

(g) Protection of critical environmental features is necessary to protect water quality in those areas most susceptible to pollution.

(h) It is important to protect the water supply and the natural environment of all watersheds for existing and future generation of citizens of the city.

(i) The city may adopt additional appropriate development rules and regulations for the purpose of protection of the watersheds and aquifers within its jurisdiction as a facet of its overall program for the control and abatement of pollution resulting from generalized discharges of pollution which are not traceable to a specific source, such as urban runoff from rainwater; and for the abatement of the risks related to flooding within the watersheds.

(2) *Stormwater management.* In order to achieve the purposes in the foregoing section, the following sections provide for stormwater management systems. All development plans and subdivision plats submitted to the city shall comply with the provisions of this article and section and any other applicable regulations; specifically, the city's construction standards and specifications for roads, streets, structures and utilities and the applicable Texas Natural Resources Conservation Commission [Texas Commission on Environmental Quality] rules. Plats of developed property on which no new structures or additional impervious coverage is planned shall be exempt from the provisions of this section.

(a) *Stormwater management system requirements.* The commission shall not recommend approval for any plat, plan or subdivision which does not meet the minimum requirements of this ordinance in making adequate provision for control of the quantity of stormwater and/or ground water runoff to the benefit of both future owners of property within the subdivision and other lands within the watershed. It shall be the responsibility of the subdivider to design and construct a system for the collection and transport of all stormwater runoff flowing onto and generated within the subdivision in accordance with:

(i) The requirements of these regulations.

(ii) The flood drainage prevention ordinance [chapter 17, article II of this Code].

(iii) Good engineering practices.

(iv) Approved plans.

(v) The principles of stormwater law established by the Texas Water Code.

(b) *Basic design objectives.* In general the stormwater management system shall be designed and constructed in a manner which promotes the development of a network of both natural and built drainageways throughout the community and so as to:

(i) Retain natural floodplains in a condition that minimizes interference with floodwater conveyance, floodwater storage, aquatic and terrestrial ecosystems and ground and surface water.

(ii) Reduce exposure of people and property to the flood hazard and nuisance associated with inadequate control of runoff.

(iii) Systematically reduce the existing level of flood damages.

(iv) Ensure that corrective works are consistent with overall city goals.

(v) Minimize erosion and sedimentation problems and enhance water quality.

(vi) Protect environmental quality, social well-being and economic stability.

(vii) Plan for both the large flooding events and the smaller, more frequent flooding by providing both major and minor drainage systems.

(viii) Minimize future operational and maintenance expenses.

(ix) Reduce exposure of public investment in utilities, streets and other public facilities (infrastructure).

(x) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public.

(xi) Acquire and maintain a combination of recreational and open space systems utilizing floodplain lands.

(xii) Preserve natural drainage patterns and limit the amount of impervious cover so as to prevent erosion, maintain infiltration and recharge of local seeps and springs, and attenuate the harm of contaminants collected and transported by stormwater. Overland sheet flow shall be maintained whenever possible and the dispersion of runoff back to sheet flow shall be a considered in the drainage design for the subdivision as opposed to concentration of flows in storm sewers and drainage ditches.

(c) *General design requirements.*

(i) The storm drainage system shall be separate and independent of any sanitary sewer system and its use shall not interfere with the operation and maintenance of road networks or utility systems.

(ii) Each lot, site and block within the subdivision shall be adequately drained as prescribed in the city's construction standards.

(iii) No subdivision shall be approved which would permit building within a regulatory floodway of any stream or watercourse. The commission may, when it deems necessary for the protection of the health, safety or welfare of the present and future population, prohibit the subdivision and/or development of any property which lies within a designated regulatory floodway of any stream or watercourse.

(iv) No lot or building site within a subdivision shall derive sole access to a public street across a waterway unless such access shall be constructed to remain open under design storm conditions as prescribed in the city's construction standards.

(v) Areas subject to inundation under design storm conditions shall be indicated with the minimum floor elevation of each lot so affected on a certified copy of the preliminary plat submitted for filing. The commission may, when it deems necessary for the protection of the health, safety or welfare of the present and future populations, place restrictions on the subdivision, regarding the design and use of areas within a drainageway. The commission shall not approve any subdivision of land within the floodplain of any stream or watercourse unless the applicant demonstrates that the subdivision and all development anticipated therein will comply with the requirements of this ordinance.

(vi) Design of all drainage facilities, including streets, inlets, storm sewers, outfall, culverts and ditches, shall conform with the city's construction standards and specification for roads, streets, structures, and utilities.

(vii) All facilities shall be designed to intercept, detain and transport the projected runoff from the 25-year frequency storm. Overflow and/or transport provisions shall be provided for 100-year storms.

(viii) Projected runoff rates for the design of drainage facilities shall be based on the expected ultimate developed state of the upstream contributing area. Said ultimate developed state shall be based on the maximum intensity allowable under existing zoning as applicable, the city's comprehensive plans, and approved plans within the contributing area.

(ix) All development establishing impervious cover or otherwise modifying an existing site shall incorporate facilities to prevent any increase in the peak rate of runoff from a 25-year frequency storm. The city engineer may waive this requirement under one or more of the following circumstances:

(A) Approved off-site storage is provided for the required regulation of peak flows and adequate conveyance of stormwater flows from the site to the off-site storage facility is demonstrated.

(B) Development of a one-, two- or three-family residential structure on any legally platted lot creates no more impervious ground cover than 30 percent of the gross lot surface area exclusive of any area within the 100-year floodplain.

(C) Certified engineering data and calculations are presented which demonstrate the absence of adverse impact on all downstream conveyances and property between the downstream property line and the receiving major waterway.

(D) Certified engineering data and calculations are presented which fully describe, explain and justify recommended alternatives to detention.

(E) The increase in runoff does not exceed ten percent of the existing conditions runoff up to a maximum increase of five curb feet per second, and said runoff does not affect adjoining property.

(F) The property is adjacent to a major waterway and in the judgment of the city engineer, waiver of detention requirements will not result in an increase in the peak flood flow of the major waterway. Waiver of this requirement for any reason shall not relieve the owner of responsibility.

(G) Design of major drainage ways through a subdivision and major structures such as box culverts or bridges across a major drainage channel shall be coordinated with the requirements of Hays County when any portion of the subdivision lies outside the city limits.

(d) *Drainage channels.*

(i) The limits of the 25-year and 100-year storm event shall be determined for watercourses draining 50 or more acres. Calculations for storm events shall utilize generally recognized backwater computational methods and actual field channel and overbank configuration.

(ii) No importation of fill material or channel modifications shall be undertaken within the area of the 100-year floodplain without written approval of the administrator. Such approval shall be based upon certified engineering data and calculations furnished by the applicant.

(iii) All constructed or modified earthen channels shall be designed utilizing a side slope of 33 percent, or flatter, to allow for future maintenance and promote adequate slope stability. As a minimum, all slopes shall be hydromulched, sodded or seeded.

(e) *Streets and storm sewer.*

(i) All street sections shall be in accordance with city standards. The allowable design drainage capacity for stormwater flow at the gutter shall be no deeper than three inches above the top of the curb.

(ii) Depth of flow in streets is to be controlled to allowable levels by modification of crossfall, gradient changes, or the use of curb inlets and/or curb drains, and storm sewers.

(f) *Bridges and culverts.*

(i) All bridge and culvert structures shall be designed to carry and/or contain the upstream runoff from a 25-year storm.

(ii) Runoff from a 100-year storm shall not top the road surface at bridge or culvert crossings for an arterial or thoroughfare crossing and shall not exceed a depth of six inches on a local street crossing.

(iii) All bridge and culvert structures shall be designed such that the structural integrity of the roadway shall not be diminished by a 25- or 100-year storm event.

(g) *Computations, plans and construction.*

(i) Plans and computations for proposed drainage facilities shall be certified with the seal of the design engineer, and submitted to the city engineer for acceptance prior to approval of construction plans.

(ii) Computations for all drainage related design shall be submitted with the plans for review. Data submitted shall include a drainage area map, a summary of methodology employed and resulting data, land use and runoff coefficient assumptions, and other pertinent hydrologic and hydraulic data.

(iii) Plans and design calculations for all drainage facilities shall be submitted to the city engineer for acceptance prior to issuance of any permit within the development or subdivision.

(h) *Building permits and utility connections.*

(i) Plans submitted for building permits and/or utility connections, other than single family residential or duplex construction and those projects already in compliance with this ordinance, shall include the necessary drainage related facilities designed and provided for in compliance with this ordinance and the city's construction standards.

(i) *Drainage easements.*

(i) *General requirements.* Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, or where a detention/filtration facility is required, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the lines of such watercourse or facility, and of such width and construction to contain the design storm and required freeboard. When parking lots or other approved use areas serve a dual function, including detention, those areas shall be designated on the plat as detention areas. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks having adequate width to contain the volume of flow generated by the design storm under ultimate development conditions.

(ii) *Design requirements.*

(A) Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements at least 20 feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. Easements shall be indicated on the plat. Drainage easements shall be carried from the road to a natural watercourse or to other drainage facilities.

(B) When a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage rights must be secured and filed of record, documented on the plat, and drawn on the construction plans.

(C) Low-lying lands along watercourses subject to flooding or overflowing during storm periods shall be preserved and retained in their natural state as drainage ways except where modification can be shown to benefit the community and such modification is as approved by the commission. All development activity within the regulatory floodplain must comply with city, state and federal regulations.

(D) All sedimentation, filtration, detention and/or retention basins and related appurtenances shall be situated within a drainage easement. The owners of the tracts upon which are located such easements appurtenances, and detention facilities shall maintain same and be responsible for their upkeep. Notice of such duty to maintain shall be shown on the plats.

(E) Drainage facilities shall be designed to serve the entire subdivision. For all subdivisions, design of drainage facilities shall be completed with other required construction plans in order to ensure adequate drainage easements and other reservations on the plat.

(F) The requirements set forth herein are not intended to be exhaustive and wherever it is necessary to make additional requirements in order to maximize the effectiveness of the drainage plan in question, such requirements shall be made by the commission. Variances to these requirements may be allowed pursuant to this ordinance only when said variance will not result in drainage related problems sought to be prevented by these regulations.

(3) *Industrial uses.*

(a) An applicant proposing any industrial use, as defined in the city comprehensive plan or Plum Creek PUD zoning ordinance [chapter 53, exhibit A], and which is not completely enclosed within a building or buildings, must provide a pollutant attention plan which:

(i) Proposes methods to capture all surface water runoff from developed areas to contain and filter pollutants generated on-site.

(ii) Controls dust and other particulate matter generated on-site, to meet the Texas Natural Resource Conservation Commission [Texas Commission on Environmental Quality] Standards for Urban Areas.

(b) The design of storage facilities for hydrocarbon or hazardous substances, including leak detection systems, spill containment areas or other control measures shall meet the following requirements:

(i) Underground storage facilities. Facilities for the underground storage of static hydrocarbon or hazardous substances shall be of double walled construction or of an equivalent method approved by the city engineer. Methods for detecting leaks in the wall of the storage facility shall be included in the facility's design and review prior to issuance of appropriate permits for construction.

(ii) Aboveground storage facilities. Facilities for the aboveground storage of static hydrocarbon or hazardous substances shall be constructed within controlled drainage areas that are sized to capture one and one-half times the storage capacity of the facility and that direct any spillage to a point convenient for collection and recovery. The controlled drainage area shall be constructed of a material suitably impervious to the material being stored.

(c) All transport facilities for hydrocarbons and hazardous substances shall be approved by the city engineer.

(4) *Minimum criteria for issuance of floodplain development permit.* Pursuant to the flood hazard area regulations (chapter 17 article II), as amended from time to time, and similar provisions enforced by the county, a floodplain development permit shall be required such that:

(a) Development or alteration of the floodplain shall result in no increase in water surface elevation of the design storm of the waterway.

(b) Development or alteration of the floodplain shall not create an erosive water velocity on or off the site. The mean velocity of stream flow at the downstream end of the site after development or alteration shall be no greater than the mean velocity of the stream flow under existing conditions as defined in the city's construction standards and specifications for roads, streets, structures, and utilities.

(c) Development or alteration of the floodplain shall be permitted by equal conveyance on both sides of the natural channel.

(d) Relocation or alteration of the natural channel shall not be permitted without an environmental assessment, including a stream rehabilitation proposal.

(e) The toe of any fill shall parallel the natural channel to prevent an unbalancing of stream flow in the altered floodplain.

(f) To insure [ensure] maximum accessibility to the floodplain for maintenance and other purposes, and to lessen the probability of slope erosion during periods of high water, maximum slopes of filled area shall not exceed three to one for 50 percent of the lengthy of the fill and six to one for the remaining length of the fill. The slope of any excavated area not in rock shall not exceed four to one. Vertical walls, terracing and other slope treatments will be considered if no unbalancing of stream flow results.

(g) Whenever feasible, the integrity of the natural waterway channel will be protected.

(h) A landscape plan shall be required, and shall include plans for erosion control of cut and fill slopes, restoration of excavated areas and tree protection where possible, both in and below the fill area. Landscaping should incorporate natural materials (earth, stone, or wood) on cut or fill slopes whenever possible.

(i) The effects of existing or proposed public and private improvements shall be used in determining water surface elevations and velocities.

(j) Any alteration of the floodplain shall not cause any additional expense in current or projected capital improvements, nor should said alteration cause additional maintenance costs to be incurred by the city.

(G) *Minimum requirements.* The following establish further general and minimum standards. In the event of any conflict between any of the following and any other requirement of this section, the higher standard shall govern and control:

(1) *Drainage structures.* Drainage structures shall be constructed in compliance with this ordinance and in such locations and of such size and dimensions to adequately serve the subdivision and associated drainage area. The developer shall be responsible for all costs for the installation of the drainage system required to accommodate the needs of the subdivision being developed, to include the carrying of existing water entering or leaving the subdivision.

(2) *Right-of-way.* In new subdivisions, the developer shall provide all the necessary easements and rights-of-way required for drainage structures, including storm sewer and open, paved or rip-rapped channels.

(3) *Storm sewers and curb inlets.* Storm sewers shall be provided and curb inlets located so as to properly drain all streets and intersections.

(4) *Standards.* The design, size, type and location of all storm drainage facilities shall equal or exceed the city's minimum construction standards and be approved by the city engineer and the director of public works.

(a) *Drainage ditches.* Open, paved or improved drainage ditches, as required by the commission or the council, shall be constructed across the entire subdivision being developed.

(b) *Storm sewer.* Water entering into the streets, in excess of what gutters will carry at maximum flow, shall be diverted into storm sewers. Capacity of storm sewers and channels shall be calculated by Manning's formula or other methods approved by the administrator.

(H) *Detention.* Except for existing single family residences on legally platted lots, all subdivisions and development establishing impervious cover or otherwise modifying an existing site shall incorporate facilities to prevent any increase in the peak of runoff from a 25-year frequency storm.

(I) *Water installation.*

(1) *Water supply and distribution.* All subdivisions shall be provided with water supply and water distribution systems approved by the Kyle Water Department. In no event shall a water well be dug without the permission of the city.

(2) *Fire hydrants.* Six-inch fire hydrants shall be installed as part of the water distribution system per specifications of the fire chief of the city and of the state board of insurance.

(J) *Sewers.*

(1) All subdivisions shall be provided with an approved sewage disposal system.

(2) Connection with the sanitary sewer system shall be required except where the city council determines that such connection will require unreasonable expenditure when compared with other methods of sewage disposal. Where septic tanks are installed, the subdivider shall conduct percolation tests under the supervision of the director of public works and county health department in order to determine the adequacy of proposed lot sizes. If a sanitary sewer disposal system is to be installed, the plans for such system must be approved by the Texas State Health Department, prior to approval of the final plat by the planning commission.

(K) *Utility lines.* All utility lines that pass under a street or alley shall be installed before the street or alley is paved, whenever practical. When it is necessary that utility lines pass under the street

pavement, they shall be installed to a point at least three feet beyond the edge of the pavement. Buried utilities may be located within the alley service drive and under public street pavement, three feet inside the face of the curb. Electric distribution shall be provided by means of underground service within the subdivision. Overhead service to individual lots shall not be permitted. Transformer pads and enclosures shall be located behind the front face or to the rear of the building.

(L) *Monuments.*

(1) Monuments shall be located at the intersection of a line three feet north from and parallel to the north line of each block with a line three feet east from and parallel to the east line of the block, unless such point of intersection occurs within the limits of street paving. In such case, alternate monument locations shall be approved by the director of public works.

(2) Where, due to topographic conditions, permanent structures, or other conditions, the view is obstructed between any two adjacent monuments, intermediate monuments shall be so set as to assure a clear view between adjacent monuments.

(M) *Parkland dedication or designation.*

(1) *Definitions.* For the purposes of this section, the following terms, phrases and words shall have the meaning ascribed to them in this subsection.

(a) *"Park"* means any public park, playground, recreation or open space area, golf course, lake, together with parking lots, which is operated, maintained and controlled by the city, and heretofore platted, dedicated, or designated as a public park within the city. Land dedicated for public school land which contains a park or parkland as defined herein shall be considered a park for the purposes of this section but only to the extent of the actual land dedicated for such a park. Private gold course areas, recreation areas and open space land within a residential area and neighborhood commercial area shall be considered to be designated as park for purposes of this section but only to the extent of the actual land designated for such golf course, recreation and open space purposes and provided that no more than 50 acres of private golf course, recreation or open space areas shall be credited by the city as parkland that complies with the parkland dedication/designation requirements set forth in this [sub]section (M).

(b) *"Neighborhood park"* means a park designated for a variety of outdoor recreational opportunities located within a residential subdivision or within a close proximity or convenient distance of the majority of residences to be served thereby so that the residential subdivision or subdivisions so located shall be the primary beneficiaries of these facilities.

(c) *"Residential area"* means any area within a subdivision plat which in whole or in part is platted for the development of dwelling units or residences, whether same be single-family, multifamily, owner occupied or rental dwelling units and including townhouses, condominiums and apartments.

(d) *"Neighborhood commercial area"* means any area as described in the Plum Creek PUD zoning ordinance [chapter 53, exhibit A].

(2) *General.*

(a) Whenever a final plat is filed of record with the county clerk of Hays County for development of a residential area in accordance with this ordinance, or the comprehensive planning and zoning ordinance of the city, such plat shall contain a clear fee simple dedication of an area of land to the city for park purposes, which area shall equal one acre for each 133 proposed dwelling units. As far as practical, all dedications or designations of land shall be in a single parcel. Provided, however, that the council and the commission deem that such dedication or designation is required in accordance with the regulations set forth herein. Any proposed plat submitted to the city for approval shall show the area proposed to be dedicated or designated under this section. Upon

the approval of the council, the dedication or designation required by this section may be met by the payment of money instead of land when permitted or required by the provisions of this section or by the platting of a private golf course, recreation area, or open space area pursuant to subsection (M)(1)(a) herein.

(b) The council declares the development of an area smaller than three acres for public park purposes, as described in subsection M(1)(a) herein, as impractical. Therefore, if fewer than 399 units are proposed by a plat filed for approval resulting in a dedication or designation of less than three acres, the developer shall be required to pay the applicable cash instead of being required to dedicate or designate any of the land area as provided by subsection (d) [of this section]. No plat showing dedication or designation of less than three acres shall be approved unless the council, upon recommendation of the commission, approves a variance to this requirement by resolution.

(c) In an instance where an area of less than five acres is required to be dedicated or designated, the city shall have the right to accept the dedication or designation for approval on the final plat, or to refuse same, after consideration of the recommendation of the commission, and to require payment of cash instead of land in the amount provided by subsection 12(M)(4) [of this section] hereafter if the city determines that sufficient park area as described in subsection 12(M)(1)(a) [of this section] is already in the public domain in the area of the proposed development, or if the parkland recreational needs of the area would be better served by expanding or improving existing parks. Such recommendations shall be given after submittal and review of the preliminary plat.

(d) The dedication or designation required by this section shall be made by the filing of the final plat clearly showing such parkland dedication or designation or contemporaneously by separate instrument unless additional dedication or designation is required subsequent to the filing of the final plat. If the actual number of completed dwelling units exceeds the figure upon which the original dedication or designation is based, such additional dedication or designation shall be required, and shall be made by payment of cash instead of the land amount provided by subsection (d) [of this section], or by the conveyance of entire numbered lot(s) to the city.

(e) Before any dedication or designation of parkland or payment of cash instead of dedication or designation may be required, the commission and the council must find at the public hearing at which the subdivision is considered for final approval, that the dedication or designation of parkland or payment of money instead of park dedication or designation for future development of parks bears a substantial relation to the health, safety, general welfare and morals of the community and that there is a need for the park improvement caused by the subdivision development. In order to determine whether or not the need or benefit is sufficient to require the dedication or designation, such factors as the size of lots in the subdivision, the economic impact of the subdivision, density of population, the amount of private parkland contained in the subdivision, and the amount of open land consumed by the development shall be considered. The director of parks and recreation shall be informed of all new subdivisions which are submitted for approval and of all existing subdivisions which are submitted for replatting, expansion, or redevelopment.

(f) Whenever payment of money instead of park dedication or designation is determined to be appropriate, the location of the park where the funds will be spent shall be determined within 90 days of the final acceptance of the completed subdivision.

(3) *Prior or excess dedication or designation.*

(a) Credit shall be given for dedication or designation of land or money paid instead of land for park or recreational purposes which was dedicated or given pursuant to the existing zoning ordinance or subdivision of the city. Credit shall also be given for the dedication

or designation of land in excess of the requirements herein, subject to the provisions of subsection (M)(1)(a) [of this section]. Such credit may be used by the owner or developer who dedicated the parkland in excess of the dedication or designation requirements, provided that the credit is used within the Plum Creek PUD, as amended.

(b) If a dedication requirement arose prior to the passage of this section, that dedication requirement shall be controlled by the ordinance in effect at the time such obligation arose, except that additional dedication or designation shall be required if the actual density of the dwelling units constructed on the property is greater than the former assumed density. Additional dedication or designation shall be required only for the increase in density and shall be based on the ratio set forth in subsection [12(M)(3)](a) of this section.

(c) At the discretion of the city, acting through its council, any former gift of parkland to the city, which was not required by any provision of the city Code, the zoning ordinance or other applicable laws, may be credited on a per acre basis toward eventual parkland dedication requirements imposed on the donor of such land. The council shall consider the recommendation of the commission in exercising its discretion under this section.

(4) *Money instead of land.* Subject to the approval of the council:

(a) An owner responsible for dedication or designation under this section may elect to meet the requirements of subsection 12(M)(2)(a) above in whole or in part by cash payment instead of land in the amount set forth in subsection 12(M)(4)(b) hereunder. Payments instead of land shall be made prior to the time the subdivision improvements are accepted.

(b) The dedication or designation requirement shall be met by a payment instead of land at a per-unit price set by resolution of the council, sufficient to acquire land and provide for adjacent streets and utilities for a neighborhood park to serve the area in which such development is located. Unless changed by the council, such per-unit price shall be computed on the basis of $200.00 per dwelling unit. Cash payment may be used only for acquisition or improvement of a neighborhood or regional park located within the same area as the development, or in close proximity thereto. This location shall be determined by the city within 90 days of the final acceptance of the completed subdivision.

(5) *Comprehensive plan considerations.* Land shown on the comprehensive plan or any neighborhood plan, if same is designated as being suitable for development by the city for a major recreational center, school site, park, or other public use, shall be reserved for a period of one year after the preliminary plat is approved by the council if, within two months after such approval, the council advises the subdivider of its desire to acquire the land or of the interest of another governmental unit to acquire the land, for purchase by the interested governmental authority, at the appraisal value of the land at the time of purchase. A failure by the council to so notify the subdivider shall constitute a waiver of the right to reserve the land. Any waiver of the right to reserve the land shall no longer be effective if the preliminary plat shall expire without adoption of a final plat.

(6) *Special fund.*

(a) There is hereby established a special fund for the deposit of all sums paid in lieu of land dedication under this section, which fund shall be known as the "Parkland Dedication Fund." All monies set aside in said parkland dedication fund shall be used exclusively for park and recreational improvements in new or existing parks within the area of the subdivision which contributes the money, or as close to the subdivision as practical to ensure that the subdivision's residents gain the benefit of the improvements.

(b) The city shall account for all sums paid instead of land dedication under this ordinance with reference to the individual plats involved and the contributing developer. Any funds paid for such purposes must be expended by the city within five years from the date

received by the city for acquisition or development of a neighborhood park. Provided, however, if the funds paid for parkland dedication are being accumulated to acquire and develop a larger neighborhood park (a park in excess of five acres or more which will provide multiple recreational facilities and will serve several adjacent subdivisions) the fund must be expended within seven years from the date received by the city. When funds from several different subdivisions are being accumulated to develop a larger neighborhood park serving several different subdivisions they shall be segregated in an account earmarked for that particular project within the parkland dedication fund. Such funds shall be considered to be spent on a first in, first out basis. If not so expended, the contributing developer(s) on the last day of such period shall be entitled to a pro rata refund of such sum, computed on a square footage of area basis. The contributing developer shall be notified of such refund. Registered mail to three addresses provided by the contributing developer(s) will constitute diligent effort to locate and if unanswered in writing, requesting refund within 365 days of such mailing, such right to refund shall be barred.

(c) Provided, however, the placing of the parkland dedication fund in a "treasury fund" established by the city, so long as accounting procedures established maintain a separate account for these proceeds for the purposes set forth herein and assure that funds will not be disbursed for any purposes not set forth in this ordinance, shall not be considered a violation of this section.

(7) *Additional requirements.*

(a) Any land dedicated to the city under this section must be suitable for recreational purposes, such as for parks, playgrounds and usable open space. The following characteristics of proposed area are generally unsuitable:

(i) Any area of which more than 20 percent is located within the 100-year floodplain.

(ii) Any areas of unusable topography or slope which render more than 25 percent of the area unusable for organized recreational activities, or due to unusual circumstances relating to subsoil, slope or topography, the development of the property for park or recreational purposes would be unusually difficult or expensive as determined by the director of public works.

(iii) The above characteristics of a parkland dedication area may be grounds for refusal of any preliminary or final plat.

(b) Drainage areas may be accepted as a part of a park if the channel is constructed in accordance with the city engineering standards, and if no significant area of the park is cut off from the access by such channel; provided, however, that the developer may provide vehicular access by a bridge or similar structure approved by the director of public works. The percentage or portion of parkland dedication hereunder may include 50 feet on each side of any well-defined creek or waterway subject to the approval of the city.

(c) Each park must have ready access to an improved public street so as to provide visual access to a majority of the park area.

(d) Unless provided otherwise herein, an action by the city shall be by the council, after consideration of the recommendation of the commission.

(N) *Drainage.*

(1) *Easements.* Where a subdivision is traversed by a watercourse, drainageway, natural channel or stream, there shall be provided an easement or right-of-way conforming substantially to the limit of such watercourse, plus additional width to accommodate future needs. An alternate path for drainage shall be permitted, based on approved engineering principles prepared by a registered professional engineer. The city shall review and approve proposed drainage methods.

(2) *Drainage facilities.* Drainage facilities shall be proposed and constructed by the subdivider in a manner which shall be reasonably reviewed and approved by the planning commission.

(O) *Blocks.*

(1) In general, intersection streets determining block lengths shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets or contemporary and accepted subdivision practices.

(2) Blocks shall be not more than 1,000 feet in length, and shall be, at minimum, bounded on either end of the long axis by a local street. Block length, up to 1,200 feet, may be approved by the administrator for good and sufficient reasons (example: curvilinear streets or paved alleys).

(P) *Crosswalk ways.* Crosswalk ways six feet in width shall be dedicated where deemed necessary by the planning commission to provide circulation or access to schools, playgrounds, shopping centers, and transportation and other community facilities, or to provide pedestrian circulation within the subdivision. Crosswalk ways shall be provided with a sidewalk constructed of concrete, concrete pavers, brick, or other suitable paving surface a minimum of six feet wide.

(Q) *Lots.*

(1) *Sewered lots.* Where off-lot sewerage is provided, each residential lot shall have an area of at least 2,500 square feet.

(2) *Unsewered lots.* Where off-lot sewerage is not required, and is not provided, residential lots shall have an area of at least 20,000 square feet. Where, as the result of the percolation test prescribed in paragraph (G) of this section, the director of public works and county health department deems the minimum lot area insufficient, the planning commission shall require additional area sufficient to accommodate the sanitary facilities deemed necessary by the director of public works.

(3) *Extra depth and width in certain cases.* Where a lot in a residential area backs up to a railroad right-of-way, a high pressure gasoline, oil or gas line, an arterial street, an industrial area, or other land use which has a depreciating effect on the residential use of property, and where no marginal access street or other street is provided at the rear of such lot, additional depth may be required by the director of public works. In no case shall additional depth in excess of 50 feet be required. Where a lot sides to any of the above, additional width in excess of 50 feet may be required by the director of public works.

(R) *Buildings, other.* Mechanical apparatus, trash containers, utility meters, conduit, A/C units and other utility elements should be located to the rear of the lot; plumbing and mechanical vents should be located to the rear of roofs, away from view of public streets.

(S) *Common open space.* Common open space and structures thereon must be either:

(1) Conveyed to a public body, if said public body agrees to accept conveyance and to maintain the common open space and buildings, structures, or improvements which have been placed on it; or

(2) Conveyed to a property owners association or some other party responsible for maintaining common buildings, areas and land within the subdivision. The common open space shall be restricted to the uses specified on the final plat and which provide for the maintenance of the common open space in a manner which assures its maintenance for its intended purpose.

(T) *Accessibility of site.* All proposed streets, alleys, and driveways shall be adequate to serve the residents, occupants, visitors or other anticipated traffic of the planned residential development, but may be designed so as to discourage outside through traffic from traversing the subdivision.

(U) *[Inspections.]* The city may make such inspections as are deemed necessary to require proper installation. The subdivider and the subdivider's engineers and contractors, respectively, shall be responsible for proper design and installation of all required improvements and neither the review nor approval of such plans nor the inspection of the work in progress or the completed work will

create any liability on the part of the city. Following construction, but not prior to acceptance of improvements or issuance of a building permit, the design engineer shall furnish one set of reproducible "AS-BUILT" plans for each project, bearing certification by a registered professional engineer.

Schedule A	
Standards	Criteria
Boulevard [residential/commercial areas]	
Design speed	25 mph/180-foot minimum curve radius
ROW width	80 ft.
Pavement width	2 (20) ft.
Median	15 ft.
Intersection curb radius	15 ft.
Permitted on-street parking	None
Average daily trips	Less than 4,000 daily trips
Avenue [residential/neighborhood commercial/commercial/mixed use areas]	
Design speed	25 mph/180-foot minimum curve radius
ROW width	60 ft.
Pavement width	36 ft.
Median	None
Intersection curb radius	15 ft.
Permitted on-street parking	2 lanes
Average daily trips	Less than 3,500 average daily trips

Residential street [residential/neighborhood commercial areas]	
Design speed	25 mph/180-foot minimum curve radius
ROW width	50 ft.
Pavement width	27 ft.
Intersection curb radius	15 ft.
Permitted on-street parking	2 lane
Average daily trips	Less than 1,500 average daily trips
One-way alley [residential/commercial]	
Design speed	5 mph
ROW width	20 ft.
Pavement width	12 ft.
Intersection curb radius	5 ft.
Permitted alley parking	None
Two-way alley [residential/commercial]	
Design speed	5 mph
ROW width	20 ft.
Pavement width	15 ft.
Intersection curb radius	5 ft.
Permitted alley parking	None

(Ord. No. 687, § 1(Exh. A), 1-17-2012)

Sec. 13. - Standards and criteria for neighborhood commercial, mixed use, employment, or industrial area development.

A permit for a commercial or industrial development within the Plum Creek PUD may be issued by the governing body for buildings or premises to be used for the retail sale of merchandise and services, parking areas, office buildings, hotel and motels, and similar facilities ordinarily accepted as commercial uses and those industrial uses which can reasonably be expected to function in a compatible manner with the other permitted uses in the area and in accordance with the Plum Creek PUD. In addition to the general standards and criteria set forth in section 14 in this ordinance, criteria set forth in this section shall prevail for commercial or industrial developments of the Plum Creek PUD if there is a conflict with criteria in other sections of this ordinance. Commercial or industrial development shall comply with the following standards unless otherwise determined by the city council:

(A) *Accessibility.* The site shall be accessible from the proposed street network in the vicinity which will be adequate to carry the anticipated traffic of the proposed commercial or industrial development. The streets and driveways on the site of the proposed development shall be adequate to serve the enterprises located in the proposed development and may be designed to discourage outside through traffic from traversing the development. The commission shall review and approve such street and driveway design.

(B) *Landscaping.* Landscaping shall be required to provide screening of objectionable views and uses and to provide for the reduction of noise. Multi-story buildings shall be located within the development in a manner which will minimize any adverse impact on adjoining low rise buildings.

(C) *Building relationship to a street.* Buildings should be designed to emphasize the front face and entrance of the building facing a public street. Front porches, eves, or other solar protection devices shall be included on the front face of buildings.

Sec. 14. - Responsibility for payment of installation costs.

(A) Two complete sets of final construction plans and specifications will be submitted to the administrator at least 15 working days prior to anticipated commencement of any construction, accompanied by fees in accordance with Ordinance No. 293, as amended, or other applicable city fee ordinances. Review will be based on conformance with this ordinance and design specifications and the use of sound engineering practices.

(B) An inspection schedule will be determined by the administrator. Inspections will be charged to the subdivider at the rate set forth in Ordinance No. 293, as amended, or other applicable city fee ordinances. Final approval will not be given until all inspection fees have been paid.

(C) The subdivider shall pay all design, engineering, material and installation costs of all improvements required by this ordinance.

(D) In the event a subdivider desires the extension of water or sewer lines to serve his subdivision, he shall bear the entire design, engineering, material, construction and installation costs of all on site and off-site lines unless otherwise agreed to between the city and subdivider in a development agreement. The city council of Kyle or their authorized representative shall specify the size of all such lines, taking into consideration the requirements of adjacent areas of future growth which must be served by such lines, unless otherwise agreed to between the city and subdivider in a development agreement. The decision of the city council or their authorized representative concerning the sizing of the line shall be final.

(E) The construction of water and sewer lines to serve lots within a subdivision will be performed by a contractor of the subdivider's choice in accordance with plans and specifications approved by the City of Kyle. The subdivider and city can agree, however, that the city shall construct such lines.

(F) If requested by the developer, oversized lines and lines serving areas other than the development proposed will be paid by the developer. The city will enter into a contract with the developer to provide that pro rata charges for additional connections or developments served by such lines will be collected by the city and reimbursed to the developer making the installation. Lines become city property upon installation and acceptance by the City of Kyle, after the contract period, pro rata charges will be collected from users, and deposited to the appropriate city account, unless otherwise agreed to between the city and developer in a development agreement.

(G) Where an existing water or sewer line lies within or abuts the subdivision, the subdivider shall make no connections to or extensions of such existing line without first paying to the city the cost of the size line of equal length to that portion of such existing line which lies within or abuts the subdivision which would be required to serve the subdivision. This cost shall be determined by the city administrator and his decision shall be final.

(H) All sewer and water lines constructed and installed pursuant to the provisions of this ordinance shall, when completed and accepted by the director of public works, become the property of the city, free and clear of all encumbrances, unless otherwise agreed to between the city and developer in a development agreement. Each and every contract entered into between a subdivider and a contractor for the installation of sewer or water lines pursuant to the provisions of this ordinance shall recite therein the provisions of this subsection.

(I) No sewer or water line shall be installed or constructed except within a public street or alley or within an easement granted to the city by appropriate written instrument filed of record with the county clerk of Hays County at the expense of the person requesting the extension of the existing line.

(J) No lift station, sanitary sewer siphon, or force main shall be constructed as a part of the sewer line extension unless the subdivider agrees that he will, at his own expense, construct such elements in accordance with the design standards provided by the director of public works or in the case of lift stations, a design using a dry and wet well installation prepared by the subdivider's engineer and approved by the director of public works, or a prefabricated installation of similar design and considered equal by the director of public works.

(K) All street, curb and gutter, and sidewalks shall be installed at subdivider's expense. In those instances where an exterior street abuts unsubdivided or undeveloped land, the developer will be required to curb and gutter his side and pave a minimum of 30 feet in width. If adjoining property develops within five years, the adjoining property owner will be required to reimburse a pro rata share to the subdivider with said pro rata share to be determined by the City of Kyle.

Sec. 15. - Withholding services and permits.

The city shall withhold all city utility services and permits of whatsoever nature including the furnishing of sewage facilities and water services from all subdivisions which have not been approved as provided by law, and no permit shall be issued by the building official/inspector of the city on any lot, tract or parcel of land other than an original or resubdivided lot in a duly approved and recorded subdivision.

Sec. 16. - Flood hazard areas.

(A) *General.*

(1) The flood hazard areas of the City of Kyle are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare. These flood losses are caused by: (a) The cumulative effect of obstructions in floodplains causing increases in flood hazard areas by uses vulnerable to floods, or hazardous to other land, which are inadequately elevated or otherwise unprotected from flood damages.

(2) This section is based upon a reasonable method of analyzing flood hazards, to wit: Hays County flood control data.

(B) *Purpose.* It is the purpose of this section to promote the public health, safety and welfare, and to minimize the losses described in section 17 by provisions designed to:

(1) Restrict or prohibit subdivision of land for uses which are dangerous to health, safety or property in time of flood or which, with reasonably anticipated improvements, will cause excessive increases in flood heights or velocities.

(2) Require that each subdivision lot in an area vulnerable to floods be provided with a safe building site with adequate access and that public facilities which serve such uses be installed with protection against flood damage at the time of initial construction.

(3) Protect individuals from buying lands which are unsuited for the intended purposes because of flood hazards by prohibiting the subdivision of unprotected flood hazard lands, requiring that the flood hazards areas be delineated on the final plat, and reserving through deed restrictions areas not suitable for development.

(C) *Application.* This section shall apply to all land within the Plum Creek planned unit development delineated as flood hazard areas on City of Kyle maps.

(D) *Warning and disclaimer of liability.* The degree of flood protection required under this section is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that area outside the delineated flood hazard areas or land uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Kyle or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(E) *Land suitability.* No land shall be subdivided which is held unsuitable for its intended use by the planning commission for reasons of flooding, inadequate drainage, soil and rock formations with severe limitations for development, susceptibility to mudslides or earthslides, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities, or any other feature harmful to the health, safety or welfare of the future residents or property owners of the proposed subdivision or the neighboring community at large. However, the planning commission may approve the preliminary and final plats if subdividers improve lands consistent with the standards of this and other applicable ordinances to make subdivision areas, in the opinion of the planning commission, suitable for their intended uses. The planning commission may also approve the preliminary and final plats if subdividers agree to make suitable improvements and place a sum in escrow pursuant to this ordinance to guarantee performance. In determining the appropriateness of land subdivision at a site, the planning commission shall consider the objectives of this section and:

(1) The danger of life and property due to the increased flood heights or velocities caused by subdivision fill, road, and intended uses.

(2) The danger that intended uses may be swept onto other lands or downstream to the injury of others.

(3) The adequacy of proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions under flood conditions.

(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(5) The importance of the services provided by the proposed facility to the community.

(6) The availability of alternative locations not subject to flooding for the proposed subdivision and land uses.

(7) The compatibility of the proposed uses with existing development and development anticipated in the foreseeable future.

(8) The relationship of the proposed subdivision to the city's comprehensive plan and floodplain management program for the area.

(9) The safety of access to the property for emergency vehicles in times of flood.

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(F) *Building site improvements.*

(1) No subdivision or part thereof shall be approved if proposed subdivision levees, fills, structures or other features will individually or collectively significantly increase flood flows, heights, or damages.

(2) Building sites for residences, motels, resorts, or other dwelling accommodation uses shall not be permitted in flood way areas. Sites for these uses may be permitted outside the flood way if the sites are elevated or filled to a height at least one foot above the elevation of the regulatory flood or if other provisions are made for elevating or adapting structures to achieve the same result. Required fill areas must extend five feet beyond the limits of intended structures and, if the subdivision is not to be sewered, must include areas for on site waste disposal.

(3) Building sites for structures not included in (F)(2) shall similarly not be permitted in flood way areas. Such sites located outside the floodway shall ordinarily be protected as herein provided. However, the planning commission may allow subdivision of areas for commercial and industrial use at a lower elevation if the subdivider protects the areas to a height of one foot above the regulatory flood protection elevation by levees, seawalls, channel modifications, or other protective techniques; or if the subdivider assures that uses will be protected through structural floodproofing, flood warning systems or other techniques specified in section 12, subsection (F).

(4) If the planning commission determines that only part of a proposed plat can be safely developed, it shall limit development to that part and shall require that the development proceed consistent with this determination.

(5) When the subdivider does not intend to develop the plat himself and the planning commission determines that additional use controls are required to ensure safe development, it may require the subdivider to impose appropriate deed restrictions on the land. Such deed restrictions shall be inserted in every deed and noted on the face of the final recorded plat.

(G) *Drainage facilities.* Storm drainage facilities shall be designed to store and convey the flow of surface waters from a 100-year frequency storm without damage to persons or property. The system shall insure [ensure] drainage at all points along streets, and provide positive drainage away from buildings and on site waste disposal sites. The planning commission may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate less frequent floods. Drainage plans shall be consistent with local and regional drainage plans.

(H) *Roads.* Except as approved by the planning commission and city council on the recommendation of the city engineer, the finished elevation of proposed streets shall be no more that zero feet below the regulatory flood protection elevation. The planning commission may require, where necessary, profiles and elevation of streets to determine compliance with this requirement. Drainage openings shall be sufficient to discharge flood flows without unduly increasing flood heights.

(I) *Sanitary sewer facilities.*

(1) The planning commission may prohibit installation of sewage disposal facilities requiring soil absorption systems where such systems will not function due to high ground water, flooding, or unsuitable soil characteristics. The planning commission may require that the subdivider note on the face of the plat and in any deed of conveyance that soil absorption fields are prohibited in designated areas.

(2) The planning commission may prescribe adequate methods for waste disposal. If a sanitary sewer system is located on or near the proposed subdivision, the planning commission shall

require the subdivider to provide sewage facilities to connect to this system where practical, and shall prescribe the procedures to be followed by the subdivider in connecting to the system.

(J) *Water facilities.* All water systems including individual wells located in floodprone areas, whether public or private, shall be floodproofed to a point at or above the flood protection elevation. If there is an existing public water supply on or near the subdivision, the planning commission shall require the subdivider to convert to this system.

(K) *Erosion and sediment control measures.* The planning commission may require the subdivider to utilize grading techniques, subdivision design, landscaping, sedimentation basin, special vegetation cover, and other measures to reduce erosion and sediment.

(L) *Floodproofing.* The following techniques, designs, [and] practices shall be used, as appropriate, to sufficiently address floodproofing requirements:

(1) Anchorage to resist flotation and lateral movement.

(2) Installation of watertight doors, bulkheads, and shutters, or similar methods of closure.

(3) Reinforcement of walls to resist water pressures.

(4) Use of paints, membranes, or mortars to reduce seepage of water through walls.

(5) Addition of mass or weight to structures to resist flotation.

(6) Installation of pumps to lower water levels in structures.

(7) Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters.

(8) Installation of pumps or comparable facilities for subsurface drainage systems to relieve external foundation wall and basement flood pressures.

(9) Building design and construction to resist rupture or collapse caused by water pressure or floating debris.

(10) Installation of valves or controls on sanitary and storm drains which permit the drains to be closed to prevent backup of sewage and stormwaters into buildings or structures.

(11) Location and installation of electrical equipment, circuits and electrical appliances so that they are protected from inundation by the regulatory flood.

(12) Location and storage facilities for chemical, explosives, buoyant materials, flammable liquids or other toxic materials which could be hazardous to public health, safety and welfare at elevations above the height associated with the regulatory protection elevation; or design of such facilities to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into floodwaters.

Sec. 17. - Authority of director of public works.

The director of public works is hereby authorized and directed to promulgate rules, regulations, standards and specifications for the construction, installation, design, location and arrangement of streets, curbs, streetlights, street signs, alleys, utility layouts, utility easements, gates for utility easements, sidewalks, water supply and water distribution systems, fire hydrants, sewage disposal systems, septic tanks, water wells, monuments, criteria for drainage easement requirements, drainage facilities, and crosswalk ways. He shall file same with the city secretary at least 15 days before they become effective. He may amend the same from time to time, provided that an amendment must be filed with the city secretary at least 15 days before it becomes effective. No such rules, regulations, standards and specifications shall conflict with this or any other ordinances of the City of Kyle, Texas. All such improvements shall be constructed, installed, designed, located and arranged by the subdivider in accordance with such rules, regulations, standards and specifications.

Sec. 18. - Approval procedure.

(A) When an application for a subdivision is filed, the planning commission shall act on the plat within 30 days after the date the complete application is filed. The city council shall act on such plat within 30 days after the date of final action by the planning commission. The plat shall be considered approved by the planning commission and/or the city council, respectively, unless it is disapproved within that period of time.

(B) In all instances where a plat is considered approved by the inaction of the planning commission, the city council shall act on such plat within 30 days after the effective date of such approval by inaction. A plat is considered approved by the city council unless it is disapproved within that period; provided that an approved by the city council with conditions shall be deemed a disapproval absent such conditions being satisfied.

(C) A plat that complies with the requirements of V.T.C.A., Local Government Code ch. 212 and that satisfies all the requirements of this ordinance and any written agreements with the landowner, the PUD subdivider, or their predecessors shall be approved by the planning commission and the city council.

Sec. 19. - Applicability and conflicting or inconsistent ordinances.

(A) This ordinance shall be applicable only to the Plum Creek planned unit development.

(B) Whenever the standards and specifications in this ordinance conflict with or are inconsistent with those contained in another ordinance regulating the development and subdivision of land into legal lots, the provisions of this ordinance shall govern and control. This ordinance supersedes and replaces the applicability of all inconsistent and conflicting ordinances with respect to the subdivision and platting of land within the Plum Creek planned unit development.

Sec. 20. - Severability clause.

Should any portion or part of this ordinance be held for any reason invalid or unenforceable, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

Sec. 21. - Effective date.

This ordinance shall be effective on the date of adoption by the city council as shown herein below.

Sec. 22. - Open meetings.

That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, V.T.C.A., Local Government Code ch. 551.

Approved and Adopted this the 30th day of June 1997.

Chapter 44 - TAXATION

ARTICLE I. - IN GENERAL

Sec. 44-1. - Goods-in-transit.

The goods-in-transit, as defined V.T.C.A., Tax Code § 11.253(a)(2), shall remain subject to taxation by the city.

(Ord. No. 520, 11-20-2007)

State Law reference— Authority to tax goods-in-transit, V.T.C.A., Tax Code § 11.253(j).

Secs. 44-2—44-20. - Reserved.

ARTICLE II. - PROPERTY TAX[1]

Footnotes:

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State Law reference— Property taxes, V.T.C.A., Tax Code § 1.01 et seq.

DIVISION 1. - GENERALLY

Secs. 44-21—44-43. - Reserved.

DIVISION 2. - FREEPORT EXEMPTION

Sec. 44-44. - Approval of Freeport exemption.

The city council does further hereby acknowledge and/or approve a property tax exemption for all items classified as "Freeport property" as provided for under the V.T.C.A., Tax Code § 11.251 and the Texas Constitution.

(Ord. No. 255-B, § 3, 8-2-2005)

Secs. 44-45—44-61. - Reserved.

DIVISION 3. - HOMESTEAD EXEMPTIONS[2]

Footnotes:

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State Law reference— Homestead exemption, V.T.C.A., Tax Code § 11.13.

Sec. 44-62. - Homestead tax exemption.

The city hereinafter increases the homestead tax exemption for citizens qualifying pursuant the article 8, section 1b of the state Constitution to be exempted from the first $30,000.00 in city ad valorem taxes. The city manager shall transmit this division to the county tax assessor collector and take such other actions as are reasonably necessary to implement this article for the taxing years 2007, and forward.

(Ord. No. 216, 8-19-1986; Ord. No. 498, § 2, 5-15-2007)

State Law reference— Homestead exemption for elderly or disabled persons, V.T.C.A., Tax Code § 11.13(d)—(f).

Secs. 44-63—44-82. - Reserved.

ARTICLE III. - HOTELS AND MOTELS[3]

Footnotes:

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State Law reference— Authority to levy tax on hotels and motel occupancy, V.T.C.A., Tax Code § 351.001 et seq.

Sec. 44-83. - Definitions.

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

Consideration means the cost of a room, or value given for the use of a room, that is ordinarily used for sleeping, and does not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

Extraterritorial jurisdiction (ETJ) means the extraterritorial jurisdiction of the city as established by state law and all extraterritorial jurisdiction as is otherwise established by the city and the landowners as authorized by state law.

Hotel means a building in which members of the public obtain sleeping accommodations for consideration. The term "hotel" includes a hotel, motel, tourist home, tourist house, tourist court, lodginghouse, inn, roominghouse, or bed and breakfast. The term "hotel" does not include a hospital, sanitarium, nursing home, or a dormitory as defined in V.T.C.A., Tax Code § 156.001.

Occupancy means the use or possession, or the right to the use or possession, of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's uses, possession, or right to use or possession extends for a period of less than 30-consecutive calendar days.

Occupant means any person who, for consideration, uses, possesses, or has a right to use or possess, any room in a hotel if the room is one ordinarily used for sleeping.

Person means one or more human beings, individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in cases under USCA title 11, receivers, and fiduciaries.

Quarter or *quarterly period* means a quarter of the calendar year as follows:

(1) The first quarter is composed of the months of January, February and March;

(2) The second quarter is composed of the months of April, May and June;

(3) The third quarter is composed of the months of July, August and September; and

(4) The fourth quarter is composed of the months of October, November and December.

Regulations means the provisions of any applicable ordinance, rule, regulation or policy.

Revenue includes any interest derived from the revenue.

(Ord. No. 365, § 1, 10-3-2000)

State Law reference— Definitions, V.T.C.A., Tax Code § 351.001.

Sec. 44-84. - Imposition of tax.

(a) There is hereby levied a tax upon the cost of occupancy of sleeping rooms in hotels, located within the city or within the city's extraterritorial jurisdiction (ETJ), for which the occupancy cost of the room is $2.00 or more per day not including the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

(b) Such occupancy tax shall be seven percent of the consideration paid for such sleeping room. The tax shall not apply to a person who is a permanent resident of the sleeping room or who is otherwise exempt from paying the tax pursuant to V.T.C.A., Tax Code §§ 156.001 et seq. and 351.001 et seq.

(Ord. No. 365, § 2, 10-3-2000)

State Law reference— Levy, V.T.C.A., Tax Code § 351.002.

Sec. 44-85. - Collection of tax.

Every person owning, operating, managing or controlling any hotel within the city or its extraterritorial jurisdiction shall collect the tax imposed and provided in this article.

(Ord. No. 365, § 3, 10-3-2000)

State Law reference— Authority to levy in extraterritorial jurisdiction, V.T.C.A., Tax Code § 351.025.

Sec. 44-86. - Records and reporting of receipts.

Every person owning, operating, managing or controlling any hotel within the city or its extraterritorial jurisdiction shall:

(1) Keep and maintain for such hotel good, adequate and accurate records for the hotel, sufficient to show and establish the consideration paid to and received by the hotel, the true and correct amount of taxes due and payable by the hotel pursuant to this article, and the applicable exemptions if any (the records);

(2) Keep and maintain the records for each calendar year, organized by calendar year, for a period of five years after the end of each such calendar year; and

(3) On or before the last day of the month following each quarter, every person required to collect tax imposed by this article shall file a report with the city secretary showing the consideration paid for all sleeping rooms during the preceding quarter and the amount of tax collected on such occupancies and sleeping rooms.

(Ord. No. 365, § 4, 10-3-2000)

Sec. 44-87. - Payment of tax.

On or before the last day of the month following each quarter, every person required to collect the tax imposed by this article shall pay the tax due to the city for the preceding quarterly period. If the occupancy of any sleeping room is by state law exempt from the tax established pursuant to section 44-84, it shall be responsibility of the person required to collect the tax to document and provide records establishing the exemption.

(Ord. No. 365, § 5, 10-3-2000)

Sec. 44-88. - Assessment for late report or payment.

Every person who shall fail to file a report as required herein or who shall fail to pay the tax as imposed herein when said report or payment is due, shall forfeit an additional amount equal to five percent of such tax as an additional penalty.

(Ord. No. 365, § 6, 10-3-2000)

Sec. 44-89. - Interest on taxes due and unpaid.

Taxes remaining due and unpaid from and after last day of the calendar month following the quarter for which such taxes are due and payable shall draw interest at the rate of one percent per calendar month beginning 60 days from the last day of the quarterly period for which such taxes are payable.

(Ord. No. 365, § 7, 10-3-2000)

Sec. 44-90. - Attorney fees and costs.

(a) The city attorney or other attorney acting for the city may bring suit against a person who is required to collect the tax imposed by this article and pay the collections over to the city and who has failed to file a tax report or pay the tax when due to collect the tax not paid or to enjoin the person from operating a hotel in the city until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this article, the person is liable to the city for:

(1) The city's reasonable attorney's fees;

(2) The costs of an audit conducted under subsection (b)(1) of this section, as determined by the city using a reasonable rate, but only if the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and

(3) A penalty equal to 15 percent of the total amount of the tax owed.

(b) If a person required to file a tax report under this article does not file the report as required by the city, the city attorney or other attorney acting for the city may determine the amount of tax due under this article by:

(1) Conducting an audit of each hotel in relation to which the person did not file the report as required by the city; or

(2) Using the tax report filed for the appropriate reporting period under V.T.C.A., Tax Code § 156.151 in relation to that hotel.

(c) If the person did not file a tax report under V.T.C.A., Tax Code § 156.151 for that reporting period in relation to that hotel, the city attorney or other attorney acting for the city may estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this article or V.T.C.A., Tax Code § 156.151. An estimate made under this subsection is prima facie evidence of the amount of tax due for that period in relation to that hotel.

(Ord. No. 365, § 8, 10-3-2000)

State Law reference— Similar provision, V.T.C.A., Tax Code § 351.004(a).

Sec. 44-91. - Collection of delinquent taxes.

(a) The city manager is authorized to notify the city attorney as to any hotel occupancy tax for which a report is not timely filed, or for which the tax is not timely paid, as required by this article. Upon the city manager referring the delinquent report or delinquent tax to the city attorney, an additional amount equal to 15 percent of the taxes, penalties and interest due shall be added to the amount due and payable. Upon the receipt of such notification from the city manager, the city attorney:

(1) Is directed to promptly give written notice to the person owing, operating, managing or controlling the hotel for which such report has not been received, or for which the taxes have not been paid, demanding the report promptly filed and the taxes be promptly paid, as applicable;

(2) Is directed to pursue the demand for performance and compliance with this article, including the payment and collection of all applicable penalties, interest, late charges, attorney fees and charges; and

(b) In the event the report is not filed or, as applicable, all amounts due and payable are not paid, within 30 days after the date of the demand by the city attorney, the city attorney is authorized and directed to file suit to obtain:

(1) The filing of any report required by this article;

(2) The payment of all taxes, penalties, interest and fees due and payable pursuant to this article;

(3) An injunction prohibiting the continued operation of the hotel for which the report has been filed, or for which the taxes have not been paid; and

(4) Such other and further relief that may be available at law or in equity.

(Ord. No. 365, § 9, 10-3-2000)

Sec. 44-92. - Audits.

The state has authority to audit any hotel for compliance with the V.T.C.A., Tax Code § 156.001 et seq., and the city shall have the authority to audit any hotel for the purpose of determining, verifying and requiring compliance by such hotel with the requirements of this article. The city manager is authorized to request the comptroller of public accounts, or any other appropriate state agency, to audit any hotel, and the city may audit the records of any hotel, or cause such records to be audited by the city, to determine and verify the taxes payable, paid and owe by such hotel pursuant to this article. If a city audit finds the hotel has underpaid taxes imposed by this article the hotel shall promptly pay the additional taxes due plus the penalties and interest thereon as provided in this article. If the city council finds from the city audit and any other evidence that the hotel underpaid by more than 15 percent the taxes due for any calendar year, or that the hotel has failed in a material respect to maintain the records, then, in that event, the hotel shall pay the city the reasonable cost and expense incurred by the city for the audit.

(Ord. No. 365, § 10, 10-3-2000)

Sec. 44-93. - Deposits and uses.

Subject to the legislative discretion of the city council a percentage of all hotel occupancy taxes received by the city may be deposited into an escrow account to be held and maintained by the city. The funds and balances of the escrow account shall be managed and invested in compliance with the city's investment policy and all earnings of such escrow account shall be deposited in and remain in such account. The escrow account shall be reserved, held and increased for any purpose allowed by V.T.C.A., Tax Code § 351.101 et seq., as amended.

(Ord. No. 365, § 11, 10-3-2000)

Sec. 44-94. - Books and accounts.

The city shall maintain books and accounts that accurately identify the receipt and expenditure of all revenue derived from the tax as provided in V.T.C.A., Tax Code § 351.108.

(Ord. No. 365, § 12, 10-3-2000)

State Law reference— Records, V.T.C.A., Tax Code § 351.108.

Sec. 44-95. - Uses of funds.

Subject to the exercise of legislative discretion and appropriations by the city council, the hotel occupancy tax receipts may be set aside, budgeted and appropriated for use and expenditure by the city for the purposes authorized by V.T.C.A., Tax Code § 351.101 et seq., as amended.

(Ord. No. 365, § 13, 10-3-2000)

Sec. 44-96. - Criminal penalty.

Each person required by this article to collect the tax imposed herein, to pay the tax to the city, to make reports as required herein, or to maintain the records, who fails to collect the tax, pay the tax, file the report, or maintain the records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed $500.00 for each offense. The failure to collect the tax, to file the required report, and to pay the tax collected prior to such payment becoming past due, and the failure to maintain the records, shall each constitute and be a separate offense punishable by fine.

(Ord. No. 365, § 14, 10-3-2000)

Secs. 44-97—44-120. - Reserved.

ARTICLE IV. - SALES TAX[4]

Footnotes:

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Editor's note—The sales tax was adopted by the voters on .

State Law reference— Local sales tax authority, V.T.C.A., Tax Code § 321.001 et seq.

Sec. 44-121. - Authorization.

The city council by majority vote of its governing body, hereby votes to retain the taxes authorized by the Local Sales and Use Tax Act, V.T.C.A., Tax Code § 321.001 et seq., on the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use, as authorized by V.T.C.A., Tax Code § 321.105.

(Ord. No. 92-A, § 1, 2-20-1979)

State Law reference— Authority to retain tax on residential use of gas and electricity, V.T.C.A., Tax Code § 321.105; retain tax on telecommunications, V.T.C.A., Transportation Code § 321.210.

Sec. 44-122. - Tax on telecommunications.

(a) A tax is hereby authorized on all telecommunications services sold within the city. For purposes of this section, the sale of communications services is consummated at the location of the telephone or other telecommunications device from which the call or other communication originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call or other communication is billed.

(b) The application of the exemption provided for in V.T.C.A., Tax Code § 321.210 is hereby repealed by the city as authorized by V.T.C.A., Tax Code § 321.210(a)(b).

(c) The rate of tax imposed by this section shall be the same as the rate imposed by the city for all other local sales and use taxes as authorized by the legislature of the state.

(Ord. No. 227, § 1, 3-15-1988)

State Law reference— Authority to retain tax on telecommunications, V.T.C.A., Tax Code § 321.210.

Secs. 44-123—44-142. - Reserved.

ARTICLE V. - TAX INCREMENT FINANCING[5]

Footnotes:

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State Law reference— Tax Increment Financing Act, V.T.C.A., Tax Code § 311.001 et seq.

Sec. 44-143. - Findings.

(a) The facts and recitations contained in the preamble of the ordinance from which this article is derived are hereby found and declared to be true and correct and are adopted as part of the ordinance from which this article is derived for all purposes.

(b) The city council further finds and declares that the creation of the zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the city.

(c) The city council further finds and declares that the zone meets the criteria and requirements of V.T.C.A., Tax Code § 311.005 because the zone contains:

  (1) Substantial areas that are predominantly open and underdeveloped;

  (2) Lack public water distribution, wastewater collection and storm drainage facilities; and

  (3) Lack adequate roadway systems for mobility, access and orderly development, each of which cause conditions that substantially impair and arrest the sound growth of the city.

(d) The city council, pursuant to the requirements of V.T.C.A., Tax Code § 311.005, further finds and declares that:

  (1) The zone is a contiguous geographic area located wholly within the corporate limits of the city;

  (2) The total appraised value of taxable real property in the zone does not exceed 15 percent of the total appraised value of taxable real property in the city and in the industrial districts created by the city;

  (3) The zone does not contain more than 15 percent of the total appraised value of real property taxable by the county, the county independent school district, Plum Creek Conservation, and county rural fire No. 5; and

  (4) The development of the property in the zone will not occur solely through private investment in the reasonably foreseeable future.

(Ord. No. 457, § 1, 11-16-2004)

Sec. 44-144. - Designation of zone.

The city, acting under the provisions of V.T.C.A., Tax Code § 311.001 et seq., including V.T.C.A., Tax Code § 311.005(a), does hereby designate as a reinvestment zone, and create and designate a reinvestment zone over the area described in exhibit A and depicted in the map exhibit B attached to the ordinance from which this article is derived, to promote the redevelopment of the area. These exhibits are on file in the city secretary's office. The reinvestment zone shall hereafter be named for identification as reinvestment Zone Number One, City of Kyle, Texas (the "TIRZ 1"). The city council specifically declares that the zone is designated pursuant to V.T.C.A., Tax Code § 311.005(a)(1) and (2).

(Ord. No. 457, § 2, 11-16-2004)

Sec. 44-145. - Board of directors.

(a) *TIRZ 1.* The TIRZ 1 shall be governed by a five person board of directors. One member of the board of directors may be appointed by the county commissioners court. The board of trustees of the Hays Independent School District (HISD), the board of the Plum Creek Conservation (PCC), and the board of Hays County Rural Fire No. 5 (HCRF 5) have waived appointment of a board member in writing prior to the date of the ordinance from which this article is derived. Four members of the board shall be appointed by the city council. If the county commissioners court waives the appointment of a member of the board of directors, the position shall be filed by an appointment made by the city council.

(b) *Qualifications.* Each member of the board shall be a qualified voter of the city, or a person at least 18 years of age who owns property within the boundaries of TIRZ 1.

(c) *Term of office.* The term of each initial director shall be determined by lot and then recorded in the minutes of the organizational meeting of TIRZ 1. Two of the initial directors shall serve an initial term of one year, and three shall serve an initial term of two years. The term of each subsequent director shall be two years. Vacancies shall be filled for the remainder of the unexpired term, by appointment made by the governing body that appointed the director who served in the vacated position.

(d) *Officers.* The city council shall annually appoint a member of the board of directors to serve as chairman of the board of directors for a one year term beginning January 1 and ending December 31. The board of directors may elect a vice-chairman to serve in the absence of the chairman, and other officers as it deems appropriate.

(e) *Meetings of directors.* The board of directors may hold its meetings at any place within the city as the board of directors may from time to time determine; provided that, in the absence of any such determination by the board of directors, the meetings shall be held at the city council chambers. The board of directors shall conduct its meetings in accordance with the requirements of the Act and the Texas Open Meetings Act, V.T.C.A., Government Code ch. 551, as amended. Regular meetings of the board of directors shall be held at such times and places as shall be designated, from time to time, by resolution of the board of directors. Notice of regular meetings need not be given to each of the directors but public notice of each meeting shall be given in the manner prescribed by law. Special meetings of the board of directors shall be held whenever called by the chairman, the vice-chairman in the absence of the chairman, or upon advice of or request by the mayor. A majority of the directors fixed by this article shall constitute a quorum for board of directors meetings. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the board of directors, unless the act of a greater number is required by law.

(f) *Authority.* The board shall have the authority specifically given to the board of directors in V.T.C.A., Tax Code ch. 311. The board of directors shall have such other authority, as may be lawfully delegated by the city council, as is delegated by the city council acting by a formal, written resolution or ordinance. Action by the board of directors that is expressly or impliedly provided in V.T.C.A., Tax Code ch. 311, or by other state law, to be subject to approval by the city council, shall not be effective until approved in writing by the city council.

(g) *Duties.* The board of directors shall perform each duty and obligation required to be performed by the board, by V.T.C.A., Tax Code § 311.001 et seq., any project or plan approved by the city council, and each such duty and obligation lawfully imposed on the board by the city council consistent with V.T.C.A., Tax Code § 311.001 et seq.

(h) *Plan.* The board of directors shall make recommendations to the city council concerning the administration of the zone. The board of directors shall prepare or cause to be prepared and adopt a project plan and a reinvestment zone financing plan for the zone as described in V.T.C.A., Tax Code § 311.011 et seq., and shall submit such plans to the city council for its approval. The city hereby delegates to the board of directors all powers necessary to prepare the project plan and reinvestment zone financing plan, subject to approval by the city council, including the power to employ any necessary consultants, that may be reasonably necessary or convenient to assist the board of directors in the preparation of the project plan and reinvestment zone financing plan.

(Ord. No. 457, § 3, 11-16-2004)

Sec. 44-146. - Duration of the zone.

The zone shall take effect on November 2, 2004, for the deposit of tax increments into the tax increment fund established pursuant to section 44-148, and termination of the operation of the zone shall occur on December 31, 2035, or at an earlier time designated by subsequent ordinance, or at such time, subsequent to the issuance of tax increment bonds, if any, that all project costs, obligations secured with tax increment revenues, and the interest thereon, have been paid in full.

(Ord. No. 457, § 4, 11-16-2004)

Sec. 44-147. - Tax increment—Base.

The tax increment base of the city or any other taxing unit participating in the zone for the zone is the total appraised value of all real property taxable by the city or other taxing unit participating in the zone and located in the zone, determined as of November 2, 2004, the year in which the zone was designated as a reinvestment zone (the tax increment base).

(Ord. No. 457, § 5, 11-16-2004)

Sec. 44-148. - Same—Fund.

There is hereby created and established a tax increment fund for the zone which may be divided into subaccounts as authorized by subsequent ordinances. All tax increments, as defined below, shall be deposited in the tax increment fund. The tax increment fund and any subaccount shall be maintained at the depository bank of the city and shall be secured in the manner prescribed by law for funds of cities in the state. The annual tax increment shall equal the property taxes levied by the city and any other taxing unit participating in the zone for that year on the captured appraised value, as defined by the Act, of real property located in zone that is taxable by the city or any other taxing unit participating in the zone, less any amounts that are to be allocated from the tax increment pursuant to the Act. All revenues from the sale of any tax increment bonds, notes or other obligations hereafter issued for the benefit of the zone by the city, if any; revenues from the sale of property acquired as part of the project plan and reinvestment zone financing plan, if any; and other revenues to be used in the zone shall be deposited into the tax increment fund. Prior to the termination of the zone, money shall be disbursed from the tax increment fund only to pay project costs, as defined by the state tax code, for the zone, to satisfy the claims of holders of tax increments bonds or notes issued for the zone, or to pay obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to V.T.C.A., Tax Code § 311.010(b).

(Ord. No. 457, § 6, 11-16-2004)

Chapter 47 - TRAFFIC AND VEHICLES

ARTICLE I. - IN GENERAL

Secs. 47-1—47-25. - Reserved.

ARTICLE II. - PARKING

DIVISION 1. - GENERALLY

Secs. 47-26—47-67. - Reserved.

DIVISION 2. - COMMERCIAL VEHICLES

Sec. 47-68. - Definitions.

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

Commercial vehicle means any commercial vehicle as defined in the V.T.C.A., Transportation Code § 621.001, that is not a passenger car or light pickup truck.

Vehicle load limit means any axle or gross weight limit as established by V.T.C.A., Transportation Code § 621.101.

(Ord. No. 339, § 2, 7-6-1999)

Sec. 47-69. - Parking of commercial vehicles.

Commercial vehicles shall not be parked and left overnight upon any public street or public way in the city.

(Ord. No. 339, § 3, 7-6-1999)

Sec. 47-70. - Commercial vehicles within residential areas.

It shall be unlawful for any person or any owner to leave, park or stand any commercial vehicle, truck-tractor, road tractor, semitrailer, bus, truck or trailer with a rated capacity in excess of one ton, according to the manufacturer's classification, upon any public street or highway within any area zoned as residential according to chapter 53, zoning. This shall not prevent the parking or standing of the vehicles described in this section in zoned areas for the purpose of expeditiously loading and unloading passengers, freight or merchandise, but not otherwise.

(Ord. No. 339, § 4, 7-6-1999)

Sec. 47-71. - Exceptions.

The following vehicles are exempt from the terms of this article while engaged in the listed activity:

(1) Emergency vehicles (as defined by state law) responding to or from, or at the scene of, an emergency call;

(2) Vehicles being used to provide any municipal service such as the installation, repair or maintenance of any public street, asset or property, collection of garbage, grounds keeping, etc.; and

(3) Vehicles being used to install, repair or maintain any public service or utility such as telephone, electricity, cable television, gas, water or sewer line.

(Ord. No. 339, § 5, 7-6-1999)

Sec. 47-72. - Enforcement.

The chief of police and members of the police department, both regular and reserve officers, are empowered to enforce this article.

(Ord. No. 339, § 6, 7-6-1999)

Sec. 47-73. - Towing and removal.

Any commercial vehicle which shall be or remain standing or parked upon any public street, avenue, way, alley or other public place in violation of this article, the owner or driver of which vehicle has been given previous notice or citation for parking such vehicle in violation of this article, may be removed by or upon an order by a police officer. The owner of such vehicle shall be responsible for the payment of any fees incurred for the towing and/or storage of said vehicle.

(Ord. No. 339, § 7, 7-6-1999)

Sec. 47-74. - Parking on private property.

It shall be unlawful to park any commercial vehicle on any private property without the consent of the owner of the property.

(Ord. No. 339, § 8, 7-6-1999)

Sec. 47-75. - Prima facie evidence.

In any prosecution charging a violation of this article governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of this article, together with proof that the defendant named in the complaint was, at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during, which such violation occurred.

(Ord. No. 339, § 10, 7-6-1999)

Secs. 47-76—47-93. - Reserved.

ARTICLE III. - SPECIFIC STREET REGULATIONS[1]

Footnotes:

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State Law reference— Authority to alter speed limits, V.T.C.A., Transportation Code § 545.356.

Sec. 47-94. - Regulations on file.

The speed limits, parking regulations, stop, yield and through streets and other specific street traffic regulations are not printed in this Code, but are on file in the city secretary's office.

Secs. 47-95—47-116. - Reserved.

ARTICLE IV. - TRAFFIC CONTROL DEVICES[2]

Footnotes:

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State Law reference— Traffic control devices, V.T.C.A., Transportation Code § 544.001 et seq.

Sec. 47-117. - Director of public works duty to install; file report.

(a) The city council shall by ordinance direct that the director of public works shall have the duty of erecting or installing upon, over, along, or beside any highway, street or alley signs, signals and markings, or cause the same to be erected, installed or placed in accordance with this article and consistent with the Texas Manual of Uniform Traffic Control Devices for Streets and Highways, volumes I and II. Said traffic control devices shall be installed immediately or as soon as such specific device, sign or signal can be procured.

(b) Whenever the director of public works has erected and installed any official traffic control device, signal or sign at any location in the city, or has caused the same to be done under his directions, in obedience to this article, the Texas Manual of Uniform Traffic Control Devices for Streets and Highways, volumes I and II, or another ordinance directing the erection of such device, signal or sign shall thereafter file a report with the city secretary in writing and signed officially by the director of public works, where the same was erected or installed. The city secretary shall file and maintain such report of the director of public works among the official papers of the office of the city secretary.

(Ord. No. 102B, § 6, 6-17-1980)

Sec. 47-118. - Records to be prima facie evidence.

It being unlawful for any person other than the director of public works, acting pursuant to an ordinance of the city, to install or cause to be installed any signal, sign or device purporting to direct the use of the streets or the activities on those streets of pedestrians, vehicles, motor vehicles, or animals; proof, in any prosecution for a violation of this article or any traffic ordinance of the city, that any traffic control device,

sign, signal or marking was actually in place on any street shall constitute prima facie evidence that the same was installed by the director of public works pursuant to the authority of this article and of the ordinance directing the installation of such device, signal or marking.

(Ord. No. 102B, § 7, 6-17-1980)

Secs. 47-119—47-149. - Reserved.

ARTICLE V. - SCHOOL CROSSING GUARDS[3]

Footnotes:

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State Law reference— School crossing guards, V.T.C.A., Local Government Code § 343.001 et seq.

Sec. 47-150. - Appointment; compensation; equipment.

(a) The authorities of the city's elementary school and middle school may appoint a maximum of nine school guards for each of the two schools.

(b) The appointed school crossing guards may be nonpaid volunteers or may be hired for compensation.

(c) Compensation for hired school crossing guards will be the responsibility of the school system authority.

(d) All the school crossing guard equipment to be furnished by the school system.

(Ord. No. 219, § 1, 4-7-1987)

Sec. 47-151. - Instruction—Required; safety equipment.

(a) School crossing guards shall attend a minimum of eight hours of instruction from the city police department in conjunction with the school authorities pertaining to the duties and authority of a school crossing guard before being allowed to act in the capacity of a school crossing guard.

(b) School crossing guards shall be required to wear distinctive, highly visible, and uniformly marked safety vests and other equipment, as appropriate, to be approved by the city police department.

(Ord. No. 219, § 2, 4-7-1987)

Sec. 47-152. - Same—Content.

(a) Instruction of school crossing guards shall be in the form of classroom training and actual crossing instruction.

(b) Instruction of school crossing guards shall contain, but not be limited to:

(1) School rules.

(2) Legal authority.

(3) Crossing safety procedures.

(4) Emergency procedures.

(Ord. No. 219, § 3, 4-7-1987)

Sec. 47-153. - Authority.

School crossing guards shall have the authority to control the crossing of children in locations approved by the city.

(Ord. No. 219, § 4, 4-7-1987)

Sec. 47-154. - Article not to limit.

This article does not limit the authority of the city to employ school crossing guards.

(Ord. No. 219, § 5, 4-7-1987)

Sec. 47-155. - City not obligated to provide guards.

The authorities of the city schools and the city shall not, by this article, be obligated to provide school crossing guards.

(Ord. No. 219, § 6, 4-7-1987)

Secs. 47-156—47-180. - Reserved.

ARTICLE VI. - GOLF CARTS[4]

Footnotes:

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Editor's note— Ord. No. 783, § 2—7, adopted March 4, 2014, amended Ch. 47 by adding provisions pertaining to golf carts. For purposes of classification and to preserve the style of this Code, and at the editor's discretion, these provisions have been included as Art. VI, §§ 47-181—47-186. Sections 1, 8—10 of Ord. No. 783, pertaining to findings, savings clause, severability, and effective date, respectively, have been omitted from codification.

Sec. 47-181. - Definitions.

As used in this article, the following terms shall have the meaning indicated as follows:

City means the City of Kyle, Texas.

Driver's license means an authorization issued by the department of public safety for operation of a motor vehicle. The term includes a temporary license or instruction permit and an occupational license.

Golf cart shall have the meaning assigned by the V.T.C.A., Transportation Code § 502.001, as amended, and means a motor vehicle commonly referred to as a golf cart which must have a minimum of

four wheels and has an attainable top speed not greater than 25 miles per hour on a paved level surface and which is manufactured primarily for transporting persons on a golf course and in compliance with those federal motor vehicle safety standards for low-speed vehicles. Specifically excluded from this definition are those motorized conveyances commonly referred to as all-terrain vehicles ("ATVs"), off-road vehicles, four-wheelers, Mules, Gators and design-altered golf carts which have been altered to allow them to travel at a speed greater than 25 miles per hour.

Nighttime shall have the meaning assigned by V.T.C.A., Transportation Code § 541.401(5) and means the period beginning one-half hour after sunset and ending one-half hour before sunrise.

Operate means the driving of a golf cart.

Operator means any person driving and having physical control over the golf cart.

Park or *parking* means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers.

Parking area means those areas accessible to the public by motor vehicular traffic and which are designated for temporary parking of motor vehicles, usually in places referred to as parking lots.

Street means a public roadway of the City of Kyle, Texas by whatever name (e.g., road, alley, avenue, highway, route, boulevard, etc.) that:

(1) Provides for no more than two lanes of vehicular traffic per direction; or

(2) Is not designated as part of either the state or federal highway system.

(Ord. No. 783, § 2, 3-4-2014)

Sec. 47-182. - Permitted locations of operation.

Golf carts are permitted to be operated on:

(1) Streets ("permitted streets") where the posted speed limit is 35 miles per hour or less, and the street is not designated as part of a state highway system, including Interstate Highway 35;

(2) A "public highway" as defined by the V.T.C.A., Transportation Code § 502.001, if the public highway is in the corporate limits of the City; and,

(3) A parking area as defined by this ordinance.

(Ord. No. 783, § 3, 3-4-2014)

Sec. 47-183. - Registration permit.

(a) Before any golf cart may be operated on any permitted street, public highway, or parking area of the city ("permitted locations"), it must be registered by the Texas Department of Motor Vehicles and display the license plate as mandated by the V.T.C.A., Transportation Code § 551.402.

(b) In addition to any state requirement for registration, all golf carts operated on permitted locations shall be registered with the city. The chief of police shall establish registration procedures and shall cause a permit to be issued to all applicants who have fulfilled the proper registration requirements. The city council of the city shall review and approve the registration requirements before the requirements are effective.

(c) The cost for the permit from the city shall be $20.00, and the permit shall expire on December 31 of the following year.

(Ord. No. 783, § 4, 3-4-2014)

Sec. 47-184. - Required equipment.

(a) A golf cart properly registered under section 47-183 must be equipped with the following equipment as mandated by the V.T.C.A., Transportation Code § 551.404(a), as amended, and/or required by the city to operate on permitted locations:

(1) Operational headlamps;

(2) Operational tail lamps;

(3) Side reflectors;

(4) Operational parking brake; and

(5) Rearview mirror(s)

(b) A golf cart that is operated at a speed of not more than 25 miles per hour shall display a slow-moving-vehicle emblem when it is operated on a public highway, as defined by V.T.C.A., Transportation Code § 502.001.

(c) Additionally, golf carts driven during the nighttime shall be equipped with the following:

(1) Turn signals;

(2) Horn;

(3) Brake lights; and

(4) Seat belts.

(d) Equipment and its installation must meet standards provided by Texas Transportation Code, as amended.

(e) All such safety equipment shall be maintained as required by state law.

(Ord. No. 783, § 5, 3-4-2014)

Sec. 47-185. - Operation regulations.

(a) All registered operators of golf carts shall:

(1) Be licensed to operate a motor vehicle as provided by V.T.C.A., Transportation Code § 521.021, as amended, and carry a valid driver's license as provided by V.T.C.A., Transportation Code § 521.025, and all driver's license permissions and restrictions shall apply to the operating of a golf cart;

(2) Abide by all traffic regulations applicable to vehicular traffic when operating a golf cart in the city;

(3) Use standard hand signals for turning during daylight if the operator's golf cart is not equipped with turn signals;

(4) Not operate or park a golf cart on a sidewalk at any time;

(5) Not pull any object or person with a golf cart in a permitted location;

(6) Maintain financial responsibility as required for other passenger vehicles in the V.T.C.A., Transportation Code § 601.051;

(7) Not intentionally or knowingly allow an unlicensed or unregistered operator to operate a golf cart in violation of this chapter;

(8) Not exceed the seating capacity of the golf cart as designed by the manufacturer;

(9) Be allowed to cross streets which are otherwise not permitted locations under this article.

(b) Operators and passengers of golf carts shall:

(1) Remain seated at all times while the golf cart is in motion;

(2) Be three years old or older.

(Ord. No. 783, § 6, 3-4-2014)

Sec. 47-186. - Penalty.

Any person who violates this article shall be guilty of a misdemeanor punishable by a fine not to exceed $200.00.

(Ord. No. 783, § 7, 3-4-2014)

ARTICLE I. - IN GENERAL

Secs. 50-1—50-18. - Reserved.

ARTICLE II. - WATER AND WASTEWATER SYSTEM GENERALLY

Sec. 50-19. - Definitions.

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

Apartment means a living unit designed for one family in a building having separate living units for two or more families or households living independently of each other and each portion or unit being equipped for preparation of food and having sleeping quarters.

Apartment building means a building or group of buildings having two or more apartments.

Commercial unit means any building or group of buildings thereof built on-site utilized for any enterprise other than a residential unit or multiunit.

Construction use means any water used during the construction of a single-family unit, multifamily unit, or commercial unit or associated structures such as road and drainage facilities.

Flat rate sewer customers means a customer who only receives wastewater service from the city. These customers will be billed a flat monthly rate, independent of water use.

Irrigation unit means a separate meter installed solely for the purposes of irrigation.

Manufactured home or *mobile home* shall have the meaning given in V.T.C.A., Occupations Code § 1201.001 et seq.

Manufactured home or mobile home park means a unified development for manufactured housing or mobile home spaces arranged on a tract of land with the individual lots or parcels being held under a common ownership and rented or leased to the occupants.

Multiple-family residential unit means any building or portion thereof built on-site which is designed for or used exclusively for residential purposes, including two-family, three-family and four-family residential units and apartments.

Multiunit means each separate multiple-family unit, apartment, or each manufactured home or mobile home that is situated in a mobile home park serviced by one or more master water meters for which the metered water usage is billed by the city to the owner, operator or manager of the multiple-family unit, apartment, or mobile home park. Submetering by the customer billed for the master meter shall not affect the categorization as multiunit.

Single-family residential unit means any building or portion thereof built on-site which is designed or used exclusively to accommodate one household for living, sleeping, eating, cooking and sanitation; and that is intended to be utilized as a single-family dwelling, including manufactured/mobile homes which are not located within a mobile home park.

(Ord. No. 493, § 2, 3-20-2007)

Sec. 50-20. - Connection fees (tap fees).

(a) For any connection made by any user to the city's water or sewer system, the applicant shall pay a connection or tap fee to the city based on the rates and location as specified in appendix A to this Code.

(b) Water or sewer service shall not be activated until such fees are paid.

(Ord. No. 493, § 3, 3-20-2007)

Sec. 50-21. - Metering.

Meters shall be required to measure the consumption of water for all water accounts connected to the city's water system. A service charge in an amount as specified in appendix A to this Code shall be made for each water meter installation along with an additional fee equal to the replacement cost of the specific meter size and model installed for water service. No future dual connections (more than one user on a single meter) shall be permitted. In the event there now is such a situation existing (two users on one meter), the appropriate base charge will be levied against each and the water/wastewater usage charges applied proportionately. For wastewater only customers, a service charge in an amount as specified in appendix A to this Code shall be paid. Water or sewer service shall not be activated until such fees are paid.

(Ord. No. 493, § 3, 3-20-2007)

Sec. 50-22. - Water and wastewater deposits and other setup or transfer fees.

(a) *Deposits.* Applications for water, sewer and trash collection services or sewer and trash collections services only must be submitted to the utility billing section of the department of finance. A deposit in an amount as specified in appendix A to this Code shall be collected from each customer requesting water, sewer and trash collection services. A deposit in an amount as specified in appendix A to this Code shall be collected from each customer requesting sewer and trash collection services only. Partial payments of the initial deposit, service and meter connection fees may be made in two equal monthly installments. These amounts will be added to the regular monthly billing statements. No time extension will be allowed or granted. Such deposits shall be returned after 24 months to each customer whose payment record reflects no late payments, delinquencies or other financial obligations still owed by the customer to the city. This applies only to the immediately preceding 24-consecutive months. Pursuant to state law, no interest shall be paid by the city on customer deposits. The director of finance may establish procedures for administering landlord accounts to facilitate procedures for rental properties, so long as deposits are maintained on each active account in amounts that are prescribed herein. Deposits for construction accounts will be established by the director of finance but shall not be less than the replacement cost of hydrant meters used for metering construction accounts. city staff is further authorized to deduct the cost of any repairs to construction meters that may be needed due to damages incurred to hydrant meters, that are in excess of normal wear and tear.

(b) *Additional deposit and reconnect fee.* Should service be interrupted for nonpayment of the monthly bill, an additional deposit and reconnection fees shall be imposed to restore service. The additional deposit shall be calculated as follows:

    (1) The preceding 12-months' billing record will be totaled, and averaged to form a basis for the additional deposit.

    (2) The monthly average will then be multiplied by two, and this amount shall be the required deposit to restore service.

    (3) The existing initial deposit shall not be combined with the additional deposit to restore service once it has been disconnected. Additional deposits shall be imposed subsequent to the deposit paid for initial service, and shall not be reduced by that amount nor shall that initial deposit be used to supplement the new deposit for reconnection.

(4) Refunds of additional deposits shall comply with section 50-23. Nonrefundable reconnect fees shall be imposed on the following basis:

a. Within the corporate limits of the city.

b. Outside the corporate limits of the city.

A minimum one third of the delinquent bill must be paid in addition to the new deposit and reconnect fee in order for service to be restored.

(c) *Transfer fee.* A nonrefundable transfer fee shall be collected from each customer requesting a transfer of service from one service address in the city to another.

(Ord. No. 493, § 4, 3-20-2007)

Sec. 50-23. - Rates and charges for water service.

(a) *Minimum monthly charge.* The rates and charges for services to be provided by the water system of the city shall consist of a minimum monthly fee (the minimum monthly charge), and a fee based on the amount of metered water usage (the volume charge). The minimum monthly charge varies by size of meter and whether or not the customer is within or outside the city limits. Minimum monthly charges for customers outside the city limits are 1.2 times the inside city rates. Actual fees by size of meter, customer class and location relative to the city limits are provided in appendix A to this Code.

(b) *Usage fees.* In addition to the minimum monthly charge, rates and charges for services to be provided by the water system of the city shall consist of a fee based on metered water usage (the volume charge). The volume rate for all customers outside the city limits are 1.2 times the amount for customers inside the city limits. The volume rate for single-family residential customers are progressively higher based on metered usage during a billing cycle. Rate blocks for single-family residential customers are as shown in the fee schedule in appendix A to this Code. Volume rates for multifamily residential, commercial, irrigation and construction customers are constant irrespective of usage within a billing cycle and are also as reflected in the following table without distinction for meter size. The volume charge is calculated by multiplying the per 1,000 volume of water consumed by the appropriate volume rate as defined appendix A to this Code. The total water charge monthly is the minimum monthly charge plus the volume charge.

(c) *Emergency interconnect wholesale water rate.* In the event an emergency interconnect system is established with County Line Water Supply Corporation for the provision of wholesale water to that entity, the whole rate per 1,000 gallons shall be 75 percent of the volume rate for commercial customers.

(Ord. No. 493, § 5, 3-20-2007)

Sec. 50-24. - Rates and charges for sewer service.

(a) *Minimum monthly charge.* The rates and charges for services to be provided by the sewer system of the city shall consist of a minimum monthly fee (the minimum monthly charge), and a fee based on the amount of metered water usage (the volume charge). The minimum monthly charge may vary by customer class as shown in the following table. Minimum monthly charges for customers outside the city limits are 1.2 times the inside city rates. Actual fees by customer class are provided in appendix A to this Code.

(b) *Usage fees.* In addition to the minimum monthly charge, rates and charges for services to be provided by the city sewer system shall consist of a fee based on metered water usage (the volume charge). The volume rate for all customers outside the city limits are 1.2 times the amount for customers inside the city limits. For residential customers, a fixed monthly fee shall be assessed beginning with the April billing in any year for the succeeding 11-consecutive months. The fixed sewer usage fee for each

customer shall be determined by averaging actual usage as recorded on the monthly bills for November, December and January. Average usage for these months will be divided by 1,000 and the divided multiplied by the appropriate volume rate as shown in the fee schedule in appendix A to this Code. This fixed charge will then be billed for April and the following 11 months. For new customers with no billing history for the months used in averaging, an amount equal to the average of residential customers, as determined by the director of finance shall be used until such time as a sufficient billing history has been established. Appeals may be made in writing to the director of finance for adjustment of the fixed volume charge if proof of excessive usage due to a water leak during the averaging period can be documented. For nonresidential customers, the volume charge is calculated by multiplying the per 1,000 volume of water used by the appropriate volume rate as defined in appendix A to this Code. The total sewer charge monthly is the minimum monthly charge plus the volume charge.

(Ord. No. 493, § 6, 3-20-2007)

Sec. 50-25. - Rates and charges for solid waste collection and disposal.

Authorized rates for collection and disposal of solid wastes for water and sewer customers or sewer customers only are as shown in appendix A to this Code.

(Ord. No. 493, § 7, 3-20-2007)

Sec. 50-26. - Payment of monthly rates and charges and penalties for late or nonpayment.

(a) *Imposition of monthly charges.* A city water meter in place for any user shall result in that user being obligated to pay the minimum charges for water, sewer and solid waste collection services unless usage shall justify additional charges as specified herein or elsewhere by ordinance. The only exceptions shall be irrigation and construction account. Such customers will not be required to pay for sewer and solid waste collection services. Customers with existing septic tanks shall not be required to pay sewer charges but must pay for solid waste collection services. Users with water meters not provided by the city are obligated to pay the minimum charges for sewer and solid waste collection services unless usage shall justify additional charges as specified herein or elsewhere by ordinance.

(b) *Monthly billing* All charges shall be paid by the user to the utility billing section on or in advance of the 15th day of each month. In the event payment is not made by the 15th day of each month, a ten-percent penalty may be added to the amount past due. In the event payment is not made within ten days from the due date, the director of public works is directed to discontinue water service and when the amount past due and delinquent is paid, such service may be resumed.

(c) *Partial payment.* In the event that the customer does not make full payment of a monthly bill, actual payments received by the city of these two monthly statements may be credited first to the customer's additional deposit amount and reconnection charges, pursuant to section 50-22(b). The remainder shall be applied to the amount billed for consumption.

(d) *Payment plan.* In order to avoid disconnection or to restore service, partial payments on delinquent accounts, to include the additional deposits, shall be authorized only as follows:

    (1) A written payment schedule shall be drawn and executed by the city and the customer which details the amount of partial payments to be made by the customer. The total of these payments shall bring the customer into full compliance with the water/wastewater utility billing policy.

    (2) The maximum duration of the deferred payment schedule shall be three months, with no provisions for extensions.

    (3) Should the customer again become late or delinquent payment amount in addition to current charges, service shall be disconnected immediately and shall not be restored until the customer has satisfied in full all financial obligations to the city.

(e) *Returned checks.* A service and handling charge shall be made to each user who, having paid a water, wastewater or garbage fee by check, has that check refused for payment. The limit on the number of returned checks for any one user shall be three in any consecutive 12-month period. Once the three returned checks limit has been reached, that customer's checks will no longer be accepted by the city, but instead only cash or money orders will be accepted. Once a satisfactory payment history has been established by a customer for 12 more consecutive months beyond the date this policy is enforced, that customer's checks shall again be accepted by the city. This policy shall be applied to the actual per connection or address of record, not just the person whose name appears on the customer list at that connection or address. All checks written by any party to pay for charges billed to a certain connection or address shall come under this policy. It shall be the address which dictates the three returned check limit.

(Ord. No. 493, § 8, 3-20-2007)

Sec. 50-27. - Maintenance.

(a) It shall be the duty of any owner or occupant of any building connected to the wastewater system to keep and maintain the connection to the wastewater system so as to prevent infiltration of the system from rain or yard watering and free from obstruction.

(b) It shall be the responsibility of the owner or occupant of any facility connected to the water system to maintain the service link from the meter to the point of usage. A cutoff valve must be installed on the service line for use of the user in case of emergency. A curb cock on the meter shall only be operated by water department personnel, or as authorized by the director of public works.

(Ord. No. 493, § 9, 3-20-2007)

Sec. 50-28. - Rate change requests by utilities supplying water and wastewater services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

Applicant means the retail public utility providing retail water and/or sewer service within the City requesting a change in rates.

Application means a request to change rates for the provision of retail water and/or sewer service within the city.

Area served means that area within the corporate limits of the City of Kyle served by applicant.

System means a water and/or sewer distribution system and its associated facilities.

(b) *Rate change requests.*

(1) An applicant must provide information required by this section and by other law. The application must include the information contained on Attachment A to Ord. No. 675, which is expressly incorporated herein as if set forth in full. An applicant may submit such additional information as it considers relevant and appropriate.

(2) An application shall be submitted by an applicant in duplicate originals, with one counterpart to be filed with the city manager and the other counterpart to be filed with the city secretary. If both counterparts are not filed on the same date, then the later of the submittal dates shall constitute the date of initial filing for all purposes.

(3) Each application and any supplement or addendum thereto shall be submitted in the form of an affidavit or have an affidavit attached thereto attested by a duly appointed agent or officer of the applicant setting forth that all information contained therein is true and correct.

(4) No application shall be deemed filed with the city unless and until it contains substantially all the information called for in this section. An application shall be deemed to be sufficiently complete if the city manager does not send the applicant a notice of insufficiency of the application on or before the 30th day following completion of the initial filing are required under subsection 50-28(b)(1). Each such notice shall be in writing and shall specify the insufficiency with particularity. In the event such notice is given, the applicant shall have ten business days within which to supplement its application to address the notice of insufficiency.

(c) *Forms and interpretation.*

(1) For the convenience of an applicant in assembling the information required, and for the sake of the convenience of the city in interpreting the information, the city manager or his/her designee may prescribe forms and formats for the submission of the information required under this section. Each applicant shall comply with all applicable forms and formats which have been so prescribed. The city manager, or any person designated by him/her, is authorized to prepare and publish guidance to aid applicants in the preparation of an application.

(2) The provisions of this section shall not be construed to relieve any utility of its obligation to file with and make available to the City, or to any authorized City officer or agency, any information not specified that is required to be furnished or made available by any ordinance or other law. Furthermore, each utility shall file, furnish and make available to the City, within such time limits as may be reasonably prescribed by the city manager, all information that the city manager may from time to time lawfully request.

(Ord. No. 675, §§ 1—3, 10-3-2011)

Editor's note— Attachment A to Ord. No. 675 is not set out herein but is available in the office of the city secretary.

Secs. 50-29—50-57. - Reserved.

ARTICLE III. - WATER SYSTEM

DIVISION 1. - GENERALLY

Sec. 50-58. - Definitions.

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

Herein means as used in this article.

Secs. 50-59—50-86. - Reserved.

DIVISION 2. - WATER USE MANAGEMENT POLICIES[1]

Footnotes:

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Editor's note—The provisions of Ord. No. 569, § 2, and Ord. No. 570, § 2, both adopted on May 19, 2009, have been treated by the editor as superseding former Div. 2, §§ 50-87—50-97 which pertained to similar subject matter and derived from Ord. No. 427, §§ 2—12, adopted July 1, 2003.

Subdivision I. - In General

Sec. 50-87. - Water conservation plan adopted.

The mayor and city council do hereby adopt and endorse the water conservation plan a copy of which is attached to Ord. No. 570, marked "Exhibit A" and made part of this ordinance as if copied verbatim herein. The adopted water conservation plan hereby supersedes all previous water conservation plans adopted by the city.

(Ord. No. 570, § 2, 5-19-2009)

Secs. 50-88—50-90. - Reserved.

Subdivision II. - Water Management Measures Under "No Drought" Conditions

[2]

Footnotes:

Sec. 50-91. - No drought status and continuing water use management.

(a) When the Barton Springs/Edwards Aquifer Conservation District is in a condition of "No Drought," the city will operate under normal conditions.

(b) The city will ensure that all appropriate employees receive a copy of the user drought contingency plan (UDCP) (in Spanish if necessary) and will be available to answer customer questions.

(c) The city encourages water conservation practices at all times and recommends the installation of "low flow" fixtures during repairs, retrofit, or new construction.

(d) Customers will be required to water lawns and operate irrigation systems in compliance with the provisions of the city's water conservation or drought conservation plans filed with the Texas Commission on Environmental Quality, as they may be amended from time to time.

(e) The city will coordinate with the Barton Springs/Edwards Aquifer Conservation District on a regular basis to provide timely information on water levels and water quality, pumpage demands, and actual pumpage.

(f) As part of a continuous program, the city will conduct a leak detection survey and will repair all identified leaks within reasonable timeframes. Employees are required to notify the appropriate city staff of any known or observed leaks.

(g) The city will enforce and maintain all provisions of the water conservation or drought conservation plans filed by the City of Kyle with the Texas Commission on Environmental Quality, as they may be amended from time to time, to assure effective water use management and to encourage comprehensive water conservation practices by all customers.

(h) Any person who receives water service directly or indirectly from the city may file an application for a variance from this UDCP for any property that receives city water. The city manager may require the applicant to provide any information deemed necessary to evaluate the variance request. The city

manager may grant a variance after determining that special circumstances exist and that compliance with this UDCP:

(1) Will adversely affect the health, sanitation, or fire protection of the public or the applicant; or

(2) Will substantially threaten the applicant's primary source of income. If a variance is granted, the applicant will maintain a copy of the variance in a location on the affected property, which must be accessible and visible to the public.

The city manager may require the applicant to undertake some form of action intended to mitigate the applicant's noncompliance with the UDCP as a condition to granting the variance request.

(i) Any person who receives water service directly or indirectly from the city shall at all times comply with this UDCP and any ordinance that implements and provides for enforcement of this UDCP, unless otherwise provided by law or authorized permit. The following constitute a waste of water and are prohibited:

(1) Failing to repair a controllable leak, including broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;

(2) Operating a permanently installed irrigation system with:

a. A broken head;

b. A head that is out of adjustment where the arc of the spray head is over a street or parking lot; or

c. A head that is misting due to high water pressure.

(3) During irrigation:

a. Allowing water to run off property such that there is a trail of water running in the street for a distance of 50 feet or greater; or

b. Allowing water to pond in the street or parking lot to a depth greater than one-quarter inch.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Sec. 50-92. - City's watering schedule.

Designated watering days have been established under some of the drought stages identified below in this plan. When this schedule is in effect, users may only water on the designated day that applies to the user. Designated days are assigned as follows:

(1) Residential odd-numbered addresses = may only water Wednesday and/or Saturday.

(2) Residential even-numbered addresses = may only water Thursday and/or Sunday.

(3) Commercial and multi-family users = may only water Tuesday and/or Friday.

Sec. 50-93. - Alternate sources of water supply (in addition to BSEACD-issued permits) on the date this UDCP was adopted.

(a) *Edwards Aquifer.* Reliance on permits issued through the Edwards Aquifer Authority (259 acre feet of firm supply during Edwards Aquifer Authority's most restrictive drought stage).

(b) *Guadalupe River.* Reliance on agreements entered among City of Kyle, Guadalupe-Blanco River Authority, and City of San Marcos (2,957 acre feet of firm supply committed pursuant to these agreements; additionally, the City holds a right of first refusal to secure additional firm supplies from the Guadalupe-Blanco River Authority).

(c) The city currently maintains and operates water utility infrastructure sufficient to distribute these firm supplies throughout the city's service area, and to fully replace the water held under the city's Class B

conditional permit in the event of a 100-percent curtailment of production under this Class B conditional permit due to drought conditions.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Subdivision III. - Water Conservation Period and Drought Stage Responses

Sec. 50-94. - Water conservation period.

Unless otherwise notified by the Barton Springs/Edwards Aquifer Conservation District that the district has declared either an alarm or critical stage drought, automatically beginning May 1st and ending September 30th each year, the City of Kyle will activate the water conservation period of its UDCP. This status will be prominently posted at the Kyle City Hall and the official city website within 20 days following commencement of the water conservation period.

(1) *Goal:* A voluntary ten percent reduction in the city's withdrawals of groundwater authorized to be withdrawn under the city's permits issued by the BSEACD.

(2) *Actions required by the user and city:*

a. Voluntary reduction in water use.

b. Assist the district in dissemination of information about the water conservation period.

c. Utilize the city's other available sources of water to comply with the water conservation period pumpage reductions.

(3) *Voluntary reductions:*

a. Comply with city schedule for lawn watering.

b. Outdoor irrigation by permanently installed automatic irrigation systems or sprinkler systems should be accomplished before 10:00 a.m. and after 8:00 p.m. This recommendation does not apply to irrigation:

1. Of a new landscape;

2. During a repair or testing of a new or existing irrigation system;

3. For watering nursery stock including potted plants, shrubs, and trees at a commercial plant nursery;

c. Use hand-held hose on garden, trees, and flowers;

d. Check for and fix water leaks.

(4) *Required reductions:* None.

(5) *Penalties or consequences:* None.

Sec. 50-95. - Alarm stage drought.

Upon notification by the Barton Springs/Edwards Aquifer Conservation District that the district has declared the aquifer to be in alarm stage drought status, the city will activate the ALARM Stage of its UDCP and will notify its customers of this change during the next billing cycle. This status will also be displayed on the city website as soon as possible and no later than one week after receiving notice of declaration of this drought stage.

(1) *Goal:* A mandatory 20-percent reduction in the city's withdrawals of groundwater authorized to be withdrawn under the city's historic use permit and mandatory 50-percent reduction in the city's

withdrawals of groundwater authorized to be withdrawn under the city's Class B conditional permit issued by the BSEACD as reflected and implemented by the monthly allocation schedule indicating the drought stage monthly target pumpage volume, which is attached hereto and incorporated by reference.

(2) *Actions required by the user and city:*

a. Continued voluntary reduction in water use in general. Mandatory compliance with required reductions listed below.

b. Utilize the city's other available sources of water to comply with the pumpage reductions.

(3) *Voluntary reductions:*

a. Water garden, trees & flowers with hand-held hose.

b. Draw less water for bath or reduce shower time.

c. Do not let water run while shaving, dishwashing, brushing teeth, etc.

d. Use water displacement device in toilet tank.

e. Install aerators on faucets.

f. Utilize water reuse where possible.

g. Only wash full loads in the washing machine and dishwasher.

h. Do not rinse dishes under running water.

i. Turn water off when brushing teeth/shaving.

(4) *Required reductions:*

a. Outdoor irrigation, excluding water nursery stock including potted plants, shrubs, and trees at a commercial plant nursery, is permitted only:

1. By a hand-held hose or hand-held bucket at any time during the day or night.

2. By a hose and sprinkler, a soaker hose, drip irrigation, or permanently installed automatic irrigation system before 10:00 a.m. and after 8:00 p.m. on the user's applicable outdoor water use day.

3. For property which a person obtains a variance from the city manager or his designee to divide the property into sections, to be watered on different outdoor water use days.

b. Automobile, trailer, boat, airplane, or any other type of mobile equipment may be washed only as follows:

1. Washing must be done with a hand-held bucket or hose equipped with a positive shut-off nozzle.

c. The automobile restrictions do not apply to a commercial car wash that has in-bay handheld spray wash equipment including foaming brushes that use no more than three gallons of water power/minute and is equipped with trigger shut-offs, uses portable pressure wash equipment with spray nozzles that use no more than 3.5 gallons of water/minute with trigger shut-offs, conveyor frictions systems use no more than 20 gallons/vehicle, conveyor touchless systems use no more than 40 gallons/vehicle, rollover automatic systems may use no more than 45 gallons/vehicle, and all chamois ringers must have positive shut-off valves.

d. Comply with city schedule for lawn watering.

e. Washing a sidewalk or driveway, parking area, street, tennis court, patio, or other paved area, is prohibited unless to alleviate an immediate health or safety hazard.

f. Athletic fields for organized sports must comply with these restrictions.

g. Check for and fix water leaks.

h. Using an automatic fill valve to add water tan outdoor swimming pool or pond is prohibited.

(5) *Penalties or consequences:*

a. A warning for a violation of a requirement under this drought stage.

b. Any person in violation is guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than $50.00 or more than $2,000.00. Each day the violation continues shall constitute a separate offense.

c. If a customer is irrigating during a time period or on a day when such irrigation is prohibited and a city worker cannot locate the person at that street address to turn off the irrigation system, the city worker may turn off the irrigation system if accessible.

d. The city will evaluate, from time to time, its conservation-oriented rate structure to ensure that the rate structure is having the intended effect of discouraging and penalizing retail water usage in violation of the requirements under this drought stage. This enforcement mechanism is intended to impose appropriate water surcharges for usage in violation of the requirements under this drought stage.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Sec. 50-96. - Critical stage drought.

Upon notification by the Barton Springs/Edwards Aquifer Conservation District that the district has declared the aquifer to be in critical stage drought status, the city will activate the critical stage of its UDCP and will notify its customers of this change during the next billing cycle. This status will also be displayed on the city website as soon as possible and no later than one week after receiving notice of declaration of this drought stage.

(1) *Goal:* A mandatory 30-percent reduction in withdrawals of groundwater authorized to be withdrawn under the city's historic use permit and mandatory 75-percent reduction in the city's withdrawals of groundwater authorized to be withdrawn under the city's Class B conditional permit issued by the BSEACD as reflected and implemented by the monthly allocation schedule indicating the drought stage monthly target pumpage volume, which is attached hereto and incorporated by reference.

(2) *Actions required by the user and city:*

a. Continued voluntary reduction in water use in general. Mandatory compliance with alarm stage restrictions and those listed below.

b. Utilize the city's other available sources of water to comply with the pumpage reductions.

(3) *Voluntary reductions:*

a. Draw less water for bath or reduce shower time.

b. Do not let water run while shaving, dishwashing, brushing teeth, etc.

c. Use water displacement device in toilet tank.

d. Install aerators on faucets.

e. Utilize water reuse where possible.

f. Only wash full loads in the washing machine and dishwasher.

g. Do not rinse dishes under running water.

h. Turn water off when brushing teeth/shaving.

(4) *Required reductions:*

a. Outdoor irrigation is permitted only by hand-held hoses, hand-held watering cans, sprinkler systems, permanently installed irrigation systems, hose-end irrigation, and/or drip irrigation before 10:00 a.m. and after 8:00 p.m. on designated outdoor water use days.

b. Washing automobiles, trucks, trailers, boats, airplanes, and other type of mobile equipment must be done with a hand-held bucket or hose equipped with a positive shut-off nozzle.

c. The automobile restrictions do not apply to a commercial car wash that has in-bay handheld spray wash equipment including foaming brushes that use no more than three gallons of water power/minute and is equipped with trigger shut-offs, uses portable pressure wash equipment with spray nozzles that use no more than 3.5 gallons of water/minute with trigger shut-offs, conveyor frictions systems use no more than 20 gallons/vehicle, conveyor touchless systems use no more than 40 gallons/vehicle, rollover automatic systems may use no more than 45 gallons/vehicle, and all chamois ringers must have positive shut-off valves.

d. The filling, refilling, or adding of potable water to fountains and ponds is prohibited.

e. Charity car washes are prohibited.

f. Using an automatic fill valve to add water to an outdoor swimming pool or pond is prohibited.

(5) *Penalties or consequences:*

a. A warning for a violation of a requirement under this drought stage.

b. Any person in violation is guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than $50.00 or more than $2,000.00. Each day the violation continues shall constitute a separate offense.

c. The city is hereby authorized to discontinue water service to any person(s) who knowingly violates any provision of the mandatory restrictions on three occasions.

d. If a customer is irrigating during a time period or on a day when such irrigation is prohibited and a city worker cannot locate the person at that street address to turn off the irrigation system, the city worker may turn off the irrigation system if accessible.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Sec. 50-97. - Exceptional stage drought.

Upon notification by the Barton Springs/Edwards Aquifer Conservation District that the district has declared the aquifer to be in exceptional stage drought status, the city will activate the exceptional stage of its UDCP and will notify its customers of this change in the next billing cycle. This status will also be displayed on the city website as soon as possible and no later than one week after receiving notice of declaration of this drought stage.

(1) *Goal:* A mandatory 40-percent reduction in withdrawals of groundwater authorized to be withdrawn under the city's historic use permit and mandatory 100-percent reduction in the city's withdrawals of groundwater authorized to be withdrawn under the city's Class B conditional permit issued by the BSEACD as reflected and implemented by the monthly allocation schedule indicating the drought stage monthly target pumpage volume, which is attached hereto and incorporated by reference.

(2) *Actions required by the user and city:*

a. Continued voluntary reduction in water use in general. Mandatory compliance with critical stage required reductions and those listed below.

b. Utilize the city's other available sources of water to comply with the pumpage reductions.

c. City will issue notices to all retail customers indicating that their public water supply may be in peril, and that physical restriction of water use and reporting excessive users to the Barton Springs/Edwards Aquifer Conservation District may be required.

(3) *Voluntary reductions:*

a. Turn off master water shut-off when out of town or on vacation.

b. Reduce use of garbage disposal.

c. Avoid watering on windy days.

d. Utilize water reuse where possible.

e. Keep pools covered when not in use.

f. Draw less water for bath or reduce shower time.

g. Do not let water run while shaving, dishwashing, brushing teeth, etc.

h. Use water displacement device in toilet tank.

i. Install aerators on faucets.

j. Only wash full loads in the washing machine and dishwasher.

k. Do not rinse dishes under running water.

l. Turn water off when brushing teeth/shaving.

(4) *Required reductions:*

a. Installation of new landscapes may not be started.

b. Commercial plant nurseries may use only hand-held hoses, hand-held watering cans, or drip irrigation.

c. Water use is limited to indoor use only.

(5) *Penalties or consequences:*

a. A warning for a violation of a requirement under this drought stage.

b. Any person in violation of the mandatory restrictions is guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than $50.00 or more than $2,000.00. Each day the violation continues shall constitute a separate offense.

c. The city is hereby authorized to discontinue water service to any person(s) who knowingly violates any provision of the mandatory restrictions on two occasions.

d. The City of Kyle is hereby authorized to report excessive users to the Barton Springs/Edwards Aquifer Conservation District.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Sec. 50-98. - Emergency response period.

Upon notification by the Barton Springs/Edwards Aquifer Conservation District that the district has declared an emergency response period, the city will activate the emergency response period of its UDCP and will notify its customers of this change in the next billing cycle. This status will also be displayed on the City of Kyle website as soon as possible and no later than one week after receiving notice of declaration of this drought stage.

(1) *Goal:* A mandatory 40-percent reduction in withdrawals of groundwater authorized to be withdrawn under the city's historic use permit and mandatory 100-percent reduction in the city's withdrawals of groundwater authorized to be withdrawn under the city's Class B conditional permit

issued by the BSEACD as reflected and implemented by the monthly allocation schedule indicating the drought stage monthly target pumpage volume, which is attached hereto and incorporated by reference.

(2) *Actions required by the user and city.*

a. Continued voluntary reduction in water use in general and observance of exceptional stage voluntary reductions. Mandatory compliance with exceptional stage required reductions.

b. Utilize the city's other available sources of water.

c. City will issue notices to all retail customers indicating that their public water supply is in peril, and that physical restriction of water use and reporting excessive users to the Barton Springs/Edwards Aquifer Conservation District may be required.

(3) *Penalties or consequences:*

a. A warning for a violation of a requirement under this drought stage.

b. Any person in violation of the mandatory restrictions is guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than $50.00 or more than $2,000.00. Each day the violation continues shall constitute a separate offense.

c. The city is hereby authorized to discontinue water service to any person(s) who knowingly violates any provision of the mandatory restrictions on any two occasions.

d. The city is hereby authorized to report violates the mandatory restrictions to the Barton Springs/Edwards Aquifer Conservation District.

(Ord. No. 640, § 2(Exh. A), 11-3-2010)

Secs. 50-99—50-124. - Reserved.

DIVISION 3. - RECLAIMED WATER

Sec. 50-125. - Definitions.

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

Reclaimed water means effluent owned or controlled by the city that is produced from the treatment of the city's wastewater through a wastewater treatment plant and treated to the standards required in 30 Texas Admin. Code § 210 et seq.

Reclaimed water system means the distribution, transmission and storage facilities designed to meet the requirements of 30 Texas Admin. Code § 210 et seq. as described in this division for the distribution of reclaimed water to users.

Users means entities or individuals that purchase reclaimed water from the city through the city's reclaimed water system.

(Ord. No. 325, § 1, 9-8-1998)

Sec. 50-126. - Prohibitions.

(a) It shall be unlawful to tap into, connect, or obtain reclaimed water from the reclaimed water system except in accordance with the terms of an executed reclaimed water use agreement with the city and this division.

(b) It shall be unlawful to use reclaimed water in a manner that violates this division or the rules and regulations of the Texas Commission on Environmental Quality.

(Ord. No. 325, § 2, 9-8-1998)

Sec. 50-127. - Construction standards for reclaimed water system.

The reclaimed water system shall be constructed in accordance with the following standards:

(1) *Transmission lines.* Any reclaimed water transmission lines shall be constructed with a minimum separation from potable waterlines of nine feet whenever possible. When it is not possible to maintain such separation, the reclaimed waterlines shall be constructed in accordance with 30 Texas Admin. Code ch. 290 concerning separation of potable and nonpotable water piping. A nondegradable warning tape shall be placed in the trench above the pipe to reduce the possibility of inadvertent connections. Pipe used for the construction of any additional reclaimed waterlines shall be purple, covered with a purple polywrap bag, or marked with purple tape. Construction plans for any additional reclaimed waterlines shall be submitted to the Texas Commission on Environmental Quality for review and approval in accordance with 30 Texas Admin. Code § 210.25h.

(2) *Internal lines.* Users shall be responsible for the design of any internal reclaimed water distribution piping or irrigation piping. The user shall design all piping in accordance with 30 Texas Admin. Code § 210.25.

(3) *Storage ponds.* All reclaimed water storage ponds shall be designed and constructed in accordance with 30 Texas Admin. Code § 210.25c.

(Ord. No. 325, § 3, 9-8-1998)

Sec. 50-128. - User responsibilities.

Reclaimed water users shall comply with the following requirements:

(1) Users shall post signs at all storage areas, hose bibs, faucets and other points of access to the reclaimed water that comply with the requirements of 30 Texas Admin. Code § 210.25b.

(2) Users shall design all hose bibs, faucets, and valves in accordance with 30 Texas Admin. Code § 210.25a.

(3) Users shall ensure that irrigation activities occur during times that will minimize the risk of inadvertent human exposure.

(4) Users shall operate irrigation systems in a manner that will not cause any surface or airborne discharge of reclaimed water.

(5) Users shall not operate irrigation systems when the earth is frozen or saturated with water.

(6) Users shall utilize operational procedures for irrigation systems that will minimize wet grass conditions in unrestricted landscape areas during the periods the areas could be in use.

(7) Users shall maintain transmission mains, storage pond, pumping facilities and internal irrigation piping beyond the point of delivery.

(8) Users shall design a routine maintenance schedule that includes a routine check of the sprinkler heads, distribution piping, pumps, valves, and other mechanical equipment and shall conduct

repairs as necessary. Preventive maintenance on all mechanical equipment shall be as specified by the manufacturer.

(Ord. No. 325, § 4, 9-8-1998)

Sec. 50-129. - Judicial enforcement remedies.

(a) *Criminal penalty.* Any person who has violated any provision of this division regarding the use of reclaimed water shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than $2,000.00 per violation per day.

(b) *Remedies nonexclusive.* The remedies provided for in this division are not exclusive of any other remedies that the city may have under state or federal law or other city ordinances. The city may take any, all, or any combination of these actions against a violator. The city is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

(c) *Supplemental enforcement action.*

(1) Whenever a user has violated or continues to violate any provision of this division, reclaimed water service to the user may be severed. Service will only recommence, at the user's expense, after he has satisfactorily demonstrated his ability to comply.

(2) The misuse of reclaimed water in violation of this division is hereby declared a public nuisance and shall be corrected or abated as directed by the city public works director. Any person creating a public nuisance shall be subject to the provisions of this Code governing such nuisances, including reimbursing the city for any costs, including but not limited to, attorneys fees and costs of court, incurred in removing, abating, or remedying said nuisance.

(3) In addition to prohibiting certain conduct by natural persons, it is the intent of this division to hold a corporation or association legally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of his office or employment.

(4) Any user that violates any provision of this division and thereby causes the city to violate a rule or regulation of the Texas Commission on Environmental Quality or any other state or federal agency, and as a consequence causes the city to incur any civil or criminal penalty, shall be liable to the city for the amount of any such civil or criminal penalty, as well as any costs of compliance with any order issued by the Texas Commission on Environmental Quality or any state or federal court and, additionally, any costs and/or attorneys fees incurred by the city in defense or compliance with such judicial or administrative action.

(Ord. No. 325, § 5, 9-8-1998)

Secs. 50-130—50-156. - Reserved.

DIVISION 4. - REGULATION OF CONNECTIONS

Sec. 50-157. - Definitions.

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

Air gap means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other assembly and the flood level rim of the receptacle. These vertical, physical separations must be at least twice the diameter of the water supply outlet, never less than one inch (25 millimeter).

Approved means accepted by the authority responsible as meeting an applicable specification stated or cited in this division or as suitable for the proposed use.

Auxiliary water supply means any water supply on or available to the premises other than the city's approved public water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source, such as a well, spring, river, stream, harbor, and so forth; used waters; or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the city does not have sanitary control.

Backflow means the undesirable reversal of flow in a potable water distribution system as a result of a cross connection.

Backflow preventer or *backflow prevention assemblies* means an assembly or means designed to prevent backflow.

Backpressure means a pressure, higher than the supply pressure, caused by a pump, elevated tank, boiler, or any other means that may cause backflow.

Backsiphonage means backflow caused by negative or reduced pressure in the supply piping.

City manager means the manager of the city, and the agents, officers or employees of the city designated by the city manager to be in charge of the water department of the city, and the designees of such agents and officers. The city manager is invested with the authority and responsibility for the implementation of an effective cross connection control program and for the enforcement of the provisions of this division. The city manager may further, with the approval of the city council, designate the county health department as an agent authorized to enforce this division.

Contamination means an impairment of a potable water supply by the introduction or admission of any foreign substance that degrades the quality and creates a health hazard.

Cross connection means connection or potential connection between any part of a potable water system and any other environment containing other substances in a manner that, under any circumstances would allow such substances to enter the potable water system. Other substances may be gases, liquids, or solids, such as chemicals, waste products, steam, water from other sources (potable or nonpotable), or any matter that may change the color or add odor to the water.

Cross connection control by containment means the installation of any approved backflow-prevention assembly at the water service connection to any customer's premises, where it is physically and economically unfeasible to find and permanently eliminate or control all actual or potential cross connections within the customer's water system; or the term "cross connection control by containment" means the installation of an approved backflow-prevention assembly on the service line leading to and supplying a portion of a customer's water system where there are actual or potential cross connections that cannot be effectively eliminated or controlled at the point of the cross connection.

Cross connections, controlled, means a connection between a potable water system and a nonpotable water system with an approved backflow-prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.

Double check valve assembly means the approved double check valve assembly consists of two internally loaded check valves, either spring loaded or internally weighted, installed as a unit between two tightly closing resilient-seated shutoff valves and fittings with properly located resilient-seated test cocks. This assembly shall only be used to protect against a nonhealth hazard (i.e., a pollutant).

Hazard, degree of, the term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

Hazard, health, means a cross connection or potential cross connection involving any substance that could, if introduced in the potable water supply, cause death, illness, spread disease, or have a high probability of causing such effects.

Hazard, nonhealth, means a cross connection or potential cross connection involving any substance that generally would not be a health hazard but would constitute a nuisance or be aesthetically objectionable, if introduced into the potable water supply.

Hazard, plumbing, means a plumbing-type cross connection in a consumer's potable water system that has not been properly protected by an approved air gap or an approved backflow-prevention assembly.

Hazard, system, means an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system or of a pollution of contamination that would have a protracted effect on the quality of the potable water in the system.

Industrial fluids system means any system containing a fluid or solution that may be chemical, biologically, or otherwise contaminated or polluted in a form or concentration, such as would constitute a health, system, pollution or plumbing hazard, if introduced into an approved water supply. The term "industrial fluids system" may include, but not be limited to:

(1) Polluted or contaminated waters;

(2) All types of process waters and used waters originating from the public potable water system that may have deteriorated in sanitary quality;

(3) Chemicals in fluid form;

(4) Plating acids and alkalies;

(5) Circulating cooling waters connected to an open cooling tower;

(6) Cooling towers that are chemically or biologically treated or stabilized with toxic substances; and/or

(7) Contaminated natural waters, such as wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, and so forth; oils, gases, glycerine, paraffins, caustic and acid solutions, and other liquid and gaseous fluids used in industrial or other purposes for firefighting purposes.

Pollution means the presence of any foreign substance in the water that tends to degrade its quality so as to constitute a nonhealth hazard or impair the usefulness of the water.

Reduced-pressure backflow-prevention assembly means the approved reduced-pressure principle backflow-prevention assembly consisting of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first check valve. These units are located between two tightly closing resilient-seated shutoff valves as an assembly and equipped with properly located resilient-seated test cocks.

Regulations means the provisions of any applicable ordinance, rule, regulation or policy.

Service connection means the terminal end of a service connection from the public potable water system, that is, where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's water system. The term "service connection" means, if a meter is installed at the end of the service connection, the downstream end of the meter. There should be no unprotected takeoffs from the service line ahead of any meter or backflow-prevention assembly located at the point of delivery to the customer's water system. The term "service connection" also includes water service connections from the public potable water system.

Water, nonpotable, means water that is not safe for human consumption or that is of questionable quality.

Water, potable, means water that is safe for human consumption as described by the public health authority having jurisdiction.

Water, used, means any water supplied by a water purveyor from a public potable water system to a consumer's water system after it has passed through the point of delivery and is no longer under the sanitary control of the water purveyor.

(Ord. No. 370, § 3, 2-20-2001)

Sec. 50-158. - Purpose.

The purpose of this division is the following:

(1) *Protect public water.* To protect the public potable water supply of the city from the possibility of contamination or pollution by isolation within the customer's internal distribution system or the customer's private water system such contaminants or pollutants that could backflow into the public water system;

(2) *Eliminate cross connections.* To promote the elimination or control of existing cross connections, actual or potential, between the customer's in-plant potable water system and nonpotable water systems, plumbing fixtures, and industrial piping systems; and

(3) *Continuing program.* To provide for the maintenance of a continuing program of cross connection control that will systematically and effectively prevent the contamination or pollution of all potable water systems.

(Ord. No. 370, § 1, 2-20-2001)

Sec. 50-159. - Prohibitions and enforcement.

(a) *General.* No water service connection shall be made to any establishment where a potential or actual contamination hazard exists unless the water supply is protected in accordance with the Texas Commission on Environmental Quality rules and regulations for public water systems (the Texas Commission on Environmental Quality rules) and this division. The city shall discontinue water service if a required backflow prevention assembly is not installed, maintained and tested in accordance with the Texas Commission on Environmental Quality rules and this division.

(b) *Enforcement.* The city manager shall be responsible for the enforcement of the Texas Commission on Environmental Quality rules and this division for the protection of the public potable water distribution system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. If, in the judgment of the city manager an approved backflow prevention assembly is required (at the customer's water service connection; or, within the customer's private water system) for the safety of the water system, the city manager or his designated agent shall give notice in writing to said customer to install such an approved backflow prevention assembly at specific locations on his premises. The customer shall immediately install such approved assembly at his own expense; and, failure, refusal, or inability on the part of the customer to install, have tested, and maintain said assembly shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.

(Ord. No. 370, § 2, 2-20-2001)

Sec. 50-160. - Water system—Composition.

(a) The water system shall be considered as made up of two parts: the utility system and the customer system.

(b) The utility system shall consist of the source facilities and the distribution system, and shall include all those facilities of the water system under the complete control of the utility, up to the point where the customer's system begins.

(c) The source shall include all components of the facilities utilized in the production, treatment, storage, and delivery of water to the distribution system.

(d) The distribution system shall include the network of conduits used for the delivery of water from the source to the customer's system.

(e) The customer's system shall include those parts of the facilities beyond the termination of the utility distribution system that are utilized in conveying utility-delivered domestic water to points of use.

(Ord. No. 370, § 4.1, 2-20-2001)

Sec. 50-161. - Same—Requirements for connection.

(a) *Protection required.* No water service connection to any premises shall be installed or maintained by the city unless the water supply is protected as required by the Texas Commission on Environmental Quality rules and this division. Service of water to any premises shall be discontinued by the city if a backflow-prevention assembly required by this division is not installed, tested, and maintained, or if it is found that a backflow-prevention assembly has been removed, bypassed, or if an unprotected cross connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

(b) *Customer's system.* The customer's system should be open for inspection at all reasonable times to authorized representatives of the city to determine whether cross connections or other structural or sanitary hazard, including violations of these regulations, exist. When such a condition becomes known, the city manager shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the conditions in conformance with state, provincial and city statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

(c) *Location.* An approved backflow-prevention assembly shall be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but in all cases, before the first branch line leading off the service line wherever the following conditions exist:

(1) In the case of premises having an auxiliary water supply that is not or may not be of safe bacteriological or chemical quality and that is not acceptable as an additional source by the city manager, the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard.

(2) In the case of premises on which any industrial fluids or any other objectionable substances are handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line, appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system that have been subject to deterioration in quality.

(3) In the case of premises having:

a. Internal cross connections that cannot be permanently corrected and controlled; or

b. Intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross connections exist;

the public water system shall be protected against backflow from the premises by installing an approved backflow-prevention assembly in the service line.

(4) In all cases where such device is required by the Texas Commission on Environmental Quality rules.

(d) *Type of assembly required.* The type of protective assembly required under subsections (c)(1), (2) and (3) of this section shall depend upon the degree of hazard that exists, as follows:

(1) In the case of any premises where there is an auxiliary water supply as stated in subsection (c)(1) of this section and it is not subject to any of the following rules, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly.

(2) In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

(3) In the case of any premises where there is any material dangerous to health that is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly. Examples of premises where these conditions will exist include sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries, and plating plants.

(4) In the case of any premises where there are uncontrolled cross connections, whether actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly at the service connection.

(5) In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impracticable to make a complete in-plant cross connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced-pressure principle backflow-prevention assembly on each service to the premises.

(6) In the case of any premises where, in the opinion of the city manager, an undue health threat is posed because of the presence of extremely toxic substances, the city manager may require an air-gap at the service connection to protect the public water system. This requirement will be at the discretion of the city manager and is dependent on the degree of hazard.

(7) In any case where the Texas Commission on Environmental Quality rules require a backflow prevention device or other provision to prevent contamination, the requirements of the Texas Commission on Environmental Quality rules shall govern and control if more stringent than the provisions of this subsection.

(e) *Standards for approved device.* Any backflow-prevention assembly required herein shall be a model and size in compliance with the Texas Commission on Environmental Quality rules, and approved by the city manager. The term "approved backflow-prevention assembly" means an assembly that has been manufactured in full conformance with the standards established by the American Water Works Association titled: AWWA C510-89, Standard for Double Check Valve Backflow-Prevention Assembly, and AWWA C511-89, Standard for Reduced-Pressure Principle Backflow-Prevention Assembly, and have met completely the laboratory and field performance specifications of the Foundation for Cross Connection Control and Hydraulic Research of the University of Southern California established by Specification of Backflow-Prevention Assemblies, section 10 of the most current issue of the Manual of Cross Connection Control. The American Water Works Association and Foundation for Cross Connection Control and Hydraulic Research standards and specifications have been adopted by the city manager. Final approval shall be evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with said American Water Works Association standards and Foundation for Cross Connection Control and Hydraulic Research specifications. The backflow preventers approved and certified by the Texas Commission on Environmental Quality, or an agency certified by the Texas Commission on Environmental Quality to approve and certify such devices. Backflow preventers that may be subjected to backpressure or backsiphonage that have been fully tested and have been granted a certificate of approval by said qualified laboratory and are listed on the laboratory's current list of approved backflow-prevention assemblies may be used without further testing or qualification.

(f) *Customer inspections mandated.* It shall be the duty of the customer-user at any premises where backflow-prevention assemblies are installed to have certified inspections and operational tests made at least once per year. In those instances where the city manager deems the hazard to be great enough, certified inspections may be required at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by the assembly manufacturer's representative, water department personnel, or by a certified tester approved by the city manager. It shall be the duty of the city manager to see that these tests are made in a timely manner. The

customer-user shall notify the city manager in advance when the tests are to be undertaken so that the customer-user may witness the tests if so desired. These assemblies shall be repaired, overhauled, or replaced at the expense of the customer-user whenever said assemblies are found to be defective. Records of such tests, repairs, and overhaul shall be kept and made available to the city manager.

(Ord. No. 370, § 4.2, 2-20-2001)

Sec. 50-162. - General installation and testing requirements.

(a) *Installation.* All backflow prevention assemblies shall be tested upon installation by a recognized backflow prevention assembly tester and certified to be operating within specifications. Backflow preventers which are installed to provide protection against health hazards must also be tested and certified to be operating with specifications at lease annually by a recognized backflow prevention assembly tester.

(b) *Installation and testing requirements.* All backflow prevention assemblies shall be installed and tested in accordance with the manufacture's instructions, the American Water Works Association's Recommended Practice for Backflow Prevention and Cross Connection Control (Manual M14) or the University of Southern California Manual of Cross Connection Control.

(c) *Replacement.* Backflow preventers shall be repaired, overhauled, or replaced at the expense of the customer whenever said assemblies are found to be defective. The original documentation of each such test, repair, and overhaul shall be kept and submitted to the city within five working days of the test, repair or overhaul of each backflow prevention assembly.

(d) *Removal and replacement.* No backflow prevention assembly or device shall be removed from use, relocated, or other assembly or device substituted without the approval of the city. Whenever an existing assembly or device is moved from its location or cannot be repaired, the backflow assembly or device shall be replaced with a backflow prevention assembly or device that complies with this division, the American Water Works Association's Recommended Practice for Backflow Prevention and Cross Connection Control (Manual M14), the University of Southern California Manual of Cross Connection Control, or the current plumbing code of the city, whichever is more stringent.

(e) *Test equipment.* Test gauges used for backflow prevention assembly testing shall be calibrated at least annually in accordance with the American Water Works Association's Recommended Practice for Backflow Prevention and Cross Connection Control (Manual M14), or the University of Southern California Manual of Cross Connection Control. The original calibration form must be submitted to the city within five working days after calibration.

(f) *Certification.* A backflow prevention assembly tester must hold a current endorsement from the Texas Commission on Environmental Quality.

(Ord. No. 370, § 4.3, 2-20-2001)

Sec. 50-163. - Customer service inspections.

(a) *Inspection required.* A customer service inspection shall be completed prior to providing continuous water service to all new construction, or any existing service when the city has reason to believe that cross connections or other contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities.

(b) *Qualified inspectors.* Only persons with the following credentials shall be recognized as capable of conducting a customer service inspection:

(1) Plumbing inspectors and water supply protection specialists that have been licensed by the state board of plumbing examiners.

(2) Certified waterworks operators, and members of other water related professional groups who have completed a training course, passed an examination administered by the Texas Commission on Environmental Quality or its designated agent, and hold a current endorsement issued by the Texas Commission on Environmental Quality.

(c) *Required certifications.* No direct connection between the city water system and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by a properly installed air gap or an appropriate backflow prevention assembly. The water service shall be discontinued unless the qualified inspector that inspects the customer's water system certifies that:

(1) There is no direct connection between the city water system and a potential source of contamination.

(2) No cross connection between the public water supply and the private water source exists. Where an actual properly installed air gap is not maintained between the public water supply and the private water supply, the inspector must certify that an approved reduced pressure-zone backflow prevention assembly is properly installed and a service agreement exists for annual inspecting and testing by a recognized backflow prevention assembly tester.

(3) No connection exists which allows water to be returned to the public drinking water supply.

(4) No pipe or pipefitting which contains more than eight percent lead is used for installation or repair of plumbing at any connection that provides water for human use.

(5) No solder or flux which contains more than 0.2 percent lead is used for the installation or repair of plumbing at any connection that provides water for human use. A minimum of one lead test shall be performed for each inspection.

(Ord. No. 370, § 4.4, 2-20-2001)

Sec. 50-164. - Amendment and application.

The plumbing code of the city is hereby amended to the extent required to be read and construed in a manner to give effect to this division. In the event of a conflict between this division and any other ordinance or law, the most restrictive standard applies.

(Ord. No. 370, § 5, 2-20-2001)

Secs. 50-165—50-181. - Reserved.

ARTICLE IV. - UTILITY DISTRICTS

Sec. 50-182. - Established.

The city council hereby finds, determines and declares that it is to the best interest of the city, and of the territory within its corporate limits that the petitioners of any municipal utility district or any other political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, or storm sewer systems and drainage facilities when such district is sought to be created within the area of the corporate limits of the city, shall, as a prerequisite to the written consent of the city, agree and covenant in writing to adhere to the following rules, regulations and standards:

(1) Bonds may be issued by the district only for the purpose of purchasing and constructing, or purchasing or constructing under contact with the city, or otherwise acquiring waterworks systems, sanitary sewer systems, sewage treatment facilities, storm sewer systems and drainage

facilities, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions and repairs thereto, and to purchase or acquire all necessary lands, right-of-way easements, sites, equipment, buildings, plants, structures and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the district. Bonds may be issued by the district for such purposes at any time that the district is so authorized by the state water commission acting pursuant to authority granted by the state water code. All district bonds shall expressly provide that the district shall reserve the right to redeem said bonds on any interest payment date subsequent to the tenth anniversary of the date of issuance at a premium not to exceed 2½ percent of par value, reducing one-half of one percent of par value each year thereafter to par value. Bonds (other than refunding bonds and bonds sold to a federal or state agency) shall be sold only after the taking of public bids therefor, and no bonds shall be sold for less than 95 percent of par, provided the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, shall not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the 30-day period next preceding the date of sale of the bonds. Bids for the bonds will be received not more than 45 days after notice of sale of the bonds is given. The order or resolution of the district authorizing the issuance of all refunding bonds of the district shall be approved the city council. The district's resolution authorizing the issuance of its bonds will contain a provision stating that the revenues from the operation of the district's water and sewer and/or drainage system will be pledged to the city or such other city which annexes the district, takes over the assets of the district and assumes all of the obligations of the district. No land will be added or annexed to the district until the city has given its written consent by resolution of the city council to such addition or annexation.

(2) Before the commencement of any construction within the district, the district, its directors, officers or the developers and landowners shall submit to the city or to its designated representative, all plans and specifications for the construction of water, sanitary sewer and drainage facilities to serve such district and obtain the approval of such plans and specifications by the city. All water wells, water meters, flush valves, valves, pipes and appurtenances installed or used within the district shall conform exactly to the specifications of the city. All water service lines and sewer service lines, lift stations, sewage treatment facilities and appurtenances thereto, installed or used within the district shall comply with the city's standard plans and specifications. Prior to the construction of such facilities within the district, the district, or its engineer, shall give written notice to the city stating the date that such construction will be commenced. The construction of the district's water, sanitary sewer and drainage facilities shall be in accordance with the approved plans and specifications and with applicable standards and specifications of the city, and during the progress of the construction and installation of such facilities, either the city, any employee, or a designated agent thereof, may make periodic on the ground inspections. As a further definition of the terms used in this subsection, specific mention of the fact is made that the term "plans and specifications," "standard plans and specifications," "approved plans and specifications" or "applicable standards and specifications" means and requires city approval only of the method of construction and types of materials to be employed therein by the district and are not meant to limit the discretion of the board of directors of the district to determine what facilities may be constructed, paid for and maintained by the district.

(3) The owner or the developer of the land, within the district shall covenant and agree that he or they will, prior to the sale of any residential lots, obtain the approval of the planning and zoning commission and the city council (if normally required) of the city of a plat thereof and properly record it in the deed records.

(4) The district will not provide water and sewer service to a residential lot unless the plat covering such lot has been approved by the planning and zoning commission and the city council (if normally required).

(5) Fulltime resident inspection shall be provided during the construction period by district inspectors approved by the city council, which inspectors shall be removed upon request by said city council if found not to be satisfactory. In addition, an additional inspector shall be furnished if deemed

necessary by the city engineer. The district shall reimburse the city for any reasonable expenses incurred by it in connection with such inspections or in connection with review of plans and specifications. Daily inspection reports will be kept on file by the district's engineer. Monthly inspection reports shall be furnished to the city. All construction contracts shall be let on a competitive bidding basis with the contract to be awarded on the basis of the lowest and best bid by a responsible competent contractor unless otherwise approved by the city, which bid shall include evidence of financial condition of the bidders. Bid bonds, payment bonds, performance bonds and affidavits of payment shall in all cases be required. Upon completion of construction, submission of a complete set of as-built plans to the city by the engineer for the district shall be required.

(6) At least one of the initial members of the district board of directors shall be a person approved by the city council. Following receipt of city consent, petitioners shall file with the city a copy of the preliminary engineering report at the same time it is furnished to the state water commission.

(7) The district shall not be permitted to escrow any funds in excess of two years interest on its issued bonds and shall levy a tax simultaneously with the first installment of such bonds and continue a tax levy until such bonds are paid in full, unless the revenues of the system are adequate to discharge such bonds.

(8) Prior to the sale of any series of district bonds, the district shall secure:

a. A letter of the city council to the effect that the district is in compliance with this article;

b. A letter of the city council addressed to the state attorney general approving the form of the resolution; or

c. Order of the district board of directors authorizing the issuance of any bonds of the district absent the interest rates on and sales price of the bonds.

(9) The district will use its best efforts to charge rates for water and sewer service not less than the rates charged by the city to its customers.

(10) The city will have the right to make recommendations to the district board of directors and its financial adviser as to the amount of bonds that should be authorized, the installment sale of such authorization, the maturity schedule of each installment, the optional provisions to be contained in such bonds, and the sale and delivery of the district bonds.

(11) The district will have its water and sewer system operated and maintained by the city upon terms and conditions deemed mutually satisfactory by the city and the district.

(12) The district will obtain sewage treatment services from city-owned facilities provided, however, upon a showing of special circumstances, the city may permit the district to utilize its own temporary sewage treatment facilities.

(13) The district, its directors, officers and the developers shall, to the extent feasible, preserve and maintain trees within the district with a diameter of four inches or greater.

(14) The district, its directors, officers and the developers will take adequate measures to prevent discharge from its sewage treatment facilities into the Edwards Aquifer Recharge Zone.

(Ord. No. 206-B, § 1, 3-11-1986)

Sec. 50-183. - Petition.

Upon receipt of a petition, by the petitioners of any such proposed political subdivision, by the city council shall consider all factors relevant to the creation of such political subdivision, and if, upon the basis of its consideration and deliberations, it determines that such consent shall be given, the written agreement of the petitioners of such political subdivision to adhere to the rules, regulations and standards contained in this article shall be a prerequisite to the granting of such written consent.

(Ord. No. 206-B, § 2, 3-11-1986)

Sec. 50-184. - Application.

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

Independent means that the engineer and the financial advisor have not previously been employed by the petitioners and will not be employed by the proposed district.

(b) *Requirements.* Upon application, and at the time of submittal to the state water commission, the petitioners of any such proposed political subdivision shall deliver to the city an opinion letter from an independent:

(1) Engineer stating that the estimated costs of the facilities to be financed by the district are reasonable; and

(2) Financial advisor stating that the plan of finance by the district is feasible.

(Ord. No. 206-B, § 3, 3-11-1986)

Secs. 50-185—50-206. - Reserved.

ARTICLE V. - INDUSTRIAL WASTE

Sec. 50-207. - Definitions.

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

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter by standard methods procedure in five days at 20 degrees Centigrade, expressed in parts per million by weight.

Domestic sewage means waterborne wastes normally discharged from sanitary conveniences of dwellings, including apartment houses and hotels, office buildings, facilities and institutions, free from stormwater, surface water and industrial wastes. The term "normal domestic sewage" means normal sewage for the city, in which the average concentration of suspended materials and five-day biochemical oxygen demand is established at 250 parts per million each, by weight, on the basis of the normal contribution of 0.20 pounds per capita. It is further expressly provided that for the purpose of this article, any waste that exceeds the concentration of suspended materials stated in this definition and/or biochemical oxygen demand shall be classified as industrial wastes and made subject to all regulations pertaining thereto, whether or not such waste was partially of domestic origin.

Garbage means solid wastes from the preparation, cooking and disposing of food, and from the handling, storage and sale of produce.

Industrial wastes means all water-borne solids, liquids, or gaseous wastes resulting from any industrial, manufacturing or food processing operation or process, or from the development of any natural resource, or any mixture of these with water or domestic sewage as distinct from normal domestic sewage.

Manager means the manager of the water and sewer systems of the city, or his authorized deputy, agent or representative.

pH means the logarithm (base 10) of the reciprocal of the hydrogen-ion concentration of a solution.

Properly shredded garbage means the wastes from the preparation, cooking, and dispensing of food, exclusive of egg shells, bones, etc., that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particles greater than one-half inch in any dimension.

Public sewer means a sewer in which all owners abutting properties shall have equal rights, and is controlled by public authority.

Sanitary sewer means a public sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

Sewage treatment plant means any city owned facility, devices and structures used for receiving and treating sewage from the city sanitary sewer systems.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sanitary sewage. Standard methods means the laboratory procedures set forth in the latest edition, at the time of analysis, of Standard Methods for the Examination of Water and Waste Water as prepared, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

Suspended solids means solids that either float on the surface, or are in suspension in water, sewage, or other liquids; and which, in accordance with standards methods, are removable by laboratory filtering.

Unpolluted water or waste means any water or waste containing none of the following: free or emulsified grease or oil, acid or alkali, phenol, or other substances in suspension, colloidal state or solution, and noxious or odorous gases. It shall contain not more than ten parts per million each of suspended solids and biochemical oxygen demand (BOD). The color shall not exceed 50 parts per million.

(Ord. No. 51, § 1, 3-2-1971)

Sec. 50-208. - Penalty.

Any person violating any provisions of this article shall be guilty of a misdemeanor, and shall upon conviction be fined in a sum not to exceed $200.00, with each day of violation constituting a separate violation of this article.

(Ord. No. 51, § 7, 3-2-1971)

Sec. 50-209. - Prohibited wastes.

(a) No person shall discharge, or cause to be discharged, into any sanitary sewer any of the following described substances, material, waters, or wastes:

(1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Centigrade), or any discharge which causes the temperature of the total treatment plant influent to increase at a rate of ten degrees Fahrenheit or more per hour or a combined total increase to a plant influent temperature of 110 degrees Fahrenheit.

(2) Any waters or wastes which contain grease or oil, plastic, or other substance that will solidify or become discernibly viscous at temperatures between 32 degrees to 150 degrees Fahrenheit.

(3) Flammable or explosive liquid, solids or gas, such as gasoline, kerosene, benzene, naphtha, etc.

(4) Solid or viscous substances in quantities capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, far, plastics, wood, whole blood, paunch

manure, hair and fleshings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues or bulk solids.

(5) Any garbage not within definition of properly shredded garbage as defined in section 50-207.

(6) Any noxious or malodorous substance and which can form a gas, which either singly or by interaction with other wastes, is capable of causing objectionable odors; or hazard to life; or forms solids in concentration exceeding limits established in subsection (b) of this section; or creates any other condition deleterious to structures or treatment processes; or requires unusual provisions, attention, or expense to handle such materials.

(7) Any hexavalent chromium greater than 2.0 parts per million.

(8) Any trivalent chromium greater than 5.0 parts per million.

(9) Any copper greater than 1.0 parts per million.

(10) Any nickel greater than 1.0 parts per million.

(11) Any cadmium greater than 1.0 parts per million.

(12) Any zinc greater than 1.0 parts per million.

(13) Any phenols greater than 0.005 parts per million.

(14) Any iron greater than 2.0 parts per million.

(15) Any tin greater than 1.0 parts per million.

(16) Any barium greater than 1.0 parts per million.

(17) Any lead greater than 1.0 parts per million.

(18) Any silver greater than 1.0 parts per million.

(19) Any chlorides greater than 250.0 parts per million.

(20) Any radioactivity as radium-226 and strontium-90 greater than three UUC per liter and ten UUC per liter respectively. In the known absence of strontium-90 and alpha emitters the known concentration shall not be greater than 1,000 UUC per liter.

(21) Any cyanide greater than 1.0 parts per million, as cyanide (CN).

(22) Any selenium greater than 0.01 parts per million.

(23) Any arsenic greater than 0.05 parts per million.

(24) Any manganese greater than 0.05 parts per million.

(25) Any mercury greater than 0.005 parts per million.

(26) Any boron greater than 1.0 parts per million.

(27) Any antimony greater than 0.005 parts per million.

(28) Any beryllium greater than 0.005 parts per million.

(29) Any bismuth greater than 0.005 parts per million.

(30) Any cobalt greater than 0.005 parts per million.

(31) Any molybdenum greater than 0.005 parts per million.

(32) Any rhenium greater than 0.005 parts per million.

(33) Any telurium greater than 0.005 parts per million.

(34) Any uranyl ion greater than 0.005 parts per million.

(b) Except in quantities, or concentration, or with provisions as stipulated herein, it shall be unlawful for any person to discharge water or wastes to the sanitary sewer containing:

(1) Free or emulsified oil and grease exceeding on analysis an average of 100 parts per million (833 pounds per million gallons) of either or both or combinations of free or emulsified oil and grease, if, in the opinion of the manager, if appears probable that such wastes:

a. Can deposit grease or oil in the sewer lines in such a manner as to clog the sewers;

b. Can overload skimming and grease handling equipment;

c. Are not amenable to bacterial action and will, therefore, pass to the receiving waters without being affected by normal sewage treatment processed; or

d. Can have deleterious effects on the treatment process due to the excessive quantities.

(2) Acids or alkalies which attack or corrode sewers or sewage disposal structures or have a pH value lower than 5.5 or higher than 9.5;

(3) Cyanide or cyanogens compounds capable of liberating hydrocyanic gas on acidification in excess of 0.5 parts per million by weight as cyanide (CN) in the wastes from any outlet into the public sewers;

(4) Materials which exert or cause:

a. Unusual concentrations of solids or composition; as for example, total suspended solids of greater than 250 parts per million of inert nature (such as Fuller's earth) and/or total dissolved solids such as sodium chloride, or sodium sulfate;

b. Excessive discoloration;

c. Biochemical oxygen demand or an immediate oxygen demand greater than 250 parts per million;

d. High hydrogen sulfide content; or

e. Unusual flow and concentration shall be pretreated to a concentration acceptable to the city water and sewer system if such wastes can cause damage to collection facilities, impair the processes, incur treatment cost exceeding those of normal sewage, or render the water unfit for stream disposal or industrial use.

(Ord. No. 51, § 2, 3-2-1971)

Sec. 50-210. - Pretreatment and control of industrial wastes.

(a) Persons or owners discharging industrial wastes which exhibit any of the prohibited wastes set out in this article shall be required to pretreat said wastes or otherwise dispose of such wastes so as to make the remaining waste acceptable to the city prior to admission of said waste into a sanitary sewer.

(b) Plans, specifications, and any other pertinent information relating to proposed preliminary treatment and control facilities shall be submitted for the approval of the city, and no construction of such facilities shall be commenced until approval is obtained in writing. Preliminary treatment and control facilities shall be constructed so as to provide all of the following:

(1) Prevention of prohibited waste from entering a sanitary sewer;

(2) Control of the quantities and rates of discharge of industrial wastes into a sanitary sewer; and

(3) An accessible entry so that any authorized city employee may readily and safely measure the volume and samples of the flow prior to the admission of said industrial wastes into a sanitary sewer.

(c) When preliminary treatment and control facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(d) The manager and other duly authorized city employees acting as his duly authorized agent and bearing proper credentials and identification, shall be permitted to gain access to such properties as may be

necessary for the purpose of inspection, observation, measurement, sampling and testing of sewage and/or industrial wastes.

(Ord. No. 51, § 3, 3-2-1971)

Sec. 50-211. - Surcharge for wastes of abnormal strength.

(a) The service charge for any person discharging industrial wastes into the system is 25 percent of the total cost of water purchased by the owner for that billing period provided that the city meter is the only source of water used by the owner and provided that the biochemical oxygen demand in the waste water or the suspended materials does not exceed the normal concentration of 250 parts per million.

(b) When either the biochemical oxygen demand or the suspended solids or both are found to exceed the stated 250 parts per million at the point entering the city's system, a surcharge shall be applied to the billing rate by multiplying the normal base rate by the factor obtained from dividing the actual measured biochemical oxygen demand by 250 parts per million and also by the factor obtained from dividing the actual measured suspended solids by 250 parts per million, each such factor to be applied individually and only when greater than one. The surcharge will be made for each factor that exceeds one and shall be additive.

(c) The determination of biochemical oxygen demand and suspended materials shall be by an independent laboratory selected by the city. The time of selection of the sample shall be at the sole discretion of the city. The applicable surcharge determined by such tests shall be retroactive for two billing periods and shall continue for six billing periods unless subsequent tests determine that the surcharge should be further increased.

(d) When any such tests made at the discretion of the city show that a surcharge shall be applied, continued or increased over the base rates, whichever is applicable, then the owner shall be billed at the rate as provided in appendix A to this Code, for each test to cover the costs of sampling, mailing and handling plus the laboratory fees. When a surcharge is in effect, the test will be made at least once each 15 days. When such tests made at the discretion of the city reveal that the surcharge is no longer applicable, then no costs will be made to the owner for such test or tests.

(Ord. No. 51, § 4, 3-2-1971)

Sec. 50-212. - Authority to disconnect service.

The city shall retain the right to disconnect waste disposal service in the following circumstances:

(1) Where acids or chemicals damaging to sewer lines or treatment processes are released to the sewer causing rapid deterioration of these structures or interfering with proper treatment of sewage, the manager is authorized immediately to terminate service by such measures as are necessary to protect the facilities;

(2) Where any governmental agency informs the city that the effluent from the treatment plant is no longer of a standard permitted for surface runoff and it is found that the owner is delivering waste water to the city's system that cannot be sufficiently diluted by mixing with the city's waste or requires treatment that is not provided by the city as normal domestic treatment. In this instance, the city shall immediately supply the owner with the governmental agencies report and provide the owner with all pertinent information. The owner's waste line will then be disconnected when the city is informed that it can no longer continue to release their effluent for surface runoff. The owner's waste treatment service shall remain disconnected until such time that the owner has provided additional pretreatment facilities designed to remove the objectionable cause from owner's industrial wastes;

(3) Where the owner delivers his waste water at an uncontrolled, variable rate in sufficient quantity that it causes an imbalance in the sewage treating system.

(Ord. No. 51, § 5, 3-2-1971)

Secs 50-213—50-231. - Reserved.

ARTICLE VI. - IMPACT FEES[3]

Footnotes:

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State Law reference— Impact fees, V.T.C.A., Local Government Code § 395.001 et seq.

DIVISION 1. - GENERALLY

Sec. 50-232. - Title.

This article shall be known, and may be cited, as the community impact fee ordinance of the city.

(Ord. No. 298-1, § 1.1, 4-17-2001)

Sec. 50-233. - Definitions.

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

Advisory committee means the city's impact fee advisory committee appointed by the city council pursuant to V.T.C.A., Local Government Code § 395.058, to advise and assist in the adoption of land use assumptions, review and file comments on the capital improvements plan and to perform the other duties set forth in such section.

Assessment means the determination of the amount of the impact fee per service unit and is the maximum amount which can be imposed on new development pursuant to this article.

Capital improvement means either a water facility or a wastewater facility, with a life expectancy of three or more years, to be owned and operated by or on behalf of the city and as listed in the impact fee capital improvements plan.

Chapter 395 means V.T.C.A., Local Government Code ch. 395, as amended.

Credit means the amount of the reduction of impact fees, payments or charges for the approved construction or provision of the same type of capital improvements for which the fee has been assessed.

Facilities expansion means either a water facility expansion or a wastewater facility expansion.

Final plat approval or approval of a final plat means the point at which the applicant has complied with all conditions of approval and the plat has been released for filing with the county clerk.

Guidelines means administrative or procedural guidelines, if any, developed by the city to further the implementation of the provisions of this article. Said guidelines, as amended from time to time, shall not supersede any provision or alter any substantive procedure established in this article.

Impact fee means a fee, charge or assessment for water facilities, a fee for wastewater facilities, or both, as appropriately imposed on new development by the city in order to fund or recoup the costs of capital improvements or facilities expansions necessitated by and attributable to such new development.

The term "impact fees" does not include the dedication or rights-of-way or easements for such facilities, the construction of water or wastewater improvements and other infrastructure within the development to serve the development unless such water or wastewater improvement is listed on the impact fee capital improvements plan, the dedication of park land or open space, and site-specific facility, or any other work, dedication or improvement that is not a water or wastewater facility listed on the impact fee capital improvements plan.

Impact fee capital improvements plan means a water improvements plan or a wastewater improvements plan adopted or revised pursuant to this article.

Land use assumptions means the projections of population growth and associated changes in land uses and intensities adopted by the city, as may be amended from time to time, upon which the impact fee capital improvements plan is based.

Living unit equivalent (LUE) means a unit of measure which represents the quantity of water utilized and wastewater generated on an average annual daily basis from a single-family, detached residence of average size and occupancy and which is the standardized measure used for service units. The formula for determining living unit equivalents is set out in the impact fee capital improvements plan, attached hereto as exhibit A to the ordinance from which this article is derived.

New development means:

(1) The subdivision of land;

(2) The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or

(3) Any use or extension of the use of land; any of which increases the number of service units.

Off site means located entirely on land which is not included within the bounds of the plat or project being considered for impact fee assessment.

Platted means platted in accordance with V.T.C.A., Local Government Code ch. 212 or the applicable subdivision or platting procedures of the city.

Redundant meter means any secondary meter or meters required for the purpose of providing emergency or necessary water if and when the primary meter or meters should fail, but the total volume of the primary and redundant meters shall not exceed the maximum volume of the primary meter. This term includes the periodic use of a secondary meter or meters for the purpose of flushing, testing, or maintaining such secondary meter or meters.

Service area means the area within which impact fees for capital improvements or facilities expansions will be collected for new development occurring within such area and within which fees so collected will be expended for those types of improvements or expansions identified in the capital improvements plan applicable to the service area.

Service unit means the same as the term "living unit equivalent," which is the applicable standard units of measure shown in exhibit A to the ordinance from which this article is derived.

Site-specific facility means an improvement or facility which is for the primary use or benefit of a new development and which is not included in the capital improvements plan and for which the developer or property owner is solely responsible under subdivision and other applicable regulations. The term "site-specific facility" may include improvements located offsite, within, or on the perimeter of the new development site.

Wastewater facility means an improvement for providing sanitary sewer service, including, but not limited to, land or easements, treatment facilities, lift stations, collection lines, or interceptor mains. Wastewater facilities exclude site-specific facilities constructed by developers.

Wastewater facility expansion means the expansion of the capacity of any existing wastewater facility for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing wastewater facility to serve existing development.

Wastewater improvements plan means the adopted plan, as may be amended from time to time, which identifies the wastewater facilities or sanitary sewer expansions and their associated costs which are necessitated by and which are attributable to new development projected within a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of community impact fees pursuant to this article.

Water facility means an improvement for providing water service, including, but not limited to, land or easements, water supply, water treatment facilities, water supply facilities, water storage facilities, or water distribution lines. The term "water facility" excludes site-specific facilities constructed by developers.

Water facility expansion means the expansion of the capacity of any existing water facility, including increasing contract rights for water supply, for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing water facility to serve existing development.

Water improvements plan means the adopted plan, as may be amended from time to time, which identifies the water facilities or water expansions and their associated costs which are necessitated by and which are attributable to new development projected within a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of community impact fees pursuant to this article.

(b) Terms used which are defined in V.T.C.A., Local Government Code § 395.001, shall have the same meaning as they have in V.T.C.A., Local Government Code § 395.001.

(Ord. No. 298-1, § 1.4, 4-17-2001; Ord. No. 812, § 2, 7-15-2014)

Sec. 50-234. - Purpose.

This article is intended to ensure the provision of adequate public facilities to serve new development within the city service area by requiring development to pay its pro rata share of the costs of improvements necessitated by and attributable to such new development.

(Ord. No. 298-1, § 1.2, 4-17-2001)

Sec. 50-235. - Authority.

This article is adopted pursuant to V.T.C.A., Local Government Code § 395.001 et seq., the state constitution, the general laws of the state, and the city Charter. The provisions of this article shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Ord. No. 298-1, § 1.3, 4-17-2001)

Sec. 50-236. - Adoption of assumptions and plan.

The land use assumptions and the capital improvements plan identifying capital improvements or facility expansions pursuant to which impact fees may be assessed, as considered at the April 3, 2001, public hearing, are hereby approved. The land use assumptions and the capital improvements plan are set out in the document attached as exhibit B to the ordinance from which this article is derived, which is dated January 9, 2001, and entitled Report To City Council on Impact Fees.

(Ord. No. 298-1, § 1.5, 4-17-2001)

Sec. 50-237. - State law.

Chapter 395 supplements this article to the extent that its provisions may be applicable hereto and, to such extent, its provisions are incorporated herein.

(Ord. No. 298-1, § 1.6, 4-17-2001)

Sec. 50-238. - Advisory committee.

(a) The advisory committee shall consist of the city planning and zoning commission (the commission) and other citizens of the city appointed by the city council. If the commission does not include at least one representative of the real estate, development or building industry who is not an employee or official of a governmental entity, the city council shall appoint at least one representative, having such qualifications, as a voting member of the advisory committee. If any impact fee is to be applied to the extraterritorial jurisdiction of the city, a representative from that area shall be appointed by the city council.

(b) The duties of the advisory committee shall be as follows:

  (1) Advise and assist the adoption of land use assumptions;

  (2) Review the capital improvements plan and file written comments;

  (3) Monitor and evaluate implementation of the capital improvements plan;

  (4) File semiannual reports with respect to the progress of the capital improvements plan and report to the city council any perceived inequities in implementing the plan or imposing the impact fee; and

  (5) Recommend to the city council as necessary and required the timely amendment and/or update of the capital improvements plan and the impact fees.

(c) All information and professional reports concerning the development and implementation of the capital improvements plan shall be made available to the advisory committee, and the city staff and contract officers of the city shall provide the committee with such support and assistance as may be required.

(Ord. No. 298-1, § 1.7, 4-17-2001)

Secs. 50-239—50-256. - Reserved.

DIVISION 2. - COMMUNITY IMPACT FEE ESTABLISHED

Sec. 50-257. - Establishment.

There is hereby established a community impact fee which shall be imposed against new development in order to generate revenues for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development.

(Ord. No. 298-1, § 2.1, 4-17-2001)

Sec. 50-258. - Basis.

The community impact fee shall be assessed on the basis of living unit equivalents. The number of living unit equivalents shall be determined at the time of assessment as hereinafter set out.

(Ord. No. 298-1, § 2.2, 4-17-2001)

Sec. 50-259. - Amount.

The community impact fee for each living unit equivalent shall, as set forth in exhibit A to the ordinance from which this article is derived, as amended from time to time in accordance with chapter 395, be as set forth in appendix A to this Code for water service and wastewater service.

(Ord. No. 298-1, § 2.3, 4-17-2001)

Sec. 50-260. - Payment.

All payments pursuant to this article shall be made to the city secretary or his designee.

(Ord. No. 298-1, § 2.4, 4-17-2001)

Sec. 50-261. - Exemption or waiver.

(a) Any building permit application which was duly accepted for filing prior to the effective date of the ordinance from which this article is derived and subsequently granted, shall be exempt from the assessment and payment of an impact fee under this article, unless such application thereafter expires. The applicant for any such building permit described in the preceding sentence shall be required to pay the impact fee specified by this article.

(b) The owner, user or custodian of a redundant meter shall be exempted from payment of impact fees under this article on said meter. The owner, user or custodian of any meter determined by the city not to be a redundant meter as defined herein shall be required to comply with this article, including the payment of impact fees on any meter determined not to be a redundant meter.

(c) If the city council grants a variance or waiver to the amount of the impact fee due for a new development under this section, it shall cause to be appropriated from the other city funds the amount of the reduction in the impact fee to the capital improvements account.

(Ord. No. 298-1, § 2.5, 4-17-2001; Ord. No. 812, § 3, 7-15-2014)

Sec. 50-262. - Establishment of accounts.

(a) The city shall establish an account to which interest is allocated for each category of capital facility for which an impact fee is imposed pursuant to this article. Each impact fee collected within the service area shall be deposited in such account.

(b) Interest earned on the impact fee account shall be considered funds of the account and shall be used solely for the purposes authorized in section 50-263.

(c) The city shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in section 50-263. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.

(d) The city shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected or expended.

(Ord. No. 298-1, § 2.6, 4-17-2001)

Sec. 50-263. - Use of proceeds.

(a) The impact fees collected pursuant to this article may be used to finance or to recoup the costs of any capital improvements or facilities expansions identified in the impact fee capital improvements plan for the service area, including the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees), and the fees actually paid or contracted to be paid to an independent qualified engineer or other consultants preparing or updating the impact fee capital improvements plan who is not an employee of the city. Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements or facilities expansions.

(b) Impact fees collected pursuant to this article shall not be used to pay for any of the following expenses:

(1) Construction, acquisition or expansion of capital improvements or assets other than those identified in the capital improvements plan;

(2) Repair, operation, or maintenance of existing or new capital improvements or facilities expansions;

(3) Upgrading, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, expanding or replacing existing capital improvements to provide better service to existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or

(5) Administrative and operating costs of the city.

(Ord. No. 298-1, § 2.7, 4-17-2001)

Secs. 50-264—50-289. - Reserved.

DIVISION 3. - APPLICABILITY OF COMMUNITY IMPACT FEES

Sec. 50-290. - Fees under this article.

(a) Subject to the provisions of this article and chapter 395, the community impact fees imposed by Ordinance No. 298, adopted on February 18, 1997, shall continue to apply to land for which a subdivision plat was approved or filed for approval after the effective date of the Ordinance No. 298 but prior to the effective date of the ordinance from which this article is derived; provided that any such application for subdivision plat approval did not expire or lapse prior to the effective date of this article; and provided that Ordinance No. 298 shall be deemed fully replaced by this article as to all other property.

(b) Any land for which a subdivision plat was filed of record prior to the effective date of this article and for which community impact fees were not paid shall be subject to the payment of community impact fees under this article.

(c) Any development for which a community impact fee component was properly paid under Ordinance No. 298, or any prior ordinance, that adds additional service units will be charged the impact fee established by this article for each such additional service unit. No additional impact fee shall be assessed against any such development unless the number of service units required to service such tract or property shall increase. Should the number of required service units increase, impact fees shall be increased in an amount equal to the impact fee established by this article multiplied by the difference in number of service units.

(Ord. No. 298-1, § 3.1, 4-17-2001)

Sec. 50-291. - Payment of impact fees.

(a) Unless there is executed an agreement for payment of impact fees in another manner, the community impact fee imposed by this article shall apply to new development not coming under section 50-290(a).

(b) The community impact fee for development coming under this section shall be assessed and collected with respect to:

(1) Land platted after the adoption of this article, at the time the city releases such plat for recording; and

(2) Development which occurs or is proposed without platting, at the earlier of the time application is made for a building permit or application is made for connection to the city's water or wastewater system.

(c) Impact fees may be assessed but not collected for property where service is not available unless:

(1) The city commits to commence construction of necessary facilities identified in the capital improvements plan within two years and will have service available within a reasonable time not to exceed five years.

(2) The city agrees in writing to permit the property owner to construct or finance the required capital improvements or facility expansions and that the costs incurred or funds advanced by such owner will either:

a. Be credited against the impact fees otherwise due from such owner;

b. Reimburse the owner for such costs from impact fees paid from such owner and other new developments that will use such improvements or expansions, in which case fees shall be reimbursed to the owner as and when collected by the city from new development; or

c. The owner voluntarily requests the city to reserve capacity to serve future development and the city and the owner enter into a valid written agreement;

provided that any such impact fee assessed but not collected, and for which no written agreement is entered into between the city and the property owner pursuant to this subsection, shall be thereafter collected at the earlier of the time the city contracts for the capital improvements necessary to serve the property or service is made available to the property.

(d) A property owner and the city may enter into a valid written agreement providing for the time and method of the payment of impact fees, which agreement shall prevail over any contrary provision of this article.

(Ord. No. 298-1, § 3.2, 4-17-2001)

Sec. 50-292. - Calculation of impact fees.

(a) Impact fees shall be calculated based upon the number of service units as determined by using the conversion table provided in exhibit A to the ordinance from which this article is derived. The impact fee required for any property, development or application shall be determined by multiplying the number of service units in the proposed development by the amount of the respective impact fees per service unit set forth in section 50-259 and in exhibit A to the ordinance from which this article is derived.

(b) Should the number of service units required for any property increase after the impact fees for such property are assessed and collected, the impact fees for such property shall be increased in an amount equal to the impact fee established by this article multiplied by the number of additional service units required for such property.

(c) The total amount of impact fees to be paid to and deposited into the impact fee account by the city for any development shall be reduced by any allowable credits, if any, for the category of capital improvements as provided in section 50-296.

(d) If at anytime impact fees are assessed against any property but are unpaid, the total amount of such unpaid impact fees shall be attached to the development application, plat and/or other documents applicable to the property and thereafter collected:

(1) At the earliest time provided for in this article; and

(2) In no event later than the date service is connected to the property.

(e) Replatting shall not require recalculation of impact fees unless the number of service units is increased. If a proposed replat increases the number of service units, the impact fee shall be recalculated as provided in subsection (b) of this section.

(Ord. No. 298-1, § 3.3, 4-17-2001)

Sec. 50-293. - In addition to other fees.

The community impact fee shall be charged in addition to all other fees set out by city ordinance or regulation including, but not limited to, building permit fees and tap fees, park land dedication requirements and payments in lieu, and dedication of easements and right-of-way.

(Ord. No. 298-1, § 3.4, 4-17-2001)

Sec. 50-294. - Easement exclusive of fees.

If granting of easements or rights-of-way is necessary to construction of an impact fee capital improvement, said easement shall be granted by the record owner of the land so affected, exclusive and in addition to the payment of the impact fee, and at the time of payment of the impact fee, as a condition of service, if construction of an impact fee capital improvement is undertaken by the city in any public right-of-way due to lack of said easement, and subsequent relocation of the improvement is required by any public agency, the record owner of the land shall bear all expense of said relocation.

(Ord. No. 298-1, § 3.5, 4-17-2001)

Sec. 50-295. - Appeals.

(a) The property owner or applicant for new development may appeal the following decisions to the city council:

(1) The applicability of an impact fee to the development;

(2) The amount of the impact fee due;

(3) The availability or the amount of any credit;

(4) The application of any credit against an impact fee due;

(5) The amount of a refund due, if any.

(b) The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the credit was not calculated according to the applicable schedule of service units or the guidelines established for determining credits.

(c) The appellant must file a notice of appeal with the city secretary within 30 days following the decision appealed from. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory

to the city attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending.

(Ord. No. 298-1, § 3.6, 4-17-2001)

Sec. 50-296. - Credits.

If the property owner and the city have entered into a valid written agreement authorized by the city council, then, in that event, to the extent provided for in such agreement, if any, the property owner shall be entitled to:

(1) An offset against, or credit for, the payment of impact fees otherwise payable by such property owner for the land being developed, to the extent of the approved costs and expense of any such construction, contribution, or dedication of any facility appearing on the capital improvements plan which is required to be constructed by the city in order to serve a property owner's development, that is paid or made by such property owner;

(2) A credit against any category of impact fee as provided in the agreement; or

(3) Reimbursement for the costs of capital improvements, constructed or paid by the property owner, from impact fees received from other new developments that will use such capital improvements or facility expansions.

(Ord. No. 298-1, § 3.7, 4-17-2001)

Sec. 50-297. - Refunds.

(a) On the request of an owner of property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the city has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of the fee payment.

(b) Upon completion of all the capital improvements or facilities expansions identified in the impact fee capital improvements plan, the city shall recalculate the maximum impact fee per service unit using the actual costs of the capital improvements or expansions. If the maximum impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the city shall refund the difference, if such difference exceeds the impact fee paid by more than ten percent. The refund to the record owner shall be calculated by multiplying such difference by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

(c) The city shall refund any impact fee or part thereof that is not spent as authorized by this article within ten years after the date of the fee payment.

(d) An impact fee collected pursuant to this article shall be considered expended if the total expenditures for capital improvements or facilities expansions authorized in section 50-263 within the service area within ten years following the date of collection exceeds the total fees collected for such improvements or expansions during such period.

(e) If a refund is due pursuant to this section, the city shall pro rate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The total refund payable to any such property owner shall be calculated by multiplying the refund due per service unit by the number of service units for the property for which the fee was paid, and interest due shall be calculated upon that amount.

(f) Refunds shall be made only to the record owner of the property at the time of the refund and shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in V.T.C.A., Finance Code § 302.002 or its successor.

(Ord. No. 298-1, § 3.8, 4-17-2001)

Sec. 50-298. - Updates to plan and revision of fees.

(a) The city shall update its land use assumptions and impact fee capital improvements plan and shall recalculate its impact fees not less than once every three years in accordance with the procedures set forth in V.T.C.A., Local Government Code § 395.001 et seq. or in any successor statute; provided that after giving the required notice the city council may determine that no changes or amendments are required.

(b) The city may review its land use assumptions, impact fee capital improvements plan, and other factors such as market conditions more frequently than provided in subsection (a) of this section to determine if the land use assumptions and capital improvements plan should be updated and the impact fee recalculated accordingly.

(Ord. No. 298-1, § 3.9, 4-17-2001)

Sec. 50-299. - Prohibition against transfer.

The payment of impact fees and credits earned under this article shall inure to the benefit of and remain with the land for which such impact fees were paid or credits earned, and may not be sold, assigned, conveyed or transferred for the benefit of any other land or property. No impact fee receipts, living unit equivalents (LUEs), rights, benefits or credits arising under this article may be sold, assigned, transferred or conveyed except to a subsequent grantee or purchaser of the land for which such fee was paid or credit earned. All rights or benefits arising from the payment of an impact fee or any credit shall automatically vest in the owner and each subsequent owner of the land for which the fee was paid or credit earned.

(Ord. No. 298-1, § 3.10, 4-17-2001)

Sec. 50-300. - Construction.

The terms and provisions of this article shall not be construed in a manner to conflict with V.T.C.A., Local Government Code § 395.001 et seq., as amended, and if any term or provision of this article shall appear to conflict with any term, provision or condition of V.T.C.A., Local Government Code § 395.001 et seq. such ordinance term or provision shall be read, interpreted and construed in a manner consistent with and not in conflict with V.T.C.A., Local Government Code § 395.001 et seq.

(Ord. No. 298-1, § 4.1, 4-17-2001)

Sec. 50-301. - Conflict with state law.

In the event of a conflict between this article and the state law, the state law shall control.

Secs. 50-302—50-330. - Reserved.

ARTICLE VII. - IRRIGATION SYSTEMS

Sec. 50-331. - Definitions.

The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

Air gap. A complete physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.

Atmospheric vacuum breaker. An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an atmospheric vacuum breaker back-Siphonage prevention assembly.

Backflow prevention. The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.

Backflow prevention assembly. Any assembly used to prevent backflow into a potable water system. The type of assembly used is based on the existing or potential degree of health hazard and backflow condition.

Completion of irrigation system installation. When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.

Consulting. The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.

Cross connection An actual or potential connection between a potable water source and an irrigation system that may contain contaminates or pollutants or any source of water that has been treated to a lesser degree in the treatment process.

Design. The act of determining the various elements of a landscape irrigation system that will include, but not be limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulics calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

Design pressure. The pressure that is required for an emission device to operate properly. Design pressure is calculated by adding the operating pressure necessary at an emission device to the total of all pressure losses accumulated from an emission device to the water source.

Double check valve. An assembly that is composed of two independently acting, approved check valves, including tightly closed resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a double check valve backflow prevention assembly.

Emission device. Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

Employed. Engaged or hired to provide consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, § 3212(d), as amended from time to time, based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

Head-to-head spacing . The spacing of spray or rotary heads equal to the manufacturer's published radius of the head.

Health hazard. A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.

Hydraulics. The science of dynamic and static water; the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

Inspector. A licensed plumbing inspector or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for the city as an employee or as a contractor.

Installer. A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Title 30, Texas Administrative Code, Chapter 30, as amended from time to time (relating to Occupational Licenses and Registrations).

Irrigation inspector. A person who inspects irrigation systems and performs other enforcement duties for the city as an employee or as a contractor and who is licensed under Title 30, Texas Administrative Code, Chapter 30, as amended from time to time (relating to Occupational Licenses and Registrations).

Irrigation plan. A scaled drawing of a landscape irrigation system which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system.

Irrigation services. Selling, designing, installing, maintaining, altering, repairing, servicing, permitting, providing consulting services regarding, or connecting an irrigation system to a water supply.

Irrigation system. An assembly of component parts that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location, and/or to reduce dust or control erosion. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, § 251.002, as amended from time to time.

Irrigation technician. A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30, as amended from time to time (relating to Occupational Licenses and Registrations).

Irrigation zone. A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

Irrigator. A person who sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30, as amended from time to time.

Irrigator-in-charge. The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

Landscape irrigation. The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

License. An occupational license that is issued by the Texas Commission on Environmental Quality under Title 30, Texas Administrative Code, Chapter 30, as amended from time to time, to an individual that authorizes the individual to engage in an activity that is covered by Title 30, Texas Administrative Code, Chapter 30, as amended from time to time.

Mainline. A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

Maintenance checklist. A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system,

including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

Major maintenance, alteration, repair, or service. Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

Master valve. A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

Matched precipitation rate. The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.

New installation. An irrigation system installed at a location where one did not previously exist.

Pass-through contract. A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services relating to an irrigation system.

Potable water. Water that is suitable for human consumption.

Pressure vacuum breaker. An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a pressure vacuum breaker back-siphonage prevention assembly.

Reclaimed water. Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

Records of landscape irrigation activities. The irrigation plans, contracts, warranty information, invoices, copies of permits, and other documents that relate to the installation, maintenance, alteration, repair, or service of a landscape irrigation system.

Reduced pressure principal backflow prevention assembly. An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.

Static water pressure. The pressure of water when it is not moving.

Supervision. The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local or state requirements. Also a licensed installer working under the direction of a licensed irrigator or beginning January 1, 2009, an irrigation technician who is working under the direction of a licensed irrigator to install, maintain, alter, repair or service an irrigation system.

Water conservation. The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

Zone flow. A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.

Zone valve. An automatic valve that controls a single zone of a landscape irrigation system.

(Ord. No. 556, § 2, 12-16-2008)

Sec. 50-332. - Valid license required; exemptions.

(a) Any person who connects an irrigation system to a water supply within the city or the city's extraterritorial jurisdiction ("ETJ"), must hold a valid license, as defined by Title 30, Texas Administrative Code, Chapter 30, as amended from time to time, and required by Chapter 1903 of the Texas Occupations Code, as amended from time to time (governing licenses related to irrigation systems) or as defined by Chapter 365, Title 22 of the Texas Administrative Code, as amended from time to time, and required by Chapter 1301 of the Texas Occupations Code, as amended from time to time (governing plumbing licenses).

(b) A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, § 1903.002(c)(1), as amended from time to time, if the property owner is performing irrigation work in a building or on a premises owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in Title 30, Texas Administrative Code, Chapter 344, as amended from time to time, regarding spacing, water pressure, spraying water over impervious materials, rain or moisture shut-off devices or other technology, backflow prevention and isolation valves. The city may, at any point, adopt more stringent requirements for a home or property owner who installs an irrigation system.

(c) The exemptions set forth in Texas Occupations Code § 1903.002, as amended from time to time, are hereby incorporated by reference into this ordinance. Persons or properties that are exempt from the licensing provisions under this Ordinance and Chapter 1903, Texas Occupations Code, shall comply with the standards applicable to irrigation systems adopted under this Ordinance, Chapter 1903, Texas Occupations Code, and the administrative rules adopted thereunder.

(Ord. No. 556, § 3, 12-16-2008)

Sec. 50-333. - Permit required; exemptions.

(a) Any person installing an irrigation system within the territorial limits or extraterritorial jurisdiction of the city is required to obtain a permit and approval of an irrigation design plan, in accordance with section 5-338, from the city prior to installation of the irrigation system. All applications for permits shall be made on suitable forms provided by the city and shall be accompanied by an irrigation design plan and any fees required by this article.

(b) The following are exempt from the permitting requirements of this Section:

(1) An irrigation system that is that an on-site sewage disposal system, as defined by Section 355.002, Health and Safety Code, as amended from time to time;

(2) An irrigation system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code, as amended from time to time; or

(3) An irrigation system connected to a groundwater well used by the property owner for domestic use.

(Ord. No. 556, § 4, 12-16-2008)

Sec. 50-334. - Backflow prevention methods and devices.

(a) Any irrigation system that is connected to the potable water supply must be connected through a backflow prevention method approved by the Texas Commission on Environmental Quality (TCEQ). The backflow prevention device must be approved by the American Society of Sanitary Engineers; or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or the Uniform Plumbing Code; or any other laboratory that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention

device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.

(b) If conditions that present a health hazard exist, including injection of chemicals in the irrigation system, one of the following methods must be used to prevent backflow;

(1) An air gap may be used if:

a. There is an unobstructed physical separation; and

b. The distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.

(2) Reduced pressure principle backflow prevention assemblies may be used if:

a. The device is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and

b. Drainage is provided for any water that may be discharged through the assembly relief valve.

(3) Pressure vacuum breakers may be used if:

a. No back-pressure condition will occur; and

b. The device is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.

(4) Atmospheric vacuum breakers may be used if:

a. No back-pressure will be present;

b. There are no shutoff valves downstream from the atmospheric vacuum breaker;

c. The device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;

d. There is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and

e. A separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.

(c) Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.

(d) If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the device is tested upon installation and test cocks are used for testing only.

(e) If a double check valve is installed below ground:

(1) Test cocks must be plugged, except when the double check valve is being tested;

(2) Test cock plugs must be threaded, water-tight, and made of non-ferrous material;

(3) A y-type strainer is installed on the inlet side of the double check valve;

(4) There must be a clearance between any fill material and the bottom of the double check valve to allow space for testing and repair; and

(5) There must be space on the side of the double check valve to test and repair the double check valve.

(f) If an existing irrigation system without a backflow-prevention assembly requires major maintenance, alteration, repair, or service, the system must be connected to the potable water supply through an

approved, properly installed backflow prevention method before any major maintenance, alteration, repair, or service is performed.

(g) If an irrigation system is connected to a potable water supply through a double check valve, pressure vacuum breaker, or reduced pressure principle backflow assembly and includes an automatic master valve on the system, the automatic master valve must be installed on the discharge side of the backflow prevention assembly.

(h) The irrigator shall ensure the backflow prevention device is tested by a licensed backflow prevention assembly tester prior to being placed in service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within ten business days of testing of the backflow prevention device.

(i) In the event that the city has adopted more stringent backflow prevention methods and requirements in a separate ordinance, the more stringent regulations shall control.

(Ord. No. 556, § 5, 12-16-2008)

Sec. 50-335. - Specific conditions and cross-Connection control.

(a) Before any chemical is added to an irrigation system connected to the potable water supply, the irrigation system must be connected through a reduced pressure principle backflow prevention assembly or air gap.

(b) Connection of any additional water source to an irrigation system that is connected to the potable water supply can only be done if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.

(c) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply must be connected through a reduced pressure principle backflow device.

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Title 30, Texas Administrative Code, Chapter 285, then:

(1) All irrigation piping and valves must meet the separation distances from the on-site sewage facilities system as required for a private water line in Title 30, Texas Administrative Code, Section 285.91(10), as amended from time to time;

(2) Any connections using a private or public potable water source that is not the city's potable water system must be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in Title 30, Texas Administrative Code, Section 344.50, as amended from time to time; and

(3) Any water from the irrigation system that is applied to the surface of the area utilized by the on-site sewage facility system must be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the on-site sewage facilities system from operating effectively.

(Ord. No. 556, § 6, 12-16-2008)

Sec. 50-336. - Water conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in the section 50-331.

(Ord. No. 556, § 7, 12-16-2008)

Sec. 50-337. - Irrigation plan design: minimum standards.

(a) An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. A paper or electronic copy of the irrigation plan must be on the job site at all times during the installation of the irrigation system. A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

    (1) Diminish the operational integrity of the irrigation system;

    (2) Violate any requirements of this ordinance; and

    (3) Go unnoted in red on the irrigation plan.

(b) The irrigation plan must include complete coverage of the area to be irrigated. If a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan.

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

    (1) The irrigator's seal, signature, and date of signing;

    (2) All major physical features and the boundaries of the areas to be watered;

    (3) A North arrow;

    (4) A legend;

    (5) The zone flow measurement for each zone;

    (6) Location and type of each:

        a. Controller; and

        b. Sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);

    (7) Location, type, and size of each:

        a. Water source, such as, but not limited to a water meter and point(s) of connection;

        b. Backflow prevention device;

        c. Water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;

        d. Valve, including but not limited to, zone valves, master valves, and isolation valves;

        e. Pressure regulation component; and

        f. Main line and lateral piping.

    (8) The scale used; and

    (9) The design pressure.

(Ord. No. 556, § 8, 12-16-2008)

Sec. 50-338. - Design and installation—Minimum requirements.

(a) No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.

(b) Spacing.

(1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure.

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.

(3) Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.

(c) *Water pressure.* Emission devices must be installed to operate at the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) *Piping.* Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe.

(e) *Irrigation zones.* Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) *Matched precipitation rate.* Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

(h) *Master valve*. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) *PVC pipe primer solvent.* All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the plumbing code adopted by the city (being Section 316, Uniform Plumbing Code, if adopted by the city or Section 605, International Plumbing Code, if adopted by the city).

(j) *Rain or moisture shut-off devices or other technology.* All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall.

(k) *Isolation valve.* All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

(l) *Depth coverage of piping.* Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be

noted on the irrigation plan and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) *Wiring irrigation systems.*

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a covered purple valve box and the hose bib and any hoses connected to the bib must be labeled "non potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) Beginning January 1, 2010, either a licensed irrigator or a licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not onsite, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

(Ord. No. 556, § 9, 12-16-2008)

Sec. 50-339. - Completion of irrigation system installation.

Upon completion of the irrigation system, the irrigator or irrigation technician who provided supervision for the on-site installation shall be required to complete four items:

(1) A final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;

(2) The maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:

a. The manufacturer's manual for the automatic controller, if the system is automatic;

b. A seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration or monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;

c. A list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and

d. The statement, "This irrigation system has been installed in accordance with all applicable state and local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time."

(3) A permanent sticker which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. The information contained on the sticker must be printed with waterproof ink and include:

(4) The irrigation plan indicating the actual installation of the system must be provided to the irrigation system's owner or owner representative.

(Ord. No. 556, § 10, 12-16-2008)

Sec. 50-340. - Maintenance, alteration, repair, or service of irrigation systems.

(a) The licensed irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.

(b) All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be returned to the original grade with compacted select backfill.

(c) Colored PVC pipe primer solvent must be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the plumbing code adopted by the city (being Section 316, Uniform Plumbing Code, if adopted by the City, or Section 605, International Plumbing Code, if adopted by the City).

(d) When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or backflow prevention device, an isolation valve shall be installed, if an isolation valve is not present.

(Ord. No. 556, § 11, 12-16-2008)

Sec. 50-341. - Advertisement requirements.

(a) All vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service must display the irrigator's license number in the form of "LI_____" in a contrasting color of block letters at least two inches high, on both sides of the vehicle.

(b) All forms of written and electronic advertisements for irrigation services must display the irrigator's license number in the form of "LI_____." Any form of advertisement, including business cards, and estimates which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number.

(c) The name, mailing address, and telephone number of the TCEQ must be prominently displayed on a legible sign and displayed in plain view for the purpose of addressing complaints at the permanent structure where irrigation business is primarily conducted and irrigation records are kept.

(Ord. No. 556, § 12, 12-16-2008)

Sec. 50-342. - Contracts.

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www. tceq.state.tx.us." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission On Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us."

(c) An individual who agrees by contract to provide irrigation services as defined in Title 30, Texas Administrative Code, Section 344.30 (relating to License Required) shall hold an irrigator license issued under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in Title 30, Texas Administrative Code, Section 344.1(36) (relating to definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, the irrigator shall still be responsible for providing the irrigation system's owner or through contract, the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this ordinance. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

(Ord. No. 556, § 13, 12-16-2008)

Sec. 50-343. - Warranties for systems.

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written document that identifies the

materials furnished in the maintenance, alteration, repair, or service. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information.

(Ord. No. 556, § 14, 12-16-2008)

Sec. 50-344. - Duties and responsibilities of city inspectors.

A licensed irrigation inspector or inspector shall enforce the ordinance of the city, and shall be responsible for:

(1) Verifying that the appropriate permits have been obtained for an irrigation system and that the irrigator and installer or irrigation technician, if applicable, are licensed;

(2) Inspecting the irrigation system;

(3) Determining that the irrigation system complies with the requirements of this article;

(4) Determining that the appropriate backflow prevention device was installed, tested, and test results provided to the city;

(5) Investigating complaints related to irrigation system installation, maintenance, alteration, repairs, or service of an irrigation system and advertisement of irrigation services; and

(6) Maintaining records according to this ordinance.

(Ord. No. 556, § 15, 12-16-2008)

Sec. 50-345. - Items not covered by this article.

Any item not covered by this ordinance and required by law shall be governed by the Texas Occupations Code, the Texas Water Code, Title 30 of the Texas Administrative Code, and any other applicable state statute or Texas Commission on Environmental Quality rule.

(Ord. No. 556, § 16, 12-16-2008)

Sec. 50-346. - Fees.

The fee for a permit required under this article shall be as set out in appendix A of this Code. If work for which a permit is required under this ordinance is commenced, initiated, or proceeds without a permit, the fees set forth in this section shall be doubled. A permit issued under this ordinance shall expire within 180 days of the date of issuance.

(Ord. No. 556, § 15, 12-16-2008)

Sec. 50-347. - Enforcement.

(a) The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person, firm, corporation or agent who shall violate a provision of this article, or fails to comply therewith, or with any of the requirements thereof, is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is declared to be a nuisance.

(b) Any person who shall violate any of the provisions of this article, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits or ETJ shall be deemed guilty of an offense

and shall be liable for a fine not to exceed $2,000. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

(c) Whenever any work is being done contrary to the provisions of this article, another controlling ordinance or statute governing the irrigation system, the building official or code enforcement authority designated by the city manager may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the city shall post a stop work order on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the building official or code enforcement authority to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the building official or code enforcement authority. The building official or code enforcement authority may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the construction project. The work on other aspects of the construction not in violation of the city's ordinances may proceed, but work shall cease as to that aspect in violation of the city's ordinances.

(d) Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and

(2) Other available relief.

(Ord. No. 556, § 19, 12-16-2008)

Secs. 50-348—50-370. - Reserved.

ARTICLE VIII. - IDENTITY THEFT PROTECTION

Sec. 50-371. - Program adoption.

The city developed this identity theft prevention program pursuant to the Federal Trade Commission's Red Flags Rule (the "Rule"), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003; 16 C.F.R. §§ 681.1 and 681.2. This program was developed for the utility department of the city (the "utility") with oversight and approval of the city council. After consideration of the size and complexity of the utility's operations and account systems, and the nature and scope of the utility's activities, the city council determined that this program was appropriate for the city's utility, and therefore approved this program on May 5, 2009.

(Ord. No. 567, § 2(Exh. A, § I), 5-5-2009)

Sec. 50-372. - Purpose and definitions.

(a) *Establish an identity theft prevention program.* To establish a program designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or an existing covered account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003.

(b) *Establishing and fulfilling requirements of the red flags rule.*

(1) The rule defines "identity theft" as "fraud committed using the identifying information of another person" and a "red flag" as "a pattern, practice, or specific activity that indicates the possible existence of identity theft".

(2) Under the rule, every financial institution and creditor is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. The program must contain reasonable policies and procedures to:

a. Identify relevant red flags for new and existing covered accounts and incorporate those red flags into the program;

b. Detect red flags that have been incorporated into the program;

c. Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and

d. Ensure the program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from identity theft.

(c) Red flags rule definitions used in this program:

City: The City of Kyle, Hays County, Texas.

Covered account: Under the rule, a "covered account" is:

(1) Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and

(2) Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the utility from identity theft.

Creditors: The rule defines creditors "to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors."

Identifying information: Identifying information is defined under the rule as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including: name, address, telephone number, social security number, date of birth, government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer's Internet protocol address, or routing code.

Program: The identity theft prevention program for the city.

Program administrator: The utility director is the program administrator for the program. In the absence of a utility director, the city manager or their designee shall be the program director.

Utility: The utility is the utility department for the city.

(Ord. No. 567, § 2(Exh. A, § II), 5-5-2009)

Sec. 50-373. - Identification of red flags.

In order to identify relevant red flags, the utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity theft. The utility identifies the following red flags, in each of the listed categories:

(1) *Notifications and warnings from consumer credit reporting agencies—Red flags.*

a. Report of fraud accompanying a consumer credit report;

b. Notice or report from a consumer credit agency of a credit freeze on a customer or applicant;

c. Notice or report from a consumer credit agency of an active duty alert for an applicant; and

d. Indication from a consumer credit report of activity that is inconsistent with a customer's usual pattern or activity, including but not limited to:

1. Recent and significant increase in volume of inquiries.

2. Unusual number of recent credit applications.

3. A material change in use of credit.

4. Accounts closed for cause or abuse.

(2) *Suspicious documents—Red flags.*

a. Identification document or card that appears to be forged, altered or inauthentic;

b. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;

c. Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and

d. Application for service that appears to have been altered or forged.

(3) *Suspicious personal identifying information—Red flags.*

a. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates, lack of correlation between Social Security number range and date of birth);

Because this program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the program's general red flag detection, implementation and prevention practices are listed in this document.

(Ord. No. 567, § 2(Exh. A, § III), 5-5-2009)

ARTICLE I. - IN GENERAL

Sec. 53-1. - Authority.

This chapter is adopted pursuant to the police powers of the city and under the authority of the city Charter and the constitution and general laws of the state, including particularly V.T.C.A., Local Government Code § 211.001 et seq.

(Ord. No. 438, § 1, 11-24-2003)

Sec. 53-2. - Title.

This chapter shall be known, and may be cited, as the Zoning Ordinance of the City of Kyle, Texas.

(Ord. No. 438, § 2, 11-24-2003)

Sec. 53-3. - Purpose and intent.

The primary purposes of this chapter are to promote the health, safety, and the general welfare of the city and it's present and future residents; provide reasonable regulations and requirements to protect, preserve, improve and provide for the health, safety and general welfare of the present and future citizens of the city; and to establish a framework of zoning guidelines and criteria which will provide for and support the development of a quality living and work environment by incorporating provisions requiring all future development and redevelopment to provide a compatible plan for residential, commercial and industrial uses, while providing reasonable protection for both the public and persons having an ownership interest in property affected by these regulations. This chapter should be administered and applied to result in development superior to that otherwise achievable and to promote the following purposes:

(1) Assist the safe, orderly, healthful and coordinated development of the city;

(2) Conserve existing and future neighborhoods;

(3) Protect and conserve the value of real property throughout the community;

(4) Conserve, develop, protect, and utilize natural resources, as appropriate and consistent with the public interest, to enhance the preservation of the environment;

(5) Protect and preserve places and areas of historical and cultural importance and significance to the community;

(6) Prevent the overcrowding of land and avoid undue concentration of population or land uses, thereby encouraging high quality development and innovative design;

(7) Lessen congestion in the streets and provide convenient, safe, and efficient circulation of vehicular and pedestrian traffic;

(8) Facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, emergency and recreational facilities, and other public requirements;

(9) Promote economic development through an efficient and practical means by which development will promote a prosperous economic environment;

(10) Promote compatible residential, commercial and industrial uses to harmoniously relate future development and redevelopment to the existing community and facilitate the development of adjoining properties;

(11) Standardize the procedure and requirements for zoning, building permits, and certificates of occupancy to provide administrative efficiency and property owner rights; and

(12) Provide the context for the appropriate reconciliation of any differences of interest among property owners, developers, neighborhoods and the city.

(Ord. No. 438, § 3, 11-24-2003)

Sec. 53-4. - Jurisdiction and intent.

(a) The requirements of this chapter shall apply to all property within the city; provide for the implementation of the site development regulations; provide a voluntary guide for the development of property within the extraterritorial jurisdiction in order that such property may be developed in a manner consistent with neighboring areas and existing or planned infrastructure; and be construed and applied in a manner to give effect to the city master plan.

(b) The intent of this chapter is to supplement the minimum standards for the development of land within the city as contained in chapter 41, pertaining to subdivision, applicable building, plumbing and electrical codes, and city standard details and specifications. If only the minimum standards are followed, as expressed by the various ordinances regulating land development, a standardization of development will occur. Such will produce a monotonous urban setting and is not encouraged.

(Ord. No. 438, § 4, 11-24-2003)

Sec. 53-5. - Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning. The term "herein" means in this chapter. The term "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The terms "used or occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

100-year floodplain. See *Regulatory 100-year floodplain.*

Access means a way of approaching or entering a property.

Accessory structure means, in a residential district, a subordinate building detached and used for a purpose customarily incidental to the main structure such as a private garage for automobile storage, tool house, bath or greenhouse as a hobby (not as a business), home workshop, children's playhouse, storage house or garden shelter, but not involving the conduct of a business or occupancy by any longterm or paying guests.

Accessory use means a use that is customarily a part the principal use, a use which is clearly incidental, subordinate and secondary to the permitted use, and which does not change the character thereof, including, but not limited to, garages, bathhouses, greenhouses, or a storage or tool shed. See *Accessory structure.*

Adjacent means abutting and directly connected to or bordering.

Alcoholic beverage, means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

Alcoholic beverages, off premises, means alcoholic beverages that are sold for off-premises consumption. Alcoholic beverages for off-premises consumption may be bought and sold only within the following zoning districts; CBD-2, RS, W, CM and E, in connection with a use for which alcoholic beverage sales is authorized under this chapter.

Alcoholic beverages, on premises, means alcoholic beverages that are sold for on-premises consumption. Alcoholic beverages for on-premises consumption may be bought and sold only within the

following zoning districts; CBD-2, RS, W, CM and E, in connection with a use for which alcoholic beverage sales is authorized under this chapter.

Alley means a minor right-of-way, dedicated to public use, which gives a secondary means of vehicular access to the back or side of properties otherwise abutting a street.

Amortization means a method of eliminating nonconforming uses by requiring the termination of the nonconforming use after a specified period of time.

Amusement, indoor, means an amusement enterprise wholly enclosed in a building which is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line, including a bowling alley, billiard parlor, and similar activities.

Amusement, outdoor, means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including a golf driving range, archery range, miniature golf course and similar activities.

Animal means any animate being that is not a human.

Annexation means the incorporation of land area into the city with a resulting change in the boundaries of the city.

Antique shop means a business that sells items whose value is greater than the original purchase price because of age or intrinsic value.

Apartment means a room or group of rooms used as a dwelling for a one-family unit, which includes full kitchen facilities for the preparation of meals and cooking therein.

Apartment hotel means a building used or intended to be used as a home for 12 or more families, who are permanent residents, living independently of each other, in which building may be located on the first floor living units for transient guests, and/or retail sales and service.

Apartment house, apartment building or *apartments* means a building or portion thereof used or intended to be used as a home for five or more families or households living independently of each other and equipped for preparation of food.

Applicant means a person applying for zoning approval under this chapter.

Approval means the final approval in a series of required actions. For instance, the approval date of a planned unit development zoning application is the date of council approval of the final site plan.

Art studio or gallery means a building where objects of art are created or displayed for the public enrichment or where said art objects are displayed for sale, including the teaching of painting and/or sculpting.

Assisted-retirement living means a use providing 24-hour supervision and assisted living for more than 15 residents not requiring regular medical attention. This classification includes personal care homes for the physically or mentally impaired, and persons 60 years of age or older.

Attendant building means a building used to house the work place of the manager or attendant of a public or private parking lot.

Attendant documents means materials needed to address the specific requirements of this chapter, which the applicant feels necessary to explain the submittal.

Auto repair, major, means a business specializing in major repair of motor vehicles entirely within an enclosed building, including any use listed in this definition, as well as any use not listed as minor vehicle servicing:

(1) Auto glass, seat cover and muffler shop;

(2) Auto painting or body rebuilding shop;

(3) Tire retreading and capping;

(4) Body, fender, clutch, transmission, differential, axle, spring and frame repairs;

(5) Major overhauling of engines requiring removal there from of cylinder head or crankcase pan and any associated engine rebuilding;

(6) Repair of radiator requiring removal from the vehicle;

(7) Repair of truck, trailer, farm or industrial equipment, or other machinery/supplies;

(8) Brake work, other than minor maintenance such as disc pad replacement and minor brake adjustment.

Auto repair, minor, means a business specializing in minor, routine, periodic, preventive maintenance of a motor vehicle conducted entirely within an enclosed building, including the following:

(1) Servicing of spark plug, batteries, distributors and distributor parts and including minor engine tune-ups;

(2) Tire servicing and flat repair but not recapping or regrooving;

(3) Radiator cleaning and flushing (on a vehicle);

(4) Fuel pump, oil pump, and related maintenance;

(5) Minor servicing of carburetors;

(6) Emergency wiring repairs;

(7) Minor motor adjustment not involving removal of the head or crank case;

(8) Quick oil and filter change;

(9) Servicing hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat belts, windshield wipers, mirrors, and installation of vehicle accessories such as radios;

(10) Lubrication, greasing, and washing;

(11) Disc pad replacement and minor brake adjustment.

Auto sales facility means one or more buildings and an open, dust-free, all-weather surface other than a street, alley, or other public place, used for the display, wholesale or retail sale, with repair and renovation authorized entirely within an enclosed building, and temporary storage of vehicles for repairs or renovation not to exceed 90 days.

Auto sales, outdoor, means an open, dust-free, all weather area, other than a street, alley or other public place, used for the display and sales of new or used automobiles. Where no repair work, except those actions normally associated with vehicle operator service, is done on the cars to be displayed and sold on the premises. A sales office is normally located on the premises and such shall be limited to, an area less than ten percent of the total sales lot.

Bar means any business establishment required to have a state license for the sale of alcoholic beverages other than beer, for on-premises consumption.

Bed and breakfast means an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for paying overnight guests.

Billboard means a sign advertising products not made, sold, used or served on the premises displaying such sign, or a sign having a height greater than 12 feet or a width greater than 18 feet, including supports.

Block means an area enclosed by streets, normally to be divided into lots to be occupied by or intended for buildings; or if the same word is used as a term of measurement, the term "block" means the distance along one side of a street between the nearest two streets that interest said street on said side.

Board means the city board of adjustment.

Board of adjustment means a board appointed by the council to consider appeals from certain administrative actions pursuant to V.T.C.A., Local Government Code § 211.008, and that is given the authority set forth in this chapter and in V.T.C.A., Local Government Code § 211.009.

Boardinghouse means a building other than a hotel, occupied as a single housekeeping unit where lodging or meals are provided for three or more persons for compensation, pursuant to previous arrangements for definite periods, but not to the general public or transients.

Buffer means an area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the use of trees, shrubs, berms and/or fences, and designed to limit views and sound from the site to adjacent properties and vice versa.

Building means any structure designed or built for the support, enclosure, shelter, or protection of persons, animals, chattels or property of any kind.

Building acre means the area within the total subdivision boundary upon which living unit equivalents (LUEs) can be built and is calculated by subtracting from the total area of the subdivision the sum total of floodplain area, park area, hike and bike trail area and street right-of-way area (i.e., buildable acre equals total acres of subdivision less sum total of floodplain area, park area, hike and bike trail area and right-of-way area).

Building area means the gross area covered by a structure when placed on the lot.

Building ordinance means the building codes and related ordinances of the city providing standards, requirements and regulations for site development and the construction and erection of buildings and structures within the city, including, but not limited to, the electrical code, plumbing code, building code, and minimum housing code, adopted by the city council from time to time, pursuant to chapter 8.

Building permit means a permit issued by the city which is required prior to commencing construction or reconstruction of any structure.

Building plot means the land, lots or tract of land upon which buildings are located, or upon which they are to be constructed, including yards.

Building setback line means the lines designating the interior limit of the area of a lot within which structures may be erected. The building lines provide the boundaries of the buildable area of any given lot and the foundation and wall of any structure or building shall not be erected between a building setback line and the corresponding lot line. Every part of the building setback line shall be open and unobstructed, except for ordinary projections of windowsills, eaves, roof extensions and other architectural features not to exceed 18 inches into the building setback line. Air conditioning compressors may be permitted within side yard building setback dimension when placed adjacent to wall of structure or building.

Cafe or *cafeteria* means a commercial establishment where snacks or meals are vended for consumption indoors or on the premises.

Caliper means the trunk diameter of a tree at three feet above natural grade.

Carport means a structure with one or more sides, covered with a roof and constructed specifically for the storage of one or more motor vehicles.

Cemetery means land used or intended to be used for the interment of human remains and dedicated for cemetery purposes, including crematories, mausoleums, columbariums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

Centerline of a waterway means the centerline of the waterway and refers to existing topographically defined channels. If not readily discernible, the centerline shall be determined by:

(1) The low flow line; or

(2) The center of the two-year floodplain.

Child care center, intermediate, means a facility (including nonresidential structures) which provides custodial care and supervision for less than 24 hours a day for between seven and 12 children, excluding foster and group homes. The facility must contain a minimum 150 square feet of floor area for each child.

Child care center, large, means a facility where over 12 children receive custodial care and supervision for less than 24 hours a day, excluding foster and group homes.

Child care center, small, means a private residence where the occupant provides custodial care and supervision during daylight hours for a maximum six children at any one time. The maximum of six children includes the family's natural or adopted children under the age of 14. The residence must contain a minimum 150 square feet of floor area for each child. This use shall exclude a family/group home.

Child care or child development facilities means any children's home, orphanage, institution, private home, residence or other place, whether public, parochial or private, operated for profit or not, which keeps, cares for, has custody of or is attended by four or more children under 16 years of age at any one time, who are not members of the immediate family or any natural person operating any such place, during any part or all of the 24 hours in a day. Also, any institution, home or other place, whether public, parochial or private, conducted for profit or not, which keeps, cares for, has custody of or is attended by any number of children, under 16 years of age, who are not members of the immediate family of any natural person operating such a place, who are mentally or physically handicapped, under medical or social supervision, and not within a hospital, 24 hours a day.

Church or *rectory* means a place of worship and religious training of recognized religions including on-site housing of ministers, rabbis, priests, nuns and similar staff personnel.

City building official or *building official* means the designated building official for the city.

City council or *council* means the city council of the city.

City engineer means the city engineer for the city or his designated representative.

City limits or *within the city* means the, or within the, incorporated boundaries of the city.

City manager means the chief administrative officer of the city or his designated representative.

City staff means the officers, employees and agents of the city assigned and designated from time to time by the city manager and/or council, including but not limited to, the city engineer, to review, comment and/or report on zoning applications.

City standard details and specifications means a library of city approved drawings and technical data representing typical drainage, transportation, erosion and sedimentation control, and utility appurtenances to be constructed for city acceptance.

Cleaning or laundry self-service shop means an establishment providing customers with self-service laundry and/or dry cleaning facilities, and does not a include a commercial laundry or cleaning plant.

Cleaning shop or laundry, small, means a custom cleaning shop not exceeding 2,500 square feet of floor area.

Clinic means a public or private station or establishment for the examination and treatment of out patients by an individual or group of doctors, dentists, opticians, veterinarians, or other similar medical professionals.

Clothing manufacture means cutting, sewing and forming garments, millinery and accessories, when no noise, dust, vibration, odor or other undesirable or obnoxious condition is created to affect adjacent property.

Club. See *Social club.*

Cold storage plant means a commercial establishment where food or other commodities are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or to commercial businesses. No slaughtering of animals or fowl is allowed on the premises.

College or *university* means an academic institution of higher learning, accredited or recognized by the state and offering a program or series of programs of academic study.

Commercial amusement, indoor, means an enterprise conducted solely within one or more buildings or permanently enclosed area whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gate for the activity, including the following activities and activities of the same or closely similar nature. The term "indoor commercial amusements" include zoos, carnivals, expositions, miniature golf courses, arcades, fairs, exhibitions,

athletic contests, rodeos, children's rides, skating rinks, ice rinks, traveling shows, bowling alleys, and pool parlors, and similar enterprises.

Commercial amusement, outdoor, means any enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gate for the activity, including the following activities and activities of the same or closely similar nature. The term "outdoor commercial amusements" include zoos, carnivals, expositions, miniature golf courses, driving ranges, arcades, fairs, exhibitions, athletic contests, rodeos, tent shows, Ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows and similar enterprises.

Commercial garage means any premises and structure used for housing more than five motor vehicles or where any vehicles are repaired for operation or kept for remuneration, hire or sale, and where a retail service station may be maintained as a secondary use.

Common area means privately owned land and improvements within a townhouse, condominium, planned development, or community unit development including buildings, common open space, central services and utilities, streets, walks, parking areas, fencing and screening walls, landscaping, and any other elements and facilities under common ownership and available for the use of all owners or tenants.

Common open space means that portion of the common area which is designated for outdoor recreation area, private park, play lot, plaza, athletic court, swimming pool, fountain, stream or pond, ornamental landscaping or natural vegetation offering visual amenity, and which is open to general view and conveniently accessible to pedestrians within the project.

Communication services means an establishment engaged in providing broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms, and photocopy and reproduction mechanisms The term "communication services" excludes broadcast towers.

Community center, private, means a recreational facility, including both indoor and outdoor facilities, for use by residents and guests of a particular residential community development, subdivision, planned unit development, or membership group.

Community center, public, means a building and grounds owned or leased and operated by a governmental body for the social, recreational, health or welfare of the community served.

Compounding or *fabrication, light,* means the making of jewelry, compounding of perfume, small instruments or pharmaceuticals, and similar work or processes.

Comprehensive or master plan. The comprehensive plan of the city and adjoining areas adopted by the planning and zoning commission and approved by the city council, including all its revisions. The comprehensive or master plan indicates the general locations recommended for various land uses, transportation routes, public and private buildings, streets, parks, and other public and private developments and improvements, to include detailed plans for water, sewer, etc. The term "comprehensive or master plan" means the overall development plan for the community adopted to provide long-range development policies including all specified individual elements thereof among which are the plans for the following:

(1) Land intensities;

(2) Land subdivision;

(3) Circulation; and

(4) Community facilities, utilities and services.

Conditional use means an additional use which may be permitted in a district, subject to meeting certain conditions or procedures established by the city council.

Condominium means a building or group of buildings in which dwelling units are owned individually, while the structure and common areas and facilities are owned by all the owners on a proportional, individual basis.

Construction plans means the maps, drawings, plans and specifications indicating the proposed location and design of improvements to be installed as part of a development.

Contiguous means property whose property lines are separated by only a street, alley, easement, right-of-way or buffer.

Convalescent home means any structure used or occupied by three or more persons recovering from illness or being provided geriatric care for compensation.

Corner lot means a lot located at the intersection of and abutting on two or more streets.

Country club means an area of 20 acres or more containing a golf course and a clubhouse and available only to private specific membership, such a club may contain adjunct facilities such as private club, dining room, swimming pool, tennis courts and similar recreational or service facilities.

County appraisal district means the Hays County appraisal district.

Court means an open, unoccupied space, bounded on more than two sides by the walls of a building. The term:

(1) "Inner court" means a court entirely surrounded by the exterior walls of a building.

(2) "Outer court" means a court having one side open to a street, alley, yard or other open space.

Critical root zone means a circular area around a significant tree equal to one foot in radius for each one-inch caliper, and the center of the circular area located at the trunk.

Cultural services means a library, museum, or similar registered nonprofit organizational use displaying, preserving, and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

Dance hall means a business establishment that otherwise complies with chapter 53 (zoning) of the Code of Ordinances and provides floor space for dancing; provides live music performances or prerecorded music or both and may impose a cover charge for entry to the dance hall; may sell alcoholic beverages but only pursuant to and in accordance with a license or permit issued by the Texas Alcoholic Beverage Commission lawfully held by the owner or operator of the dance hall; and may sell or otherwise provide food but only in accordance with applicable public health and other laws.

Day camp means a facility arranged and conducted for the organized recreation and instruction of children including outdoor activities on a daytime basis.

Developed area means that portion of a lot, easement, or parcel upon which a building, structure, pavement or other improvements have been placed.

Developer means the legal owner of land to be improved and/or subdivided or his authorized representative.

Development means the construction or placement of any buildings, utilities, access, roads or other structures, excavation, mining, dredging, grading, filling, clearing or removing vegetation, or the deposit of refuse, waste or fill. The term "development" does not include the following:

(1) Lawn and yard care, including mowing of tall weeds and grass, gardening, tree care and maintenance, removal of trees or other vegetation damaged by natural forces, and ranching and farming.

(2) Utility, drainage, and street repair, and any construction maintenance and installation which does not require land disturbance or result in additional impervious cover.

District means a zoned section of the city for which regulations governing the use of buildings and premises; the height of buildings; the size of yards; and the intensity of use are uniform.

Dormitory means any structure specifically designed to house student tenants associated with a university, college, or other school having and maintaining an educational curriculum and course requirements equal to or better than the standards established for public colleges and schools by the state.

Double frontage lot. See *Reverse frontage lot.*

Drainageway. See *Waterway.*

Drive approach means a paved surface connecting the street to a lot line.

Drive-in eating establishment means any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises, or to be taken away for consumption at other places.

Driveway means the surface connecting a drive approach with a parking space, parking lot, loading dock or garage.

Dwelling means any building or portion thereof built on-site which is designed for or used exclusively for residential purposes.

Dwelling.

Four-family or *fourplex* means a detached building designed and constructed with four separate living units under a single roof for occupancy by four families.

Multifamily means a single structure designed to accommodate five or more households.

Multiple-family means any building or portion thereof, which is designed, built, rented, leased or let to be occupied as five or more dwelling units or apartments or which is occupied as a home or residence of five or more families.

Single-family means a detached building having accommodations for occupancy by not more than one family.

Three-family or *triplex* means a detached building designed and constructed with three separate living units under a single roof for occupancy by three families.

Two-family or *duplex* means a detached building designed and constructed with two separate living units under a single roof for occupancy by two families.

Dwelling unit means a building or portion of a building arranged, occupied or intended to be occupied as a residential unit designed to accommodate one household for living, sleeping, eating, cooking and sanitation.

Easement means a grant by the property owner for the use of a strip of land for a stated purposes.

Environment means the aggregate of social and physical conditions that influence the life of the individual and/or community.

Exterior side yard means a yard which faces and is parallel to a side street.

Extraterritorial jurisdiction or ETJ means that geographic area outside the corporate boundaries of the city as established pursuant to V.T.C.A., Local Government Code §§ 42.021 and 42.022.

Family means any number of individuals living together as a single housekeeping unit, in which not more than three individuals are unrelated by blood, marriage, adoption, or guardianship, and occupying a dwelling unit.

Family home means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

Family home or *group home* means a dwelling unit used as a single housekeeping unit where not more than six physically or mentally impaired or handicapped persons are provided room and board, as well as supervised care and rehabilitation provided by not more than two persons. The term "family home" means a community based residential home operated in accordance with the Community Homes for Disabled Persons Location Act and its amendments.

Farm accessory building means a structure, other than a dwelling, on a farm as herein defined, for the housing protection or storage of the usual farm equipment, animals and crops.

Farm, ranch, garden or *orchard* means an area of three acres or more which is used for the primary purpose of growing of vegetables, fruits, trees, hay, livestock feed and/or grain, and/or for the raising thereon of poultry and farm animals such as horses, cattle and sheep and including the necessary accessory uses for raising, treating and storing products raised on the premises, but not including the commercial feeding of offal and garbage to swine and other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

Filing date means, with respect to zoning applications, the date of the first public hearing before the planning and zoning commission regarding such zoning application.

Filling or retail service station means an establishment where gasoline, oil and grease, or automobile accessories are sold, supplied, or dispensed to the motor vehicle trade or where motor vehicles receive limited repair, or where electric storage batteries are charged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment.

Financial services means services provided by an establishment primarily engaged in financial and banking activities. Typical uses may include banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services.

Floodplain means that land which lying within a stream channel or adjacent to a stream channel within which flooding frequently occurs, the elevation above sea level of which shall be as established by a flood insurance rate map (FIRM) issued or approved by Federal Emergency Management Act (FEMA), or in absence of such, as established as part of the land development by licensed professional engineer and approved by the city. It is land that is required to be kept open and nonurbanized in order to maintain upstream floodplain characteristics and ensure continued adequate drainage of adjacent land.

Floor area ratio (FAR) means the maximum square footage of total floor area permitted for each square foot of land area.

Food and beverage sales store means a retail establishment of greater than 2,500 square feet of total floor area, selling a variety of consumables, notions and/or similar items, usually serving a significant market area. The sale of beer for off-premises consumption is allowed, if not otherwise prohibited.

Food and beverage sales store or *convenience store* means a retail establishment of less than 2,500 square feet of total floor area selling a variety of consumables, notions and/or similar items, usually serving as a convenient outlet to a neighborhood. This activity can include the retail sale and self-service dispensing of gasoline or other fuels in appropriate zoning districts. The sale of beer for off-premises consumption is allowed in specific districts.

Food sales means an establishment primarily engaged in the retail sale of food or household products for home consumption. Typical uses include grocery stores, delicatessens, meat markets, retail bakeries, and candy shops.

Fraternity, sorority or group student housing means a building occupied by and maintained exclusively for students affiliated with an academic or vocational institution.

Front property line means the boundary of a parcel that is generally located immediately adjacent to a public street a structure faces. In the case of side lots that have two boundaries adjacent to public streets, the front property line shall be toward the street that will be used for 911 address purposes.

Front wall means the wall that generally faces the front property line, or, in the case of side lots that have two boundaries adjacent to public streets, the front wall shall be the wall where the front entrance to the structure on the parcel is located.

Front yard means a space extending the full width of the lot between any building set back line and the front lot line, and measured perpendicular to the building at the closest point to the front lot line.

Frontage means that side of a lot, parcel or tract of land abutting a street right-of-way and ordinarily regarded as the frontal orientation of the lot.

Frontage block means all the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.

Garage means an enclosed structure in which one or more motor vehicles are parked for residential purposes.

Gasoline station, full-service, means a place where gasoline, other fuels, oil and grease and/or accessories are sold and dispensed to the retail motor vehicle trade, and where one or more of the following activities are conducted: motor vehicles are serviced and repaired; stored batteries are recharged and cared for; or vehicle tires are stored, serviced or exchanged.

Gasoline station, limited-service, means a place where the services provided are limited to the retail sale, either self-service or attendant dispensed, of gasoline, other fuels and petroleum products for the motor vehicle trade.

General acute care hospital means a health care facility that provides inpatient or outpatient services delivered to patients experiencing acute illness or trauma as licensed by the state as a general or special hospital. See *Licensed general hospital.*

Golf course, commercial, means a golf course or driving range privately owned but open to the public for a fee and operated as a commercial venture.

Grade means the following:

(1) The slope of a road, street, other public way or utility line specified in terms of percent;

(2) The topographic relief of a parcel of land;

(3) The average elevation at ground level of the buildable area of a lot or parcel of land.

Grading means any stripping, cutting, filling or stockpiling of earth or land, including the land in its cut or filled condition.

Half-story means a partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story, except that any partial story used for residence purposes, other than by a family occupying the floor immediately below it, shall be deemed a full story.

Halfway house means a dwelling unit used as a single-housekeeping unit for not more than six persons who have demonstrated a tendency towards alcoholism, drug abuse, antisocial or criminal conduct, together with not more than two persons providing supervision and other services to such persons.

Height means the vertical distance from the highest point on a structure to the average ground elevation where the foundation meets ground.

Heliport means landing facility for a rotary wing aircraft subject to regularly scheduled use and may include fueling or servicing facilities for such craft.

Helistop means a landing pad for occasional and infrequent use by a rotary wing aircraft not exceeding a gross weight of 6,000 pounds.

Home for aged means a home where elderly people are provided with lodging and meals without nursing care.

Home occupation means a commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without the installation of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, and which does not cause the generation of other than normal noise, pedestrian and vehicular traffic. It is an accessory to a residential use subject to the following limitations:

(1) The home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioners;

(2) The residential character of the lot and dwelling shall be maintained, the exterior of the dwelling shall not be structurally altered, and no additional buildings shall be added on the property to accommodate the home occupation;

(3) The occupation shall not produce external noise, vibration, smoke, odor, fumes, electrical interference or waste runoff outside the dwelling unit or on the property surrounding the dwelling unit; and

(4) No vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on any street adjacent to the property.

Homeowners or unit owners association means any association or organization of co-owners within a condominium or townhouse project, including the council of co-owners of a condominium or townhouse management association, or the owners of lots within a subdivision; organized for the primary purpose of managing and maintaining the common areas and common open space in any such project, or otherwise owned by the association. An organization, association, or other entity formed and controlled by the developer, project owner or general partner for this purpose will be included in this definition.

Hotel means a building in which lodging is provided and offered to individual transient guests, but not excluding permanent guests, and may include a cafe, drugstore, clothes, pressing shop, barbershop or other service facilities for guests for compensation, and in which ingress and egress to and from all rooms is made through and inside a lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradiction to a boardinghouse, a lodginghouse, or an apartment. To be classified as a hotel an establishment shall contain a minimum of six individual guest rooms or units and shall furnish customary hotel services such as linen, maid service, telephone, and the use and upkeep of furniture.

Impervious cover means roads, parking areas, buildings, rooftop landscapes, patios, decking, and other construction limiting the absorption of water by covering the natural land surface; this shall include, but not be limited to, all streets and pavement within the development.

Improvements means any street, alley, roadway, barricade, sidewalk, bikeway, pedestrian way, water line system, wastewater system, storm drainage network, public park land, landscaping, or other facility or portion thereof for which the local government may ultimately assume responsibility for maintenance and operation or which may affect an improvement for which local government responsibility is established.

Incinerator means a furnace or apparatus for burning waste materials such as trash, wood and other flammable items for the purpose of reducing their weight and bulk.

Institution for the care of substance dependent persons means an institution offering resident or outpatient treatment to alcoholic or narcotic patients.

Interior lot means a lot other than a corner lot and, bounded by a street on only one side.

Kennel means a place in which five or more dogs or cats at least six months of age are kept, boarded or trained, by the owners of the dogs or cats or by persons providing facilities and care with or without compensation.

Kindergarten or *preschool* means any private school, operated for profit or not, attended by four or more children at any one time during part of a 24-hour day, which provides a program of instruction for children below the first grade level in which constructive endeavors, object lessons and helpful games are prominent features of the curriculum.

Laundry services means an establishment engaged in providing laundering, dry cleaning, or dyeing services. Typical uses shall include bulk laundry and cleaning pants, and linen supply services.

Legal lot means a lot recorded in the official county records pursuant to and in compliance with the subdivision regulations and/or state law in effect at the time of the creation of the lot.

Licensed general hospital means a shortterm, acute care, general hospital that:

(1) Is an institution duly licensed in and by the state in which it is located and is lawfully entitled to operate as a general, acute care hospital;

(2) For compensation from or on behalf of its patients, is primarily engaged in providing inpatient diagnostic and therapeutic services for the diagnosis, treatment and care of two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy by or under the supervision of physicians;

(3) Has organized, functioning departments of medicine and surgery;

(4) Provides 24-hour nursing service by or under the supervision of licensed registered nurses;

(5) Regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent;

(6) Is not predominantly a skilled nursing facility, nursing home, custodial care home, health resort, spa or sanatorium, place for rest, place for the aged, place for the treatment or rehabilitative care of mental or nervous conditions, place for the treatment or rehabilitative care of alcoholism or substance abuse or addiction, or place for hospice care.

Light manufacturing means an establishment engaged in the manufacture of finished products or parts, including packaging of such products, and incidental storage, sales and distribution of such products, but excluding uses that are not traditionally classified as light industrial or manufacturing. Uses defined as traditional light industrial and manufacturing are set forth in this chapter.

Livestock auction means barns, pens and sheds for the temporary holding and sale of livestock.

Loading space means an off-street space for the parking of a vehicle while loading or unloading merchandise or materials from commercial or industrial vehicles.

Local health district means the county health district.

Local utility line means the facilities provided by a municipality or a franchised utility company for the distribution or collection of gas, water, surface drainage water, sewage, electric power, telephone or cable service, including pad and pole mounted transformers.

Lot means a separate parcel of land, created by the division or subdivision of a block or other parcel, intended as a unit for transfer of ownership, or for development, or for occupancy and/or use, platted in compliance with state law. See also *Legal lot.*

Lot depth means the average horizontal distance between the front and rear lot lines.

Lot lines means the lines bounding a lot as defined in this section.

Lot width. See *Minimum lot width.*

Manufactured home means a complete living unit, manufactured at a location away from the lot on which it will be located, as defined in V.T.C.A., Occupations Code § 1201.001 et seq.

Manufactured home park means a unified development for manufactured housing spaces arranged on a tract of land in compliance with this chapter and chapter 41, pertaining to subdivision, with the individual lots or parcels being held under a common ownership and rented or leased to the occupants.

Manufactured home subdivision means a unified development for manufactured housing spaces arranged on a tract of land in compliance with this chapter and chapter 41, pertaining to subdivision, with the individual lots or parcels being developed and sold to occupant owners.

Manufactured housing. See *Manufactured home.*

Master plan means the overall development plan for the community which has been officially adopted to provide long-range development policies including all specified individual elements thereof among which are the plans for:

(1) Land intensities;

(2) Land subdivision;

(3) Circulation; and

(4) Community facilities, utilities and services.

Mini-storage warehouse means a building or group of buildings consisting of individualized shelters of various sizes for rent or lease for the purpose of providing protection of commodities stored therein. The size of each individual storage unit of a mini-storage warehouse shall be limited to 2,000 cubic feet.

Minimum lot width means the horizontal dimension (arc length if a curved line) shown on the plat along the street line.

Mobile home means a movable or portable structure constructed prior to June 15, 1976, that is eight feet, or more, in width and 40 feet, or more, in length constructed to be towed on its own integral chassis, as defined in V.T.C.A., Occupations Code § 1201.003.

Modular component means a structure or building module as defined in V.T.C.A., Occupations Code § 1202.001(5), that is inspected and permitted by and under the jurisdiction and control of the department of licensing and regulations, that is transportable in one or more sections and designed to be used on a permanent foundation system. The term includes the plumbing, heating, air conditioning and electrical systems contained in the component. The term "modular component" does not include a mobile home or a manufactured home.

Motel means a building or group of detached, semidetached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers, including groups designated as auto cabins, motor courts, motels and similar designations.

Multi-family residential, restricted means multiple-family residences, containing five or fewer dwelling units which are located above the first floor of a structure that has a nonresidential use, such as an office or retail shop, operating on the first floor.

Multiple building complex means more than one principal building on a building plot or lot.

Natural channel means the topography of a waterway prior to construction, installation of improvements or any regarding.

Natural drainage means a stormwater runoff conveyance system not altered by development.

Natural state means substantially the same conditions of the land which existed prior to its development, including but not limited to the same type, quality, quantity and distribution of soils, ground cover, vegetation and topographic features.

Neighborhood means the area of the city characterized by residential land uses which is bounded by:

(1) Physical features, such as river, major street, lack of access, buffer; and/or

(2) Political features, such as voting districts, subdivision boundaries.

Neighborhood automobile service station means an establishment primarily engaged in automotive-related service. The following are permitted automotive-related services within such definition: automobile washing, minor automotive repair services, service stations, the sale of fuel, lubricants (including oil change facilities), parts and accessories, or any incidental minor repair services to motor vehicles.

Neighborhood park means a publicly owned parcel of land, within a subdivision, dedicated solely for recreational uses and maintained by the city or under authority granted by the city.

Nightclub means an establishment required to have a state permit for the sale of alcoholic beverages and in which 50 percent or more of the monthly gross revenues are from the sale of alcoholic beverages; or any business or commercial establishment in which alcoholic beverages are consumed and live entertainment is provided.

Nonconforming lot means a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision or amendment of the ordinance from which this chapter is derived, but which fails by reason of such adoption revision or amendment to conform to the present requirements of the zoning district.

Nonconforming structure or building means a structure or building the size dimensions or location of which was lawful prior to the adoption, revision or amendment of the ordinance from which this chapter is

derived, but which fails by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

Nonconforming use means any use lawfully existing at the time of passage of the ordinance from which this chapter is derived, which does not, by reason of design or use, conform to the regulations of the district in which it is situated.

Occupancy means the use or intended use of land or a building by any person.

Occupant car ratio (OCR) means the minimum number of parking spaces without parking time limits required for each living unit, establishment or use.

Official county records means the official records of Hays County, Texas.

Off-site improvements means any required improvement which lies outside of the property being developed.

Off-street parking as expansion of retail or commercial use means an off-street parking lot located adjacent or contiguous to a retail, commercial or office district.

Off-street parking space means an area of privately owned land not less than nine feet by 18½ feet not on a public street or alley, with an all-weather surface. A public street, private street or joint-use driveway shall not be classified as such, nor shall head-in parking adjacent to a public street and dependent upon such street for maneuvering space; provided that, not more than 25 percent of any required off street parking spaces may be compact parking spaces of not less than 128 square feet (eight feet by 16 feet) exclusive of the driveways connecting said space with the street or alley.

Open or outdoor storage means the keeping, in an unroofed area, of any goods, junk, material, merchandise, in the same place for more than 24 hours.

Open space means an area included in any side, rear or front yard or any unoccupied space on the lot that is open and unobstructed to the sky except for the ordinary projections of cornices, eaves, porches, and plant material.

Overland drainage means stormwater runoff which is not confined by any natural or manmade channel such as a creek, drainage ditch, storm sewer, or the like.

Park or *playground* means an open recreation facility or park owned and operated by a public agency such as the city or the school district and available to the general public for neighborhood use, but not involving lighted athletic fields for nighttime play.

Parking lot means a parking area to accommodate the vehicles which utilize any multiple family, retail, commercial, office, business or industrial property.

Parking space means an area that is not a street, alley or public right-of-way that is used or designed to be used for motor vehicle parking, that is not less than nine feet by 18½ feet, exclusive of the driveways connecting said space with a street or alley. Said parking space and connecting driveway shall be durably surfaced and so arranged to permit satisfactory ingress and egress of an automobile. Compact parking spaces shall be 128 square feet exclusive of the driveways connecting said space with the street or alley.

Parking structure or *garage* means a structure devoted to the parking or storage of automobiles for a fee and may include a facility for servicing of automobiles provided such facility is primarily an internal function for use only by automobiles occupying the structure and creates no special problems of ingress or egress.

Pasturage means land used primarily for the grazing of animal stock.

Paved area means an area surfaced with asphalt, concrete or similar pavement, providing an all-weather surface. Gravel is not an acceptable paved surface.

Performance standard means a set of criteria or limits relating to nuisance elements which a particular use or process may not exceed.

Permit issuing authority means the building official or other city officer, employee or agent designated by lawful authority to issue the applicable permit.

Permitted use means a use specifically allowed in the applicable zoning districts without the necessity of obtaining a conditional use permit.

Personal care facility means a facility that provides supervised living arrangements for persons with physical or mental disabilities, which by reason of federal or state law, is not subject to the limitations set forth in deed restrictions of single-family zoning districts.

(1) The term "personal care facility" includes a community-based residential home operated by:

   a. The Texas Department of Mental Health and Mental Retardation;

   b. A community center operated under V.T.C.A., Health and Safety Code § 534.001 et seq., which provides services to disabled persons;

   c. A nonprofit corporation; or

   d. Any entity certified by the state department of human resources as a provider under the intermediate care facilities for the mentally retarded program.

(2) The term "personal care facility" includes homes for the handicapped as defined in 42 USC 3602(h).

Personal service means an establishment engaged in providing services of a personal nature. Typical uses includes beauty shops and barbershops, tailor, and shoe repair services.

Personal service shop means an establishment for the purpose of supplying limited personal services such as, but not limited to, barbershops or shoe, boot, or beauty shops.

Pharmacy means a use where medicines are compounded or dispensed under the supervision of a licensed pharmacist.

Planned unit development means a zoning district which permits development of three acres or more under single or multiple ownership pursuant to a master plan and which requires specific approval by the city council. It is a development of land under unified control, planned and developed as a whole in a single development operation or a programmed phasing of developments, including streets, utilities, lots or building sites, structures, open spaces and other improvements. This district may permit mixed uses of land (e.g., industrial, commercial, residential) within a single or multiple subdivisions as part of or pursuant to a master plan which seeks to minimize adverse impacts when development occurs to protect the environment and nearby neighborhoods.

Planting area means any area designed for landscape planting having a minimum of ten square feet of actual plantable area and a minimum inside dimension on any side of 18 inches.

Playfield or *stadium* means an athletic field or stadium owned and operated by a public agency for the general public including a baseball field, golf course football field or stadium which may be lighted for nighttime play.

Property owners association (POA) neighborhood park means a privately owned parcel of land, within a subdivision, dedicated solely for recreational use by persons in such subdivision and their guests, and maintained by the residents of said subdivision.

Postal facilities means postal services, including post office, bulk mail processing, or sorting centers operated by the United States Postal Service or a private postal service.

Primary structure means a structure in which the principal use of the lot is conducted. For example, for single-family residential lots, the house is the primary structure.

Privacy fence means an opaque fence or screen at least six feet in height. A fence shall be considered opaque if it is made of opaque materials and constructed so that gaps in the fence do not exceed one-half inch. Fences using boards placed on alternating sides of fence runners shall be considered opaque if the boards overlap at least one-half inch.

Private club means an establishment required to have a state issued alcoholic beverage permit for the sale, storage or vending of alcoholic beverages to its members.

Private garage means an accessory building housing vehicles owned and used by occupants of the main building.

Product assembly services means an establishment engaged in the on-site assembly of nonhazardous products.

Product development services, general, means development and testing of nonhazardous products related to research services. See *Research services, general*.

Product development services, hazard, means development and testing of products related to research services, which products could pose a health or safety risk outside of the structure in which the services are provided. See *Research services, hazard.*

Professional office means a use providing professional or consulting services in the fields of law, architecture, design, engineering, accounting, and similar professions licensed by the state.

Property owners association means an incorporated, nonprofit organization operating under recorded land agreements through which:

(1) Each lot and/or homeowner in a subdivision or planned unit development or PUD is automatically a member;

(2) Each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining common property; and

(3) The charge, if unpaid, becomes a lien against the property.

Psychiatric and rehabilitation hospital means hospitals known and licensed as psychiatric and substance abuse hospitals are primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The primary activities of firms in this industry are:

(1) Psychiatric hospitals, except convalescent.

(2) Alcoholism rehabilitation hospitals.

(3) Children's hospitals, psychiatric or substance abuse.

(4) Detoxification hospitals.

(5) Drug addiction rehabilitation hospitals.

(6) Hospitals for alcoholics.

(7) Hospitals, addiction.

(8) Hospitals, mental, except mental retardation.

(9) Hospitals, psychiatric, except convalescent.

(10) Hospitals, psychiatric pediatric.

(11) Hospitals, substance abuse.

(12) Mental hospitals, except mental retardation.

(13) Mental health hospitals.

(14) Rehabilitation hospitals, alcoholism and drug addiction.

Public means:

(1) With respect to land and interests in land within the city limits, the city;

(2) With respect to land and interests in land within the extraterrestrial jurisdiction limits, the general public; and

(3) With respect to the provision of any services or products by a business establishment, the general public.

Public grounds or building means a facility such as office buildings, and maintenance yards and shops required by branches of local, state or federal government for service to an area such as highway department yard or a city, county or school service center.

Public use means places of noncommercial public assembly or administrative functions where the primary activity is contained within a building, including but not limited to churches, schools and government buildings.

Quarry means a tract of land of 50 acres or more for which any portion is used as a commercial operation for the extraction, processing, sale or use of soil, sand, shale, gravel, limestone, or other similar rock materials, but not oil or natural gas, for any commercial purpose.

Quarry operations means the operations necessary to develop and operate a quarry, including but not limited to mining, drilling, blasting, crushing, processing, or other similar activities, and the accessory buildings, structures, machinery and facilities related thereto as more particularly described in article VI, division 2 of this chapter.

Radio, television, microwave and similar towers means structures supporting antennas for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennas installation for home use of radio or television.

Railroad spur or siding means a siding for spotting and unloading or loading boxcars or other railroad cars and which area is connected to a public street by a drive for access.

Railroad tracts means the right-of-way for railroad tracts, and includes siding, spurs, loading facilities, docks, yards or maintenance areas. The term "railroad tracts" does not include passenger stations.

Rear yard means a space extending across the full width of the lot between the principal building and the rear lot line, and measured perpendicular to the building to the closest point of the rear lot line.

Recyclable materials means materials including, but not limited to, scrap steel, aluminum cans, appliances, paper, batteries, glass bottles, motor vehicles, motor vehicle parts, and machinery that have no economic value except as composition or salvage material.

Recycling collection use means use of a property as a location where glass, paper, plastics and/or aluminum cans are only deposited in containers, with no sorting or processing on site, and usually occurring as an accessory use on the property.

Recycling operation means the collection, buying, storage, or processing of recyclable materials such as glass, paper, plastics, liquids, wood or metals, which are then sorted or processed for use or shipment for the purpose of reuse and manufacture, excluding smelters and refining operations.

Recycling operations, indoor, means a recycling operation which is fully enclosed within permanent walls and roof of a building or, if windows and doors are present, which is capable of enclosure to ensure compliance with the required performance standards in the construction/manufacturing or transportation/utilities districts as appropriate. The outside storage of recyclable materials in conjunction with the recycling operation inside a building is prohibited in a W district. A dust collection system may be located outside the main building.

Recycling operations, outdoor, means a recycling operation which occurs in the open, or partially within a building and partially in the open.

Regulatory 100-year floodplain means the 100-year floodplain as defined by the Federal Emergency Management Act (FEMA).

Religious assembly means a use, located in a permanent or temporary building, providing regular organized religious worship and religious education incidental thereto.

Replacement trees means new landscape trees to be planted by the developer to replace significant trees removed during the development of property. A list of approved replacement trees can be obtained at the office of the city.

Required yard means the open space between a lot line and the buildable area within which no structure shall be located except as provided for herein.

Research services, general, means establishments engaged in research of an industrial or scientific nature not involving or requiring the use of any biological, chemical or other agent that could cause a hazard to adjacent property. Typical uses include electronics research laboratories, and development and testing of computer software packages.

Research services, hazard, means establishments engaged in research of an industrial or scientific nature involving or requiring the use of biological, chemical or other agents capable of causing a hazard to property or persons outside the structure in which conducted.

Reserve strip means a narrow strip of property usually separating a parcel of land from a roadway or utility line easement, that is characterized by limited depth which will not support development and which is intended to prevent access to the roadway or utility easement from adjacent property and which are prohibited by these regulations unless their control is given to the city.

Restaurant means an establishment engaged in the preparation and retail sale of food and beverages for on-premises consumption. Typical uses include diners, dinner houses, but not a drive-in/drive-thru or fast-food restaurant.

Restaurant, drive-thru means an establishment where food and/or beverages are sold in a form ready for consumption, where a portion of the pick-up and consumption of food may take place from an automobile. The term "drive-thru restaurant" includes fast-food restaurants.

Retail food store means a retail establishment selling meats, fruits, vegetables, bakery products, dairy products, light hardware and other similar items which are purchased for use and/or consumption off the premises. The term "retail food store" may be a drive-in or supermarket.

Retail sales means the sale or rental of commonly used goods and merchandise for personal or household use. Typical uses may include department stores, furniture stores, or establishments providing the following products or services:

(1) Home furnishings and appliances, household cleaning and maintenance products;

(2) Drugs, cards, stationery, notions, books, tobacco products, cosmetics, or specialty items;

(3) Apparel, jewelry, fabrics, and like items;

(4) Cameras or photography services;

(5) Household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, or office supplies;

(6) Bicycles, wallpaper, carpeting and floor covering; or

(7) Automotive parts and accessories (excluding service and installation).

Reverse frontage lot means a double frontage lot which is to be developed with the rear yard abutting a major street and with the primary means of ingress and egress provided on a minor street.

Right-of-way means a strip of land occupied or intended to be occupied by street, crosswalk, railroad, road, electric transmission line, oil or gas pipe line, water main, sanitary or storm sewer main, or for other similar purpose or use. The term "right-of-way," for land platting purposes, means that every right-of-way hereinafter established and shown on the final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Right-

of-way intended for streets, crosswalks, water mains, wastewater lines, storm drains, or any other use involving maintenance by a public agency shall be dedicated to the public by the maker of the plat where such right-of-way is established.

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

Salvage processing means the method or action to enhance recyclable materials for reuse, including, but not limited to, separating, baling, flattening, shredding, crushing, cleaning, or cutting for the purpose of preparing recyclable materials for reuse, excluding a smelter operation.

Same ownership means ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations in which a stock holder, partner, or associate or a member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association.

School, business, means a business organized to operate for a profit and offering instruction and training in a service or art such as secretarial school, barber college, beauty school or commercial art school, but not including a commercial trade school.

School, commercial trade, means a business organized to operate for a profit and offering instruction and training in a trade such as welding, bricklaying, machinery operation, mechanics and similar trades.

School, public, private or *denominational,* means a school under the sponsorship of a public, religious or private entity and having a curriculum that is equal to or better than the minimum curriculum requirements specified by the state, or by an institution or organization that establishes curriculum standards that are accepted by the state, for public elementary or secondary schools, or for colleges or universities, as applicable, including preschools and kindergarten schools, but not including trade or commercial schools.

Secondary use means a support use to the principal, permitted use that remains incidental to the principal use, both in building square footage and, when applicable, in gross sales. A space that utilizes 90 percent of its space for the primary, permitted use purposes, can use the balance for the secondary use.

Servants' quarters means an accessory building or portion of a main building located on the same lot as the main building and used as living quarters for servants employed on the premises and not rented or otherwise used as a separate domicile.

Setback line means a line which marks the setback distance from the property line, and establishes the minimum required front, side or rear yard space of a building plot. See *Building setback line*.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. See article VIII of this chapter for related definitions and development standards pertaining to sexually oriented businesses.

Shopping center means a composite arrangement of shops and stores which provides a variety of goods and services to the general public, when developed as an integral unit.

Shrub means any self-supporting woody evergreen and/or deciduous species.

Side yard means a space extending from the front yard to the rear yard between the setback line and the side lot line measured perpendicular from the side lot line to the closest point of the setback line.

Sign means any device or surface on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected, illuminated, or in any manner outlined or attached and used for advertising purposes.

Significant tree means a living tree that the city desires to preserve to the greatest extent possible. A list of significant trees can be provided by city staff.

Single-family, attached, means the use of a series of sites for two or more dwelling units, constructed with common or abutting walls and each located on a separate lot within the total development site.

Single-family, detached, means the use of a lot for only one dwelling unit.

Single-family dwelling means a building designed for or occupied exclusively by one household. See *Single-family, detached*.

Site plan means a plan showing the use of the land, to include locations of buildings, drives, sidewalks, parking facilities and other structures to be constructed.

Slope means the vertical change in grade divided by the horizontal distance over which that vertical change occurred. The slope is usually given as a percentage.

Social club means a building or portion thereof or premises used or operated for a social, educational or recreational purpose, but not primarily for profit or to render a service that is customarily carried on as a business.

Specialty surgical and diagnostic hospital means a licensed hospital that offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care. These hospitals are primarily engaged in providing diagnostic and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). The term "specialty surgical and diagnostic hospital" includes hospitals providing longterm care for the chronically ill and hospitals providing rehabilitation, restorative, and corrective services to physically challenged or disabled people are included in this industry. These establishments have an organized staff of physicians and other medical staff to provide patient care services, diagnostic X-ray services, clinical laboratory services, treatment facilities, and/or other definitive medical treatment. Special surgical diagnostic hospitals maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals may provide other services, such as outpatient services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.

Square foot or *square feet* means the square footage computed from the outside dimensions of the dwelling or structure, excluding attached garages, attics, basements, open or screened porches.

Stable means an accessory building for quartering horses when the stable building is set back from all adjacent property lines at least 50 feet, is at least 100 feet from any adjacent residence and when the site contains minimum area of one acre.

State health department means the Texas Department of Health or the Texas Commission on Environmental Quality (TCEQ), as applicable.

Storage and distribution means an establishment offering wholesaling, storage, and warehousing services of nonhazardous materials in enclosed structures.

Storage garage means any premises and structure used exclusively for the storage of more than five automobiles.

Story means that portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, then the space between the floor and the ceiling next above it.

Street means any public or private right-of-way which affords the primary means of vehicular access to abutting property.

Street line means that line limiting the right-of-way of the street and being identical with the property line of persons owning property fronting on the streets.

Street side yard means the side yard of a corner lot abutting the street right-of-way.

Structural alterations means any change in the supporting members of a building, such as load bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.

Structural integrity means the ability of a structure to maintain stability against normal forces experienced by said structure.

Structure means any building or anything constructed or erected on the ground or which is attached to something located on the ground. The term "structure" includes buildings, telecommunications towers,

sheds, parking lots that are the primary use of a parcel and permanent signs. Sidewalks and paving shall not be considered structures unless located within a public utility or drainage easement.

Structure, principal, means the principal structure which fulfills the purpose for which the building plot is intended.

Subacute hospital means hospital care designated for patients who have been hospitalized for an acute illness and who need additional care before returning home. Subacute patients do not require intensive hospital treatment, but can benefit from additional restorative care, therapies or educational programs. Typically, patients who will benefit from subacute care have undergone major surgeries, such as hip or knee replacements, or have had strokes, pneumonia or other illnesses that qualify them for skilled care. A subacute care unit helps patients stay near their families and loved ones while receiving the medical attention they need.

Subdivision means the division or redivision of land into two or more lots, tracts, sites or parcels for the purpose of development, laying out any addition to the city, or for laying out any subdivision or building lots, or any lot, street, alley, access easement, public utility easement, park or other portion intended for use by the public, or for the use of any owner, purchaser, occupant, person or entity.

Swimming pool, commercial, means a swimming pool with accessory facilities that is not a part of the municipal or public recreational system or a private swim club and that is available to the general public for a fee.

Swimming pool, private, means a swimming pool constructed for the exclusive use of the residents of a single-family, duplex, multiplex or multifamily dwelling, or other residential dwelling, located and fenced in accordance with city regulations and not operated as a business or maintained in a manner to be hazardous or obnoxious to adjacent property owners.

Tavern means an establishment required to have a state permit for the sale and on-premises consumption of beer, that is not licensed or permitted to sell any other alcoholic beverage.

Telephone exchange means switching relay and transmitting equipment, but not including public business facilities, storage or repair facilities.

Temporary field or construction office means a structure or shelter used in connection with a development or building project, for housing on site the temporary administrative and supervisory functions, and for sheltering employees and equipment, related to the development.

Tourist home means a building other than a hotel where lodging is provided and offered to the public for compensation for not more than 20 individuals and open to transient guests.

Townhouse means a structure on an individual lot, which is one of a series of three or more dwelling units designed for single-family occupancy, which dwelling units are structurally connected, immediately adjacent to and abutting each other between individual dwelling units. A condominium apartment (as defined in V.T.C.A., Property Code ch. 82) in a condominium structure may be considered a townhouse if no other dwelling unit or use of any kind exists immediately above or below it. Any project including three or more such condominiums or townhouses shall be considered a townhouse project.

Traffic impact analysis (TIA) means a study of the impacts of a development on the city's transportation system.

Trailer camp or park means an area designed, arranged or used for the parking or storing of one or more auto trailers and/or recreational vehicles which are occupied or intended for occupancy as temporary living quarters by individuals or families.

Transportation services means a facility for loading, unloading, and interchange of passengers and baggage, between modes of transportation, including bus terminals, railroad stations and public transit facilities utilizing park and ride stations.

Tree means any self-supporting woody plant species which normally grows to an overall minimum height of 15 feet.

Tree survey means a scaled drawing accurately showing the location, caliper and critical root zone of significant trees in relation to the property boundaries.

Upholstery shop means a business establishment engaged in the installation of soft covering material such as fabric and underpayment for furniture and other objects. Except however, with respect to motor vehicles, it shall only include interior upholstering. In no event shall an upholstery shop include the manufacture or building of furniture or other objects.

Urbanization means the process of constructing public improvements required to support suburban or urban land use.

Utilities other than listed means any utility requiring a franchise, such as closed circuit television, distribution of steam, hot or chilled water or similar service requiring the use of public streets or easements.

Variance means an adjustment in the application of the specific regulations of this chapter to a particular parcel of property which, because of special conditions or circumstances peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district.

Variety store means a retail commercial establishment which supplies a variety of household goods, toys, limited light hardware items, candy, some clothing and other general merchandise.

Veterinary hospital means an establishment offering veterinary services and clinics for pets, small and/or large animals. Typical uses include pet clinics, care, treatment and temporary housing of livestock and large animals, with temporary housing of large animals permitted in an attached or adjacent roofed building, with three or more sides having walls or a solid fence extending from the foundation to at least three-quarters of the distance to the roofline.

Veterinary services means an establishment offering veterinary services and clinics for pets and small domestic animals, with all activities and work indoors.

Video rental store means an establishment engaged in the sale or rental of motion pictures or games.

Vines means any woody or herbaceous plants which may cling by twining, by means of aerial rootlets or by means of tendrils, or which may simply sprawl over the ground or other plants.

Wall means a structure of brick, stone, or other suitable building material, that is a side of a building, surrounds an area, separates one area from another, defines an area architecturally, or carries a load.

Warehouse means an establishment engaged in the storage of merchandise or commodities in an enclosed structure.

Watershed means area from which stormwater drains into a given basin, river or creek.

Waterway means any natural or manmade channel conducting stormwater from a two year storm event at a depth of eight inches or more and at a rate of five cubic feet per second or more. Street pavement shall in no instance be considered a waterway.

Wood yard means a tract of property used for the storage of wood either for use as firewood or as a building material. Usually the area is fenced for safety and security reasons.

Working days means Monday through Friday exclusive of the city's recognized holidays.

Wrecking yard means any lot, tract, or building or structure upon which used automobiles or parts of used automobiles or other motor vehicles are stored for the primary purpose of obtaining parts for resale as an automotive or motor vehicle part.

Yard means an open space at grade between the principal and accessory buildings and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Yard depth means the shortest distance between a lot line and a yard line.

Yard, front, means a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street easement line and the main building or any projections

thereof other than the projections of the usual steps, balconies or bays, or unair-conditioned porch. On corner lots the front yard shall be considered as parallel to the street upon which the yard has its least dimension.

Yard line means a line drawn parallel to a lot line at a distance therefrom equal to the depth of the required yard.

Yard, rear, means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of steps, balconies or bays, or unair-conditioned porches, accessory dwellings or detached garages.

Yard, side, means a yard between the main building and the side line of the lot, extending from the required front yard to the required rear yard, and being the minimum horizontal distance between a side lot line and the side of any building on the lot, or any projections thereof.

Zero-lot-line lot means a single-family lot that has a side wall along or near one of the lot lines so that a usable yard of a minimum of ten feet from the side lot line to the building line is created on the other side of the lot. In no case shall any part of a structure or building, including architectural features, be constructed so as to encroach upon or over the vertical extension of a lot line.

Zoning means the division of a municipality into districts in an effort to achieve compatible land use relationships, and the associated establishment of regulations governing the use, placement, spacing and size of land and buildings in order to achieve that compatibility.

Zoning map means the official map showing the division of the city into districts which is a part of this chapter.

Zoning, spot, means the zoning or rezoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan.

Zoning strip means, typically, commercial and/or retail zoning proposed to accommodate commercial or retail development, fronting a portion of a major street, usually one lot deep.

Zoo, private, means a facility housing and displaying live animals, reptiles or birds, privately owned and operated for a fee or for the promotion of some other enterprise.

Zoo, public, means a publicly owned zoo or similar facility owned and operated by a governmental entity or nonprofit zoological society where live animals, birds and reptiles are domiciled and displayed.

(b) Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices.

(Ord. No. 438, § 5, 11-24-2003; Ord. No. 438-42, § 3, 2-7-2005; Ord. No. 526, § 1, 1-8-2008; Ord. No. 539, § 1, 5-20-2008; Ord. No. 643, §§ 3, 4, 2-1-2011; Ord. No. 668, § 1, 8-16-2011; Ord. No. 824, § 3, 10-21-2014; Ord. No. 825, § 3, 10-21-2014; Ord. No. 856, § 2, 6-2-2015)

Sec. 53-6. - Application.

The provisions of this chapter shall, except as specifically provided otherwise in this chapter, apply to all land within the jurisdiction of the city.

(Ord. No. 438, § 6, 11-24-2003)

Sec. 53-7. - Exemptions.

The provisions of this chapter shall not:

(1) Prohibit the continuation of plans, construction or designed use of a building for which a building permit was lawfully issued and which:

a. Is completed in its entirety within one year from the effective date of the ordinance from which this chapter is derived; and

b. For which construction shall have been started within 90 days after the effective date of the ordinance from which this chapter is derived; provided that any such building, construction or use that is not in compliance with this chapter shall be a nonconforming use; or

(2) Apply to permits or commitments given by the city with reference to construction of public utility buildings prior to the passage of the ordinance from which this chapter is derived shall be observed.

(3) Residential development located within the original Town of Kyle shall be exempt from constructing a garage. Should a garage be constructed, the garage location requirements of the zoning district shall be observed.

(Ord. No. 438, § 7, 11-24-2003; Ord. No. 785, § 1(Exh. A), 3-18-2014)

Sec. 53-8. - Enforcement of regulations.

(a) No building permit, certificate of occupancy, plumbing permit, electrical permit, or utility tap shall be issued by the city for or with respect to any lot, tract or parcel of land within the city limits that is developed, or proposed to be developed, after the effective date of the ordinance from which this chapter is derived, until all then applicable requirements of this chapter have been satisfied and accepted by the city.

(b) This chapter may be further enforced by injunction and other judicial proceedings, either at law or in equity; and, in lieu of or in addition to, any other authorized enforcement or action taken, any person who violates any term or provision of this chapter, with respect to any land or development within the city, by fine and penalties as provided herein.

(Ord. No. 438, § 8, 11-24-2003)

Secs. 53-9—53-32. - Reserved.

ARTICLE II. - ZONING DISTRICTS AND REGULATIONS

DIVISION 1. - GENERALLY

Sec. 53-33. - General requirements and limitations.

(a) *Conformity to zoning district required.* No building shall be erected and no existing buildings shall be moved, structurally altered, added to or enlarged, nor shall any land, building or premises be used, or designated for use for any purpose or in any manner other than provided for hereinafter in the district in which the building, land or premises is located; provided, however, that necessary structural repairs may be made where health and safety are endangered.

(b) *Signs and billboards.* No sign or billboard shall be erected, moved, altered, added to, enlarged, painted, or modified unless it shall conform to the provisions of this chapter and all applicable city ordinances governing the placement, location, permitting, construction and maintenance of signs. Except as otherwise expressly authorized by ordinance, all off-premises signs and billboards are expressly prohibited.

(c) *Structures and buildings.* No building, structure or accessory structure shall be erected, converted or enlarged, nor shall any such existing building or structure be structurally altered or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, unless the same shall be done and completed in a manner to comply with all applicable city codes and ordinances, and such work and structure shall:

(1) Conform to the building setback line, building site area, building location and land use regulations hereinafter designated for the district in which such building or open space is located.

(2) Not exceed the height limit herein established for the district in which such building is located, except as specifically authorized as follows:

a. The height limits prescribed herein shall not apply to television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers, scenery lofts, cooling towers, ornamental towers and spires, chimneys, elevator bulkheads, smokestacks, necessary public or private utilities, conveyors, flagpoles, and necessary mechanical appurtenances. The height limits and other applicable regulations for television, radio and communications towers and antennas may be established by separate ordinance.

b. Public or semipublic service buildings, institutions or schools, where permitted, may be erected to a height not exceeding 60 feet and churches and other places of worship may be erected to a height not exceeding 75 feet when each of the required yards is increased by one foot for each two feet of additional building height above the height limits for the district in which the building is located.

(d) *Accessory structures and uses.* Accessory structures designed, constructed and located for a use permitted in the district, in compliance with this chapter and all other applicable city ordinances, are permitted in each zoning district.

(e) *Conformity to construction plan requirements.* No structure or building shall be erected, converted, enlarged, reconstructed or structurally altered unless construction plans meeting the requirements of this chapter have been approved by the city engineer and/or city building official.

(f) *Conformity to parking and loading space requirements.* No structure or building shall be erected, converted, enlarged, reconstructed, or structurally altered unless it shall conform to the off-street parking and loading requirements of this chapter.

(g) *Conformity to landscaping and screening requirements.* No building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered unless it shall conform to the landscaping and screening requirements of the this chapter.

(h) *Conformity to building setback requirements.* No yard or other open space provided around any structure or building for the purpose of complying with provisions of this chapter shall be considered as providing a yard or open space for a building on any other lot.

(i) *Outdoor lighting.* All outdoor lighting shall be installed and maintained in compliance with all applicable city ordinances. Such lighting shall be located and maintained in a manner so as to not be directed onto any public street or adjacent property; provided that, such lighting may be directed directly down upon a public street as provided for streetlights.

(1) *Multifamily, business and industrial.* Outdoor lighting for multifamily, general retail, commercial, office and industrial property will be in accordance with the provisions of this chapter and city building codes. A lighting plan shall be included with the site plan submitted for a building permit.

(2) *Residential.* Outdoor lighting on residential property will be installed in accordance with applicable city ordinances. It will be located so as not to be directed directly upon adjoining property or create a nuisance for adjoining property owners. Lighting used for security purposes, which will be operated during night hours will be located as close as is practicable to main dwellings.

(j) *Height and placement requirements.* Except as otherwise specifically provided in this chapter, no building shall be erected or maintained within the required building setback line set forth herein, or which exceeds the height limits specified in chart 1 in subsection (k) of this section. The minimum

street line width of all residential lots situated on a cul-de-sac shall be 35 feet, excluding width of side yard, drainage and/or public utility easements in which pipe will be laid as part of the initial development. The minimum street line width of all other lots situated on a cul-de-sac shall be 50 feet, excluding width of side lot line drainage and/or public utility easements in which pipe will be laid as part of the initial development.

(k) *Common areas.* If any part or portion of a development or property includes a common area or common open area, a home and/or property owners association shall be created and established in which all property owners shall be members. The articles and bylaws for the corporation and the declarations, conditions, covenants and restrictions for the proposed development shall provide for the assessment and collection of fees adequate and as necessary to maintain all such common areas in a good, clean and safe condition, and in compliance with all codes and ordinances of the city.

Chart 1

Land Use District	Front Setback (feet)	Side Setback (feet)	Corner Lot at Side Street or Alleyway Setback (feet)	Street Side Yard Setback (feet)	Rear Setback (feet)	Min. Lot Square Footage Area	Min. Lot Street Line Width (feet)	Height Limit (feet)
A	25	25	25	25	25	43,500	150	45
UE	25	25	25	25	25	22,500	100	45
R-1-1	30[9]	7	10	15	10	8,190[1]	80[1]	35
R-1-2	30[9]	5	10	15	10	6,825[1]	65[1]	35
R-1-A	25	(2)	10	15	15	4,550[1]	35	35
R-1-T	(3)	(3)	10	15	(3)	2,844[3]	35	35
R-1-C	(4)	(4)		15	(4)	9,000[4]	80	45
R-2	25[9]	7	10	15	25	9,000	80	35
R-3-1	25	15	15	15	25	(5)	80	35 [6]
R-3-2	25	20	15	15	25	(5)	80	45[7]
R-3-3	25	7	15	15	25	(13)	90	45[7]
M-1	25	7	15	15	25	8,190	80	35

M-2	25	7	25	25	25	8,190	80	35
CBD-1	25[8]	(8)	15	15	(8)	(8)	(8)	35 [8]
CBD-2	0	0	0	0	0	2,500	25	45
RS	25	10	15	15	15	6,000	50	45
HS	50	50	50	50	50	10 acres	200	100[14/15]
W	25	25	25	25	25	9,000	80	45
CM	25	50	50	50	50	43,500	150	45
E	25	25	15	15	15	6,000	50	45[14]
TU	25	7	15	15	15	(10)	(10)	(10)
B	25	25	25	15	15	(11)	(11)	(11)
PUD	(8)	(8)	(8)	15	(8)	5 acres	(8)	(8)

Notes for chart—

(1) On approval by the city council: in a section or phase of a subdivision up to 25 percent of R-1-1 lots may be less than 8,190 square feet in area but not less than 7,200 square feet, and up to 25 percent of the lots may be less than 80 feet in width but not less than 65 feet in width; and up to 25 percent of R-1-2 lots may be less than 6,825 square feet in area but not less than 5,825 square feet, and up to 25 percent of the lots may be less than 65 feet in width but not less than 55 feet in width; and up 25 percent of R-1-T lots may be less than 2,844 square feet in area but not less than 2,500 square feet, and up to 25 percent of the lots may be less than 35 feet in width but not less than 20 ft in width; and up to 25 percent of R-1-A lots may be less than 4,550 square feet in area but not less than 4,000 square feet, and up to 25 percent of the lots may be less than 35 feet in width but not less than 30 ft in width. If the city council approves any lots to be platted that have less area than the minimum area provided in the chart 1 in this section for any such zoning district, the percentage of such smaller lots actually platted and fully developed in any section or phase shall not at anytime exceed the percentage of smaller lots approved by the city council for the entire subdivision or development. In no event shall more than 25 percent of the lots in any phase or section of a subdivision have less land area than the minimum lot area established in chart 1.

(2) Side yard setback for the R-1-A district is ten feet on one side, and a zero lot line is permitted on the other side. See definition for zero-lot-line lot.

(3) See division 5 of this article, pertaining to residential townhouse district R-1-T.

(4) See division 6 of this article, pertaining to residential condominium district R-1-C.

(5) Minimum lot area for property in the R-3-1 and R-3-2 district is 12,000 square feet, plus an additional 1,500 square feet for each dwelling unit in excess of four units; provided that the density limitations set forth for each such district shall apply.

(6) Not to exceed two stories.

(7) Not to exceed three stories.

(8) The conditions and limitations, setbacks and lot requirements set forth in chart 1 applicable to the district governing the proposed base use of the property shall apply within this district, i.e., if the proposed use of property within the district is a use provided for in the CBD-1 district the conditions and limitations applicable to the CBD-1 district shall apply to the property.

(9) An approval by the city council up to 50 percent of the lots within a subdivision may have a front setback line of less than 30 feet but not less than 20 feet; provided that no more than three consecutive and abutting lots shall have less than 30 feet front setback; and no more than 25 percent of the lots shall have a minimum front setback of 25 feet; and not more than 25 percent of the lots shall have a minimum front setback of 20 feet.

(10) The conditions, limitations, setbacks and lot requirements shall be determined by the planning commission as part of the site development approval process subsequent to review and recommendation by staff.

(11) The conditions, limitations, setbacks and lot size requirements shall comply fully with chapter 29, pertaining to signs.

(12) Minimum lot area for property in the R-3-3 district is 12,000 plus 1,500 square feet for each residential unit; minimum lot width shall be 90 feet.

(13) Height limitation applies to buildings; height for amusement rides shall be determined on a case-by-case basis.

(14) Not to exceed 100 feet for the main hospital building, and not to exceed 75 feet for any other building. No portion of any building within 100 feet of the property line of a single-family residential use shall exceed 35 feet in height.

(15) Permitted heights can exceed the maximum feet shown when and only when structured parking is included in the construction design of the building and occurs in the same phase of construction as the building and providing for a minimum of one-third of the number of the required parking spaces that are required by ordinance to separately serve the uses within the building.

(l) *Impervious coverage.* The maximum percentage of lot area which may hereafter be covered by the main buildings and all accessory buildings shall not exceed that set forth in chart 2 in this subsection. In the following zoning districts, the maximum building lot coverage for multiple-family dwellings must conform to the following schedule:

Chart 2		
District	Maximum Lot Coverage	
	Main buildings (in percent)	Main building and accessory buildings (in percent)
R-1-1	35	40
R-1-2	35	45

R-1-A	40	60
R-1-T	40	60
R-1-C	40	50
R-2	40	50
R-3-1	40	50
R-3-2	40	50
R-3-2	40	50
CBD-1	60	65(1)
CBD-2	100	100
RS	60	65
HS	60	65
W	50	60
CM	40	45
E	60	65
TU	60	65

Note—Open off-street parking and loading areas will not considered as lot coverage under this subsection.

(1) Maximum lot coverage of 70 percent for the main building and for all buildings is permitted on lots where existing buildings were located prior to the date of the ordinance from which this chapter is derived. This only applies to buildings that existed on the date of the ordinance from which this chapter is derived, and that are within the area hereafter zoned CBD-1.

(m) *Floor area ratio.* Except as hereinafter provided, no building or structure may be erected, added to or altered to exceed the maximum floor area ratio standards in the various zoning districts as set forth in chart 3 in this subsection. In the zoning districts listed in the chart in this subsection, the maximum floor area ratio (FAR) for any building or structure shall be as follows:

Chart 3	
District	Building Area, Maximum Floor Area Ratio to Land Area
CBD-1	1.8:1
CBD-2	2.5:1
RS	1.8:1
HS	1.8:1
W	1.5:1
CM	1.2:1
E	1.8:1
TU	1.8:1

Structures used for off-street parking of vehicles shall not be included in calculating the building area to determine floor area ratio (FAR) standards.

(n) *Parking.* Automotive vehicles or trailers not bearing current license plates and state motor vehicle inspection stickers, excluding racing cars, antique cars, and cars belonging to members of armed forces who are on active duty, shall be parked or stored in any residential area only in completely enclosed buildings. No vehicle, trailer or major recreational equipment shall be parked or stored on any lot except that it shall be enclosed in a building or parked on a driveway or a concrete, paved or stone pad installed for such a purpose and subject to the following requirements:

(1) *Parking regulations.* Where any lot and/or structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this chapter, designated on-street or off-street parking spaces shall be provided in a number not less than as provided in chart 4, set forth in this subsection.

(2) *Handicap parking.* Nonresidential handicap parking and handicap accessible routes shall be provided and constructed in compliance with the Texas Accessibility Standards (TAS).

(3) *Maximum parking.* The maximum number of parking spaces for a general retail, commercial, office or industrial use area shall not exceed 150 percent of the parking required pursuant to chart 4.

(4) *Width of parking spaces.* Except for all required handicap parking, not less than 50 percent of all parking spaces, for any given commercial use must be a minimum of nine feet in width, and all remaining parking spaces must not be less than 8½ feet in width.

(5) *Reduction of parking.* The total number of required motor vehicle parking spaces for a nonresidential use may be reduced by five percent for each of the activities listed in this subsection provided by the owners or operators, up to a maximum of ten percent reduction in the total number of motor vehicle spaces:

a. Participate in an area wide carpool/vanpool ride matching program for employees; designating at least ten percent of the employee motor vehicle parking spaces as carpool/vanpool parking and placing such spaces closer to the building than other employee parking;

b. Providing showers and lockers for employees who commute by bicycle;

c. Providing covered, secured bicycle parking racks or facilities;

d. Providing a transit facility that is approved by the local transit authority, and related amenities. Related amenities include, but are not limited to, a public plaza, pedestrian sitting areas, and additional landscaping.

(6) *Development and maintenance standards for parking areas.* Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

a. Off-street parking areas for more than five vehicles shall be effectively screened by a sight-obscuring fence, hedge or planting, on each side which adjoins a residential use or property situated in a residential area.

b. Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.

c. Access aisles shall be of sufficient width for vehicular turning and maneuvering.

(7) *Council determination.* Off-street and on-street parking, for all uses not within the categories listed in this subsection, shall be adequate to meet the anticipated needs and shall be determined by the city council using standards outlined for special exceptions and with a view towards providing adequate parking and carrying out the general scheme of the parking requirements herein set out.

(8) *Special exception.* The city council may grant a special exception to allow two or more uses to share parking spaces upon a showing that the particular uses in question will require parking at different times. Any spaces the council allows to be shared count toward the number of spaces each use must provide.

Chart 4[(1)]	
Use (See exhibit A for list of SIC codes)	Number of Parking Spaces[(1)]
CBD-1	One space for every 200 square feet of floor space.
CBD-2	If located on Center, Main or Front Streets, parking requirements will be decided on case-by-case basis. All others will provide one space for every 200 square feet of floor space.

R-1-1, R-1-2, R-1-A, R-1-T, R-1-C, R-2, R-3-1, R-3-2, R-3-3, M-1, M-2 and M-3 districts	Two spaces minimum for each living unit, and one-half space for each additional bedroom above two.
W and CM districts	One space per 1,000 feet of gross floor area and one space for every 1½ employees.
SIC codes: 72111000 (hotels); 72111001 (motels)	One space per bedroom and one space for each two employees.
SIC codes: 62149300 (emergency clinic); 62311000 (convalescent and nursing home); 62221000 (rehabilitation services); 62221001 (rehabilitation clinic); 62331100 (retirement homes)	One space for each two employees, and one space for each four patient beds.
Bars, cafes, restaurants, taverns, night clubs, and similar uses. RS SIC codes 72211006—72211017 (fast-food); 72211000—72211005 (restaurants); 72221200 (cafeteria); 72241001 (bar); 72241004 (brew pub)	One space for every four seats provided for customer services provided food is served. Bars and brew pubs which do not serve food shall have one space for three persons up to the maximum capacity allowed by fire codes for establishment.
RS district, E district unless SIC code stated additional requirements above.	One space for each 250 square feet of gross floor area.
HS district (hospital, extended care facility, intermediate care facility, longterm care facility).	Two for each bed, plus one for each two employees on the largest shift at full design capacity.
HS district (ambulance service)	Two for each ambulance vehicle.
HS district (medical educational institution)	One per each facility member, plus one for each three students.
HS district (clinic or doctor's office)	One per 200 square feet of gross floor area.

Note—(1)The city council may, based on a site plan approved by council, waive all or part of these parking space requirements for buildings within the original town.

(o) *Uses noncumulative.* Uses within each district are restricted solely to those uses expressly permitted in each district, and are not cumulative unless so stated.

(p) *Exceptions.* Nothing in this section shall prohibit the approval of a comprehensive zero lot line residential development or other innovative housing development in compliance with the other terms and provisions of this chapter.

(q) *Mandated exceptions.* To the extent required by state or federal law, a personal care facility is an additional permitted use in any zoning district; provided that:

(1) Homes and residential units not designed and constructed in compliance with the ordinance and code requirements applicable to multiple-occupancy residential buildings and nursing homes, shall meet the following requirements:

a. The structure shall comply with provisions of the fire code, electrical code and building code that are applicable to nursing homes;

b. There shall be two parking spaces, plus one additional space for each three residents;

c. There shall be not less than 50 square feet of living space within a sleeping room for each occupant assigned to such room;

d. There shall be not less than 175 square feet of living area in the structure for each occupant/resident of the structure, and attendant on duty; and

e. The structure and operation shall comply with the standards established by the state department of human services as licensing standards for personal care facilities for a type B facility.

(2) The home must meet all applicable state licensing requirements;

(3) A personal care facility must have at least one paid staff member on duty 24-hours per day, and one supervisor for each six residents during waking hours;

(4) A personal care facility may not have more than 15 residents.

(Ord. No. 438, § 20, 11-24-2003; Ord. No. 438-35, §§ 1, 2, 8-2-2005; Ord. No. 526, §§ 2—6, 1-8-2008; Ord. No. 568, § 1, 5-5-2009; Ord. No. 663, §§ 1, 2, 7-19-2011)

Sec. 53-34. - Establishment of zoning districts.

(a) The city is hereby divided into 24 zoning districts, one planned unit development district, and two overlay districts, the use, height and area regulations as set out herein shall be uniform in each district. The districts established shall be known as:

Abbreviated Designation	Zoning District Name	Designation
A	Agricultural district	District A
UE	Urban estate district	District UE
R-1-1	Single-family residential 1	District R-1-1
R-1-2	Single-family residential 2	District R-1-2
R-1-A	Single-family attached	District R-1-A

R-1-T	Residential townhouse	District R-1-T
R-1-C	Residential condominium	District R-1-C
R-2	Residential two-family	District R-2
R-3-1	Multifamily residential 1	District R-3-1
R-3-2	Multifamily residential 2	District R-3-2
R-3-3	Apartments residential 3	District R-3-3
M-1	Manufactured home	District M-1
M-2	Manufactured home subdivision	District M-2
M-3	Manufactured home park	District M-3
CBD-1	Central business district 1	District CBD-1
CBD-2	Central business district 2	District CDB-2
RS	Retail/service	District RS
W	Warehouse	District W
CM	Construction/manufacturing	District CM
E	Entertainment	District E
TU	Transportation/utilities	District TU
B	Billboards	District B
RV	Recreational vehicle park	District RV
HS	Hospital services	District HS
PUD	Planned unit development	District PUD

H	Historic district overlay	District H overlay
CU	Conditional use overlay	District CU overlay

(b) *Zoning map.* The location and boundaries of the districts herein established are shown upon the zoning map, which is hereby incorporated and made a part of this chapter; provided that such uses as listed but not shown on the zoning map are provided for future growth and use upon amendment of the comprehensive plan. It shall be the duty of the city building official to maintain the zoning map together with all notations, references, and other information shown thereon and all amendments thereto.

(c) *District boundaries.* Where uncertainty exists with respect to the boundaries of the established districts as shown on the zoning map, the following rules shall apply:

(1) Where district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or highway right-of-way lines shall be construed to be said boundaries.

(2) Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

(3) Where district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets, or the centerlines of right-of-way lines of highways such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale on said zoning map.

(4) In subdivided property, the district boundary lines on the zoning map shall be determined by use of the scale appearing on the map.

(5) If a district boundary line divides a property into two parts, the district boundary line shall be construed to be the property line nearest the district line as shown.

(6) Whenever any street, alley or other public way is vacated by the city council, the zoning district shall be automatically extended to the center of such vacation and all area included in the vacation shall then and henceforth be subject to all regulations of the districts as extended.

(7) Where the streets on the ground differ from the streets shown on the zoning map, those on the ground shall control.

(Ord. No. 438, § 21, 11-24-2003)

Sec. 53-35. - Zoning of annexed areas.

(a) *Interim zoning district.* All territory hereafter annexed to the city shall be automatically classified as agricultural district A, pending subsequent action by the planning and zoning commission and council for permanent zoning; provided that upon application, by either the city or the property owner of the land being annexed, for zoning other than agricultural, notice may be given and hearings held in compliance with V.T.C.A., Local Government Code ch. 211 and upon annexation, such property may be permanently zoned as determined by the city council after considering the planning and zoning commission's recommendation.

(b) *Permits in interim zoned areas.* In an area temporarily classified as agricultural district A, no permits for the construction of a building or use of land other than uses allowed in said district under this chapter shall be issued by the city building official.

(Ord. No. 438, § 22, 11-24-2003)

Sec. 53-36. - Agricultural district A.

The permitted uses in the agricultural district A allow farming, ranching, pasturage, detached single-family residences and related accessory structures, on a minimum one acre tract. Parks, playgrounds, greenbelts and other public recreational facilities, owned and/or operated by the municipality or other public agency are permitted.

(Ord. No. 438, § 23, 11-24-2003)

Sec. 53-37. - Urban estate district UE.

The urban estate district UE permits detached single-family residential dwellings with a minimum of 1,800 square feet of living area and related accessory uses on lots that are a minimum of one acre in size. Parks, playgrounds, greenbelts and other public recreational facilities, owned and/or operated by the municipality or other public agency are permitted.

(Ord. No. 438, § 24, 11-24-2003)

Secs. 53-38—53-62. - Reserved.

DIVISION 2. - SINGLE-FAMILY RESIDENTIAL 1 DISTRICT R-1-1

Sec. 53-63. - Purpose and permitted uses.

The R-1-1 single-family residential 1 district allows detached single-family residences with a minimum of 1,600 square feet of living area and permitted accessory structures on a minimum lot size of 8,190 square feet. There shall be no more than 3.9 houses per buildable acre.

(Ord. No. 438, § 25(a), 11-24-2003)

Sec. 53-64. - Additional permitted uses.

In addition to the uses permitted in division, the following uses are permitted in the R-1-1 single-family residential 1 district:

(1) Parks, playgrounds, community buildings and other public recreational facilities, owned and/or operated by the municipality or other public agency.

(2) Public buildings, including libraries, museums, police and fire stations.

(3) Real estate sales offices during the development of a residential subdivision but not to exceed two years. Display dwellings with sales offices, provided that if said display dwellings are not moved are converted to a permitted use within a period of one year, specific permission must be obtained from the city council for said display houses to remain.

(4) Schools, public, private and denominational.

(5) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.

(6) Water supply reservoirs, pumping plants and towers.

(7) Accessory structures and uses customarily incident to the uses in this division and located on the same lot therewith, not involving the conduct of any business or commercial enterprise.

(8) Churches.

(Ord. No. 438, § 25(b), 11-24-2003)

Sec. 53-65. - Conditions and limitations.

The following are the conditions and limitations in the R-1-1 single-family residential 1 district:

(1) The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(3) Garages are required and must be one of the following designs:

a. Detached with a minimum setback of five feet from the front wall of the home facing front property line;

b. May be attached and must have a minimum setback of five feet from the front wall of the home facing front property line; or

c. May be attached and meet minimum front setback requirements, but must face side property line.

Each garage must be designed and constructed with a minimum of 480 square feet.

(4) All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 25(c), 11-24-2003)

Secs. 53-66—53-88. - Reserved.

DIVISION 3. - SINGLE-FAMILY RESIDENTIAL 2 DISTRICT R-1-2

Sec. 53-89. - Purpose and permitted uses.

The single-family residential 2 district permits detached single-family dwellings with a minimum of 1,200 square feet of living area, and related accessory structures, on a minimum lot size of 6,825 square feet. There shall be no more than 4.7 houses per buildable acre.

(Ord. No. 438, § 26(a), 11-24-2003)

Sec. 53-90. - Additional permitted uses.

The additional permitted uses for the single-family residential 2 district shall be as set forth in section 53-64.

(Ord. No. 438, § 26(b), 11-24-2003)

Sec. 53-91. - Conditions and limitations.

The conditions and limitations for district R-1-2 are as follows:

(1) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(3) Garages are required and must be one of the following designs:

a. Detached with a minimum setback of five feet from the front wall of the home facing front property line;

b. May be attached and must have a minimum setback of five feet from the front wall of the home facing front property line; or

c. May be attached and meet minimum front setback requirements, but must face side property line.

Each garage must be designed and constructed with a minimum of 480 square feet.

(4) All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 26(c), 11-24-2003)

Secs. 53-92—53-110. - Reserved.

DIVISION 4. - SINGLE-FAMILY ATTACHED/DETACHED DISTRICT R-1-A, GARDEN HOME

Sec. 53-111. - Purpose and permitted uses.

The single-family attached/detached district R-1-A, garden home allows attached or detached single-family structures with a minimum of 1,000 square feet of living area and permitted accessory structures on a minimum lot size of 4,800 square feet. There shall be no more than 6.8 houses per buildable acre. The single-family residences authorized in this zoning district include those generally referred to as garden homes, patio homes and zero lot line homes.

(Ord. No. 438, § 27(a), 11-24-2003; Ord. No. 438-35, § 3(a), 8-2-2005)

Sec. 53-112. - Additional permitted uses.

In addition to the uses permitted in this division, the following uses are permitted in the R-1-A district:

(1) Temporary buildings for uses incidental to construction work on the premises, to be removed upon the completion or abandonment of construction work.

(2) Accessory structures and uses customarily incident to the uses listed in this section and section 53-111 and located on the same lot therewith, not involving the conduct of any business or commercial enterprise.

(Ord. No. 438, § 27(b), 11-24-2003; Ord. No. 438-35, § 3(b), 8-2-2005)

Sec. 53-113. - Conditions and limitations.

The conditions and limitations for the R-1-A district are as follows:

(1) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(3) Garages are required and must be one of the following designs:

a. Detached with a minimum setback of five feet from the front wall of the home facing front property line;

b. May be attached and must have a minimum setback of five feet from the front wall of the home facing front property line; or

c. May be attached and meet minimum front setback requirements, but must face side property line.

Each garage must be designed and constructed with a minimum of 480 square feet.

(4) All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 27(c), 11-24-2003; Ord. No. 438-35, § 3(c), 8-2-2005)

Secs. 53-114—53-139. - Reserved.

DIVISION 5. - RESIDENTIAL TOWNHOUSE DISTRICT R-1-T

Sec. 53-140. - Purpose and permitted uses.

The residential townhouse district R-1-T allows attached single-family structures with a minimum of 1,000 square feet of living area and permitted accessory structures. The single-family residences authorized in this zoning district are those generally referred to as townhouses. The permitted density shall not exceed 2,844 square feet. There shall be no more than ten units per buildable acre of land.

(Ord. No. 438, § 28(a), 11-24-2003)

Sec. 53-141. - Additional permitted uses.

There are no additional permitted uses in the R-1-T residential townhouse district.

(Ord. No. 438, § 28(b), 11-24-2003)

Sec. 53-142. - Conditions and limitations.

The conditions and limitations district R-1-T is as follows:

(1) The declaration, conditions and covenants for the project shall provide for a home owners association and the assessment and collection of fees adequate and as necessary to maintain the property in compliance with all ordinances of the city.

(2) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(3) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(Ord. No. 438, § 28(c), 11-24-2003)

Sec. 53-143. - Site development regulations.

The site development regulations as set forth in this section shall be exclusively applicable to residential townhouses, district R-1-T, and in addition to those in chart 1 in section 53-33(k):

(1) *Density.* Maximum dwelling units per buildable acre is ten units.

(2) *Front yard.* There shall be a common area yard having a depth of not less than 15 feet extending from the property line of each individual lot to the nearest line of:

a. The curbline of any driveway or parking area; or

b. The boundary line of the property included within the townhouse development, whichever is closer.

(3) *Side yard.* No side yard shall be required for individual lots. There shall be a side yard setback of not less than 15 feet from the walls of any building, or accessory building, to the nearest boundary line of any property not included within the townhouse development.

(4) *Rear yard minimum setback.* There shall be a rear yard setback having a depth of not less than 15 feet from the rear most wall of the dwelling unit to the back property line, or, if a garage is at the rear of the property, 15 feet from the rear most wall of the dwelling to the nearest wall or roofline of the garage. No building or structure shall be located within 15 feet of the boundary line of any property not included within the townhouse development.

(5) *Garages.*

a. Garages are required and must be one of the following designs:

1. Detached with a minimum setback of five feet from the front wall of the home facing front property line;

2. May be attached and must have a minimum setback of five feet from the front wall of the home facing front property line; or

3. May be attached and meet minimum front setback requirements, but must face side property line.

Each garage must be designed and constructed with a minimum of 480 square feet.

b. A minimum of two off-street parking spaces shall be provided for each living unit. All off-street parking and driveways shall be improved with all weather asphalt, concrete, or paving stones, and curb and gutter.

c. No curbline of a driveway or parking area shall be less than five feet from the nearest boundary line of any property not within the townhouse development.

(6) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 28(d)(i)—(vi), 11-24-2003)

Secs. 53-144—53-171. - Reserved.

DIVISION 6. - RESIDENTIAL CONDOMINIUM DISTRICT R-1-C

Sec. 53-172. - Purpose and permitted use.

The residential condominium district R-1-C allows the establishment of a residential housing in compliance with the Texas Uniform Condominium Act, V.T.C.A., Property Code ch. 82, with individual apartments or units having a minimum of 500 square feet living area, inclusive of separate sleeping, living and kitchen facilities.

(Ord. No. 438, § 29(a), 11-24-2003)

Sec. 53-173. - Conditions and limitations.

The conditions and limitations in the district R-1-C is as follows:

(1) All construction, plumbing, heating, cooling and electrical work shall comply with all applicable city ordinances. No land or property including an existing building or structure proposed to be converted to condominiums shall be zoned for such purpose prior to a complete inspection by the building official, conducted at the expense of the owners.

(2) The declaration, conditions and covenants for the proposed condominium shall provide for the assessment and collection of fees adequate and as necessary to maintain the property in compliance with all codes and ordinances of the city.

(3) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with V.T.C.A., Property Code ch. 82, or any other statute enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with V.T.C.A., Property Code ch. 82, and any other state statute concerning condominiums.

(4) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(5) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(Ord. No. 438, § 29(b), 11-24-2003)

Sec. 53-174. - Site development regulations.

The site development regulations set forth in this section shall be exclusively applicable to residential condominium, district R-1-C.

(1) *Density.* The maximum dwelling units per buildable acre or square footage for the R-1-C district are as follows:

   a. Lot size of 9,000 square feet for two units.

   b. Lot size of 10,000 square feet for four units.

c. A minimum of three units and for acreage tracts, 36 units per buildable acre.

(2) *Front yard.* There shall be a common area front yard having a depth of not less than 25 feet.

(3) *Side yard.* There shall be a common area side yard having a depth of not less than 15 feet.

(4) *Rear yard.* There shall be a common area rear yard having a depth of not less than 15 feet.

(5) *Parking.* The parking requirements for the R-1-C district is as follows:

a. Covered off-street parking is required and may be attached or detached and accessible from a public or private street.

b. Covered parking is required and may be attached or detached and placed to rear of the property. Attached covered parking must not face the front lot line.

c. Covered parking required within this district shall provide and accommodate for two parking spaces, as defined herein for each living unit. All covered parking and/or off-street parking and driveways shall be improved with all weather asphalt, concrete, or paving stones, and curb and gutter.

d. No curbline of a driveway or parking area shall be less than five feet from the nearest boundary line of any property not within the townhouse development.

(6) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 29(c), (d), 11-24-2003)

Secs. 53-175—53-203. - Reserved.

DIVISION 7. - RESIDENTIAL TWO-FAMILY DISTRICT, R-2 DUPLEX

Sec. 53-204. - Purpose and permitted uses.

(a) The residential two-family district R-2 duplex allows single-family dwellings and duplex housing not to exceed six units per buildable acre.

(b) Two-family dwellings shall have a minimum living area on each side of 900 square feet.

(Ord. No. 438, § 30(a), 11-24-2003)

Sec. 53-205. - Additional permitted uses.

As set forth in section 53-64.

(Ord. No. 438, § 30(b), 11-24-2003)

Sec. 53-206. - Conditions and limitations.

The conditions and limitations of the R-2 district are as follows:

(1) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(3) *Garages or carports are required.* A minimum of two off-street parking spaces shall be provided for each living unit. All off-street parking and driveways shall be improved with all-weather asphalt, concrete, or paving stones, and curb and gutter.

(4) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 30(c), (d), 11-24-2003)

Secs. 53-207—53-237. - Reserved.

DIVISION 8. - MULTIFAMILY RESIDENTIAL 1, DISTRICT R-3-1

Sec. 53-238. - Purpose and permitted uses.

The multifamily residential district R-3-1 allows three-family and four-family dwellings each having a minimum living area of 850 square feet. The R-3-1 district permits typical garden apartment development with buildings not exceeding two stories, having at least five and not more than 12 units per buildable acre, and with apartments or units having a minimum living area of 850 square feet.

(Ord. No. 438, § 31(a), 11-24-2003)

Sec. 53-239. - Conditions and limitations.

The conditions and limitations on uses in the R-3-1 district are as follows:

(1) *Density.* More than one building or structure may be located upon a lot.

(2) *Access.* Any structure not facing a public street shall face upon a court yard having a minimum width of 45 feet between structures and any appurtenances thereto, which courtyard shall have direct access to a public street or a parking lot abutting a public street.

(3) *Distance between buildings.* No exterior walls of any two buildings, any one of which buildings contains an apartment or living unit and either one of which exterior walls includes a window or door, and which walls are parallel or within 45 degrees of being parallel, shall be closer together than a horizontal distance of 45 feet.

(4) *Minimum distance requirements.* All buildings and structures shall, except as provided in subsection (3) of this section, be separated by a minimum horizontal distance of eight feet.

(5) *Parkland requirements.* Unless otherwise satisfied pursuant to chapter 41, pertaining to subdivisions, one acre per 100 dwelling units, or five percent of the total site area, whichever is greater, shall be provided to satisfy parkland requirements; provided that the council may, at its discretion, require the payment of the established fee in lieu of land dedication for each such dwelling unit. Such recreational open space shall be located or arranged so as to function as a recreational area and be uniformly beneficial to all of the dwelling units in the project or development. Open space required to separate structures shall not be considered to be a part of the required recreational open space.

(6) *Parking.*

a. There shall be a minimum 15-foot setback from the rear most wall of any garage, and from the curbline of any parking area, to the nearest property line.

b. Garages and/or covered parking is required, and may be attached or detached.

c. A minimum of two off-street parking spaces shall be provided for each living unit. All off-street parking and driveways shall be improved with all weather asphalt, concrete, or paving stones, and curb and gutter.

(7) *Traffic impact.* The planning and zoning commission and the council may consider number of units proposed, the availability of mass transit and the impact the development may have on existing traffic patterns, with respect to any application for multifamily zoning.

(8) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(9) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(10) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 31(b), (d), 11-24-2003)

Sec. 53-240. - Site development regulations.

(a) The site development regulations in this section shall be applicable to apartment buildings and property zoned multifamily residential district R-3-1.

(b) The maximum dwelling units per buildable acre is 12 units.

(Ord. No. 438, § 31(c), 11-24-2003)

Secs. 53-241—53-260. - Reserved.

DIVISION 9. - MULTIFAMILY RESIDENTIAL 2, DISTRICT R-3-2

Sec. 53-261. - Purpose and permitted uses.

The multifamily residential district R-3-2 permits typical apartment development with buildings not exceeding three stories, nor more than 21 units per buildable acre, and with apartments or units having a minimum living area of 400 square feet; provided that not more than 25 percent of the units in any such apartment development or project shall have less than 500 square feet of living area.

(Ord. No. 438, § 32(a), 11-24-2003; Ord. No. 438-47, § 2(a), 7-5-2006)

Sec. 53-262. - Conditions and limitations.

See section 53-239(1) through (4).

(Ord. No. 438, § 32(b), 11-24-2003; Ord. No. 438-47, § 2(b), 7-5-2006)

Sec. 53-263. - Site development regulations.

The following site development regulations shall be applicable to apartment buildings and property zoned multifamily residential, district R-3-2:

(1) *Density.* The maximum dwelling units per building acre are 21 units.

(2) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(3) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(4) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 32(c), (d), 11-24-2003; Ord. No. 438-47, § 2(c), (d), 7-5-2006)

Secs. 53-264—53-291. - Reserved.

DIVISION 10. - APARTMENTS RESIDENTIAL 3, DISTRICT R-3-3

Sec. 53-292. - Purpose and permitted uses.

The multifamily residential district R-3-3 permits typical apartment development with buildings not exceeding three stories, nor more than 28 units per buildable acre, and with apartments or units having a minimum living area of 500 square feet; provided that not more than 25 percent of the units in any such apartment development or project shall have less than 750 square feet of living area.

(Ord. No. 438, § 33(a), 11-24-2003)

Sec. 53-293. - Conditions and limitations.

See section 53-239.

(Ord. No. 438, § 33(b), 11-24-2003)

Sec. 53-294. - Site development regulations.

The following site development regulations shall be applicable to apartment buildings and property zoned multifamily residential district R-3-3.

(1) *Density.* The maximum dwelling units per buildable acre are 28 units.

(2) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k);

(3) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(4) *Approved materials.* All buildings and structures, garages, and/or accessory buildings constructed within this district must have all four sides composed of 100 percent brick, stone, hardiplank or other approved masonry product.

(Ord. No. 438, § 33(c), (d)(iii), (d)(iv), (e), 11-24-2003)

Sec. 53-295. - Exceptions for low and moderate income.

(a) The city council may in appropriate circumstances and subject to the conditions provided in this section grant an exception for apartment projects planned for low and moderate income residents; provided that the proposed multifamily project has firm financing, contracts and agreements in place to ensure rent subsidy and rental assistance for 60 percent, or more, of the proposed units, and the site proposed for the project is buffered and separated from neighboring single-family residential property by such uses as:

    (1) Parks, drainages with greenbelts;

    (2) Railroad right-of-way or Interstate Hwy. 35;

    (3) Schools or other large public facility campuses;

    (4) A large shopping center;

    (5) Commercial or industrial facility.

(b) Multifamily residential projects meeting the requirements of this section, in addition to meeting the other requirements of this district, may in the discretion of the city council have a:

    (1) Maximum density not to exceed 28 dwelling units per buildable acre, with maximum lot coverage of all:

        a. Main buildings not to exceed 50 percent; and

        b. Main and accessory buildings combined not to exceed 60 percent.

    (2) Minimum lot area shall be 12,000 square feet plus 1,000 square feet for each residential unit;

    (3) Minimum lot width shall be 90 feet; and

    (4) Maximum height of any building or structure shall three stories but not exceed 45 feet.

(Ord. No. 438, § 33(d)(i)—(ii), 11-24-2003)

Secs. 53-296—53-325. - Reserved.

DIVISION 11. - MANUFACTURED HOME DISTRICT M-1

Sec. 53-326. - Purpose and permitted uses.

(a) This is a zoning overlay district applicable only to specific geographic areas that, prior to the date of the ordinance from which this chapter is derived, were platted as individual lots and zoned or otherwise designated as eligible for mobile homes and manufactured homes as an additional permitted use.

(b) This district and use will continue in effect only for the purpose of complying with state law authorizing such manufactured homes to be replaced, so long as the use is not discontinued.

(c) No additional or new lots, tracts or parcels of land shall be hereafter zoned district M-1, except as required by state law or specifically provided otherwise in this section, no manufactured home shall be hereafter placed or installed on any lot, tract or parcel of land within the city unless such lot, tract or parcel of land:

    (1) Was previously granted a conditional use permit and zoned district M-1 under a prior zoning ordinance of the city; or

(2) Is zoned district M-2 or district M-3.

(Ord. No. 438, § 34(a), 11-24-2003)

Sec. 53-327. - Conditions and limitations.

Manufactured homes located on lots, tracts or parcels of land previously granted a conditional use and zoned district M-1, for which the conditional use has not lapsed or expired, or been abandoned or cancelled, may be replaced on the lot, tract or parcel of land previously zoned M-1 only as permitted by state law; provided that any such manufactured home shall comply with the following conditions and limitations:

(1) *Minimum living area.* Manufactured homes in this district must have a minimum of 1,000 square feet of living area.

(2) *Skirting.* Manufactured homes must be skirted within 90 days from date installed.

(3) *Tie-down.* Manufactured homes must be tied down securely and in compliance with applicable regulations prior to occupancy.

(4) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(5) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(Ord. No. 438, § 34(b), 11-24-2003)

Sec. 53-328. - Authorized in specified areas.

Only lots, tracts or parcels of land previously granted a conditional use permit and zoned M-1 shall be zoned M-1, and such conditional use and zoning shall terminate and expire on the earlier to occur of the expiration of the conditional use permit or the abandonment of the use. The use of a lot, tract or parcel for a manufactured home under district M-1 shall be deemed abandoned if:

(1) A manufactured home is not located on the lot, tract or parcel for a period of 90 consecutive days; or

(2) The manufactured home is removed from the property, and the lot, tract or parcel is sold, transferred or conveyed.

(Ord. No. 438, § 34(c), 11-24-2003)

Sec. 53-329. - Standards.

The installation, occupancy and maintenance of manufactured homes shall be subject to the following provisions:

(1) No outside horizontal dimension shall be less than 14 feet, except for original extensions or subsequent additions containing less than 50 percent of the total enclosed floor area.

(2) The exterior siding material, excluding skirting, shall be nonmetallic.

(3) The structures shall be of adequate quality and safe design, as certified by a label stating that the unit is constructed in conformance with the federal manufactured home construction and safety standards in effect on the date of manufacture, or other such applicable standards as required by state or federal law. Any such structure without such certification, but meeting all other requirements, may be accepted as safe and quality construction provided it meets the following criteria:

a. All electrical material, devices, appliances, and equipment are in sound and safe condition. Aluminum conductors are not acceptable.

b. All mechanical systems including space and water heating, are in sound and safe condition.

c. All plumbing, gas piping, and wastewater systems are in sound and safe condition.

d. The unit is in sound and safe structural condition. Uncompressed finish floorings greater than one-eighth inch in thickness beneath load-bearing walls that are fastened to the floor structure are not acceptable. Any such structure that shows signs of fire damage will not be acceptable.

e. The determination of the foregoing acceptance of any noncertified unit shall be made by the building official and/or the fire marshal.

(4) Manufactured homes shall be installed in accordance with the following criteria:

a. By a person licensed by the state in compliance with state law, or as hereinafter provided in this subsection. The frame shall be supported by, and tied to, a foundation system capable of safely supporting the loads imposed as determined from the character of the soil. The minimum acceptable foundation design shall be a series of eight-inch grout-filled concrete block piers spaced no more than eight feet on center and bearing on 12 inches by 12 inches solid concrete footings. A tie-down and anchoring system separate and apart from the foundation ties shall be provided as recommended by the manufacturer, if different from the foundation ties.

b. Axle and hitch assemblies shall be removed at the time of placement on the foundation.

c. Each manufactured home shall be totally skirted with metal, masonry, pressure-treated wood, or other nondegradable material which is compatible with the design and exterior materials of the primary structure.

d. Electrical power supply shall be from a meter installation on the mobile home, or from a permanent meter pedestal.

e. Driveways and off-street parking shall be provided in accordance with the requirements for single-family dwellings.

f. Garage and carport additions are permitted, provided they cover a paved parking area and are connected to a street by a paved drive, meet the minimum building setback requirements, and have roof and siding material compatible with the primary structure.

g. Patio and porch covers are permitted, provided they cover an improved patio, deck, or porch, and meet the minimum building setback requirements.

h. Living area additions are permitted, provided they meet the minimum building setback requirements, have roof and siding material that is compatible with the primary structure, and comply with the same structural standards as the primary structure.

i. All accessory structures and additions shall comply with all applicable city ordinances.

(Ord. No. 438, § 34(d), 11-24-2003)

Sec. 53-330. - Site development regulations.

The manufactured home shall not be placed or located on any lot, tract or parcel except as a replacement for a manufactured home previously located thereon pursuant to a conditional use permit for which the use has not lapsed, expired or been abandoned. Otherwise, provided the conditions and limitations as set forth in section 53-327 are satisfied, no additional site development regulations shall be applicable.

(Ord. No. 438, § 34(e), 11-24-2003)

Secs. 53-331—53-348. - Reserved.

DIVISION 12. - MANUFACTURED HOME SUBDIVISION DISTRICT M-2

Sec. 53-349. - Purpose and permitted uses.

Property and areas of the city zoned M-2 may be planned, used, approved, platted and occupied as a manufactured home subdivision with all lots sold and conveyed to individual lot owners. Land and areas of the city zoned M-2 and having an approved subdivision plat may be used for manufactured homes having a minimum of 1,200 square feet of living area.

(Ord. No. 438, § 35(a), 11-24-2003)

Sec. 53-350. - Additional permitted uses.

Additional permitted uses in the M-2 district are as follows:

(1) See section 53-64.

(2) Single-family detached dwellings.

(Ord. No. 438, § 35(b), 11-24-2003)

Sec. 53-351. - Conditions and limitations.

The conditions and limitations on uses in the M-2 district are as follows:

(1) Manufactured homes in this district must have a minimum of 1,200 square feet of living area.

(2) Manufactured homes must be skirted within 90 days from date installed.

(3) Manufactured homes must be tied down securely and in compliance with applicable regulations prior to occupancy.

(4) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(5) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(6) All manufactured homes must be placed on lot with the longest length of the home facing the front lot line.

(7) Property zoned M-2 may not be used, operated, leased or rented as a manufactured home park.

(Ord. No. 438, § 35(c), 11-24-2003)

Sec. 53-352. - Authorized in specified areas.

No manufactured home may be located in any district other than an M-1, M-2 or M-3 district, and a manufactured home subdivision that permits the sale and conveyance of individual lots is permitted only in district M-2.

(Ord. No. 438, § 35(d), 11-24-2003)

Sec. 53-353. - Standards.

See section 53-329.

(Ord. No. 438, § 35(e), 11-24-2003)

Sec. 53-354. - Site development regulations.

The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(Ord. No. 438, § 35(f), 11-24-2003)

Secs. 53-355—53-381. - Reserved.

DIVISION 13. - MANUFACTURED HOME PARK DISTRICT M-3

Sec. 53-382. - Purpose and permitted uses.

Property and areas of the city zoned M-3 may be planned, used, approved, platted and occupied as a manufactured home park with lots held under common ownership and rented or leased to individual tenant occupants. Land and areas of the city zoned M-3 and having an approved subdivision plat may be used for manufactured homes having a minimum of 1,200 square feet of living area.

(Ord. No. 438, § 36(a), 11-24-2003)

Sec. 53-383. - Additional permitted uses.

Additional permitted uses in the M-3 district are as follows:

(1) One manufactured home on each approved space or lot.

(2) Accessory buildings located on a lot for use by the owner or occupant of a structure that is located on such lot.

(3) Recreational, civic and/or commercial facilities designed for exclusive use of the occupants of the manufactured home park.

(4) Accessory buildings for use by the owner or manager of the mobile home park.

(5) One single-family dwelling unit on a 8,190 square foot, or larger, lot for use as the owner's or manager's residence.

(Ord. No. 438, § 36(b), 11-24-2003)

Sec. 53-384. - Conditions and limitations.

The conditions and limitations on uses in the M-3 district are as follows:

(1) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(3) *Design requirements.* A development designed as a manufactured home park shall meet all requirements of the M-2 district, the manufactured home park ordinance of the city and all requirements of chapter 41, subdivision. The development shall include amenities and be designed for the explicit purpose of renting or leasing of sites and shall not be construed to permit the sale of such spaces or lots.

(4) *Conversion.* At no time may a manufactured home park be converted to a manufactured home subdivision without first complying with all requirements of the city subdivision ordinance then in effect, receiving approval by the city council, and being rezoned to M-2.

(5) *Through traffic.* No through traffic shall be permitted in a manufactured home park.

(6) *Perimeter fence.* A perimeter fence shall be required, unless otherwise approved by the planning and zoning commission.

(7) *Placement.* All manufactured homes must be placed on lot with the longest length of home facing the front lot line.

(Ord. No. 438, § 36(c), 11-24-2003)

Sec. 53-385. - Authorized in specified areas.

A manufactured home park for the rental or lease of lots is permitted only in district M-3.

(Ord. No. 438, § 36(d), 11-24-2003)

Sec. 53-386. - Standards.

See section 53-329; provided that the addition of garages, carports and additional living area is not permitted.

(Ord. No. 438, § 36(e), 11-24-2003)

Sec. 53-387. - Site development regulations.

The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(Ord. No. 438, § 36(f), 11-24-2003)

Secs. 53-388—53-417. - Reserved.

DIVISION 14. - CENTRAL BUSINESS DISTRICT 1, DISTRICT CBD-1

Sec. 53-418. - Permitted uses.

(a) The CBD-1 central business district 1 principally addresses development in the original town and central area of the city, allowing a mix of uses including, office, restricted commercial, and residential uses excluding multifamily, which uses will generate a low volume of vehicular traffic and will encourage pedestrian traffic and include only the specifically listed uses in section 53-1230.

(b) The additional uses permitted in the CBD-1 central business district 1 shall be as provided in section 53-1230.

(Ord. No. 438, § 37(a), 11-24-2003)

Sec. 53-419. - Conditions and limitations.

The conditions and limitations on uses in the CBD-1 district are as follows:

(1) The use is conducted wholly within an enclosed building, except for delivery.

(2) Required yards and outdoor areas not to be used for display, sale vehicles, equipment, containers or waste material, save and except for screened dumpster collection areas.

(3) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused customer and employee vehicles, such odors, smoke, dust, noise or vibration be generally contained within the property. Garbage and refuse disposal and storage areas, delivery areas, and similar outside use areas that are necessary and incidental to the main use will be screened by approved fencing or landscaping.

(4) Signs (advertising) must be in compliance with all applicable ordinances.

(5) Establishments located on property that is within 300 feet of any property zoned for a residential use may not be open to the general public before 6:30 a.m. and must be closed to the general public by 10:00 p.m.

(6) Glare. No use or operation in an CBD-1 district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(7) The rear yard of all projects constructed or developed within this district shall be screened in compliance with the screening requirements of section 53-994.

(Ord. No. 438, § 37(b), (f)—(h), 11-24-2003)

Sec. 53-420. - Site plan regulations.

An approved site plan shall be required within central business district 1. The site plan shall meet the requirements for site plans and construction plans as set forth in this chapter and in any other ordinances of the city. In addition to such other requirements, the site plan shall show and include sidewalks (pedestrian walkways) that must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage, driveways, setbacks, fencing and screening of all incidental and necessary outside uses.

(Ord. No. 438, § 37(c), 11-24-2003)

Sec. 53-421. - Building facade requirements.

All new buildings constructed within this district, and all existing buildings refurbished or reconstructed within the district, shall be constructed and maintained in the same or consistent architectural style as those buildings found within the district.

(Ord. No. 438, § 37(d), 11-24-2003)

Sec. 53-422. - Parking requirements.

All parking must be located to the rear of building within the district along Center Street. Corner lots along Center Street may apply for parking variance to allow parking on property facing the side street, if a variance is granted, parking must be set back from Center Street at a minimum of 25 feet. Additional parking requirements as provided in chart 4 in section 53-33(n).

(Ord. No. 438, § 37(e), 11-24-2003)

Secs. 53-423—53-442. - Reserved.

DIVISION 15. - CENTRAL BUSINESS DISTRICT 2, DISTRICT CBD-2

Sec. 53-443. - Permitted uses.

(a) The CBD-2 central business district 2 is less restrictive than CBD-1 and principally addresses development in the original town and central area of the city, allowing a mix of uses including, office, restricted commercial, restricted multi-family residential and residential uses. Each multi-family dwelling unit shall be required to have a minimum of five hundred (500) square feet of living area.

(b) The uses permitted in the CBD-2 central business district 2 shall be as provided in section 53-1230.

(Ord. No. 438, § 38(a), 11-24-2003; Ord. No. 668, § 2, 8-16-11)

Sec. 53-444. - Conditions and limitations.

The conditions and limitations on uses in the CBD-2 district are as follows:

(1) The use be conducted wholly within an enclosed building.

(2) Required yards and outdoor areas not be used for display, sale vehicles, equipment, containers or waste material, save and except for screened dumpster collection areas.

(3) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused customer and employee vehicles, such odors, smoke, dust, noise or vibration be generally contained within the property.

(4) Signs (advertising) must be in compliance with all applicable ordinances.

(5) The conditions and limitations and permitted uses applicable to the district governing the proposed use of the property shall apply within the central business district 2.

(6) Uses as determined by the planning and zoning commission and the council which are closely related and similar to those listed and that are not likely to create any more offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences than the minimum amount normally resulting from listed uses permitted.

(Ord. No. 438, § 38(b), 11-24-2003)

Sec. 53-445. - Site plan regulations.

The site plan regulations applicable to the district governing the proposed use of the property shall apply within the central business district; provided that sidewalks (pedestrian walkways) must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

(Ord. No. 438, § 38(c), 11-24-2003)

Sec. 53-446. - Building facade requirements.

All new buildings constructed or existing buildings within this district for any use or occupancy listed in CBD-2 or CBD-1 shall be constructed or maintained in the same architectural style as those buildings found within district, and if the building is within the historical district the review and action by the historic preservation commission will be required.

(Ord. No. 438, § 38(d), 11-24-2003)

Sec. 53-447. - Parking requirements.

See the parking regulations and requirements and chart 4 in section 53-33(n).

(Ord. No. 438, § 38(e), 11-24-2003)

Sec. 53-448. - Glare.

No use or operation in CBD-2 district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(Ord. No. 438, § 38(f), 11-24-2003)

Secs. 53-449—53-479. - Reserved.

DIVISION 16. - RETAIL AND SERVICES DISTRICT RS

Sec. 53-480. - Purpose and permitted uses.

This district allows general retail sales of consumable products and goods within buildings of products that are generally not hazardous and that are commonly purchased and used by consumers in their homes, including most in-store retail sales of goods and products that do not pose a fire or health hazard to neighboring areas, e.g., clothing, prescription drugs, furniture, toys, hardware, electronics, pet supply, variety, department, video rental and antique stores, art studio or gallery, hobby shops and florist shops., and the retail sale of goods and products (in the following listed use areas) to which value has been added on site, including sales of goods and services outside of the primary structure as customary with the uses specifically listed, and the following: Any use permitted in CBD-1 or CBD-2 and RS districts as provided in section 53-1230.

(Ord. No. 438, § 42(a), 11-24-2003)

Sec. 53-481. - Conditions and limitations.

The conditions and limitations on uses in the RS district are as follows:

(1) The use be conducted wholly within an enclosed building, except for delivery, catering, gasoline sales, nurseries and garden centers.

(2) Required yards and outdoor areas not be used for display, sale vehicles, equipment, containers or waste material, save and except for screened dumpster collection areas.

(3) All merchandise to be sold on the premises, except for delivery and catering.

(4) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused customer and employee vehicles, such odors, smoke, dust, noise or vibration be generally contained within the property.

(5) Establishments located on property that is within 300 feet of any property zoned for a residential use when the commercial use is first established may not to be open to the general public before 6:00 a.m. and must be closed to the general public by 10:00 p.m.

(6) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(7) Lot coverage. The maximum percentage of lot area that can be covered is as provided in chart 2 in section 53-33(l).

(8) Floor area ratio. The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(9) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(10) Signs (advertising) must be in compliance with all applicable ordinances.

(Ord. No. 438, § 42(b), 11-24-2003)

Sec. 53-482. - Site development regulations.

The site development regulations on uses in the RS district are as follows:

(1) Paved sidewalks, driveways and parking areas are required. The sidewalks, pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

(2) Screening of loading and storage facilities is required.

(Ord. No. 438, § 42(c), 11-24-2003)

Sec. 53-483. - Building facade requirements.

All new buildings constructed within the RS district shall comply with the following requirements:

(1) The exterior walls facing front and side streets shall be constructed of at least 100 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product excluding doorways and windows;

(2) All roofs surfaces visible from the street shall be surfaced with metal, concrete, clay tile, or minimum of 25-year dimensional shingles;

(3) Any variation requests to subsection (1) or (2) of this section must present actual technical drawings, and/or architectural plans and models and be approved by the planning and zoning commission;

(4) It is recommended, but not required, that improvements to existing buildings in this district comply with subsections (1) or (2) of this section; and

(5) Glare. No use or operation in an RS district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination

nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(Ord. No. 438, § 42(d), 11-24-2003)

Sec. 53-484. - Special screening requirements.

All construction or development of property within this district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

(1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

(2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

(3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

(4) All screening required by this section shall be along all common property boundaries with residential zoning.

(5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

(6) The finished side of all fences built to comply with this section shall face away from the screened property.

(7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

(8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and city council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 42(e), 11-24-2003)

Secs. 53-485—53-506. - Reserved.

DIVISION 17. - BILLBOARD DISTRICT B

Sec. 53-507. - Purpose and permitted uses.

The billboard district B allows the following commercial land uses:

(1) As provided in section 53-1230.

(2) The uses as determined by the planning and zoning commission and the council which are closely related and similar to those listed in section 53-1230.

(Ord. No. 438, § 43(a), 11-24-2003)

Sec. 53-508. - Conditions and limitations.

The conditions and limitations on uses in the billboard district are as follows:

(1) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that such odors, smoke, dust, noise or vibration at the property line does not exceed the permitted levels established by ordinance.

(2) Signs (advertising) must be in compliance with all applicable ordinances.

(Ord. No. 438, § 43(b), 11-24-2003)

Sec. 53-509. - Site development regulations.

The development of any use permitted in the billboard district shall conform with the site development regulations established for that district.

(Ord. No. 438, § 43(c), 11-24-2003)

Secs. 53-510—53-526. - Reserved.

DIVISION 18. - WAREHOUSE DISTRICT W

Sec. 53-527. - Purpose and permitted uses.

(a) The warehouse district W is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users.

(b) The permitted uses include those that primarily serve other commercial and industrial enterprises and do not include any use listed in the construction and manufacturing district CM, in division 19 of this article. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated.

(c) Any use permitted in district CBD-1, CBD-2, RS and this district as provided in section 53-1230.

(Ord. No. 438, § 44(a), 11-24-2003)

Sec. 53-528. - Conditions and limitations.

The conditions and limitations on uses in the W district are as follows:

(1) The use is conducted primarily within an enclosed building or screened area, except for the customary outdoor activities for the specific use listed.

(2) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that such odor, smoke, dust, noise or vibration at the property line does not exceed the permitted levels established by ordinance.

(3) Signs (advertising) must be in compliance with all applicable ordinances.

(4) Establishments located on property that is within 300 feet of any property zoned for a residential use when the commercial use is first established may not to be open to the general public before 6:00 a.m. and must be closed to the general public by 10:00 p.m.

(5) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(6) Lot coverage. The maximum percentage of lot area that can be covered is as provided in chart 2 in section 53-33(l).

(7) Floor area ratio. The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(8) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(Ord. No. 438, § 44(b), 11-24-2003)

Sec. 53-529. - Site development regulations.

Paved sidewalks, driveways and parking areas are required.

(Ord. No. 438, § 44(c), 11-24-2003)

Sec. 53-530. - Performance standards for the W district.

All uses in the W warehouse district shall conform in operation, location and construction to the minimum performance standards specified as follows for noise, odorous matter, toxic and noxious matter, glare, smoke, particulate matter and other air contaminants, fire, explosive and hazardous matter, and vibration:

(1) *Decibel limits.* At no point at the boundary property line of any use in a W district may the sound pressure level of any operation or plant exceed the decibel limits specified in the octave band groups designated in the table in this subsection.

a. Maximum permissible daytime octave band/decibel limits at the bounding property line in a warehouse district are as follows:

1. Daytime. Daytime shall refer to the hours between sunrise and sunset on any given day.

2. Property line. The building official will interpret the bounding property line for noise enforcement as being at the nearest right-of-way or property line of any street, alley, stream or other permanently dedicated open space from the noise source when such open space exists between the property line of the noise source and adjacent property. When no such open space exists, the common line between two parcels of property shall be the bounding property line.

Octave band (CPS)	Decibel band limit (dB Re 0.0002 microbar)
37—75	82
75—150	76
150—300	68
300—600	60
600—1200	56

1200—2400	53
2400—4800	50
4800—9600	48
A-Scale	62

Note. A-scale level is provided for monitoring purposes only and is not applicable to detailed sound analysis.

b. The following corrections will be made to the table of octave band/decibel limits in determining compliance with the noise level standards in a commercial/manufacturing district:

1. When noise is present at night, any time other than daytime, subtract seven decibels.
2. When noise contains strong, pure tone components or is impulsive, that is when meter changes at ten decibels or more per second, subtract seven decibels.
3. Add ten decibels when noise is present for not more than:
   (i) One-half minute in any one-half-hour period;
   (ii) One minute in any one-hour period;
   (iii) Ten minutes in any two-hour period; or
   (iv) Twenty minutes in any three-hour period.

c. Measurement of noise is made with a sound level meter or octave band analyzer meeting the standards prescribed by the American Standards Association.

(2) *Smoke and particulate matter.* No operation or use in a W district shall cause, create or allow the emission of air contaminants which violate state or federal environmental laws, as referenced herein, V.T.C.A., Health and Safety Code chs. 381 and 382, air pollution prevention and control, 42 USCA 67401 et seq. Open storage and open processing operations, including on-site transportation movements which are a source of wind or airborne dust or other particulate matter, are subject to the standards and regulations specified herein.

(3) *Odorous matter.* No use may be located or operated in a W district which involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located. The odor threshold as herein set forth is determined by observation by the building official. In any case where uncertainty may arise or where the operator or owner of an odor emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required the method and procedures as specified by American Society for Testing Materials, ASTM D1391-57, entitled Standard Method For Measurement of Odor in Atmospheres, will be used and a copy of ASTM D1391-57 is hereby incorporated by reference.

(4) *Flammable and explosive material.* No use involving the manufacture or storage of compounds or products which decompose by detonation is permitted in a warehouse district except that chlorate, nitrate, perchlorate, phosphorus and similar substances and compounds in small quantities for use by industries, school laboratories, druggists or wholesalers may be permitted when approved by the fire marshal of the city as not presenting a fire or explosion hazard. The

storage and use of all flammable liquids and materials such as pyroxylin plastics, nitrocellulose films, solvents and petroleum products is permitted only when such storage or use conforms to the standards and regulations established by city ordinance.

(5) *Toxious and noxious matter.* No operation or use permitted in a warehouse district may emit a concentration across the bounding property line of the tract, on which such operation or use is located, of toxic or noxious matter which exceeds the concentration (exposure) considered as the threshold limit for an industrial worker, as such standards are set forth by the state department of health in Threshold Limit Values Occupational Health Regulation No. 3, as such regulations exist or may later be amended.

(6) *Vibrations.* No operation or use in a W district may at any time create earth-borne vibration which, when measured at the bounding property line of the source of operation, exceed the limit of displacement set forth in the following table in the frequency ranges specified:

Frequency (cycles per second)	Displacement (in inches)
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 to 50	0.0003

(7) *Glare*. No use or operation in a W district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(Ord. No. 438, § 44(d), 11-24-2003)

Sec. 53-531. - Special screening requirements.

All construction or development of property within the warehouse district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

(1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

(2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

(3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

(4) All screening required by this section shall be along all common property boundaries with residential zoning.

(5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

(6) The finished side of all fences built to comply with this section shall face away from the screened property.

(7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

(8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and city council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 44(e), 11-24-2003)

Secs. 53-532—53-555. - Reserved.

DIVISION 19. - CONSTRUCTION AND MANUFACTURING DISTRICT CM

Sec. 53-556. - Permitted uses.

(a) The construction and manufacturing district CM allows assembly, packaging, treatment, processing and manufacture of products that do not pose any materially potential hazard to persons and property outside the boundaries of the property, and the following specifically listed uses to the extent such uses are contained or included within property as to not pose a potential hazard outside of the property on which such use is conducted.

(b) The construction and manufacturing district CM allows any use permitted in the following districts as provided in section 53-1230:

(1) CBD-1;

(2) CBD-2;

(3) RS;

(4) W; and

(5) CM.

(Ord. No. 438, § 45(a), 11-24-2003)

Sec. 53-557. - Conditions and limitations.

The conditions and limitations on uses in the CM district are as follows:

(1) *Height and placement requirements.* The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) *Lot coverage.* The maximum percentage of lot area that can be covered is as provided in chart 2 in section 53-33(l).

(3) *Floor area ratio.* The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(4) *Parking.* The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(5) *Conditions and limitations.* Development of any use permitted in the W and CM districts shall conform to the conditions and limitations established for that district.

(6) *Quarry operations.* Quarry operations may be permitted provided the applicable requirements of article VI, division 3 of this chapter are met, which standards shall be in lieu of section 53-559(1), (4) and (6), and if there is a conflict between article VI, division 3 of this chapter and other provisions of this division, article VI, division 3 of this chapter shall control.

(Ord. No. 438, § 45(b), 11-24-2003; Ord. No. 438-42, § 4, 7-5-2006)

Sec. 53-558. - Site development regulations.

Development of any use permitted in the W and CM districts shall conform to the site development regulations established for that district.

(Ord. No. 438, § 45(c), 11-24-2003)

Sec. 53-559. - Performance standards for the construction and manufacturing district.

All uses in the CM construction and manufacturing district shall conform in operation, location and construction to the minimum performance standards herein specified for noise, odorous matter, toxic and noxious matter, glare, smoke, particulate matter and other air contaminants, fire and explosive or hazardous matter, vibration, open storage and glare.

(1) *Noise.* At no point at the boundary property line of any use in a CM district may the sound pressure level of any operation or plant exceed the decibel limits specified in the octave band groups designated in the table in this subsection.

a. Maximum permissible daytime octave band/decibel limits at the bounding property line in a commercial manufacturing district are as follows:

1. Daytime. Daytime shall refer to the hours between sunrise and sunset on any given day.

2. Property line. The building official will interpret the bounding property line for noise enforcement as being at the nearest right-of-way or property line of any street, alley, stream or other permanently dedicated open space from the noise source when such open space exists between the property line of the noise source and adjacent property. When no such open space exists, the common line between two parcels of property shall be the bounding property line.

Octave band (CPS)	Decibel band limit (dB Re 0.0002 microbar)
37—75	86
75—150	76
150—300	70
300—600	65

600—1200	63
1200—2400	58
2400—4800	55
4800—9600	53
A-Scale	65

Note—A scale level is provided for monitoring purposes only and is not applicable to detailed sound analysis.

b. The following corrections will be made to the table of octave band/decibel limits in determining compliance with the noise level standards in an CM district:

1. When noise is present at night, any time other than daytime, subtract seven decibels.
2. When noise contains strong, pure tone components or is impulsive, that is when meter changes at ten decibels or more per second, subtract seven decibels.
3. Add ten decibels when noise is present for not more than:
   (i) One-half minute in any one-half-hour period;
   (ii) One minute in any one-hour period;
   (iii) Ten minutes in any two-hour period; or
   (iv) Twenty minutes in any three-hour period.

c. Measurement of noise is made with a sound level meter or octave band analyzer meeting the standards prescribed by the American Standards Association.

(2) *Smoke and particulate matter.* No operation or use in an CM district shall cause, create or allow the emission of air contaminants which violate state or federal environmental law, as referenced herein, V.T.C.A., Health and Safety Code chs. 381 and 382; air pollution prevention and control, 42 USCA 7401 et seq. Open storage and open processing operations including on-site transportation on movements which are a source of wind or airborne dust or other particulate matter are subject to the standards and regulations specified herein.

(3) *Odorous matter.* No use may be located or operated in an CM district which involves the emission of odorous matter from a source of operation where the odorous matter exceeds a concentration at the bounding property line or any point the tract on which such use or operation is located which, when diluted with an equal volume of odor free air, exceeds the odor threshold (two odor units). The odor threshold as herein set forth is determined by observation by the superintendent of construction safety and services. In any case where uncertainty may arise or where the operator or owner of an odor emitting use may disagree with the enforcing officer or where specific measurement of odor concentration is required, the method and procedures as specified by American Society for Testing Materials, ASTM D1391-57, entitled Standard Method For Measurement of Odor In Atmospheres will be used and a copy of the ASTM D1391-57 is hereby incorporated by reference.

(4) *Flammable and hazardous materials.* No use involving the manufacture or storage of compounds or products which decompose by detonation is permitted in an CM district except that chlorate, nitrate, perchlorate, phosphorous and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the fire marshal of the city as not presenting a fire or explosion hazard. The storage and use of all flammable liquids and materials, such as pyroxylin plastics, nitrocellulose film, solvents and petroleum products is permitted only when such storage or use conforms to the standards and regulations of established by city ordinance.

(5) *Toxic and noxious matter.* No operation or use permitted in an CM district may emit a concentration across the bounding property line of the tract on which such operation or use violating sate or federal environmental laws, as referenced in this section, V.T.C.A., Health and Safety Code chs. 381 and 382; air pollution prevention and control, 42 USCA 7401 et seq. Open storage and open processing operations, including on-site transportation movements which are a source of wind or airborne dust or other particulate matter, are subject to the standards and regulations specified herein.

(6) *Vibration*s. No operation or use in an CM district may at any time create earth-borne vibration which, when measured at the bounding property line of the source of operation, exceed the limit of displacement set forth in the following table in the frequency ranges specified.

	Displacement
(cycles per second)	*(in inches)*
0 to 10	0.0020
10 to 20	0.0016
20 to 30	0.0010
30 to 40	0.0006
40 to 50	0.0005

(7) *Glare.* No use or operation in an CM district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(Ord. No. 438, § 45(d), 11-24-2003)

Sec. 53-560. - Special screening requirements.

All construction or development of property within this district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

(1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

(2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

(3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

(4) All screening required by this section shall be along all common property boundaries with residential zoning.

(5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

(6) The finished side of all fences built to comply with this section shall face away from the screened property.

(7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

(8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and city council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 45(e), 11-24-2003)

Secs. 53-561—53-583. - Reserved.

DIVISION 20. - ENTERTAINMENT DISTRICT E

Sec. 53-584. - Purpose and permitted uses.

The entertainment district E allows general entertainment businesses from amusement parks to golf courses as provided in section 53-12300.

(Ord. No. 438, § 46(a), 11-24-2003)

Sec. 53-585. - Conditions and limitations.

The conditions and limitations on uses in the entertainment district are as follows:

(1) The use is conducted wholly within an enclosed building when applicable, other uses to be determined by city council.

(2) Required yards and outdoor areas not be used for display, sale vehicles, equipment, containers or waste material, save and except for screened dumpster collection areas.

(3) All merchandise be sold on the premises, except for delivery and catering.

(4) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused customer and employee vehicles, such odors, smoke, dust, noise or vibration be generally contained within the property.

(5) Establishments located on property that is within 300 feet of any property zoned for a residential use when the commercial use is first established may not to be open to the general public before 9:00 a.m. and must be closed to the general public by 11:00 p.m.

(6) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(7) Lot coverage. The maximum percentage of lot area that can be covered is as provided in chart 2 in section 53-33(l).

(8) Floor area ratio. The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(9) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(10) Signs (advertising) must be in compliance with all applicable ordinances.

(Ord. No. 438, § 46(b), 11-24-2003)

Sec. 53-586. - Site development regulations.

The site development regulations on uses in the entertainment district are as follows:

(1) Paved sidewalks, driveways and parking areas are required. The sidewalks, pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

(2) Screening of loading and storage facilities is required.

(3) All amusement parks, miniature golf, horse stables and racetracks shall be fenced with a minimum height of five feet.

(Ord. No. 438, § 46(c), 11-24-2003)

Sec. 53-587. - Building facade requirements.

All new buildings constructed within the entertainment district shall comply with the following requirements:

(1) The exterior walls facing front and side streets shall be constructed of at least 100 percent stone, brick, masonry, stucco, masonry veneer or similar granular product or wood siding, excluding doorways and windows;

(2) All roofs surfaces visible from the street shall be surfaced with metal, concrete, clay tile, or minimum of 25-year dimensional shingles;

(3) Any variation requests to subsection (1) or (2) of this section must present actual technical drawings, and/or architectural plans and models and be approved by the planning and zoning commission; and

(4) It is recommended, but not required, that improvements to existing buildings in the entertainment district comply with subsections (1) and (2) of this section.

(Ord. No. 438, § 46(d), 11-24-2003)

Sec. 53-588. - Special screening requirements.

All construction or development of property within the entertainment district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

(1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

(2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

(3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

(4) All screening required by this section shall be along all common property boundaries with residential zoning.

(5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

(6) The finished side of all fences built to comply with this section shall face away from the screened property.

(7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

(8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and city council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 46(e), 11-24-2003)

Secs. 53-589—53-609. - Reserved.

DIVISION 21. - TRANSPORTATION AND UTILITIES DISTRICT TU

Sec. 53-610. - Purpose and permitted uses.

The transportation and utilities district allows airports, utilities and communication towers as provided in section 53-1230.

(Ord. No. 438, § 47(a), 11-24-2003)

Sec. 53-611. - Conditions and limitations.

The conditions and limitations on uses in the TU district are as follows:

(1) Property zoned TU is for a specific use only, which shall be stated when property owner request TU zoning.

(2) Required yards and outdoor areas are not to be used for display, sale vehicles, equipment, containers or waste material, save and except for screened dumpster collection areas.

(3) All merchandise is to be sold on the premises, except for delivery and catering.

(4) The use is not objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused by customer and employee vehicles, such odors, smoke, dust, noise or vibration is to be generally contained within the property.

(5) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(6) Lot coverage. The maximum percentage of lot area that can be covered is as provided in chart 2 in section 33-33(l).

(7) Floor area ratio. The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(8) Parking. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(9) Signs (advertising) must be in compliance with all applicable ordinances.

(10) Any communications tower or antenna shall also be subject to the requirements set forth in the city ordinances regulating the locations, setback, placement, or standards for communications towers and antennas.

(Ord. No. 438, § 47(b), 11-24-2003)

Sec. 53-612. - Site development regulations.

The site development regulations on uses in the TU district are as follows:

(1) Paved sidewalks, driveways and parking areas are required. The sidewalks and pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

(2) Screening of loading and storage facilities is required.

(3) All airports shall comply with all Federal Aviation Administration rules and regulations.

(Ord. No. 438, § 47(c), 11-24-2003)

Sec. 53-613. - Building facade requirements.

All new buildings constructed within the TU district shall comply with the following requirements:

(1) The exterior walls facing front and side streets shall be constructed of at least 40 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product excluding doorways and windows;

(2) All roofs surfaces visible from the street shall be surfaced with metal, concrete, clay tile, or minimum of 25-year dimensional shingles;

(3) Any variation requests to subsection (1) or (2) of this section must present actual technical drawings, and/or architectural plans and models and be approved by the planning and zoning commission; and

(4) It is recommended, but not required, that improvements to existing buildings in the TU district comply with subsections (1) and (2) of this section.

(Ord. No. 438, § 47(d), 11-24-2003)

Sec. 53-614. - Special screening requirements.

All construction or development of property within this district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

(1) Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

(2) Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

(3) Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

(4) All screening required by this section shall be along all common property boundaries with residential zoning.

(5) All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

(6) The finished side of all fences built to comply with this section shall face away from the screened property.

(7) All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

(8) Exceptions to the provisions of this section may be granted by the planning and zoning commission and council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 47(e), 11-24-2003)

Secs. 53-615—53-630. - Reserved.

DIVISION 22. - HOSPITAL SERVICES DISTRICT HS

Sec. 53-631. - Purpose and permitted uses.

The hospital services district HS is established to provide for the optimum development of hospital facilities and allied health services. The purpose of this district is to promote health, safety, welfare, comfort, and convenience for those within the HS district and to address land use compatibility with surrounding land uses. This may be accomplished through locating these uses with direct access to major arterial roadways and within a larger scale, regional development complex. The HS district allows for an acute care, general hospital, specialty surgical and diagnostic hospital, and a comprehensive variety of allied health services and support services. The following permitted uses found in this district are combined in order to promote health care in a positive and sustainable manner for the city:

(1) Ambulatory surgical center.

(2) Drug store.

(3) General or acute care hospital.

(4) Medical clinics.

(5) Medical offices.

(6) Medical research laboratory.

(7) Medical, surgical, and dental supply houses.

(8) Intermediate care facility.

(9) Longterm care facility.

(10) Specialty surgical and diagnostic hospital.

(11) Subacute hospital.

(12) Outpatient cardiac diagnostic and treatment facility.

(13) Outpatient diagnostic center and services.

(14) Outpatient surgery and treatment center.

(15) Pharmacy.

(16) Psychiatric and rehabilitation hospital.

(17) Secondary uses permitted with the permitted uses in this district as provided in section 53-633(6)b.

(18) Secondary uses permitted with hospitals in this district as provided in section 53-633(6)c.

(19) Temporary buildings for uses incidental to construction work on the premises.

(20) Utility services, general.

(21) Accessory uses as provided in section 53-632.

(Ord. No. 526, § 7(a), 1-8-2008)

Sec. 53-632. - Accessory uses.

Regulations on accessory uses in the HS district are as follows:

(1) *General provisions.*

a. The sum of all accessory uses in a principal building shall not exceed 25 percent of the total floor area of the principal building.

b. An accessory use is not allowed without a main building or primary use being in existence.

c. An accessory use may not be sold separately from the sale of the entire property, rented, or sublet.

d. A maximum of two accessory uses are allowed per lot, not including other accessory uses such as a pool or playscape.

(2) *Development regulations.*

a. Minimum building setbacks shall be the same as principal structure.

b. Accessory uses shall not be located in front of the principal building.

c. Height restrictions shall be in accordance with that of the principal structure.

d. Minimum of ten-foot setback from principal building.

e. An accessory use shall not be used as a dwelling unit unless it is specifically permitted for such purpose.

(Ord. No. 526, § 7(b), 1-8-2008)

Sec. 53-633. - Conditions and limitations.

Conditions and limitations on uses in the HS district are as follows:

(1) Height and placement requirements. The height and placement requirements shall be as provided in chart 1, section 53-33(k).

(2) Lot coverage. The maximum percentage of lot area that can be covered is as provided in chart 2 in section 53-33(l).

(3) Floor area ratio. The maximum floor area ratio (FAR) for any building or structure is as provided in chart 3 in section 53-33(m).

(4) Off-street parking regulations. The parking regulations and requirements shall be as provided in chart 4, section 53-33(n).

(5) Signs. Signs (advertising) must be in compliance with all applicable ordinances.

(6) Regulations specific to the HS district. Regulations that are specific to the HS district are as follows:

a. A permanent structure is required to contain the principal use with indoor facilities that include offices, restroom facilities, etc., to comply with all building code regulations.

b. The following secondary uses shall be permitted in the HS district:

1. Administrative offices incidental to a principal permitted uses.

2. Portable or temporary buildings when incidental to the construction of a permanent structure.

c. The following secondary uses shall be permitted only when they are directly associated with a hospital:

1. Ambulance services.

2. Doctor's, nurses, and allied health staff living quarters.

3. Facilities provided by the hospital for the benefit of employees, including cafeteria, incidental day care, employee training and meeting areas.

4. Facilities provided by the hospital for the direct benefit of its patients, relatives and other visitors to the patients, including cafeteria, gift shop.

5. Facilities provided for the safety, security and operation of the principal permitted use, including site security offices, firefighting facilities and maintenance facilities.

6. Heliport with Federal Aviation Administration regulatory compliance.

7. Inpatient physical medicine and rehabilitation facility.

8. Medical, nursing, and allied health schools and educational institutions, including associated bookstores and laboratories.

9. Walkup or drive-through bank teller facilities.

10. Wellness centers. There shall not be a limit on hours of operation.

(Ord. No. 526, § 7(c)—(h), 1-8-2008)

Sec. 53-634. - Site development regulations.

The site development regulations on uses in the HS district are as follows:

(1) *Paved sidewalks, driveways and parking areas.* Paved sidewalks, driveways and parking areas are required. The sidewalks, pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

(2) *Screening of service zones.* Screening of loading, service zones and storage facilities is required. Loading, service zones and storage facilities shall be buffered from view by walls that match the building materials and colors. Screen walls shall be a minimum of eight feet high. Berming used in conjunction with intensive landscaping, may be considered, to reduce the height of the screen wall.

(3) *Building facade requirements.* All new buildings constructed within the HS district shall comply with the following requirements:

a. *Materials.* The exterior walls facing front and side streets shall be constructed of at least 75 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product or any combination of the materials in this subsection. Mirrored glass is not permitted;

b. *Variations.* Any variation requests to subsection (3)a. of this section must present actual technical drawings, and/or architectural plans and models and be approved by the planning and zoning commission.

c. *Glare.* No use or operation in an H district may be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor may any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

(4) *Special screening requirements.* All construction or development of property within this district that abuts property with residential zoning and/or residential use must conform to the following special screening requirements:

a. Solid, continuous fencing up to eight feet in height, but not less than six feet in height; and solid landscaping of at least four feet in width.

b. Screening under this section shall be at least three feet in height, but no more than four feet in height in front yards, from the front setback line to the sidewalk.

c. Landscaping under this section shall conform to the provisions of section 53-994(4) through (6).

d. All screening required by this section shall be along all common property boundaries with residential zoning.

e. All screening shall be constructed to maintain structural integrity against natural forces such as wind, rain, and temperature variations.

f. The finished side of all fences built to comply with this section shall face away from the screened property or be double sided/double faced.

g. All screening and/or landscaping required by this section shall be in addition to all other landscaping, planting, screening, and/or setback requirements.

h. Exceptions to the provisions of this section may be granted by the planning and zoning commission and council to require a lesser amount of screening if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the screened area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 526, § 7(i), 1-8-2008)

Secs. 53-635—53-650. - Reserved.

DIVISION 23. - RECREATIONAL VEHICLE PARK DISTRICT RV

Sec. 53-651. - Definitions.

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

Dependent recreational vehicle and *dependent travel trailer* means a recreational vehicle or travel trailer which does not have a flush toilet and a bath or shower.

Independent recreational vehicle and *independent travel trailer* means a recreational vehicle or travel trailer which has a flush toilet and a bath or shower.

Natural barrier and *artificial barrier* means any river, pond, canal, railroad, levee, embankment, fence or hedge.

Park means a recreational vehicle and/or travel trailer park; and does not include, permit or authorize mobile or manufactured homes.

Recreational vehicle and *travel trailer* means a vehicle or similar portable structure designed for recreational use and travel having no foundation other than wheels, jacks, blocks or skirting, having 600 square feet or less of enclosed area, and so designed or constructed as to permit occupancy for dwelling or sleeping purposes; provided, however, a mobile home or manufactured home is not a recreational vehicle or travel trailer, and, for purposes of determining the distances specified herein, the term "recreational vehicle and travel trailer" includes any portable, prefabricated, temporary room, commonly called a cabana, that is attached to such recreational vehicle.

Recreational vehicle lot and *travel trailer lot* means a plot of ground within a recreational vehicle and/or travel trailer park designed for the accommodation of one recreational vehicle or travel trailer.

Recreational vehicle park and *travel trailer park* means any plot of ground upon which one or more recreational vehicles or travel trailers are located, or are occupied for dwelling or sleeping purposes during travel, vacation, periods of temporary work such as construction, and other periods of time generally less than 12 months in duration, regardless of whether or not a charge is made for such accommodations.

(Ord. No. 438, § 41(c), 11-24-2003)

Sec. 53-652. - Purpose and permitted uses.

Property and areas of the city zoned RV may be planned, used, approved, platted and occupied as a recreational vehicle park with lots held under common ownership and rented or leased to individual occupants. Land in areas of the city zoned RV and having an approved plat may be used for dependent recreational vehicle, dependent travel trailers, independent recreational vehicles, independent travel trailers, recreational vehicles and travel trailers as defined in section 53-651.

(Ord. No. 438, § 41(a), 11-24-2003)

Sec. 53-653. - Additional permitted uses.

Additional permitted uses in the RV park district are as follows:

(1) Accessory buildings located on a lot for use by the owner or occupant of a structure that is located on such lot.

(2) Recreational, civic and/or commercial facilities designed for exclusive use of the occupants of the recreational vehicle park.

(3) Accessory buildings for use by the owner or manager of the park.

(4) One single-family dwelling unit on a 6,000 square foot or larger lot for use as the owner's or manager's residence.

(Ord. No. 438, § 41(b), 11-24-2003)

Sec. 53-654. - Conditions and limitations.

(a) *Park license required.* It is unlawful for any person to maintain or operate within the city, any recreational vehicle and/or travel trailer park unless such person first obtains a license therefor. A minimum of ten lots shall be required to qualify for RV zoning and no license shall be issued or renewed for a recreational vehicle and/or travel trailer park unless such park has at least ten lots.

(b) *License application.* Application for a recreational vehicle and/or travel trailer park license shall be filed with the city for review and approval by the city council. Applications shall be in writing, signed by the applicant, and shall contain the following:

(1) The name and address of the applicant;

(2) The location and legal description of the recreational vehicle and/or travel trailer park;

(3) A complete plan of the park showing compliance with this chapter;

(4) Plans and specifications of all buildings and other improvements constructed, or to be constructed, within the recreational vehicle and/or travel trailer park;

(5) Such further information as may be requested by the city council to enable it to determine if the recreational vehicle and/or travel trailer park will comply with the legal requirements.

(c) *Inspection.* The city shall investigate the application, and inspect the proposed plans and specifications. A report shall then be made to the city manager concerning such applicant, together with recommendations relating to the issuance of a license. If the recreational vehicle and/or travel trailer park will be in compliance with all provisions of this division, and, in the case of proposed parks, make such approval contingent upon the completion of the park according to the plans and specifications submitted with the application.

(d) *Issuance.* If the application satisfies the requirements of this division, the city manager shall issue the license.

(e) *Transfer prohibited.* A license issued pursuant to this chapter is not transferable.

(f) *License fee.* The annual license fee for each recreational vehicle and/or travel trailer park shall be as provided in appendix A of this Code per year for the first ten lots or spaces, plus an amount as provided in appendix A of this Code for additional lots or spaces over ten, or the fee established in the city administrative fees ordinance.

(g) *License display and posting.* The license certificate shall be conspicuously posted in the office of or on the premises of the recreational vehicle and/or travel trailer park at all times.

(h) *License revocation.* The city council may revoke any license issued under this division if any of the provisions of this division are violated. Before any such license may be revoked, the city must give ten days' notice to the holder of such license and hold a hearing thereon. If the license is revoked, the license may be reissued to the same licensee, if the reasons for such revocation have been duly corrected, or a license may be issued to another qualified applicant.

(i) *Location of parks.* The recreational vehicle and/or travel trailer park may be located only in conformity with the comprehensive zoning ordinance of the city, and, in addition to the requirements contained therein, unless the park is separated from neighboring properties by a natural or artificial barrier, each boundary of the park must have a solid barrier wall or fence of at least six feet in height; no lot or boundary line of any space or lot within the park shall be closer than 25 feet to such barrier wall or fence; and the 25-foot area shall be required to be maintained as a clear zone at all times. The provisions of this division do not apply to recreational vehicle and/or travel trailer parks already in existence and operation at the time of the passage of the ordinance from which this chapter is derived, and such existing operating parks are treated as a nonconforming use insofar as the requirements of this division are concerned.

(Ord. No. 438, § 41(d), 11-24-2003)

Sec. 53-655. - Site development regulations.

(a) *Park plan requirements.* The recreational vehicle and/or travel trailer park shall conform to the following requirements:

(1) The park shall be located on a well drained site, properly graded to ensure rapid drainage and freedom from stagnant pools of water, in compliance with the city's subdivision drainage requirements.

(2) Recreational vehicle and/or travel trailer lots shall be provided, consisting of a minimum of 2,500 square feet for each lot, which shall be at least 35 feet wide and clearly defined. Recreational vehicles or travel trailers shall be so harbored on each lot that there shall be at least a 25-foot clearance between recreational vehicles and travel trailers; provided, however, with respect to recreational vehicles or travel trailers parked end-to-end, the end-to-end clearance between the same may be less than 25 feet, but not less than ten feet. No recreational vehicle or travel trailer shall be located closer than ten feet from any building within the park or from any property line bounding the park.

(3) All recreational vehicle and/or travel trailer lots shall abut upon a driveway of not less than 36 feet in width which shall have unobstructed access to a public street, alley or highway. All driveways shall be hard surfaced, well-marked in the daytime, and lighted at night. The minimum quality of such driveway surfacing shall be a two-course hot top surface.

(4) Walkways not less than 44 inches wide shall be provided from the recreational vehicle and/or travel trailer lots to the service building.

(5) Separate restroom and shower facilities shall be provided within the park for men and women. Such restroom and shower facilities shall be designed, constructed and maintained in compliance with the city building codes and ordinances and centrally and conveniently located within the park. A minimum of two showers, lavatories and commodes shall be included in each restroom and shower facility building for each sex. One additional shower, lavatory and commode (hereinafter collectively "unit") shall be added to each such men's and women's facility for each additional increment of 15 pad sites or lots, or fraction thereof, in excess of 25 pad sites or lots within the park. For example, the minimum facilities shall be required for any park with 25 or less pad sites or lots; one additional unit shall be required for parks that have 26 to 40 pad sites or lots; two additional units will be required for parks having 41 to 60 pad sites or lots; and three additional units will be required for parks having 61 to 75 pad sites or lots.

(b) *Utility connections.* Water, sewer and electrical system must be provided to each lot or pad site in accordance with city specifications.

(c) *Office building.* Each recreational vehicle and/or travel trailer park shall be provided with a building to be known as the office in which shall be kept copies of all records pertaining to the management and supervision of the park, as well as all rules and regulations of the park; such records, rules and regulations to be available for inspection by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained therein.

(d) *Site drainage plan.* The site plan shall include a site drainage plan showing the necessary drainage related facilities designed and provided for in compliance with this policy and the drainage criteria manuals, regulations and ordinances of the city (Drainage Criteria Manual). Such plans and design calculations for all drainage facilities shall be submitted to the city for acceptance prior to issuance of any utility or building permit. The design engineer shall certify that the plans and calculations for all drainage facilities are in compliance with the policies and criteria of the city.

(e) *Stormwater requirements.*

(1) *Facility design requirements.* Storm drainage facilities should be designed in compliance with the Drainage Criteria Manual.

(2) *Drainage and storm sewers.*

a. Adequate drainage shall be provided within the limits of the property. The protection of adjoining property from any increase in runoff is mandatory. The city may eliminate the detention requirement for properties adjacent to floodplains defined on the flood insurance rate map and when in the judgment of the city such elimination would not result in an increase in the peak flood flow.

b. Drainage and storm sewer plans shall be certified by a licensed professional engineer and approved by the city. Review and approval shall in no manner make the city liable for defects in such plans. Criteria established in the Drainage Criteria Manual and good engineering practices will be used for all calculations relative to rainfall runoff quantities, and the design of channels, culverts, storm sewers and detention facilities. The owners of the tracts upon which are located such easements, appurtenances and detention facilities shall maintain same and be responsible for their upkeep. Notice of such duty to maintain shall be shown on the plats.

c. Drainage and storm sewer plans. Construction plans for streets and utility installation required by the city shall include drainage and storm sewer plans prepared by a licensed professional engineer which shall be reviewed and approved by the city prior to such construction. The city shall make inspections as are deemed necessary to ensure proper installation. Neither the review nor approval of such plans nor the inspection of the completed work will create any liability on the part of the city.

(3) *Plan approval.* Plans for proposed drainage facilities shall be submitted to the city for acceptance prior to construction. Further, computations for all drainage related design shall be submitted with the plans for review. Data submitted shall include a drainage area map, a summary of methodology employed and resulting data, land use and runoff coefficient assumptions and other pertinent hydrologic and hydraulic data. Certification shall be submitted by the design engineer that the plans and computations are in compliance with the requirements of this policy and the Drainage Criteria Manual. Following construction, but prior to acceptance of improvements by the city, the design engineer shall furnish certification that based upon his periodic inspection of the work all improvements, including those covered by this chapter, have been constructed in compliance with the city's requirements.

(4) *Applicable criteria.* If the city has not adopted a Drainage Criteria Manual, the stormwater and drainage provisions of chapter 17, article II, pertaining to the flood hazard area regulations, chapter 41, pertaining to subdivisions, and good engineering practices shall govern; provided that if the city engineer and the applicant cannot agree on the applicable criteria the terms, provisions, conditions, and requirements of the City of Austin Drainage Criteria Manual shall be applicable.

(Ord. No. 438, § 41(e), 11-24-2003)

Sec. 53-656. - Additional requirements and regulations.

(a) *Maintenance.* Every person owning or operating a recreational vehicle and/or travel trailer park shall maintain such park, and any facilities, fixtures and permanent equipment in connection therewith, in a clean and sanitary condition and shall maintain such equipment in a state of good repair.

(b) *Cooking and heating fuel.* Bottled gas for cooking purposes shall not be used at individual recreational vehicles or travel trailer lots unless the containers are properly connected by copper or other suitable tubing. Bottled gas cylinders shall be securely fastened in place. Bottled gas shall be located in a recreational vehicle or travel trailer, and outside such vehicle, in compliance with state regulations. State and local regulations applicable to the handling of bottled gas and fuel oil must be followed.

(c) *Park rules and regulations.* It is the duty of the owner, agent, representative or manager to prescribe rules and regulations for the management of the park, to make adequate provisions for the enforcement of such rules and to subscribe to all subsequent rules and regulations which may be adopted for the management of such park. Copies of all such rules and regulations shall be furnished to the city. In addition thereto, it is the duty of the owner, agent, representative or manager to comply strictly with the following:

(1) Provide for regular inspection of the water and sanitary conveniences;

(2) Provide for the collection and removal of garbage and other waste material;

(3) Provide for the concealment or storage of unsightly material or vehicles of any kind;

(4) Not allow any recreational vehicle, travel trailer or other structure not in compliance with this chapter to be or remain in the park; and

(5) Not allow, suffer or permit any person to occupy any lot, plot or parcel for sleeping, eating and living purposes other than for interim or temporary periods of time that are less than 12 months in duration.

(Ord. No. 438, § 41(f), 11-24-2003)

Secs. 53-657—53-660. - Reserved.

DIVISION 24. - NEIGHBORHOOD COMMERCIAL DISTRICT NC

Sec. 53-661. - Purpose.

The neighborhood commercial district [NC] is to provide for various types of small scale, limited impact commercial, retail, personal services, and office uses located in close proximity to their primary customers. The uses of the neighborhood commercial district shall be designed in a way so as to be operated completely compatible to and harmonious with the character of surrounding residential areas.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

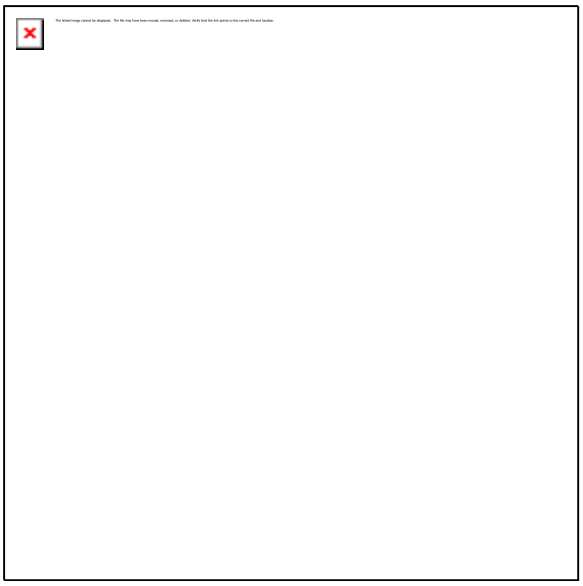
Sec. 53-662. - Building placement.

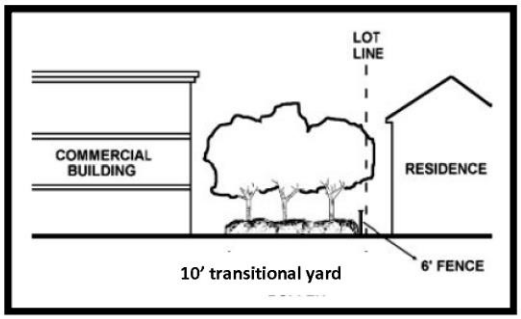
Front Setback** (min. feet)	Side Setback (min. feet)	Side Setback to Residential District (min. feet)	Corner Lot - Side Setback	Rear Setback* (min. feet)	Lot Width (min. feet)	Max. Height
20'	5'	10'	15'	20'	50'	2 stories

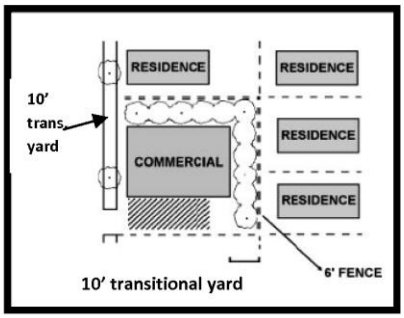
* When the rear or side lot line abuts a single-family residential zoned lot or a lot used for a single-family residence the rear/side setback shall consist of the following transitional yards:

- A ten-foot wide planting area consisting of two non-deciduous trees and eight evergreen shrubs per 50 linear feet of lot width.
- Eight-foot privacy fence.

** In already developed areas where adjacent lots have front yard setbacks less than 20 feet, an administrative special exception maybe granted to allow for a setback consistent with the median setback along a block face.





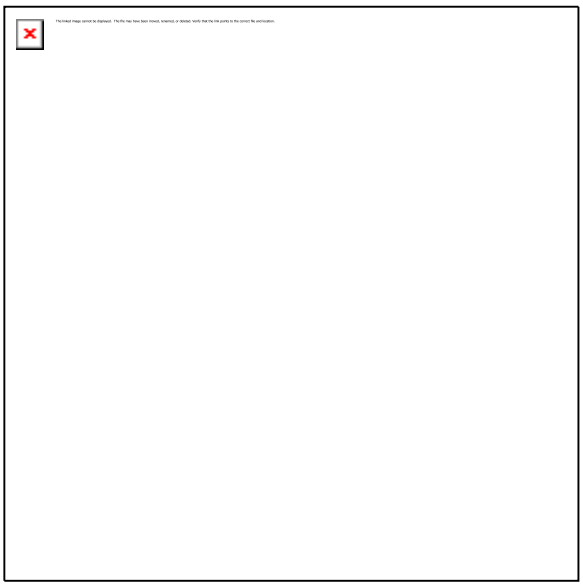


(Ord. No. 700, § 2(Exh. A), 7-17-2012)

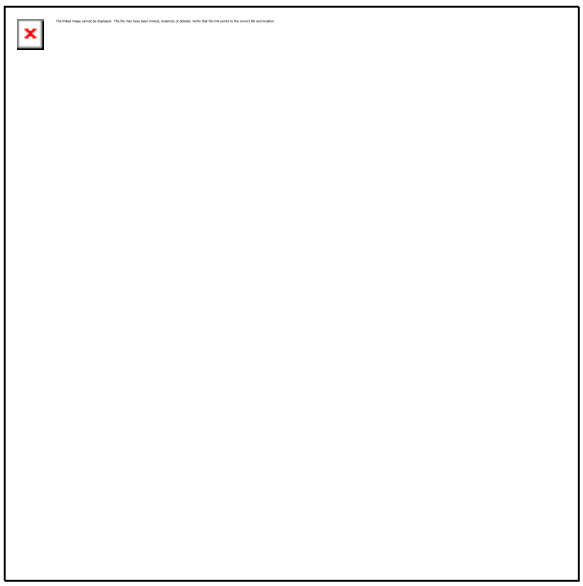
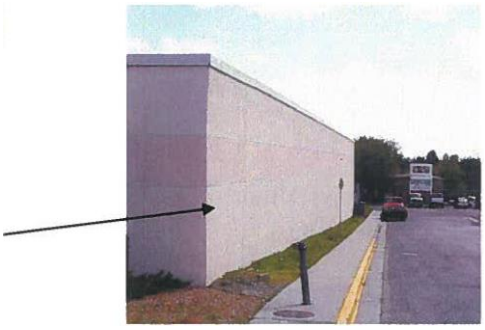
Sec. 53-663. - Design.

- Primary entrances shall face the public street.

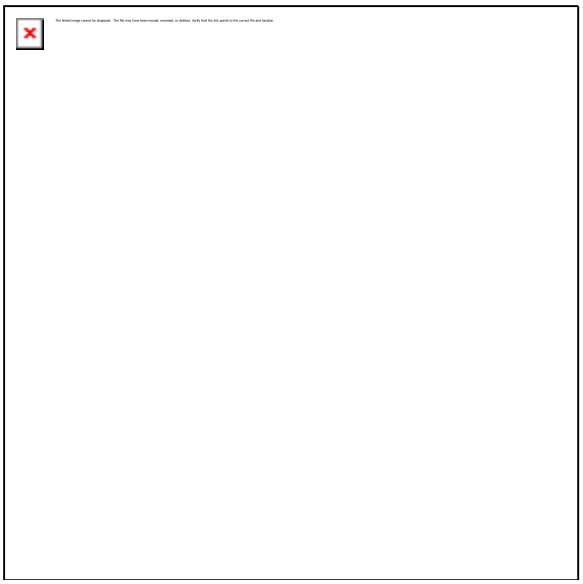
- The exterior walls shall be constructed of 100 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product excluding doorways and windows. All walls must include materials and design characteristics consistent with those on the front.

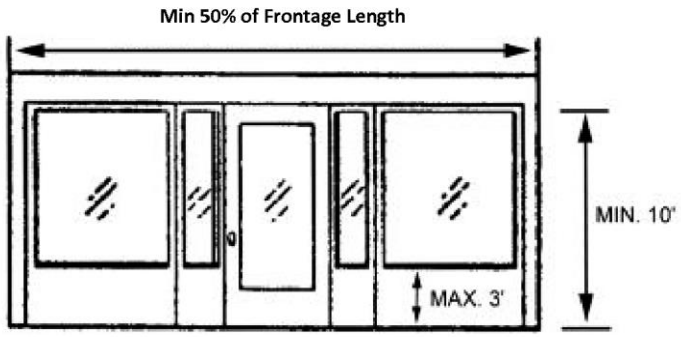


Sides of building use the same material as the front. While the front elevation of buildings will inherently have more visual interest, the side and rear elevations should generally incorporate the same design standards that apply to the front elevation.

The image to the right shows a blank building wall easily visible from the street. This building design DOES NOT meet the requirement for four-sided design.	 

• Windows or doors of clear or lightly tinted glass (no high glare glass)shall comprise at least 50 percent of the frontage length measured between three feet and ten feet above grade for retail buildings and shall comprise at least 30 percent of the frontage length for non-retail based buildings. Windows shall be distributed in a more or less even manner.





• For new non-residential development all buildings shall incorporate at least four of the following buildings elements:

- Awnings;
- Pillars;
- Canopies;
- Alcoves;
- Recessed entries;
- Ornamental cornices (other than colored stripes or bands alone);
- Pillar posts.

• Exterior walls cannot have a blank uninterrupted length greater than 30 feet, without including two or more features:

- Change in plane;
- Change in texture or masonry pattern;
- Windows;

- Other equivalent that subdivide the wall into a human scale.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-664. - Site standards.

The site development regulations for uses in the NC district are as follows:

Landscaping.

- Street trees shall be planted a minimum of 30 feet on center. A minimum of 25 percent of the lot area shall be devoted to landscaping (all landscaping shall consist of drought tolerant plants). Fifty percent of the required landscaping shall be located in front of the primary building.

Sidewalks.

- Sidewalks, driveways and parking areas are required. The sidewalks and pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

Screening.

- Screening of loading, trash, recycling and storage facilities is required. All trash and recycling receptacles shall be stored behind the host building. The materials used for screening must be compatible with the materials used on the host building.

Parking.

- All on-site parking shall be setback at least ten feet from the front building line (corner lots shall adhere to this requirement on both street frontages). Curb cuts for parking areas shall not exceed 25 feet in width.

Detention Facilities.

- Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure) and shall be limited to not more than 30 percent of the perimeter of the pond and shall be seamlessly integrated with landscape.

Lighting.

- Site lighting shall be shielded so that light sources are not visible from the public right-of-way or from adjacent residential zoned or used property. Lighting pole standards shall not exceed a height of 12 feet.

	
Use pedestrian-oriented lighting.	*Not automobile-oriented lighting.*

Fencing.

- Any fencing in front, or to the side of on corner lots, shall not exceed a height of three feet and any solid fencing material shall not exceed a height of two feet. No chain link, sheet metal, plastic, vinyl, barbed wire or horizontal metal pipe larger than two inches in diameter shall be used. If adjacent to a single-family zoned property or a property used as a single-family residence, a six-foot privacy fence shall be required.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-665. - Use.

The neighborhood commercial zoning district shall allow professional offices and small businesses serving neighborhood community needs. The following uses shall be permitted:

- Second floor multi-family shall be permitted by right regardless of base zoning;
- Bed and breakfast up to five rooms;
- Retail;
- Restaurant w/o drive-thru;
- Religious assembly;
- Art gallery;
- Dance studios;
- Child care center (outdoor playground allowed);
- Fire/police station;
- Professional office;
- Barber/beauty shop;
- Convenience/grocery store w/o fuel sales;
- Nursing/retirement homes;
- Veterinarian - without outdoor boarding;
- Health and fitness center;
- Financial institution w/o drive-thru banking.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-666. - Special standards.

Parcels shall not be aggregated to a size of one acre or greater.

Size of building: First floors are limited to a maximum of 10,000 square feet.

Permanent outdoor storage shall not be allowed. Outdoor dining shall be allowed. Limited outdoor display shall be allowed with no more than ten percent of the lot area to be used for merchandise (merchandise shall not be left outside overnight). Outdoor displays shall not be allowed in any required off-street parking spaces.

Establishments located on property that are within 300 feet of any property zoned or used for a residential use may not be open to the general public before 6:00 a.m. and must be closed to the general public by 10:00 p.m. Businesses may utilize extended hours on Friday and Saturday if the following conditions exist:

- If a property is located 150 feet or more from a single-family zoned or used property the business shall be allowed a closing time of midnight, on Friday and Saturday, by right.
- Any property closer than 150 feet from a single-family residentially zoned or used property may apply for a conditional use permit to allow for extended business hours that would allow for a closing time of midnight, on Friday and Saturday.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

DIVISION 25. - COMMUNITY COMMERCIAL DISTRICT CC

Sec. 53-667. - Purpose.

The purpose of the community commercial district [CC] is to provide for slightly more intense commercial uses than allowed in the neighborhood commercial zoning district. The district is established to provide areas for quality retail establishments and service facilities. This district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate higher traffic volumes.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-668. - Applicability.

Any building constructed or reconstructed within a community commercial zoned property shall adhere to the following requirements.

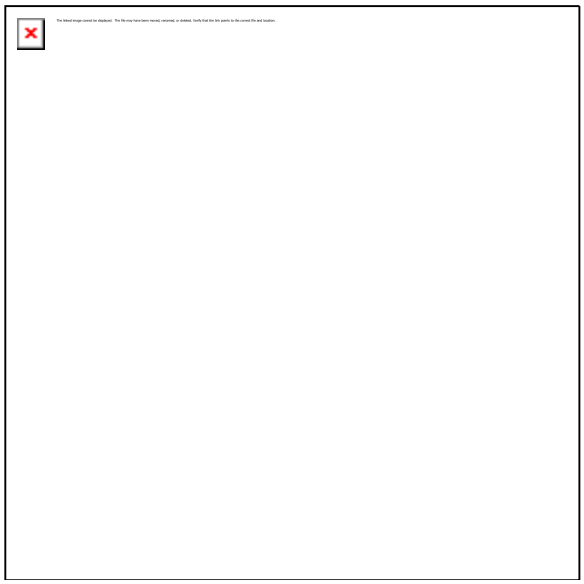
(Ord. No. 700, § 2(Exh. A), 7-17-2012)

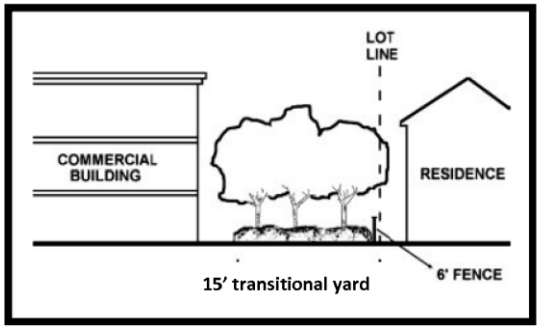
Sec. 53-669. - Building placement.

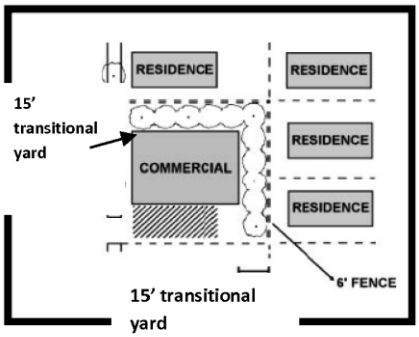
Front Setback** (min. feet)	Side Setback (min. feet)	Side Setback to Residential District (min. feet)	Corner Lot - Side Setback	Rear Setback* (min. feet)	Lot Width (min. feet)	Max. Height
25'	10'	15'	15'	25'	80'	3 stories

* When the rear or side lot line abuts a single family residential zoned lot or property used for a single family residence the rear/side setback shall consist of the following transitional yards:

- A 15-foot wide planting area consisting of one shade tree, two non-deciduous trees, and eight evergreen shrubs per 50 linear feet of lot width.
- Eight-foot privacy fence.

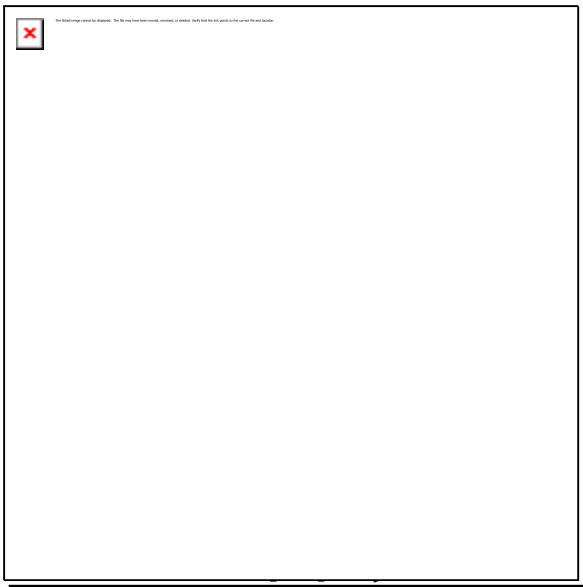


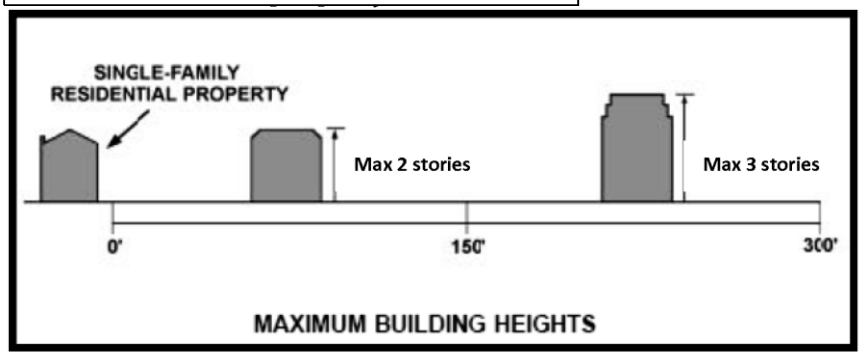




Lot size: Minimum 8,000 square foot lot.

Height regulations: Maximum height of two stories within 150 feet from single-family residential zoned or used property and three stories between 150 and 300 feet from single-family residential zoned or used property.**





** Stories shall not exceed 14 feet in height from finished floor to finished ceiling. A single floor level exceeding 14 feet shall be counted as two stories.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

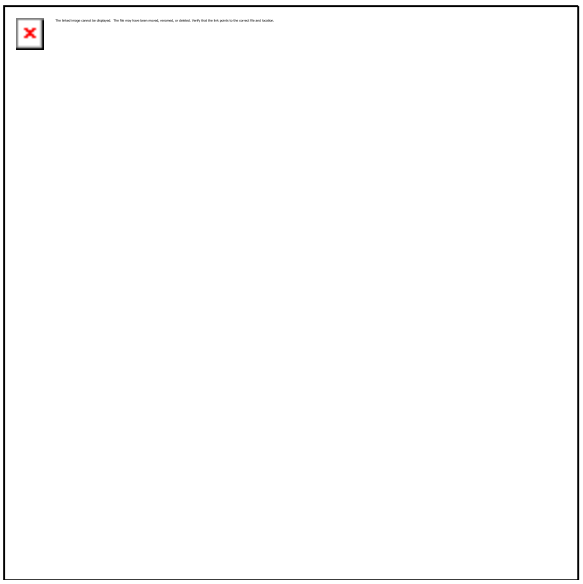
Sec. 53-670. - Design.

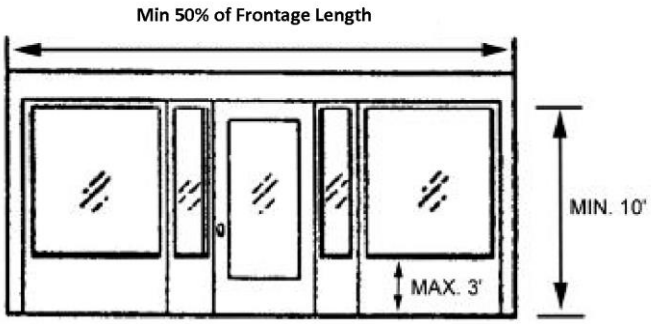
- Primary entrances shall face the public street.

- The exterior walls shall be constructed of 100 percent stone, brick, masonry, stucco, masonry veneer, or similar granular product excluding doorways and windows. All walls must include materials and design characteristics consistent with those on the front (wood and metal may be used as accent material).

An example of four-sided design.

• Windows or doors of clear or lightly tinted glass (no high glare glass)shall comprise at least 50 percent of the frontage length measured between three feet and ten feet above grade, for retail buildings and shall comprise at least 30 percent of the frontage length for non-retail based buildings. Windows shall be distributed in a more or less even manner.





- For new non-residential development all buildings shall incorporate at least four of the following buildings elements:
    - Awnings;
    - Pillars;
    - Canopies;
    - Alcoves;
    - Recessed entries;
    - Ornamental cornices (other than colored stripes or bands alone);
    - Pillar posts.
- Exterior walls cannot have a blank uninterrupted length greater than 30 feet, without including two or more features:
    - Change in plane;
    - Change in texture or masonry pattern;
    - Windows;

- Other equivalent that subdivide the wall into a human scale.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-671. - Site standards.

The site development regulations for uses in the CC district are as follows:

Landscaping

- Street trees shall be planted a minimum of 30 feet on center. A minimum of 25 percent of the lot area shall be devoted to landscaping (all landscaping shall consist of drought-tolerant plants). Fifty percent of the required landscaping shall be located in front of the primary building.

Sidewalks.

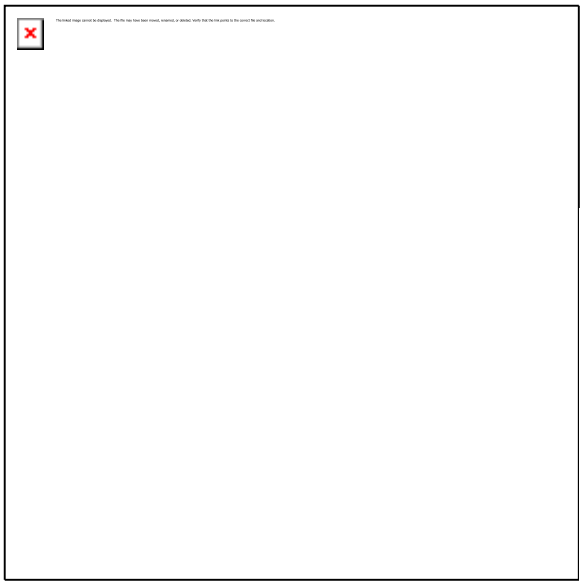
- Sidewalks, driveways and parking areas are required. The sidewalks and pedestrian walkways must be constructed of brick, pavers, or concrete with an exposed broom finish, and connect to the adjacent property having a common frontage.

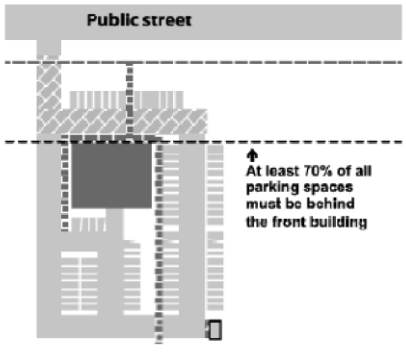
Screening.

- Screening of loading, trash, recycling and storage facilities is required. All trash and recycling receptacles shall be stored behind the host building. The materials used for screening must be compatible with the materials used on the host building.

Parking.

- Seventy percent of all parking shall be setback behind the front of the building. Curb cuts for parking areas shall not exceed 25 feet in width.





Detention Facilities.

- Detention and water quality ponds shall utilize earthen berms and be designed with a curvilinear contoured shape. Any structural stabilization shall be limited to the use of native stone (except for outlet structure), and shall be limited to not more than 30 percent of the perimeter of the pond and shall be seamlessly integrated with landscape.

Lighting.

- Site lighting shall shine downward and be shielded so that light sources are not visible from public thoroughfares or from adjacent residential zoned or used property. Lighting pole standards shall not exceed a height of 18 feet.

Fencing.

- Any fencing in front, or to the side on corner lots, shall not exceed a height of three feet and any solid fencing material shall not exceed a height of two feet. No chain link, sheet metal, plastic, vinyl, barbed wire or horizontal metal pipe larger than two inches in diameter shall be used.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-672. - Use.

The neighborhood commercial zoning district shall allow professional offices and small businesses serving neighborhood community needs. The following uses shall be permitted:

- Multi-family on the second floor and above shall be permitted by right regardless of base zoning;
- Bed and breakfast up to five rooms;
- Retail;
- Restaurant;
- Religious assembly;
- Art gallery;
- Child care center (outdoor playground allowed);
- Fire/police station;
- Professional office;
- Funeral home;
- Barber/beauty shop;
- Convenience/grocery store;
- Fuel station*;
- Nursing/retirement homes;
- Veterinarian - without outdoor boarding;
- Health and fitness center;
- Restaurant with drive-thru*;
- Financial institution w/ drive-thru banking.

* See special standards.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-673. - Special standards.

Size of building: First floors are limited to a maximum of 15,000 square feet.

Permanent outdoor storage shall not be allowed. Outdoor dining shall be allowed. Limited outdoor display shall be allowed with no more than ten percent of the lot area to be used for merchandise (merchandise shall not be left outside overnight). Outdoor displays shall not be allowed in any required off-street parking spaces.

Establishments located on property that are within 300 feet of any property zoned or used for a single-family residential use may not to be open to the general public before 6:00 a.m. and must be closed to the general public by 10:00 p.m. Businesses may utilize extended hours on Friday and Saturday if the following conditions exist:

- If a property is located 150 feet or more from a single-family zoned or used property the business shall be allowed a closing time of midnight, on Friday and Saturday, by right.

- Any property closer than 150 feet from a single-family residentially zoned or used property may apply for a conditional use permit to allow for extended business hours that would allow for a closing time of midnight, on Friday and Saturday.

Fuel stations must adhere to the following requirements:

- Fascias of the canopy shall be finished to match the building material and color. Striping and banding of canopies is prohibited.

- No more than eight fuel pumps shall be allowed within the community commercial zoning designation.

Drive-through facilities (speakers, menu boards, or drive-through windows) shall not be located within 75 feet of a residentially zoned property. Drive-through facilities shall not face a public ROW. Drive-through lanes and facilities shall be located to the side and rear of the primary building. A minimum of a ten-foot wide landscape area along the edge of a site where parking areas, drive lanes are adjacent to a public street shall be provided. The landscape area shall include trees, shrubs and/or low walls to screen cars from view while allowing eye level visibility into the site.

(Ord. No. 700, § 2(Exh. A), 7-17-2012)

Sec. 53-674. - Reserved.

ARTICLE III. - OVERLAY DISTRICTS

DIVISION 1. - GENERALLY

Secs. 53-675—53-698. - Reserved.

DIVISION 2. - PLANNED UNIT DEVELOPMENT DISTRICT (PUD)

Subdivision I. - In General

Sec. 53-699. - Purpose and objectives.

(a) The purpose and intent of the planned unit development district is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the city consistent with this chapter and accepted urban planning, with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. The planned unit development rules are designed to:

    (1) Allow development which is harmonious with nearby areas;

    (2) Enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance;

    (3) Provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs;

    (4) Encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods;

    (5) Facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment;

    (6) Provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and

    (7) Require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development.

(b) Toward these ends, rezoning of land and development under this district will be permitted only in accordance with the intent and purpose of the city's comprehensive plan and this chapter, and to that end the planned unit development plan must be prepared and approved in accordance with the provisions of this chapter.

(Ord. No. 438, § 39(a), 11-24-2003)

Sec. 53-700. - Mixed use development.

The PUD district shall include and allow for compatible mixed uses such as compatible residential, commercial and/or industrial, within a single project within the boundaries of a an approved plan area, in order to provide the flexibility required for a well-designed and innovative development that will conserve, develop, protect and utilize to their best use the natural resources of the area in a manner that ensures the safe, orderly and healthy development and expansion of the city. In order to promote such development, the PUD may be comprised of a combination of all the other zoning districts provided for in this chapter. The outer boundary of the each such PUD zoning district shall be shown on a map. Said map will include a descriptive legend, the specific boundaries of the area proposed for use authorized for in any other zoning district, and percentage of the total area of such PUD which will comprise each such separate use, and all notations, references, and other information shown thereon, shall be adopted by ordinance.

(Ord. No. 438, § 39(b), 11-24-2003)

Sec. 53-701. - Residential clustering.

Upon approval by the city council, a PUD district subdivision or a section or phase of a PUD district subdivision of greater than three buildable acres may cluster living unit equivalents (LUEs) on buildable acres of subdivision so long as the total number of LUEs does not exceed the total number of allowable LUEs had each LUE been built on specified minimum lot square footage for appropriate zoning

classification as shown in chart 1 in section 53-33(k). When clustering LUEs, the subdivision may be composed of the following:

(1) Forty percent or more of the LUEs must be built under the guidelines of R-1-1 zoning requirements;

(2) Thirty percent or less may be built under the guidelines of R-1-2 zoning requirements;

(3) Thirty percent or less may be built under the guidelines of R-1-A zoning requirements;

(4) Fifteen percent or less may be built under the guidelines of R-1-T zoning requirements so long as the total number of LUEs in the subdivision does not exceed the total number of LUEs allowed under R-1-1.

(Ord. No. 438, § 39(c), 11-24-2003)

Sec. 53-702. - Variances.

If, after review by the planning and zoning commission and on approval by the city council of a concept development plan, clustered residential developments may vary from established standards as set forth in chart 1 in section 53-33(k) if the following conditions are met:

(1) Create pedestrian access to retail establishments without using major roads.

(2) All homes have access to green space within one-eighth of mile from home.

(3) Subdivision must consist of three to four product types (i.e., R-1-1; R-1-2; R-1-A; R-1-T).

(4) Create pedestrian access to neighborhood schools.

(5) Plant five-inch diameter trees every 30 feet along streets.

(6) Have a minimum of three green space areas each having an area of not less than one acre within the interior of subdivision, not including floodplain or neighborhood association parks.

(7) Total density of development shall not exceed that which is allowed by designated zoning district.

(Ord. No. 438, § 39(c), 11-24-2003)

Sec. 53-703. - Flexible planning.

(a) When considering a planned unit development (PUD), the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and streetlights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc.

(b) Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD as approved, departs from existing codes and ordinances.

(c) The flexibility permitted for a PUD does not imply that any standard or requirement will be varied or decreased.

(Ord. No. 438, § 39(d), 11-24-2003)

Sec. 53-704. - Rules applicable.

The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may attach a planned unit development district designation to

any tract of land equal to or greater than three buildable acres. Under the planned development designation the following rules apply:

(1) The approval of any proposed PUD or combination of uses proposed therein shall be subject to the discretion of the city council, and no such approval will be inferred or implied.

(2) Permitted uses are those listed under the applicable zoning districts for the base zoning to be applied to the PUD (for example, the permitted uses in a PUD proposed to be developed as CBD-2, RS, W, CM districts). In addition, a planned unit development district may be established where the principal purpose is to serve as a transitional district, or as an extension of an existing district whereby the provision of off-street parking, screening walls, fences, open space and/or planting would create a protective transition between a lesser and more restrictive district. In approving a planned unit development, additional uses may be permitted, and specific permitted uses may be prohibited from the base district.

(3) Standards required by the base zoning apply in a planned unit development except that the following regulations and standards may be varied in the adoption of the planned unit development; provided that the plan is consistent with sound urban planning and good engineering practices.

   a. Front, side and rear setbacks.

   b. Maximum height.

   c. Maximum lot coverage.

   d. Floor area ratio.

   e. Off-street parking requirements.

   f. Special district requirements pertaining to the base zoning.

   g. Number of dwelling units per buildable acre.

   h. Accessory building regulations.

   i. Sign standards.

(4) In approving a planned unit development, no standards may be modified unless such modification is expressly permitted by this chapter, and in no case may standards be modified when such modifications are prohibited by this chapter.

(5) In approving a planned unit development, the city council may require additional standards deemed necessary to create a reasonable transition to, and protection of, adjacent property and public areas, including but not limited to, light and air, orientation, type and manner of construction, setbacks, lighting, landscaping, management associations, open space, and screening.

(6) The planning and zoning commission and city council, in approving modifications to standards and regulations, shall be guided by the purpose intended by the base zoning and general intent of this chapter.

(Ord. No. 438, § 39(e), 11-24-2003)

Secs. 53-705—53-721. - Reserved.

Subdivision II. - Plans and Certain Other Requirements

Sec. 53-722. - Preliminary site plan.

A preliminary site plan of the entire property within the planned unit development will be considered by the planning and zoning commission prior to any recommendation to, or consideration by, the city council of this division.

(1) A preliminary site plan may be approved for a portion of a planned unit development district where the district is divided by a major thoroughfare, and the preliminary site plan includes all the property located on one side of the street.

(2) Approval of a preliminary site plan will determine the location and mix of proposed uses, proposed points of ingress and egress, parking spaces, building locations and height, lot coverage, yards and open spaces, landscaping, screening walls or fences, topography, and other development and protective requirements, considered necessary to create a reasonable transition to, and protection of, the adjacent property.

(3) The planning and zoning commission and/or city council may approve, conditionally approve, request modifications, or deny approval of the preliminary site plan based on evaluation of details with respect to:

a. The plan's compliance with all provisions of this chapter and other ordinances of the city.

b. The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood.

c. The relationship of the development to adjacent uses in terms of harmonious use and design, setbacks, maintenance of property values, and negative impacts.

d. The provision of a safe and efficient vehicular and pedestrian circulation system.

e. The design and location of off-street parking and loading facilities to ensure that all such spaces are usable and are safely and conveniently arranged.

f. The sufficient width and suitable grade and location of streets designed to accommodate prospective traffic and to provide access for fire fighting and emergency equipment to buildings.

g. The coordination of streets so as to compose a convenient system consistent with the thoroughfare plan of the city.

h. The use of landscaping and screening to:

1. Provide adequate buffers to shield lights, noise, movement or activities from adjacent properties when necessary; and

2. Complement the design and location of buildings and be integrated into the overall site design.

i. The location, size and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.

j. The adequacy of water, drainage, sewerage facilities, garbage disposal and other utilities necessary for essential services to residents and occupants.

(Ord. No. 438, § 39(e), 11-24-2003)

Sec. 53-723. - Final site plan.

Following approval of the preliminary site plan, or simultaneously if detailed information is available, a final site plan for any portion of the planned unit development may be approved. The preliminary site plan establishes the general development standards according to a base district. The final site plan providing all the detail required for development, subdivision, zoning and enforcement of the special conditions and

regulations must be approved by ordinance prior to the zoning being in effect and construction being authorized.

(Ord. No. 438, § 39(f), 11-24-2003)

Sec. 53-724. - Amendments.

Consideration of amendments to a planned unit development will take into consideration the effect of the proposed development on the remainder of the property, adjacent properties and the neighboring communities. Amendments to the final site plan or any planned development conditions which are substantive shall require public hearings in the manner required for any other zoning change.

(Ord. No. 438, § 39(g), 11-24-2003)

Sec. 53-725. - Expiration.

If development equal to at least 25 percent of the cost of installing streets, utilities and drainage in the planned unit development, or, if the PUD is approved to be developed in sections or phases, if development equal to at least 50 percent of the cost of installing streets, utilities and drainage in the first section or phase of the PUD has not occurred, on a planned unit development tract or lot within two years after the date of approval, such approval shall expire; and may only be renewed after application is made therefor, notice is given and public hearings are held by the planning and zoning commission and city council to evaluate the appropriateness of the previously authorized planned development approval. Any such application for renewal or extension shall be considered in the same manner, and under the same rules, regulations and ordinances then in effect, as a new application for zoning.

(Ord. No. 438, § 39(h), 11-24-2003)

Sec. 53-726. - Chapter amendment.

Every planned unit development district approved under the provisions of this chapter is considered an amendment of this chapter as to the property involved, and to the master plan. All planned unit development districts will be referenced on the zoning district map, and a list of such planned unit development districts shall be maintained as an appendix to this chapter.

(Ord. No. 438, § 39(i), 11-24-2003)

Sec. 53-727. - Certificate of occupancy.

All planned unit development district conditions and special regulations must be complied with in the PUD, or in the separate section or phase, before a certificate of occupancy is issued for the use of land or any structure which is part of a planned unit development district, or, if applicable, the separate section or phase being developed.

(Ord. No. 438, § 39(j), 11-24-2003)

Secs. 53-728—53-752. - Reserved.

DIVISION 3. - HISTORIC DISTRICT, DISTRICT H

Subdivision I. - In General

Sec. 53-753. - Intent.

The city council here by declares that it is in the community's best interest to preserve the individuality and charm of the city by identifying and designating historical landmarks of architectural, cultural, and historical significance. The following historic landmark and district zoning ordinance has been adopted, pursuant to V.T.C.A., Local Government Code § 211.001 et seq.:

(1) Protect and enhance the landmarks and districts which represent distinctive elements of city's historic, architectural, and cultural heritage;

(2) Foster civic pride in the accomplishments of the past;

(3) Protect and enhance city's attractiveness to visitors and support and stimulate the economy;

(4) Ensure the harmonious, orderly, and efficient growth and development of the city;

(5) Promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the city;

(6) Encourage stabilization, restoration, and improvements of such properties.

(Ord. No. 438, § 40(a), 11-24-2003)

Sec. 53-754. - Criteria for the designation of historic landmarks and districts.

A historic landmark or district may be designated if it:

(1) Possesses significance in history, architecture, archeology, or culture.

(2) Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.

(3) Is associated with the lives of persons significant in our past.

(4) Embodies the distinctive characteristics of a type, period, or method of construction.

(5) Represents the work of a master designer, builder, or craftsman.

(6) Represents an established and familiar visual feature of the neighborhood or city.

(7) Is designated as a recorded state historic landmark or state archeological landmark, or is included on the National Register of Historic Places.

(Ord. No. 438, § 40(b), 11-24-2003)

Sec. 53-755. - Definitions.

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

Alteration means a physical change in or to a building.

Appurtenant features means those features that define the design of a building or property. The term "appurtenant features" includes porches, railings, columns, shutters, steps, fences, attic vents, sidewalks, driveways, fences, garages, carports, outbuilding, gazebos, arbors, ponds, and pools.

Architectural control regulations means governing the appearance or architectural style of buildings or structures. Architectural control I is a form of aesthetic zoning. (PAS, Report No. 322, p. 4)

Building means a building, such as a house, barn, church, hotel, or similar construction so created to shelter any for of human activity. The term "building" also may be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. (National Register Bulletin 24, p. 1)

Case law means the body of law developed through hearings and judgments of specific issues (cases) by courts of law.

Comprehensive historic preservation plan means a document that integrates the various preservation activities and gives them coherence and direction, as well as relates the community's preservation efforts to community development planning as a whole. (National Register Bulletin 24, p. 61)

Comprehensive plan means a document or series of documents prepared by a planning commission or department setting forth policies for the future of a community. Enabling statutes in many states require zoning to be in accordance with a comprehensive plan. (PAS, Report No. 322, pp. 10-11)

Contributing property means a property which is:

(1) Fifty years of age or older;

(2) Contributes to a district's historical significance through its association with historical persons or events, based on guidelines set forth; and

(3) Retains sufficient integrity, location, setting, design, construction, workmanship, and association to convey its significance.

Design review means the decision-making process conducted by an established review committee of a local government that is guided by the terms set in this division.

Design review guidelines means a set of guidelines adopted by the planning and zoning commission that details acceptable alterations of designated properties. They are usually generously illustrated and written in a manner that would be understood by most property owners.

District means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. (National Register Bulletin 24, p. 1)

Due process of law means a requirement that legal proceedings be carried out in accordance with established rules and principles. (PAS, Report No. 322, p. 14)

Enabling legislation means state legislation that grants certain authority to local governments so that they may direct the development of their communities. V.T.C.A., Local Government Code ch. 211, Municipal Zoning Authority is the legislation that enables municipalities in this state to zone and designate historic landmarks and districts as part of the comprehensive zoning plan.

Exterior features includes the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, other appurtenant features and significant trees. For signs, the term exterior features means the style, material, size, and location of all signs. For the purposes of this chapter, a change in exterior color is not deemed to be a change in exterior features.

General law cities means incorporated municipalities with populations under 5,000. These cities must conform to the general laws of the state.

Historic property means a district, site, building, structure, significant in American history, architecture, engineering, archeology, or culture at the national, state or local level.

Historic resource means the same as a historic property. It includes architectural, historical, and archeological properties as well as landscape features.

Historical significance means a district, site, building, structure, or object of 50 years of age, significant in American history, architecture, engineering, archeology, or culture at the national, state or level which has been altered from its original design.

Home rule cities means incorporated municipalities with populations over 5,000. These cities must adopt a home rule Charter and are granted more independence in their local decision making.

Integrity means the authenticity of a property's historic identity, evidenced by survival of physical characteristic that existed during the property's historic or prehistoric period.

Intensive survey means a systematic detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance.

Inventory means a list of historic properties that have been identified and evaluated as meeting specified criteria of significance.

Landmark means any individual building, structure or object that is significant for historical, architectural, or archeological reasons.

Object means as used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, such as statuary in a designed landscape. (National Register Bulletin 24, p. 1)

Ordinary maintenance refers to activities relating to a property that would be considered ordinary or common for maintaining the property, such as the replacement of a porch floor with identical or in-kind materials. The term "ordinary maintenance" may also include other activities such as painting.

Overlay zones means a set of zoning requirements that are described in the chapter text, is mapped, and is imposed in addition to those of the underlying district. Development within the overlay zone must conform to the requirement of both zones or the more restrictive of the two. (PAS, Report No. 322, p. 24)

Police power means the authority of government to exercise controls to protect the public's health, safety, morals, and general welfare. (PAS, Report No. 322, p. 26)

Preservation means the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. The term "preservation" may include initial stabilization work, where necessary, as well as on going maintenance of the historic building materials.

Preservation planning means the planning for the continued identification and evaluation of historic properties and for their protection and enhancement. (National Register Bulletin 24, p. 61)

Rehabilitation means the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.

Restoration means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Site means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the value of any existing structure. (National Register Bulletin 24, p. 1)

Special district means a district established to accommodate a narrow or special set of uses or for special purposes. The term can signify any district beyond the conventional residential, commercial, industrial, and agricultural districts. Examples include open space districts hotel/motel districts, or historic preservation districts. The establishment of special districts must have an appropriate police power basis (these should be spelled out in the preamble or statement of purpose). (PAS, Report No. 322, p. 32)

Statutory law means the body of law established through statutes initiated and adopted by elected officials participating in our legislative and executive branches of government.

Structure means as used to distinguish from buildings those functional constructions makes usually for purposes other than creating shelter. (National Register Bulletin 24, p. 1)

Taking means the appropriation by government of private land for which compensation must be paid. Under the U.S. Constitution, property cannot be condemned through eminent domain for public use or public purpose without just compensation. This is reasonably clear when government busy land directly. But the "taking issue" is far less clear when the imposition of police power controls. (PAS, No. 322, p. 34)

Zoning means a police power measure, enacted primarily by general purpose units of local government, in which the community is divided in to districts or zones within which permitted and special uses are established as are regulations governing lot size, building bulk, placement, and other development standards. (PAS, Report No. 322, p. 38)

(Ord. No. 438, § 40, 11-24-2003)

Sec. 53-756. - Penalties.

Failure to comply with any of the provisions of this division shall be deemed a violation and the violator shall be liable for a misdemeanor charge, and be subject to a fine of not less than $50.00 nor more than $100.00 for each day the violation continues. The penalty to possibly include:

(1) Pay back to the city any or all tax incentives received to date;

(2) Removal of the historical landmark designation or restore the property to the status that existed before violation.

(Ord. No. 438, § 40(q), 11-24-2003)

Secs. 53-757—53-780. - Reserved.

Subdivision II. - Historic Preservation Commission

Sec. 53-781. - Created.

There is hereby created a commission to be known as the Kyle Historic Preservation Commission. The historic preservation commission is to provide assistance to homeowners or business owners in restoring, preserving and enhancing their historic landmark or district.

(Ord. No. 438, § 40(c), 11-24-2003)

Sec. 53-782. - Membership.

(a) The historic preservation commission shall consist of seven members to be appointed, to the extent available among the residents of the community, by the city council as follows. These are recommended representatives:

(1) At least one shall be an architect, planner, or representative of a design profession.

(2) At least three shall be an owner and resident of a landmark or of a property in a historic district.

(3) At least one shall be a member of city council.

(4) At least one shall be a member of county historic commission.

(5) At least one shall be an historian.

In the event that the historic preservation commission decides more members are needed, the historic preservation commission may recommend such to the council who may appoint two additional qualified persons to the historic preservation commission.

(b) All historic preservation commission members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the city.

(c) Historic preservation commission members shall serve for a term of two years, with the exception that two members shall have a one-year first term, and two members shall have a three-year first term.

(d) The chair and vice-chair of the historic preservation commission shall be elected by and from the members of the historic preservation commission.

(Ord. No. 438, § 40(c)(i)—(iv), 11-24-2003)

Sec. 53-783. - Powers and duties.

The historic preservation commission shall be empowered to:

(1) Make recommendations for employment of staff and professional consultants as necessary to carry out the duties of the historic preservation commission. This shall include a preservation officer.

(2) Prepare rules and procedures as necessary to carry out the business of the historic preservation commission, which shall be ratified by the city council.

(3) Adopt criteria for the designation of historic, architectural, and cultural landmarks and the delineation of historic districts, which shall be ratified by the city council.

(4) Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic districts within the city.

(5) Recommend the designation of resources as landmarks and historic districts.

(6) Create committees from among its membership and delegate to these committees' responsibilities to carry out the purposes of this division.

(7) Recommend conferral of recognition upon the owners of landmarks or properties within districts by means of certificates, plaques, or markers, which the city would retain ownership of said plaques or markers.

(8) Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.

(9) Make recommendations to the city council concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the city.

(10) Approval or disapproval of applications for certificates of appropriateness pursuant to this division.

(11) Prepare and submit annually to the city council a report summarizing the work completed during the previous year.

(12) Prepare specific design guidelines for the review of landmarks and districts.

(13) Recommend the acquisition of a landmark structure by the city government where its preservation is essential to the purpose of this act and where private preservation is not feasible.

(14) Propose tax abatement programs for landmarks or districts.

(Ord. No. 438, § 40(c)(v), 11-24-2003)

Secs. 53-784—53-804. - Reserved.

Subdivision III. - Designation of Landmarks and Districts

Sec. 53-805. - Historic landmarks.

The following provisions pertaining to the designation of historic landmarks constitutes part of the comprehensive zoning plan of the city:

(1) Property owners of historic landmarks may apply for a historic landmark designation with the historic preservation commission. The historic preservation commission will hold a public hearing to see if the property meets the requirement of a historical property.

(2) Upon recommendation of the historic preservation commission, the proposed historic district application shall be submitted to the planning and zoning commission within 30 days from the date of submittal of designation request. The planning and zoning commission shall give notice and conduct its hearing on the proposed designation within 45 days of receipt of such recommendation from the historic preservation commission. Such hearing shall be in the same manner and according to the same procedures as specifically provided in article IX of this chapter. The planning and zoning commission shall make its recommendation to the city council within 45 days subsequent to the hearing on the proposed designation.

(3) The city council shall schedule a hearing on the planning and zoning commission's recommendation to be held within 45 days of receipt of the recommendation of the planning and zoning commission. The city council shall give notice, follow the publication procedure, hold the hearing, and make its determination in the same manner as provided in this chapter.

(4) Upon designation of a building, object, site, and/or structure as a historic landmark or district, the city council shall cause the designation to be recorded in the official public records of real property of the county, the tax records of the city, and the county appraisal district as well as the official zoning maps of the city. All zoning maps should indicate the designated landmarks with an appropriate mark.

(5) Permitted uses. Nothing contained in this division or in the designation of property as being a historic landmark shall affect the present legal use of property. Use classifications as to all property which may be included in a historical district or historic landmark shall continue to be governed by the general zoning provisions of this chapter and the procedures herein established. In no case, however, shall any use be permitted which requires the demolition, razing, remodeling, or alteration, of any buildings or structures approved as a historic landmark so as to adversely affect the character of the district or historic landmark, except upon compliance with the terms of this division. For purposes of clarity in the zoning designation of property, all zoning maps shall reflect property as historic landmarks by the including of the word historic as a prefix to its use designation as specified in accordance with the general zoning provisions of this chapter. No provision of this division shall be construed as prohibiting a property owner from continuing to use property for a nonconforming use.

(6) An applicant for a certificate of appropriateness dissatisfied with the action by the historic preservation commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the city council within 30 days after receipt of notification of such action. The city council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in this chapter.

(Ord. No. 438, § 40(d), 11-24-2003)

Sec. 53-806. - Historic districts.

The following provisions pertaining to the designation of a historic district constitute a part of the comprehensive zoning plan of the city:

(1) Property owners may apply to the historic preservation commission for consideration in establishing a historic district designation of their real property, if they so desire. If 100 percent of property owners within the proposed historic district agree to the designation, the nomination will be forwarded to the historic preservation commission. At a historic preservation commissions public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence, which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic district properties.

(2) Then the historic preservation commission may recommend the designation of a district if it:

   a. Contains properties and an environmental setting which meet one or more of the criteria for designation of a landmark; and

   b. Constitutes a distinct section of the city.

(3) Upon recommendation of the historic preservation commission, the proposed historic district shall be submitted to the planning and zoning commission within 30 days from the date of submittal of designation request. The planning and zoning commission shall give notice and conduct its hearing on the proposed designation within 45 days of receipt of such recommendation from the historic preservation commission. Such hearing shall be in the same manner and according to the same procedures as specifically provided in article IX of this chapter. The planning and zoning commission shall make its recommendation to the city council within 45 days subsequent to the hearing on the proposed designation.

(4) The city council shall schedule a hearing on the planning and zoning commission's recommendation to be held within 45 days of receipt of the recommendation of the planning and zoning commission. The city council shall give notice, follow the publication procedure, hold hearings, and make its determination in the same manner as provided in this chapter.

(5) Upon designation of a historic district the city council shall cause the designated boundaries to be recorded in the official public records of real property of the county, the tax records of the city and the county appraisal district as well as the official zoning maps of the city. All zoning maps should indicate the designated historic district by an appropriate mark.

(6) Any owner of a vacant lot within a historical district, interested in building a house or commercial business shall be required to build with historical architectural design. The plans must be submitted to the historic preservation commission for approval.

(7) Any property owner of a home or building within a historic district that does not have historical landmark status and wishes to move or demolish said property must receive approval from the historic preservation commission. Any house or building built on the newly vacant property must be of historical architectural design, with plans needing to be submitted to the historic preservation commission for approval before building permit will be issued.

(Ord. No. 438, § 40(e), 11-24-2003)

Secs. 53-807—53-835. - Reserved.

Subdivision IV. - Certificate of Appropriateness for Alteration or New Construction Affecting Landmark

Sec. 53-836. - Required.

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

Exterior architectural feature includes, but is not limited to, architectural style and general arrangement of such portion of the exterior of a structure as is designed to be visible from adjacent public streets to include exterior lighting standards, fencing, color and secondary buildings.

(b) *Application.* No person shall alter, change, construct, reconstruct, expand, restore, remove or demolish any exterior architectural feature of a designated historic landmark or property within a historic district, or allow the results of such action to be maintained unless application is made in compliance with this division for a certificate of appropriateness and such a certificate is granted. See sections 53-838 through 53-840.

(c) *Issuance.* A certificate of appropriateness shall be obtained prior to the issuance of any building permit, although the certificate of appropriateness reviews and building permit and other required permit review processes may be conducted simultaneously. A certificate of appropriateness may also be required for work not otherwise requiring a building permit. The certificate of appropriateness shall be required in addition to, and not in lieu of, any building permit.

(Ord. No. 438, § 40(f), 11-24-2003)

Sec. 53-837. - Criteria for approval of a certificate of appropriateness.

In considering an application for a certificate of appropriateness, the historic preservation commission shall be guided by any adopted design guidelines, and where applicable, the following from the Secretary of Interior's Standards for the Rehabilitation of Historic Buildings. Any adopted design guidelines and the Secretary Interior's standards shall be made available to the property owners of historic landmarks or within historic districts.

(1) Every reasonable effort shall be made to adopt the property in a manner, which requires minimal alteration of the building, structure, object, or site and its environment.

(2) The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(3) All buildings, structures, objects and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(4) Changes, which may have taken place in the course of time, are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftsmanship, which characterize a building, structure, or object, or site, shall be kept where possible.

(6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.

(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

(10) Wherever possible, new additions or alterations to building, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

(Ord. No. 438, § 40(g), 11-24-2003)

Sec. 53-838. - Certification of appropriateness application procedure.

(a) Prior to the commencement of any work requiring certificate of appropriateness the owner shall file an application for such a certificate with the historic preservation commission. The application shall contain:

(1) Name, address, telephone number of applicant, detailed description of proposed work.

(2) Location and photograph of the property and adjacent properties.

(3) Elevation drawings of the proposed changes, if available.

(4) Samples of materials to be used.

(5) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property.

(6) Any other information, which the historic preservation commission may deem necessary in order to visualize the proposed work.

(b) No building permits shall be issued for such proposed work until, a certificate of appropriateness has first been issued by the historic preservation commission.

(c) The historic preservation commission shall review the application at a regularly scheduled meeting within 45 days from the date the application is determined to be administratively complete, at which time an opportunity will be provided for the applicant to be heard. The historic preservation commission shall approve, deny, or approve with modifications the permit within 45 days after the review meeting. In the event the historic preservation commission does not act within 60 days of the receipt of the application, a permit may be granted.

(d) All decisions of the historic preservation commission shall be in writing. The historic preservation commission's decision shall state its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant. Additional copies shall be filed as part of the public record on that property and dispersed to appropriate city departments, e.g., building inspection.

(Ord. No. 438, § 40(h), 11-24-2003)

Sec. 53-839. - Certificate of appropriateness required for demolition.

A permit for the demolition of a historic landmark or property within a historic district, including secondary buildings shall not be granted by the building official without the review of a completed application for a certificate of appropriateness by the historic preservation commission, as provided for in sections 53-836 through 53-838.

(Ord. No. 438, § 40(i), 11-24-2003)

Sec. 53-840. - Construction and repair standards—New construction.

(a) *New construction standards.* New construction within a historic district shall be visually compatible with other buildings to which they are visually related generally in terms of the following factors; provided, however, these guidelines shall apply only to those exterior portions of buildings and sites visible from adjacent public streets:

(1) *Height.* The height of a proposed building shall be visually compatible with adjacent buildings.

(2) *Proportion of building's front facade.* The relationship of the width of a building to the height of the front elevation shall be visually compatible to the other buildings to which it is visually related.

(3) *Proportion of openings within the facility.* The relationship of the width of the windows in a building shall be visually compatible with the other buildings to which it is visually related.

(4) *Rhythm of solids to avoids in front facades.* The relationship of solids to voids in the front facade of a building shall be visually compatible with the other guidelines to which it is visually related.

(5) *Rhythm of spacing of buildings on streets.* The relationship of building to the open space between it and adjoining buildings shall be visually compatible to the other buildings to which it is visually related.

(6) *Rhythm of entrance and/or porch projection.* The relationship of entrances and porch projections to sidewalks of a building shall be visually compatible to the other buildings to which it is visually related.

(7) *Relationship of materials and texture.* The relationship of the materials, and texture of the exterior of a building, including its windows and doors, shall be visually compatible with the predominant materials used in the other buildings to which it is visually related.

(8) *Roof shapes.* The roof shape of a building shall be visually compatible with the other buildings to which it is visually related.

(9) *Walls of continuity.* Appurtenances of a building, including walls, fences and building exteriors shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building to the other buildings to which it is visually related.

(10) *Scale of building.* The size of a building, the mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the other buildings to which it is visually related.

(b) *Additional guidelines.* The historic preservation commission may use as general guidelines, in addition to the specific guidelines contained in subsection (a) of this section, the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.

(Ord. No. 438, § 40(j), 11-24-2003)

Sec. 53-841. - Same—New construction on existing buildings.

(a) New construction added to existing buildings shall be visually compatible with the existing building to which they are attached and visually related generally in terms of the factors in section 53-841(a); provided, however, these guidelines shall apply only to those exterior portions of the new construction of the existing buildings visible from adjacent public streets as provided in section 53-841(a).

(b) The historic preservation commission may use as general guidelines, in addition to the specific guidelines contained in subsection (a) of this section, the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.

(Ord. No. 438, § 40(k), 11-24-2003)

Sec. 53-842. - Same—Existing buildings.

(a) Repairs to existing buildings or appurtenances within a local historic district or landmark must be visually compatible with other buildings to which they are visually related generally in terms of the following factors: provided, however, these guidelines shall apply only to those exterior portions and sites visible from adjacent public streets as provided in section 53-841(a).

(b) The historic preservation commission may use as general guidelines, in addition to the specific guidelines contained in section 53-841(a), the current Standards for Historic Preservation Projects issued by the United States Secretary of the Interior.

(Ord. No. 438, § 40(l), 11-24-2003)

Sec. 53-843. - Economic hardship application procedure.

(a) After receiving written notification from the historic preservation commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process.

(b) When a claim of economic hardship is made due to the effect of this chapter, the owner must prove that:

  (1) The property is incapable of earning a reasonable return, regardless whether that return represents the most profitable return possible;

  (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return;

  (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed; and

  (4) The sole source of income is derived from social security or other government assisted programs.

(c) The applicant shall consult in good faith with the historic preservation commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the historic preservation commission.

(d) The historic preservation commission shall hold a public hearing on the application, within 45 days from the date the application is received by the building official. Following the hearing, the historic preservation commission has 30 days after receipt of notification of such action. The city council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in article IX of this chapter.

(e) All decisions of the historic preservation commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the city clerk's office for public inspection. The historic preservation commission's decision shall state the reasons for granting or denying the hardship application.

(f) An applicant for a certificate of appropriateness dissatisfied with the action of the historic preservation commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the city council within 30 days after receipt of notification of such action. The city council shall give notice, follow publication procedure, hold hearing, and make its decision in the same manner as provided in article IX of this chapter.

(Ord. No. 438, § 40(m), 11-24-2003)

Sec. 53-844. - Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the building official or his designated representative to inspect periodically any such work to ensure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the historic preservation commission and verification by the building official, the building official shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work is in effect.

(Ord. No. 438, § 40(n), 11-24-2003)

Sec. 53-845. - Ordinary maintenance.

Nothing in this division shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a historic landmark or property within a historic district, which does not involve a change in design, color, material, or outward appearance. In-kind replacement or repair is included in this definition of ordinary maintenance.

(Ord. No. 438, § 40(o), 11-24-2003)

Sec. 53-846. - Demolition by neglect.

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the historic preservation commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself. Examples of such deterioration include:

(1) Deterioration of exterior walls or other vertical supports.

(2) Deterioration of roofs or other horizontal members.

(3) Deterioration of exterior chimneys.

(4) Deterioration or crumbling of exterior stucco or mortar.

(5) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.

(6) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition, is necessary for the public safety.

(Ord. No. 438, § 40(p), 11-24-2003)

Secs. 53-847—53-870. - Reserved.

Subdivision V. - Incentives for Landmarks

Sec. 53-871. - Historic landmarks.

(a) *Purpose.* The purpose of this subdivision is to encourage historic preservation by providing incentives for the stabilization, rehabilitation and renovation of properties designated as historic landmarks.

(b) *Incentives.* A property designated as a historical landmark or contributing property within a historic district, is eligible for an exemption of 50 percent of assessed value of a structure or archeological site

if the structure or archeological site is designated. This as recorded in V.T.C.A., Tax Code § 11.24 and V.T.C.A., Government Code ch. 442, or archeological landmark under V.T.C.A., Natural Resources Code ch. 191.

(c) *Exemption.* The exemption shall relate only to the assessed value of the qualifying structure. The exemption will be assessed by the county appraisal district on a yearly basis. Property owners must file for historical property tax abatement no later than May 1 of each year. Refer to V.T.C.A., Tax Code § 11.43(b).

(d) *Marker.* The city will place a historic landmark on the designated property. All costs of said marker shall be borne by the city, with the city retaining ownership.

(Ord. No. 438, § 40(r), 11-24-2003)

Secs. 53-872—53-890. - Reserved.

DIVISION 4. - CONDITIONAL USE OVERLAY DISTRICTS

Sec. 53-891. - Purpose.

(a) The purpose of this division is to establish four conditional use overlay districts to maintain a high character and quality of community development, to promote compatible uses and standards, to preserve and enhance property values, to promote economic growth, to provide for orderly development, to provide for proper movement of traffic, and to secure the general safety of citizens by regulating the exterior architectural characteristics of structures and the characteristics of the property as a whole throughout each of the conditional use overlay districts as defined in section 53-892.

(b) The conditional use overlay districts will assist the community to recognize and preserve the distinctive architectural character of this community, which has been greatly influenced by the architecture of an earlier period in this community's history. This purpose shall be served by the regulation of exterior design, use of materials, the finish grade line, ingress and egress, and landscaping and orientation of all structures hereinafter altered, constructed, reconstructed, reacted, enlarged, remodeled, removed, or demolished in the conditional use overlay districts defined in section 53-892.

(c) It is the further intent of this division that, in order to coordinate and expedite the permits, review and time required for compliance with this division and all other applicable city, state, and federal ordinances, codes, laws, rules, and regulations, the applicant for a conditional use permit under this division may combine such application with the application for site plan approval so that both applications may be considered and acted upon on substantially the same schedule.

(Ord. No. 438, § 66(a), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-892. - Districts and boundaries.

(a) *Established.* Four conditional use overlay districts are established as follows:

(1) *The 1-35 overlay district.* The Interstate Highway 35 corridor conditional use overlay district (the 1-35 overlay district) extends from the northernmost city limit boundary at 1-35 to the southernmost city limit boundary at 1-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of 1-35;

(2) *The Old Highway 81 overlay district.* The Old Highway 81 corridor conditional use overlay district (the Old Highway 81 overlay district) extends from the intersection of Burleson Street and Old Highway 81 on the north to the intersection of Opal Lane and Old Highway 81 on the south, and

includes all real property within 200 feet from the outer most edge of the highway right-of-way of Old Highway 81;

(3) *The Center Street overlay district.* The Center Street conditional use overlay district (the Center Street overlay district), Center Street is also known as Farm-to-Market Road No. 150, extends from the intersection of Center Street and 1-35 on the east to the intersection of Center Street and Rebel Drive on the west, and includes all real property within 200 feet from the centerline of Center Street; and all real property within all central business district-1 (CBD-1) and central business district-2 (CBD-2) zoning districts; and

(4) *The Rebel Drive overlay district.* The Rebel Drive conditional use overlay district (the Rebel Drive overlay district), Rebel Drive is also known as Farm-to-Market Road No. 150, extends from the intersection of Rebel Drive and Center Street on the south to the northernmost city limit boundary at Rebel Drive on the north, and includes all real property within 400 feet of the outer most edge of the street right-of-way of Rebel Drive.

(b) *Map.* The boundaries of the conditional use overlay districts are additionally set forth on the city map which is attached to the ordinance from which this article is derived and made part hereof. The 1-35 overlay district, the Old Highway 81 overlay district, Center Street overlay district, and the Rebel Drive overlay district are hereinafter collectively sometimes referred to as the overlay districts.

(Ord. No. 438, § 66(b), 11-24-2003; Ord. No. 438-37, § 2, 9-20-2005; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-893. - Conditional use permit required.

(a) A conditional use permit shall be required prior to the construction or erection of any new structure for a commercial, retail, or business use within one of the overlay districts. A conditional use permit shall also be required:

(1) Prior to any existing structure within one of the overlay districts being altered, reconstructed, enlarged, or remodeled for a commercial, retail, or business use, which altering or remodeling would increase or decrease the total gross building area by 50 percent or more; and

(2) If such work requires any additional curb cut, or the reconstruction, enlargement, remodeling, or alteration of the exterior design, material, material, finish grade line, landscaping, or orientation of the structure.

(b) The conditional use permit shall be in addition to and not in lieu of the required site plan and the appropriate underlying zoning required for the proposed use.

(Ord. No. 438, § 66(c), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-894. - Jurisdiction and procedure.

The planning and zoning commission shall receive, consider and act upon all applications for a conditional use permit.

(Ord. No. 438, § 66(d), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-895. - Application and fees.

(a) The fee for a conditional use permit shall be as provided in appendix A of this Code, per acre or part thereof. Such fee shall be in addition to any other applicable fees or charges.

(b) Applications for conditional use permits in one of the overlay districts shall be accompanied by a site plan and building elevations drawn to scale showing at a minimum:

(1) The lot dimensions, size, shape, and dimensions of the proposed and/or existing structures;

(2) The location and orientation of the structures on the lot and the actual or proposed building setback lines; and

(3) All points of ingress and egress.

(c) Applications for structures to be constructed or remodeled, which remodeling would increase or decrease the total gross building area by 50 percent or more, shall be accompanied by appropriate, relevant colored elevations showing at a minimum:

(1) The design;

(2) Use of materials;

(3) Finish grade line;

(4) Landscaping;

(5) Orientation of the buildings; and

(6) Any significant architectural features.

In addition, the planning and zoning commission may require the submission of colored perspectives or architectural renderings in applications where the planning and zoning commission finds it useful.

(Ord. No. 438, § 66(e), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-896. - Standards for review.

(a) The planning and zoning commission shall determine whether the application and project is consistent and compliant with the terms and intent of this division, this chapter, chapter 32, article II, pertaining to the site development plan, and all other codes and ordinances of the city. The planning and zoning commission will determine if the proposed use, occupancy and structure will promote, preserve, and enhance, and will not damage or detract from the distinctive character of the community; will preserve and protect property values and taxable values; will not be detrimental or inconsistent with neighboring uses and occupancies; will not be detrimental to the general interests of the citizens; and will not be detrimental to the public health, safety and welfare. In conducting its review, the planning and zoning commission shall make examination of and give consideration to the traffic flow, development density, neighboring historical designs, neighboring uses, and elements of the application, including, but not limited to:

(1) Height, which shall conform to the requirements of this chapter;

(2) Building mass, which shall include the relationship of the building width to its height and depth, and its relationship to the visual perception;

(3) Exterior detail and relationships, which shall include all projecting and receding elements of the exterior, including, but not limited to, porches and overhangs and the horizontal or vertical expression which is conveyed by these elements;

(4) Roof shape, which shall include type, form, and materials;

(5) Materials, texture, and color, which shall include a consideration of material compatibility among various elements of the structure;

(6) Compatibility of design and materials, which shall include the appropriateness of the use of exterior design details;

(7) Landscape design and plantings, which shall include lighting and the use of landscape details to highlight architectural features or screen or soften undesirable views;

(8) Vehicular and pedestrian access, which shall include location, width, and type of surface for all points of ingress and egress;

(9) Signage, which shall include, in addition to the requirements chapter 29, pertaining to signs, the appropriateness of signage to the building in relation location, historical significance of the structure and neighboring structures, traffic visibility; obstruction of views from neighboring property;

(10) Exterior lighting, which shall included location, type, and/or design of lighting and/or lighting fixtures to be used.

(b) The planning and zoning commission may request from the applicant such additional information, sketches, and data as it shall reasonably require. It may call upon experts and specialists for testimony and opinion regarding matters under examination. It may recommend to the applicant changes in the plans it considers desirable and may accept a voluntary amendment to the application to include or reflect such changes. The planning and zoning commission shall keep a record of its proceedings and shall attach to the application copies of information, sketches, and data needed to clearly describe any amendment to the application.

(c) If the conditional use permit is granted by the planning and zoning commission, the applicant shall be required to obtain a building permit and/or a development permit, if required, provided all other requirements for a building permit and/or a development permit are met. The building permit and/or a development proposal as approved shall be valid from one year from the date of approval. The planning and zoning commission may grant an extension of the one-year limitation if sufficient documentation can be provided to warrant such an extension.

(Ord. No. 438, § 66(f), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-897. - Repair or maintenance exception.

This division shall not be construed to prevent any ordinary repair or maintenance of an exterior architectural feature or any ordinary planting or landscaping.

(Ord. No. 438, § 66(g), 11-24-2003; Ord. No. 742, § 2(Exh. A), 9-3-2013)

Sec. 53-898. - Reserved.

Editor's note— Ord. No. 742, § 2(Exh. A), adopted Sept. 3, 2013, repealed § 53-898, which pertained to scheduling and action and derived from Ord. No. 438, § 66(h), adopted Nov. 24, 2003.

Sec. 53-899. - Reserved.

Editor's note— Ord. No. 742, § 2(Exh. A), adopted Sept. 3, 2013, repealed § 53-899, which pertained to I-35 overlay district development standards and derived from Ord. No. 717, § 2(Exh. A), adopted Dec. 18, 2012.

Secs. 53-900—53-929. - Reserved.

ARTICLE IV. - PLAN REQUIREMENTS AND SPECIAL PROVISIONS

DIVISION 1. - GENERALLY

Secs. 53-930—53-946. - Reserved.

DIVISION 2. - CONSTRUCTION PLANS

Sec. 53-947. - Purpose and applicability.

Construction plans provide detailed graphic information and associated text indicating property boundaries, easements, land uses, street access, utilities, drainage, off-street parking, lighting, signage, landscaping, vehicle and pedestrian circulation, open spaces, and general conformance with the master plan and ordinances of the city. Construction plan approval by the city engineer shall be required for any development or improvement of land subject to this chapter, and not otherwise required by chapter 41, subdivision.

(Ord. No. 438, § 60(a), 11-24-2003)

Sec. 53-948. - Format.

Construction plans shall be drawn on 24 inches by 36 inches sheets at a generally accepted engineering scale, and sufficient to thoroughly meet the informational requirements herein.

(Ord. No. 438, § 60(b), 11-24-2003)

Sec. 53-949. - Content.

Construction plans shall include all of the land proposed to be developed or improved, and any off-site improvements required to accommodate the project. Construction plans shall contain, or have attached thereto:

(1) A cover sheet showing the following:

   a. Names, addresses and phone numbers as applicable of the record owner and developer and all authorized agents including the architect, engineer, landscape architect, and surveyor.

   b. The proposed name of the project.

   c. A location map showing the relation of the project to streets and other prominent features in all directions for a radius of at least one mile using a scale of one-inch equals 2,000 feet. The latest edition of the United States Geological Survey 7.5 minute quadrangle map is recommended.

   d. Certification, revision and signature blocks as required by the city.

   e. The total acreage of the property to be developed.

   f. Current zoning district as defined by this chapter.

(2) An existing conditions plan that shows the following:

   a. Boundary of existing zoning districts, if applicable.

   b. The existing property lines, including bearings and distances, of the land being developed or improved. Property lines shall be drawn sufficiently wide to provide easy identification.

c. The location of existing structures and improvements, if applicable.

d. The accurate location, caliper and critical root zone of significant trees eight-inch caliper and larger, in relation to the property boundary and, if applicable, within the limits of the proposed off-site improvements.

e. Centerline of watercourses, creeks, existing drainage structures and other pertinent data shall be shown.

f. Lines delineating the regulatory 100-year floodplain, if applicable.

g. Topographic data indicating one foot contour intervals. The contoured area shall extend outward from the property boundary for a distance equal to 25 percent of the distance across the tract, but not fewer than 50 feet or more than 200 feet.

h. The locations, sizes and descriptions of all existing utilities, including but not limited to sewer lines, lift stations, sewer and storm sewer manholes, water lines, water storage tanks, and wells within the property, and/or adjacent thereto. Existing overhead and underground electric utilities shall also be shown.

i. The location, dimensions, names and descriptions of all existing or recorded streets, alleys, reservations, railroads, easements, building setbacks or other public rights-of-way within the property, intersecting or contiguous with its boundaries or forming such boundaries, as determined from existing deed and plat records. The existing right-of-way width of any boundary street to the property shall also be shown.

j. Location of city limit lines and/or outer border of the city's extraterritorial jurisdiction, as depicted on the city's most recent base map, if either traverses or is contiguous to the property boundary.

(3) An erosion and sedimentation control plan that shows the following:

a. Proposed fill or other structure elevating techniques, levees, channel modifications and detention facilities.

b. Existing and proposed topographic conditions with vertical intervals not greater than one foot referenced to a United States Geological Survey or coastal and geodetic survey benchmark or monument.

c. The location, size, and character of all temporary and permanent erosion and sediment controls with specifications detailing all on-site erosion control measures which will be established and maintained during all periods of development and construction.

d. Contractor staging areas, vehicle access areas, temporary and permanent spoils storage areas.

e. A plan for restoration and for the mitigation of erosion in all areas disturbed during construction.

(4) A site plan that shows all visible improvements to the land, including the following:

a. The location, dimensions, square footage, height, and intended use of existing and proposed buildings on the site.

b. Location, number and dimensions of existing and proposed parking spaces, distinguishing between standard, handicap and van handicap spaces, and calculation of applicable minimum requirements in accordance with this chapter.

c. The location, type and dimensions of proposed driveways, signs and traffic control devices.

d. Compliance with the city's transportation policies provided in chapter 41, subdivisions.

(5) A grading and drainage plan that shows the following:

a. A drainage area map delineating areas to be served by proposed drainage improvements.

b. Detailed design of all drainage facilities, including typical channel or paving section, storm sewers, detention ponds and other stormwater control facilities.

c. Accurate cross sections, plan and profiles of every drainage improvement proposed in a public utility easement and/or public right-of-way.

d. Existing and proposed topographic conditions with vertical intervals not greater than one foot referenced to a United States Geological Survey or coastal and geodetic survey benchmark or monument.

e. Attendant documents containing design computations and any additional information required to evaluate the proposed drainage improvements.

f. Compliance with the city's drainage policies provided in chapter 41, subdivisions.

(6) A utility plan that shows the following:

a. The layout, size and specific location of proposed water mains and other related structures and in accordance with all current city standards, specifications, and criteria for construction of water mains.

b. The location of proposed fire hydrants, valves, meters and other pipe fittings.

c. Design details showing the connection with the existing city water system.

d. The layout, size and specific location of the proposed wastewater lines, lift stations, and other related structures, and in accordance with all current city standards, specifications, and criteria for construction of wastewater systems.

e. Plan and profile drawings for each line in public right-of-way or public utility easements, showing existing ground level elevation at centerline of pipe, pipe size and flow line elevation at all bends, drops, turns, station numbers at 50-foot intervals.

f. Detailed design for lift stations, special wastewater appurtenances, if applicable.

g. Utility demand data, and other attendant documents, to evaluate the adequacy of proposed utility improvements, and the demand on existing city utilities.

h. Compliance with the city's utility policies provided in chapter 41, subdivisions.

(7) A building plan, including floor, building, foundation, and roof plans, and elevations.

(8) A landscape plan that shows the following:

a. Dimensions, types of materials, size and spacing of proposed vegetative materials, planting details and irrigation appurtenances in relation to proposed structures or other significant improvements.

b. The following maintenance note: The developer and subsequent owners of the landscaped property, or the manager or agent of the owner, shall be responsible for the maintenance of all landscape areas. Said areas shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free of refuse and debris. All planted areas shall be provided with a readily available water supply and watered as necessary to ensure continuous healthy growth and development. Maintenance shall include the replacement of all dead plant material if that material was used to meet the requirements of chapter 41, subdivisions.

c. Compliance with the city's landscaping and screening requirements of this chapter. See article V of this chapter.

(9) Construction details that show (when applicable) the following:

a. Structural retaining walls and/or detention outlet structures.

b. Storm sewer manhole and covers, typical channel sections, inlets, safety end treatments and headwalls.

c. Wastewater manholes and covers, cleanouts, grease traps, pipe bedding and backfill.

d. Water valves, water meters, fire hydrants, thrust blocks, backflow prevention and concrete encasement.

e. Driveways, curb and gutter, sidewalks, curb ramps, pavement sections and pavement repair.

f. Silt fence, rock berms, stabilized construction entrance, inlet protection.

g. Traffic controls when working in public right-of-way.

h. Applicable city standard details and specifications.

(Ord. No. 438, § 60(c), 11-24-2003)

Sec. 53-950. - Procedure.

Construction plans for the development or improvement of land in the city limits, not otherwise governed by chapter 41, subdivisions, shall be submitted to the city for approval prior to the issuance of a building permit as follows:

(1) Two complete sets of construction plans shall be submitted to city staff for review by the city engineer at any time prior to the issuance of a building permit, along with the following:

a. Completed application forms and the payment of all applicable fees.

b. A letter requesting any variances from the provisions of this chapter.

c. Any attendant documents needed to supplement the information provided on the construction plans.

(2) City staff shall review all construction plan submittals for completeness at the time of application. If, in the judgment of city staff, the construction plan submittal substantially fails to meet the minimal informational requirements as outlined above, it will not be accepted for review.

(3) The city engineer shall review the construction plans to ensure compliance with this chapter, and other applicable city ordinances, codes, standards and specifications, and good engineering practices.

(4) Construction plans may be rejected at any time subsequent to submittal and prior to final approval for failure to meet the minimum information requirements of this chapter.

(Ord. No. 438, § 60(d), 11-24-2003)

Sec. 53-951. - Approval.

Within 30 days of the date on which all required information has been accepted for review, the city engineer shall either approve or disapprove the construction plans. If the construction plans are disapproved, the city engineer shall notify the applicant, in writing, of disapproval and indicate the requirements for bringing the construction plans into compliance. If construction plans are approved, then the city engineer shall sign the cover sheet of the construction plans, returning one signed copy to the applicant and retaining the other signed copy for city records.

(1) Specific approvals required from other agencies shall be obtained by the owner.

(2) All improvements shown in the approved construction plans shall be constructed pursuant to and in compliance with the approved plans, except as otherwise specifically approved.

(3) It shall be the right of the applicant seeking construction plan approval, to appeal a decision of the city engineer to the planning and zoning commission and have a final decision rendered by the planning and zoning commission.

(Ord. No. 438, § 60(e), 11-24-2003)

Sec. 53-952. - Revision.

Where necessary, due to unforeseen circumstances, for corrections to be made to construction plans for which approval has already been obtained, the city engineer shall have the authority to approve such corrections when, in his opinion, such changes are warranted and also in conformance with city requirements. Approval of such changes agreed to between the developer and city engineer shall be noted by initialing and dating by both parties on the two original signed copies of the construction plans.

(Ord. No. 438, § 60(f), 11-24-2003)

Sec. 53-953. - Responsibility.

Notwithstanding the approval of any construction plans the city engineer or the planning and zoning commission:

(1) The developer and the engineer that prepares and submits such plans and specifications shall be and remain responsible for the adequacy of the design of all such improvements; and

(1) Nothing in this chapter shall be deemed or construed to relieve or waive the responsibility of the developer and his engineer for or with respect to any design, plans and specifications submitted.

(Ord. No. 438, § 60(g), 11-24-2003)

Sec. 53-954. - Expiration.

Unless a longer time shall be specifically established as a condition of approval, construction plan approval shall expire no earlier than September 1, 2010, and no earlier than two years for an individual construction plan and no earlier than five years for a project following the date on which such approval became effective, unless prior to the expiration, a building permit is issued and construction is commenced and diligently pursued toward completion.

(Ord. No. 438, § 60(h), 11-24-2003; Ord. No. 823, § 5, 10-21-2014)

Sec. 53-955. - Extension.

Construction plan approval may be extended if the developer submits a written request for extension and continuance of the plan as approved by the city prior to expiration. Approval of any such extension request shall be automatic one time only for a period of 12 months.

(Ord. No. 438, § 60(i), 11-24-2003)

Secs. 53-956—53-983. - Reserved.

ARTICLE V. - LANDSCAPING AND SCREENING REQUIREMENTS

Sec. 53-984. - Purpose.

The purpose of this article is, in conjunction with the other requirements of this chapter, to promote and support the orderly, safe, attractive and healthful development of land located within the community, and to promote the general welfare of the community by preserving and enhancing ecological, environmental and aesthetic qualities, through established requirements for the installation and maintenance of landscaping elements and other means of site improvements in developed properties. The following are additional factors considered in establishing the requirements of this article:

(1) Paved surfaces, automobiles, buildings and other improvements produce increases in air temperatures, a problem especially noticeable in this southern region, whereas plants have the opposite effect through transpiration and the creation of shade. Likewise, impervious surfaces created by development generate greater water runoff causing problems from contamination, erosion and flooding. Preserving and improving the natural environment and maintaining a working ecological balance are of increasing concern. The fact that the use of landscape elements can contribute to the processes of air purification, oxygen regeneration, water absorption, water purification, and noise, glare and heat abatement as well as the preservation of the community's aesthetic qualities indicates that the use of landscape elements is of benefit to the health, welfare and general well-being of the community and, therefore, it is proper that the use of such elements be required.

(2) The city experiences frequent droughts and periodic shortages of adequate water supply; therefore, it is the purpose of this article to require the use of drought resistant vegetation that does not consume large quantities of water. (See section 53-1231, grow green plant guide for native and adapted landscape plants.)

(Ord. No. 438, § 61(a), 11-24-2003)

Sec. 53-985. - Installation and plan.

All landscape materials shall be installed according to American Association of Nurserymen (AAN) standards. An approved landscape plan shall be required for all new development in any zoning district, except for the A, UE, R-1-1, R-1-2 and R-1-A districts.

(Ord. No. 438, § 61(b), 11-24-2003)

Sec. 53-986. - Maintenance.

(a) The owner of the landscaped property shall be responsible for the maintenance of all landscape areas. Said areas shall be maintained so as to present a healthy, neat and orderly appearance at all times and shall be kept free of refuse and debris. All planted areas shall be provided with a readily available water supply and watered as necessary to ensure continuous healthy growth and development. Maintenance shall include the replacement of all dead plant material if that material was used to meet the requirements of this article.

(b) All property within the city limits will adhere to city drought management program when watering.

(Ord. No. 438, § 61(c), 11-24-2003)

Sec. 53-987. - Planting criteria.

(a) *Trees.* Trees shall be a minimum of four inches in caliper measured three feet above finished grade immediately after planting. A list of recommended landscape trees may be obtained from the city. If the developer chooses to substitute trees not included on the recommended list, those trees shall have an average mature crown greater than 15 feet in diameter to meet the requirements of this article. Trees having an average mature crown less than 15 feet in diameter may be substituted by grouping trees so as to create at maturity the equivalent of a 15-foot diameter crown if the drip line area is

maintained. A minimum area three feet in radius is required around the trunks of all existing and proposed trees.

(b) *Shrubs and ground cover.* Shrubs, vines and ground cover planted pursuant to this section shall be good, healthy nursery stock. Shrubs must be, at a minimum, a one gallon container size and be drought resistant species. This applies to all zoning classifications.

(c) *Lawn grass.* In order to limit the volume of water required for the turf, it is required that grass areas be planted with drought resistant species normally grown as permanent lawns, such as Bermuda, Zoysia, Buffalo or other similar drought resistant grasses. Grass areas may be sodded, plugged, sprigged or seeded except that solid sod shall be used in areas subject to erosion. This applies to all zoning classifications.

(1) Other low water requirement turf products will be considered and may be approved by a designated city official or body on a case-by-case basis.

(2) These requirements for specific types of turf are adopted to establish conservation practices under the drought management plan of the city.

(3) The requirements set forth in this subsection shall not prohibit the installation or planting of any turf not described in this section (nonconforming turf) if at least 50 percent of the nonimpervious cover area of the lot or parcel was planted with a nonconforming turf prior to the effective date of the ordinance from which this chapter is derived and the same nonconforming turf is being installed or planted.

(d) *Synthetic plants.* Synthetic or artificial lawns or plants shall not be used in lieu of plant requirements in this section.

(e) *Architectural planters.* The use of architectural planters may be permitted in fulfillment of landscape requirements.

(f) *Other.* Any approved decorative aggregate or pervious brick pavers shall qualify for landscaping credit if contained in planting areas, but no credit shall be given for concrete or other impervious surfaces.

(Ord. No. 438, § 61(d), 11-24-2003)

Sec. 53-988. - Landscaping requirements.

A minimum percentage of the total lot area shall be devoted to landscape development in accordance with the following schedule:

Zoning and/or Proposed Land Use	Percentage
R-1-T, R-1-C, R-3-1, R-3-2, R-3-3, CBD-1	20
R-1-1, R-1-2, R-1-A, R-2, M-1, M-2, M-3	Note 1
CBD-2, RS, E, TU (SIC code 48811900 only)	15
W, CM	15
PUD	Note 2

Agricultural	None
Private and public park/public area	20

Note 1—Minimum landscape requirements for each lot on which a single-family, duplex, triplex or fourplex dwelling, or a manufactured home, is constructed or installed after the date of the ordinance from which this chapter is derived shall be a minimum of two four-inch trees, six two-gallon shrubs and lawn grass from the front property line to the front two corners of the structure all plants shall be of native and adapted species and drought resistant. Residential structures on reverse frontage lots shall also be required to screen the rear of the structure from the abutting highway, access road, or other public rights-of-way.

Note 2—Landscaping requirements will apply to planned unit developments in the same manner as the requirements listed in note 1, to be determined by the zoning classification assigned to the planned unit development.

(Ord. No. 438, § 61(e), 11-24-2003)

Sec. 53-989. - Exceptions.

Exceptions to these provisions may be granted by the planning and zoning commission and/or council to require a lesser amount of landscaping if the aesthetic, buffering and environmental intent of this chapter is met, and the reduction of the landscape area results in the preservation of natural features having comparable value to the reduced landscape requirements.

(Ord. No. 438, § 61(f), 11-24-2003)

Sec. 53-990. - Placement.

Landscaping shall be placed upon that portion of a tract or lot that is being developed. Fifty percent of the required landscaped area and required plantings shall be installed between the front property lines and the building being constructed. Undeveloped portions of a tract or lot shall not be considered landscaped, except as specifically approved by the planning and zoning commission. Landscaping placed within public rights-of-way shall not be credited to the minimum landscape requirements by this article.

(Ord. No. 438, § 61(g), 11-24-2003)

Sec. 53-991. - Credit.

The building official and/or city engineer shall, with respect to the issuance of a building permit or approval of a construction or site development plan, give a credit against the requirements of this article for trees preserved on the site; provided that, in order to reward the preservation of significant tees, a credit may be given for such preservation only if no more than 50 percent of the critical root zone is disturbed or distressed with impervious cover; and provided further that the remaining critical root zone must consist of at least 100 square feet.

(Ord. No. 438, § 61(h), 11-24-2003)

Sec. 53-992. - Additional required plantings.

For every 600 square feet of landscape area required by this article, two trees and four shrubs shall be planted. To reduce the thermal impact of unshaded parking lots, additional trees shall be planted, if necessary, so that no parking space is more than 50 feet away from the trunk of a tree, unless otherwise approved by the planning and zoning commission. This section shall not apply to any property included in any of the following zoning categories: A, UE, R-1-1, R-1-2, or R-1-A.

(Ord. No. 438, § 61(i), 11-24-2003)

Sec. 53-993. - Replacement of required trees.

Upon the death or removal of a tree planted pursuant to the terms of this article, a replacement tree of equal size and type shall be required to be planted. A smaller tree that will have a mature crown similar to the tree removed may be substituted if the planting area or pervious cover provided for the larger tree in this article is retained.

(Ord. No. 438, § 61(j), 11-24-2003)

Sec. 53-994. - Screening.

The following requirements shall be in addition to the landscaping and planting requirements in this article:

(1) *Required to be screened.* All off-street parking, loading spaces and docks, outside storage areas, satellite dishes larger than 18 inches in diameter, antennas, mechanical equipment, and the rear of structures on reverse frontage lots, must be screened from view from the street or public rights-of-way.

(2) *Approved techniques.* Approved screening techniques include privacy fences, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof.

(3) *Privacy fences.*

a. All fences required by this subsection and along a common property boundary shall be six feet in height.

b. Fences up to eight feet in height, but not less than six feet, shall be allowed for impeding access to hazardous facilities including, but not limited to, electrical substations, swimming pools and chemical or equipment storage yards, where the slope of a line drawn perpendicular to the fence line averages 20 percent or more on either side of the fence over a distance no less than 15 feet, or where the fence forms a continuous perimeter around a subdivision and the design of said perimeter fence is approved by the planning and zoning commission.

c. Fences less than or equal to three feet in height shall be allowed in front yards.

d. No fence or other structure more than 30 percent solid or more than three feet high shall be located within 25 feet of the intersection of any rights-of-way.

e. All fences shall be constructed to maintain structural integrity against natural forces such as wind, rain and temperature variations.

f. The finished side of all fences built to comply with these regulations shall face away from the screened object.

(4) *Evergreen vegetative screens.* Evergreen plant materials shall be shrubs, at least 30 inches in height and at a minimum spacing of 48 inches at the time of installation. Shrubs may be used in combination with landscape trees to fulfill the requirements of this article.

(5) *Landscape berms.* Landscape berms may be used in combination with shrubs and trees to fulfill the screening requirements of this article if the berm is at least three feet in height and has a maximum side slope of four feet of horizontal run for every one foot in vertical rise.

(6) *Native vegetation.* Existing vegetation, demonstrating significant visual screening capabilities and as approved by the planning and zoning commission may fulfill the requirements of this article.

(Ord. No. 438, § 61(k), 11-24-2003)

Sec. 53-995. - Trees.

(a) *Purpose.* The purpose of this section is to conserve, protect and enhance existing trees and natural landscape that are healthy and contribute to a safe and livable community. It is recognized that the preservation of existing trees contributes to the overall quality of life and environment of the city. Trees play a vital role in water and air quality. They protect the health of aquifers and creek watersheds, function in storm water management as well as erosion and dust control, abatement of noise, provision of wildlife habitat and enhancement of property values. This section establishes requirements for the following:

- Clearing of natural vegetation;
- Removal/mitigation of trees;
- Exception to mitigation/permits;
- Tree protection standards on construction sites;
- Incentives for retaining trees;
- Penalties.

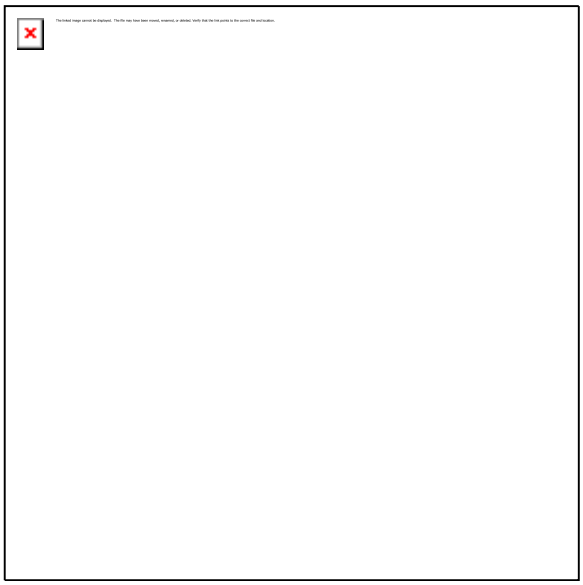
(b) *Applicability.* The provisions of this section are applicable to the following:

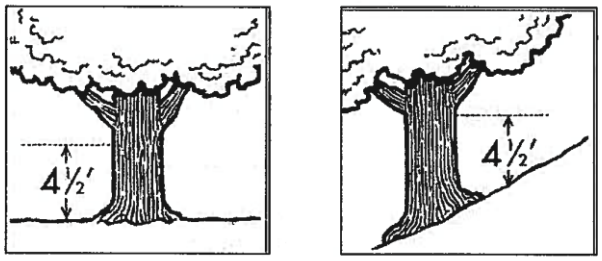
- All new residential and nonresidential development within the city.
- Redevelopment of any residential or nonresidential property within the city limits that results in an increase in building footprint or total destruction and reconstruction (not applicable to existing development wanting to remove a tree).

(c) *Definitions.* For the purposes of this Code, the following definitions will be used:

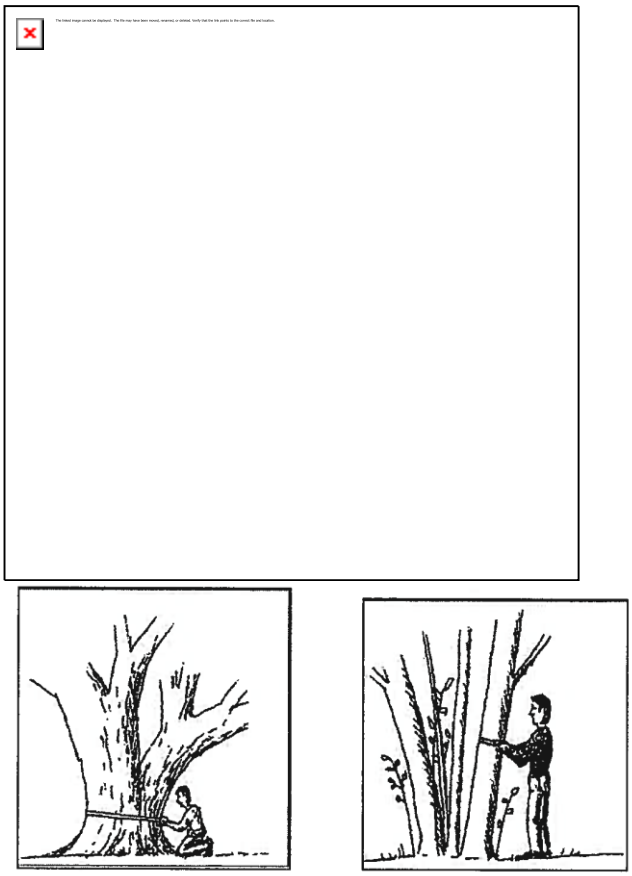
(1) *Caliper.* The American Association of Nurserymen standard for trunk measurement (diameter) for nursery stock. Caliper of the trunk shall be measured six inches above the root ball for four-inch caliper size and smaller, and 12 inches above the root ball for larger sizes.

(2) *Circumference.* Circumference is measured four and one-half feet from the ground's level surface or directly below the first branches, whichever is lower.





** If the tree is on a slope, measure from the high side of the slope*

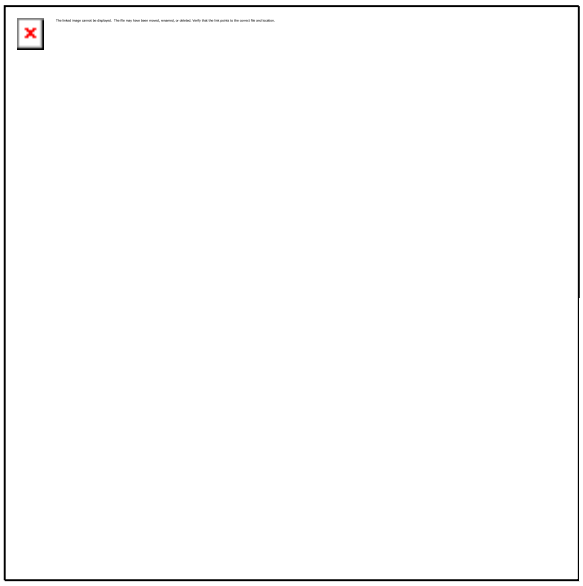


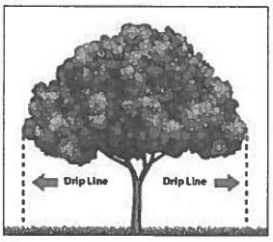
For multiple trunk trees, the circumference is deemed to equal the circumference of the largest trunk plus half the circumference of each additional trunk. For example, a tree that has three trunks with circumferences of 22", 18", and 12" you would have a circumference of 37" (22" + (½ × 18") + (½ × 12")).

(3) *Clearing.* The act of cutting down, removing all or a substantial part of, or damaging a tree or other vegetation that will cause the tree to decline and/or die (which includes but is not limited to chemical, physical, compaction or grading damage).

(4) *Critical root zone.* The root protection zone is an area with a radius of one-half foot for each inch of trunk measured four and one-half feet above the ground, or if branching occurs at four and one-half feet, the diameter is measured at the point where the smallest diameter closest to the branching occurs. The zone need not be exactly centered around the tree or circular in shape, but it should be positioned so that no disturbance occurs closer to the tree than one-half of the radius of the zone or within five feet of the tree, whichever is more.

(5) *Drip line.* A vertical line extending from the outermost portion of the tree canopy to the ground.





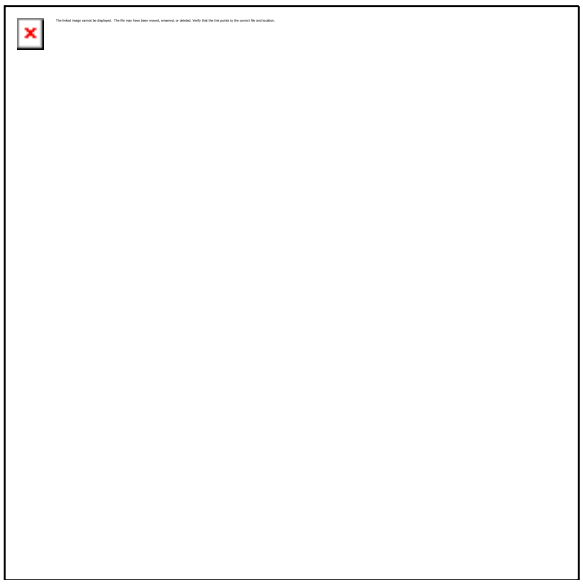
(6) *Protected tree.* Trees with a circumference of 28 inches or greater.

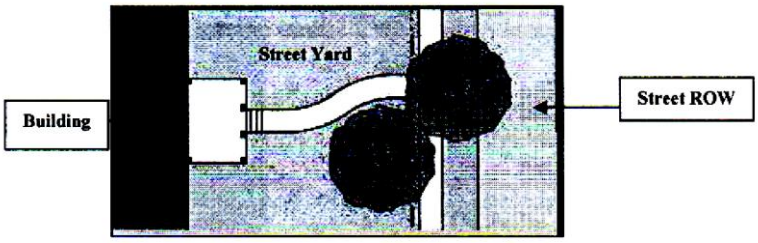
(7) *Public tree.* All trees partially or completely resting on public property.

(8) *Removal of tree.* An act that causes or may be reasonably expected to cause a tree to die, including, but not limited to: uprooting, severing the main trunk, damaging the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade above the root system or around the trunk; paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree.

(9) *Specimen tree.* Trees with a circumference of 75 inches or greater.

(10) *Street yard.* The area behind the street right-of-way (ROW), and in front of any building on private property is known as the street yard.





(d) *Requirements.*

(1) Clearing or stripping of natural vegetation on a lot is expressly prohibited. Any part of a site not used for buildings, parking, driveways, walkways, utilities, on-site septic facilities (OSSF) and approved storage areas shall be retained in a natural state, or reclaimed to its natural state.

(2) The following trees are exempt from mitigation requirements of this section:

- Celtis Occidentalis (hackberry);
- Juniperus Virginiana, Juniperis Ashei (common cedar);
- Chinaberry;
- Mesquite;
- Ligustrum.

(3) The removal of any tree with a circumference of 28 inches or larger must be specifically requested by the applicant and approved in writing by the director of planning prior to any action being taken to remove the tree or to damage or disturb the tree in any way. The location of all trees over 28 inches in circumference to be preserved or removed within the area proposed for development shall be designated at one of the following steps in the development process:

- On an application for a site plan for non-residential and multi-family developments;
- On a tree survey at the time of platting for development seeking to install infrastructure; or

• At the time of building permit for residential lots already platted and seeking to develop or redevelop.

Removal of any such trees without city approval is expressly prohibited. Such trees shall be tagged and numbered, and numbers shall be graphically depicted on the applicable plan submitted. The tags and related numbers shall remain on the trees until the certificate of occupancy is issued.

(4) Trees over 28 inches in circumference but less than 75 inches in circumference that are not located in one of the following areas shall be replaced on-site at a ratio of two and one-half trees per tree removed and shall be credited toward the number of trees required for site development:

- Within a building footprint.
- Within ten feet of a building footprint.
- Within the area over the septic system.
- Within areas necessary for reasonable site access.
- Within areas designated for the construction or installation of public facilities such as streets or utilities, that the property owner requests and receives approval to remove may be removed.

Replacement trees shall have a minimum circumference of 12 inches (four-inch caliper tree). If two-inch caliper trees are utilized for mitigation then trees must be replaced at a ratio of five trees per tree removed.

(5) The removal of specimen trees, which for the purposes of these requirements are trees with 75-inch circumference or greater, must be specifically approved by the planning and zoning commission prior to any action being taken to remove the tree or to damage or disturb the tree in any way. Any specimen tree that is removed shall be replaced circumference-for-circumference (a ratio of one-to-one) regardless of the location of the specimen tree (even if the tree is within the building footprint).

(6) Trees must be planted prior to the issuance of a certificate of occupancy unless a bond for the cost of the trees is posted with the city. If a bond is posted the property owner shall have up to 12 months to plant the required trees. Trees may be donated or a fee-in-lieu of planting the required trees may be paid to the City of Kyle if the following conditions exist:

a. There is not adequate space on the site for all of the required trees to be planted on the site in which the tree(s) were removed.

b. Weather conditions are such that do not make it favorable for the required planted trees to survive and thrive.

Species, size, quantity, and delivery date of trees shall be approved by the director of parks and recreation.

(e) *Exemptions to mitigation.*

(1) Trees over 28 inches in circumference but less than 75 inches in circumference that are located within a building footprint or within ten feet of a building footprint, within the area over the septic system, or within areas necessary for reasonable site access (but not including parking areas), such as a driveway, shall not be required to be replaced.

(2) Trees over 28 inches in circumference but less than 75 inches in circumference that are located within areas designated for the construction or installation of public facilities such as streets or utilities, shall not be required to be replaced, but must still submit a formal request for removal with the submittal of public improvement construction plans.

(f) *Tree removal permit.*

(1) The removal of an existing tree(s) from a development site must be in accordance with this and all other applicable ordinances of the city. Prior to the removal of any protected or specimen tree, as defined within this section, the property owner must first submit a letter detailing the following:

- Which tree(s) will be removed (as shown on a site plan).
- How the removal will be performed (and machinery and equipment needed), and the date and time when the anticipated removal will occur.
- If a specimen or protected tree proposed for removal is within or not within the following:
  - A building footprint or within ten feet of a building footprint.
  - Within the area over the septic system.
  - Within an area necessary for reasonable site access.
  - Within an area designated for the construction or installation of public facilities such as streets or utilities.

(g) *On-site tree protection requirements.*

(1) All protected trees within or next to an excavation site or construction site for any building, structure, or street work, shall be guarded with a good substantial protective fence, frame, or box not less than four feet high and surrounding the drip line of the tree. In addition, three inches of mulch or compost shall be spread beneath the drip line of the tree when the drip line is completely fenced off and eight to 12 inches of mulch if there will be any encroachment within the area under the drip line of the tree.

(2) The barriers other than what is required per this section shall be approved by the building official and shall be in place before any site clearance or other site-disturbing act commences.

(3) All building material, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, and other materials shall be kept outside the barrier.

(4) Barriers shall remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the certificate of occupancy.

(5) Activities hazardous to the health of any protected tree being preserved are prohibited, including but not limited to the following:

- Physical damage.
- Equipment cleaning and liquid disposal. Cleaning equipment, depositing or allowing harmful liquids to flow overland within the limits of the critical root zone. This includes paint, oil, solvents, asphalt, concrete, mortar, tar or similar materials.
- Grade changes. Grade changes (cut or fill) within the limits of the critical root zone.
- Material storage. Storing materials intended for use in construction or allowing waste materials due to excavation or demolition to accumulate within the limits of the drip line.
- Tree attachments. Attaching to a tree any signs, wires, or other items, other than those of a protective nature.
- Vehicular traffic. Vehicular and/or construction equipment traffic, parking, or storage within the limits of the drip line, other than on pre-existing or approved pavement. This restriction does not apply to single incident access within the drip line for purposes of clearing underbrush, vehicular access necessary for emergency services, routine utility maintenance, emergency restoration of utility service, or routine mowing operations.

- Utility encroachment. Installation of utilities and appurtenances within the drip line.
- Excavation and trenching. Excavation and trenching within the limits of the drip line.

(h) *Incentives for retaining trees.*

(1) *Application.* The provisions of this section apply to all new nonresidential and multi-family development within the City of Kyle limits.

(2) *Incentives to retain existing trees.* As an incentive to retain existing trees in the street yard, existing trees shall receive credit against the landscaping requirements according to the following schedule:

a. Greater than 28-inch circumference: credit for two required trees.

b. Greater than 12-inch but less than 28-inch circumference: credit for one and one-half trees.

c. Any existing tree in the street yard which is at least 18 inches in circumference and at least 15 feet tall shall be considered as two and one-half trees for the purposes of satisfying the requirements of landscaping code.

d. Any existing specimen tree (75-inch circumference or greater) shall be considered as a circumference-for-circumference match for the purposes of satisfying the requirements of the landscaping ordinance. For example, a 75-inch circumference tree can be counted for up to 12 trees each that have a six-inch circumference.

(i) *Penalty.* Any person who shall violate any provision of this section or technical codes adopted herein, or shall fail to comply therewith, or with any of the requirements thereof shall be liable for a fine not to exceed the sum of $2,000.00. Each tree removed and each day the violation exists shall constitute a separate offense.

(Ord. No. 725, § 2(Exh. A), 5-8-2013)

Secs. 53-996—53-1016. - Reserved.

ARTICLE VI. - CONDITIONAL USES

DIVISION 1. - GENERALLY

Secs. 53-1017—53-1045. - Reserved.

DIVISION 2. - PERMITS

Sec. 53-1046. - Purpose.

The city council may by ordinance, adopted by four affirmative votes after receiving the recommendation of the commission, grant a conditional use permit in compliance with this division for the conditional uses as listed in section 53-1047. The city council may impose appropriate conditions and safeguards, including a specified period of time for the permit, to protect the comprehensive plan and to conserve and protect property and property values in the neighborhood.

(Ord. No. 438, § 63(a), 11-24-2003; Ord. No. 526, § 8, 1-8-2008)

Sec. 53-1047. - Authorized conditional uses.

The following listed conditional uses, and none other, may be authorized subject to the terms of this section and compliance with all conditional terms, regulations and requirements established by the city council:

(1) Heliport in CM, W and PUD districts only;

(2) Municipal service facilities and buildings in all districts;

(3) Circus or carnival, but not within 300 feet of any residential district;

(4) Privately operated community building or recreation field in all districts;

(5) Telephone, radio or television broadcasting tower or station in T, CM, W and PUD districts only;

(6) Churches in all districts where not otherwise specifically permitted;

(7) Cemeteries in A, TU, E, CBD-2, RS, W, CM, or PUD districts;

(8) Schools, public and denominational, but not day care in all districts where not otherwise specifically permitted;

(9) Manufactured homes in the limited areas as specifically authorized by this chapter;

(10) Quarry operations are permitted in the CM district as conditional uses, subject to the requirements in division 2 of this article;

(11) The specific manufacturing and warehouse uses set forth in the table in section 53-1106 may be permitted as provided in division 3 in this article;

(12) RV sales in the RS district within the I-35 overlay district only; and

(13) Buildings with a height of up to 150 feet in the RS district.

(Ord. No. 438, § 63(b), 11-24-2003; Ord. No. 438-11, § 3, 7-6-2004; Ord. No. 438-50, § 3, 9-19-2006; Ord. No. 526, § 8, 1-8-2008; Ord. No. 643, § 5, 2-1-2011; Ord. No. 841, § 2, 3-17-2015)

Sec. 53-1048. - Procedure.

Before authorization of any of the conditional uses authorized in section 53-1047, public notice shall be given and public hearings shall be held as provided in V.T.C.A., Local Government Code ch. 211; provided that a conditional use permit for a period not to exceed seven calendar days may be given for a use set forth in section 53-1047(3) after a public hearing is held by the city council after having received a report and recommendation from the planning and zoning commission concerning the effect of the proposed use on the adjacent and neighboring properties and neighborhoods.

(Ord. No. 438, § 63(c), 11-24-2003)

Secs. 53-1049—53-1080. - Reserved.

DIVISION 3. - QUARRY OPERATIONS

Sec. 53-1081. - Conditional uses.

Quarry operations are permitted in the CM district as conditional uses subject to the requirements in this division; provided that the property, at the time the city annexed the property into the city limits, was

actively pursuing a state or local permit associated with quarry operations or conducting quarry operations under an existing state or local permit on the property.

(Ord. No. 438-42, § 5(63(b)(xii)), ((b)(xii)(A)), 2-7-2005)

Sec. 53-1082. - Permitted uses.

The following uses related to the quarry and utilized for quarry operations, in addition to the underlying zoning uses, are permitted:

(1) *Testing and extraction.* Testing for, including but not limited to, geologic investigation, or extraction of raw materials such as of soil, sand, shale, gravel, limestone, or other similar rock materials that are mined or removed with or without the use of blasting or explosives.

(2) *Processing and handling.* The processing and handling of extracted or recycled materials including, but not limited to, loading, crushing, screening, washing, sorting, stockpiling, and distribution by rolling equipment or conveyor systems.

(3) *Production and processing.* Production of materials and finished product through processing plants, including, but not limited to cement plants, lime plants, ready-mix concrete plants, concrete batch plants, asphaltic concrete plants, pug mills and production facilities for precast and prestressed concrete, concrete products, packaged cement, packaged concrete, and recycled aggregates.

(4) *Warehousing and distribution.* Warehousing and distribution facilities for finished products and raw materials such as mined aggregate, and raw cement in various stages of production (i.e., cement powder, clinker, gypsum, etc.).

(5) *Testing.* Laboratory, weighing, and testing facilities for conducting tests and chemical analyses of materials.

(6) *Administration.* The administrative activities associated with such uses including, but not limited to, offices and associated uses.

(7) *Outside storage.* Outside storage of materials, equipment, spare parts and supplies.

(8) *Transportation related uses.* Transportation related uses including but not limited to the use of equipment and trucking and railroad vehicles for transporting quarry materials and product to and from the particular site, the maintenance, repair, and storage of the equipment, and trucking and/or railroad vehicles utilized by the operator of the quarry.

(9) *Fuel storage.* Aboveground fuel storage that meets all applicable government regulations.

(10) *Maintenance facilities.* Rail, vehicle and equipment maintenance facilities.

(11) *Other.* Hot mix and ready mix plants operated in association with quarry operations.

(Ord. No. 438-42, § 5(63(b)(xii)(B)), 2-7-2005)

Sec. 53-1083. - Development standards.

The development standards shall be the same as those for the CM district except as specifically modified in this section. The following development and use standards for quarry operations as specifically detailed shall be adhered to:

(1) *Site plan and building codes.* Permanent buildings constructed or enlarged after the effective date of the ordinance from which this division is derived shall comply with the applicable site plan requirements of the city and with applicable building codes and regulations established for the CM district. New driveways for access to public roads (unless exempt herein), shall be subject to site plan review and all applicable ordinances. Internal roads and parking areas utilized for quarry

operations shall not be subject to site plan review or building regulations. Quarry equipment shall be subject to compliance with appropriate mechanical codes establishing safety standards for use and operation of such equipment.

(2) *Quarry tract setbacks.* Except as provided in subsection (a)(3) of this section, the following setbacks shall apply for quarry operations (the quarry tract setback):

a. There shall be a setback of 200 feet from the quarry pit to any property boundary abutting a public street, or 100 feet from the quarry pit to any property boundary abutting a public street if a berm, landscaping, or other screen is installed within the quarry tract setback in compliance with applicable regulations; and

b. There shall be a setback of 50 feet from the quarry pit to any property boundary that does not abut a public street. The quarry tract setback does not apply to the removal of soil or overburden.

(3) *Accessory uses.* Weigh stations, offices/administrative offices, shop buildings, similar accessory facilities and quarry operations other than excavation or blasting may be placed within the quarry tract setback established in subsection (a)(2) of this section. In addition, driveways, roads, parking areas, signs, and landscaping may be placed within the setbacks in compliance with applicable regulations.

(4) *Height limitations above surrounding ground level.* Height limitations are as follows:

a. Crushers shall not exceed a height of 75 feet.

b. Conveyor belts and stackers shall not exceed a height of 100 feet.

c. Weigh stations and other similar facilities shall not exceed a height of 50 feet.

d. Towers and stacks shall not exceed a height of 300 feet.

e. Plants, silos, and other similar structures shall not exceed a height of 200 feet.

(5) *Extraction activities and blasting.* Extraction activities and blasting shall be conducted according to this subsection. All blasts shall comply with the more restrictive of the following standards or other applicable state or federal regulations:

a. *General requirements.* Blasting shall occur only during daylight hours and not more than three blasts shall occur in any day. A blast containing multiple charges set in sequence to explode within a few minutes of the first charge shall be considered a single blast.

b. *Noise/airblast limits.* For the purpose of this division, the air overpressure and related noise generated by the use of explosives in excavation activities shall be measured by the airblast created thereby. An airblast shall not exceed the maximum limits listed in the table in this subsection at the location of any dwelling, public building, school, church, or community or institutional building outside the property, except as provided in subsection (a)(5)f. of this section.

Lower frequency limit measuring in Hz	Maximum level, in dB (plus-minus 3 dB)
1 Hz or lower, flat response	134 peak
2 Hz or lower, flat response	133 peak
6 Hz or lower, flat response	129 peak
C-weighted, slow response	105 peak dBC

c. *Monitoring requirement.*

1. The operator shall conduct monitoring to ensure compliance with the airblast standards.

2. The measuring systems shall have an upper-end flat-frequency response of at least 200 hertz.

d. *Flyrock.* Flyrock traveling in the air or along the ground shall not be cast from the blasting site beyond the property boundary.

e. *Ground vibration.*

1. *General.* The maximum ground vibration shall not exceed the values illustrated in the table in subsection (a)(5)e.2(i) of this section. The maximum ground vibration for protected structures listed in subsection (a)(5)e.2(i) of this section shall be established in accordance with the maximum peak-particle-velocity limits as shown in the table.

2. *Maximum peak particle velocity.*

(i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the property:

Maximum allowable peak particle velocity for ground vibration	
	(in/sec)*
1 to 300	1.25
301 to 5,000	1.00
5,001 and beyond	0.75

*Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

(ii) A seismographic record shall be maintained for each blast.

f. *Exceptions.* The maximum noise/airblast and ground vibration standards of this section shall not apply at the following locations:

1. At structures owned by the permittee and not leased to another person;

2. At structures owned by the permittee and leased to another person, if a written waiver by the lessee has been obtained.

(6) *Blasting records.* Quarry operators or their designated blasting contractor shall keep records of each blast including recording seismographic information of all blasts. Further, quarry operators shall permit the city to inspect at operator's offices blast records, for the preceding six months upon at least two business days' advance request; provided, however, the information shall not be copied without the consent of the operator or court order.

(7) *Compliance.* The quarry operator shall comply with other city regulations incorporating applicable state and federal regulations at the time of any development, redevelopment, operations, or conducting of quarry operations. The quarry operator shall use best efforts to resolve complaints from citizens regarding compliance with state and federal laws and with the conditional use permit, including making available at all times to the city the name and phone number of a quarry representative authorized to resolve complaints of citizens.

(8) *Protection of public roadways.* New driveways from points of ingress and egress to public roadways to the point of weighing/scaling of vehicles shall be constructed of asphalt or similar material in order to reduce mud and other debris being transported on to the public roadway.

(9) *Private roadways.* The quarry operator may install and cut private roadways within the quarry tract for quarry operations and construct storage, loading, and quarry parking areas that are not subject to site plan requirements provided that access points to a public road must be in strict compliance with subsection (a)(8) of this section.

(10) *Public notice signs.* The quarry operator shall post and maintain public notice signs to notify the public and adjoining property owners that the property is designated as a quarry property and blasting site. The content of the sign shall be approved by the city and shall be treated as a public notice sign exempt from city sign regulations if posted in strict compliance with this subsection.

(11) *Noise exemption.* Quarry operations carried out in accordance with the requirements of this division shall not be deemed a nuisance or subject to the requirements of chapter 23, article IV, pertaining to noise.

(Ord. No. 438-42, § 5(63(b)(xii)(C)), 2-7-2005)

Sec. 53-1084. - Development agreement.

If the owner of the property and the city have entered a development agreement pursuant to V.T.C.A., Local Government Code, ch. 212, subch. G., the conditional use shall be subject to the provisions of that agreement.

(Ord. No. 438-42, § 5(63(b)(xii)(D)), 2-7-2005)

Sec. 53-1085. - Quarry property.

Division of a quarry property into smaller tracts and use of such smaller tract for any use other than quarry operations shall terminate the conditional use permit as to such tract.

(Ord. No. 438-42, § 5(63(b)(xii)(E)), 2-7-2005)

Secs. 53-1086—53-1105. - Reserved.

DIVISION 4. - WAREHOUSE CONDITIONAL USES IN THE RETAIL AND SERVICES RS DISTRICT

Sec. 53-1106. - Conditional uses table.

The specific manufacturing and warehouse uses set forth in the following table in this section may be permitted in the RS district as conditional uses provided the actual use was actively pursued on the property at the time the city annexed the property into the city limits:

Warehouse Conditional Uses		
SIC Code	SIC Type	SIC Description
2351 1002	Construction	A/C heating contractor
2349 2000	Construction	Cable installation contractor
2355 2000	Construction	Carpet and floor laying contractor
2333 2000	Construction	Commercial buildings contractor
2349 2000	Construction	Contractor, cable installation
2355 2000	Construction	Contractor, carpet and floor laying
2354 2000	Construction	Contractor, drywall and insulation
2352 1000	Construction	Contractor, paint and wallpaper hanger
2354 2000	Construction	Drywall and insulation contractor
2355 2000	Construction	Floor and carpet laying contractor
2359 9003	Construction	General contractor office
2351 1002	Construction	Heating and A/C contractor
2354 2000	Construction	Insulation and drywall contractor
2352 1000	Construction	Wallpaper hanging and paint contractor
3399 2000	Manufacturing	Athletic and sporting goods mfg.
3152 9000	Manufacturing	Clothing mfg., NEC
3342 9000	Manufacturing	Communication device mfg. (not telephone)
3344 1200	Manufacturing	Computer, circuit board mfg.

3341 1300	Manufacturing	Computer, computer mfg.
3344 1301	Manufacturing	Computer, Cabless semiconductor
3341 1900	Manufacturing	Computer, peripheral equip
3332 9500	Manufacturing	Computer, semiconductor mfg. equip
3344 1302	Manufacturing	Computer, semiconductor testing
3341 1301	Manufacturing	Computer, terminal mfg.
3399 1400	Manufacturing	Costume jewelry mfg.
3399 3100	Manufacturing	Doll manufacturer
3363 2200	Manufacturing	Electrical equip mfg., vehicle
3344 1900	Manufacturing	Electronic components mfg.
3344 1700	Manufacturing	Electronic connectors mfg.
3118 1200	Manufacturing	Food, bread products
3113 2000	Manufacturing	Food, candy products
3118 2100	Manufacturing	Food, cookies and chips and snacks
3119 9100	Manufacturing	Food, prepared (nonfrozen)
3119 4100	Manufacturing	Food, sauces and condiments
3334 1400	Manufacturing	Heating and fireplace equipment mfg.
3371 2501	Manufacturing	Household fixtures, NEC
3371 2500	Manufacturing	Household furniture mfg.
3399 1300	Manufacturing	Jeweler finding mfg.

3399 1400	Manufacturing	Jewelry mfg., costume jewelry
3399 1100	Manufacturing	Jewelry mfg., precious metal
3351 2900	Manufacturing	Lighting equip, NEC
3149 9900	Manufacturing	Sewing gift products
4539 9810	Retail	Chemical retailer, NEC
4543 1200	Retail	Liquefied petro/bottled gas
4539 3001	Retail	portable buildings and mobile office sales
4412 1000	Retail	RV and utility trailer dealers
4412 1000	Retail	Trailer and RV dealers
8113 1001	Services	Armature rewinding shop
5616 1300	Services	Armored car service
4543 9002	Services	Coffee service, office
4922 1000	Services	Delivery services
5617 3001	Services	Lawn and garden services
5311 3000	Services	Miniwarehouse
5311 3000	Services	Miniwarehouse office
5311 3000	Services	Miniwarehouse/personal storage units
5311 3000	Services	Self-storage warehouses
4841 1002	Services	Movers, home and office
5111 1000	Services	Newspaper (publish and print)

4889 9100	Services	Packing and crating service
5617 1000	Services	Pest control
5111 1000	Services	Print, newspaper (publish and print)
5111 9900	Services	Print, publishing and printing
8114 9000	Services	Repair services NEC
5617 3002	Services	Tree surgeon and services
5617 4000	Services	Upholstery and carpet cleaning
4542 1000	Services	Vending machine, office
4542 1001	Services	Vending machine equip, various local
4931 2000	Services	Warehousing, refrigerated
4931 1000	Services	warehousing and storage, general
4855 1000	Transportation	Bus charter service
4852 1000	Transportation	Bus lines
4851 1300	Transportation	local and suburban transit
4841 1000	Transportation	Local trucking w/o storage
4841 1001	Transportation	Local trucking with storage
4854 1000	Transportation	School buses
4853 1000	Transportation	Taxicab company
4889 9900	Transportation	Transportation services NEC
2211 2200	Utilities	Electric companies

4217 3000	Wholesale	A/C and heating equipment
4216 2000	Wholesale	Appliance wholesaler, electrical
4219 2000	Wholesale	Arts and crafts wholesaler
4228 1000	Wholesale	Beer distributor
4224 9001	Wholesale	Bottled water distributor
4213 9000	Wholesale	Building materials nec
4224 3000	Wholesale	Dairy products wholesaler
4222 1000	Wholesale	Drugs and toiletries wholesaler
4216 1000	Wholesale	Electrical equipment and supplies
4216 2000	Wholesale	Electrical appliances
4216 9000	Wholesale	Electronic parts and equipment
4229 3000	Wholesale	Florists and flowers supply, wholesaler
4226 9000	Wholesale	Gas, industrial and medical
4224 1000	Wholesale	Grocery distributor, wholesaler
4217 1000	Wholesale	Hardware wholesaler
4218 4000	Wholesale	Industrial supplies
4218 5000	Wholesale	Janitorial supplies
4219 4000	Wholesale	Jewelry wholesaler
4228 2000	Wholesale	Liquor and wine wholesaler
4229 2000	Wholesale	Magazine and newspaper wholesaler

4214 5000	Wholesale	Medical goods and equipment
4229 2000	Wholesale	Newspaper and magazine wholesaler
4221 2000	Wholesale	Office supplies wholesaler
4229 5000	Wholesale	Paint wholesaler
4221 3000	Wholesale	Paper wholesaler
4217 2000	Wholesale	plumbing fixtures and supplies
4224 8000	Wholesale	Produce wholesaler
4214 9000	Wholesale	Professional equipment and supplies NEC
4214 4000	Wholesale	Restaurant equipment and supplies
4224 9000	Wholesale	Soft drinks distributor
4229 4000	Wholesale	Tobacco products wholesaler
4222 1000	Wholesale	Toiletries and drugs wholesaler
4229 9000	Wholesale	Wholesale trade NEC
4228 2000	Wholesale	Wine and liquor wholesaler
5311 3000	Services	Miniwarehouse office
5311 3000	Services	Miniwarehouse
5311 3000	Services	Miniwarehouse/personal storage units
5311 3000	Services	Self-storage warehouses

(Ord. No. 438-50, § 3, 9-19-2006)

Sec. 53-1107. - Additional conditions.

The conditional use permit shall identify one or more of the conditional uses permitted and no other use may occur on the property save and except uses permitted in the underlying zoning district. The additional conditions shall apply:

(1) Any and all uses permitted under a conditional use permit within the retail and services district RS must be conducted wholly within an enclosed building, except for the following, if applicable:

a. Delivery;

b. Catering;

c. Gasoline sales;

d. Trailer and moving truck rental activities; and

e. RV, vehicle, boat, and trailer storage.

(2) Required yards and outdoor areas shall not be used for display or storing equipment, containers or waste material, save and except for screened dumpster collection areas; trailer and moving truck rental activities; and RV, vehicle, boat, and trailer storage.

(3) The use shall not be objectionable because of odor, excessive light, smoke, dust, noise, vibration or similar nuisance; and that, excluding that caused by customer and employee vehicles, such odors, smoke, dust, noise or vibration be generally contained within the property.

(4) Any and all warehouse activities or uses shall not occur before 6:00 a.m. or after 10:00 p.m. on any given night.

(5) The conditional use permit shall terminate upon the use ceasing for 90 days or if the use is changed to a qualifying RS district use.

(6) Failure to comply with the conditional use permit requirements or the additional conditions imposed herein may result in a revocation of the permit. The city shall provide the conditional use permit holder of any violations and provide 30 days to comply. Failure to comply and failure to appeal within 30 days shall result in a forfeiture of the conditional use permit. The conditional use permit holder may appeal by tendering a written notice of appeal to the city secretary requesting appeal to the planning and zoning commission. The planning and zoning commission shall accept information from the property owner and city staff regarding the conditional use permit, allegations related to compliance and shall make a recommendation to the city council. If the planning and zoning commission determines that recommendation of revocation of the permit for failure to comply should be considered by the city council, the city shall notify the property owner of the date and time the city council will consider revocation seven days prior to the meeting. The decision of the city council shall be final.

(7) Setbacks and development standards for the approved conditional warehouse uses shall be the same as for RS district except as otherwise modified.

(8) Development, remodeling or redevelopment of the property. Any addition to the property requiring a building permit after approval of the conditional use permit shall require compliance with all of the following:

a. Minimum development standards, unless otherwise modified in this subsection. For all uses, the site shall be brought into compliance with the minimum development standards for the RS district. Any buildings existing in the setback or of a greater height than permitted are not required to be brought into compliance with the applicable height and setback requirements; however, any additions to the building must comply with the setback and height requirements appropriate for the use approved.

b. Parking. All areas for storage of materials, parking and operation of motor vehicles shall be paved with asphalt or concrete, save and except existing unpaved areas on properties that

are used for the storage of RVs, vehicles, boats, or trailers or trailer and moving truck rental activities on the effective date of the ordinance from which this article is derived.

c. Screening shall be as provided in article V of this chapter.

d. Landscaping shall be as provided in article V of this chapter.

(9) A permitted warehousing conditional use may be expanded to an adjoining vacant property provided both properties are owned by the same owner at time the ordinance from which this article is derived was passed and approved on second reading and an amendment to the conditional use permit is approved to join the additional property.

(Ord. No. 438-50, § 3, 9-19-2006)

Secs. 53-1108—53-1137. - Reserved.

ARTICLE VII. - NONCONFORMING USES AND STRUCTURES

Sec. 53-1138. - Exceptions to nonconformities.

The general public, the city council and the planning and zoning commission are directed to take note that nonconformities in the use and development of land and buildings are to be avoided, or eliminated where now existing, whenever and wherever possible, except:

(1) When necessary to preserve property rights established prior to the date the ordinance from which this chapter is derived become effective as to the property in question; and

(2) When necessary to promote the general welfare and to protect the character of the surrounding property.

(Ord. No. 438, § 64(a), 11-24-2003)

Sec. 53-1139. - Nonconforming structures.

Where a lawful structure exists on the effective date of the adoption or amendment of the ordinance from which this chapter is derived, that could not be built under the terms of this article by reason of restrictions on permitted use, area, lot coverage, height, years, its locations on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming structure may be enlarged or altered in a way which increases its structural nonconformity, but any structure or portion thereof may be altered to decrease its structural nonconformity.

(2) Should such nonconforming structure or nonconforming portions of a structure be damaged by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with this chapter.

(3) Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

(Ord. No. 438, § 64(b), 11-24-2003)

Sec. 53-1140. - Nonconforming uses.

(a) A nonconforming use may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed or reconstructed.

(2) The use of the structure shall only be changed to a use permitted in the district in which it is located.

(3) A nonconforming use that has been discontinued may be resumed only if there has been no other use of the premises or structure since the nonconforming use was discontinued, and such use was not discontinued for a period of 90 days or more; provided that if a use is discontinued temporarily for remodeling of a building and a building permit for the remodeling is taken out within 60 days from the date the use is discontinued the period shall be 180 days from the from the date the use is discontinued.

(4) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to any land outside such building.

(5) Removal or destruction of a structure containing a nonconforming use shall eliminate the nonconforming use status. The term "destruction" means, for the purpose of this subsection, damage equal to more than 50 percent of the replacement cost of the structure.

(6) A nonconforming use shall not terminate upon any sale or conveyance of the property so long as the nonconforming use continues through any sale or conveyance.

(b) *Repairs and maintenance.* On any nonconforming structure, or nonconforming portion of a structure, containing a nonconforming use, repairs and maintenance shall be performed to maintain the structure in compliance with the electrical, plumbing and building codes; provided that such repairs and maintenance shall be subject to the following conditions and limitations:

(1) No work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-load-bearing walls, fixtures, wiring or plumbing, to an extent exceeding 25 percent of the current replacement cost of such structure or nonconforming portion of such structure.

(2) If 50 percent or more of the nonconforming structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by a duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

(Ord. No. 438, § 64(c), (d), 11-24-2003)

Secs. 53-1141—53-1158. - Reserved.

ARTICLE VIII. - SEXUALLY ORIENTED BUSINESSES

Sec. 53-1159. - Purpose and intent.

It is the purpose of this article 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 deleterious location and concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to distributors and exhibitors of sexually oriented

entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.

(Ord. No. 438, § 65(a), 11-24-2003)

Sec. 53-1160. - Definitions.

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

Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult bookstore or *adult video store* means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

(3) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store as long as either two percent or more of its:

a. Gross revenue is derived from the sale or rental of the specified materials which depict or describe specified sexual activities or specified anatomical areas; or

b. Inventory consists of the specified materials which depict or describe specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear in a state of nudity;

(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(3) Films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult motel means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment, which regularly features persons who appear in a state of nudity or live performances, which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Establishment means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

Nude model studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or *a state of nudity* means the appearance of a human's bare buttock, anus, male genitals, female genitals, or female breast.

Permittee means a person in whose name a conditional use permit to operate a sexually oriented business has been issued and the person who owns the building and/or land on which the business is located, as well as the individual listed as an applicant on the application for a permit.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers any of the following for consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

Specified anatomical areas means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

Specified sexual activities means and includes any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or stimulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in this definition.

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area existed on the effective date of the ordinance from which this article is derived, or under a certificate of occupancy therefor.

Transfer of ownership or control of a sexually oriented business means and includes any of the following:

(1) The sale, lease or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 438, § 65(b), 11-24-2003)

Sec. 53-1161. - Classification.

Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

(8) Nude model studios; and

(9) Sexual encounter centers.

(Ord. No. 438, § 65(c), 11-24-2003)

Sec. 53-1162. - Location.

(a) This article allows the opportunity for consideration of conditional use permits to be issued for sexually oriented businesses in construction/manufacturing CM or warehouse W zoning districts only.

(b) The following uses may be permitted within the city by conditional use permit only in the CM zoning districts.

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

(8) Nude model studios; and

(9) Sexual encounter centers.

(c) No use listed in subsection (b) of this section shall be established within 1,000 feet of any of the following uses in existence prior to the beginning of such business:

(1) A church, chapel, or other regular place of religious worship;

(2) A public or private elementary, secondary school or institute of higher learning;

(3) A boundary of any residentially zoned district;

(4) A public park or playground;

(5) The property line of a lot used for residential purposes; or

(6) Within 1,000 feet of another sexually oriented business.

(d) For the purpose of this article, measurement 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 a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private elementary or secondary school, institute of higher learning, nearest boundary of a public park or playground or residential lot; or from the closest exterior wall of the structure in which the business is proposed to be located to the nearest exterior wall of any other sexually oriented business.

(Ord. No. 438, § 65(d), 11-24-2003; Ord. No. 850, § 2, 6-2-2015)

Sec. 53-1163. - Sexually explicit films and videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, videocassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) The application for a conditional use permit for a sexually oriented business shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus one foot. The building official may waive the diagram in this subsection for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises is correct and has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of an amendment to the conditional use permit.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subsection (a)(5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

(7) No viewing room may be occupied by more than one person at any time.

(8) The premise shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level.

(9) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(b) A person having a duty under subsection (a) of this section commits a misdemeanor if he knowingly fails to fulfill that duty.

(Ord. No. 438, § 65(e), 11-24-2003)

Sec. 53-1164. - Exemptions.

It is a defense to prosecution under this article that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

b. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and

c. Where no more than one nude model is on the premises at any one time.

(Ord. No. 438, § 65(f-1), 11-24-2003)

Sec. 53-1165. - Specific violations.

(a) A person commits a misdemeanor if he:

(1) Operates or causes to be operated a sexually oriented business without a conditional use permit. All sexually oriented businesses shall be located within the CM or W zoning districts.

(2) Operates or causes to be operated a sexually oriented business within 1,000 feet of any of the following uses in existence prior to the beginning of such business:

a. A church, chapel, or other regular place of religious worship;

b. A public or private elementary, secondary school or institute of higher learning;

c. A boundary of any residentially zoned district;

d. A public park or playground; or

e. The property line of a lot used for residential purposes.

(3) Causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(4) Causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(b) For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure in which any, or any part of any, sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private elementary or secondary school, institute of higher learning, the nearest boundary of a public park or playground, or residential lot.

(Ord. No. 438, § 65(f-2), 11-24-2003; Ord. No. 850, § 3, 6-2-2015)

Sec. 53-1166. - Nonconforming uses.

(a) Any sexually oriented business lawfully operating on the effective date of the ordinance from which this article is derived that is in violation of this article shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business is nonconforming.

(b) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of a conditional use permit for a sexually oriented business, of a church, public or private elementary or secondary school, institute of higher learning, public park or playground, or a residential lot within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit and/or license has expired or has been revoked.

(Ord. No. 438, § 65(h), 11-24-2003)

Secs. 53-1167—53-1195. - Reserved.

ARTICLE IX. - ADMINISTRATION

Sec. 53-1196. - Building official's duties.

The city building official shall administer the provisions of this chapter, and in furtherance of such authority, the city building official shall:

(1) *Records.* Maintain permanent and current records with respect to this chapter, including amendments thereto.

(2) *Applications.* Receive, file, and review all zoning applications to determine whether such plans comply with this chapter.

(3) *Planning and zoning commission.* Forward zoning applications to the planning and zoning commission as required by this chapter, together with its recommendations thereon.

(4) *Council.* Forward zoning applications to the council, together with the recommendations of the planning and zoning commission and the city staff.

(5) *Implementation.* Make such other determinations and decisions as may be required of the city by this chapter, the planning and zoning commission or the city council; and enforce and implement this chapter and the final decisions by the planning and zoning commission and the city council.

(Ord. No. 438, § 70, 11-24-2003)

Sec. 53-1197. - Chapter interpretation.

In the interpretation and application of the terms and provisions of this chapter, the following regulations shall govern:

(1) *Liberally construed.* In the city's interpretation and application, the provisions of this chapter shall be regarded as minimum requirements for the protection of the public health, safety, comfort, convenience, prosperity and welfare. This chapter shall be regarded as remedial and shall be liberally construed to further its underlying purposes.

(2) *Highest standards govern.* Whenever a provision of this chapter and any other provision of this chapter, or any provision in any other law, ordinance, resolution, rule or regulation of any kind contains any restrictions covering the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern.

(3) *Resolution of conflicting interpretations.* Where there arises a question concerning the meaning or intent of a provision of this chapter, a written decision setting forth the manner in which said provision shall be interpreted and administered is encouraged. In the event exception is taken by any interested party to such a decision the matter may be appealed to the planning and zoning commission and, as appropriate, to the council whose decision shall be final.

(4) *Written decisions binding.* Any final written decision made as provided in subsection (3) of this section shall be archived and shall govern the interpretation of this chapter until such time as an amendment of this chapter shall nullify such decision, or the decision is over-ruled or rescinded by the city council.

(5) *State law.* The terms, provisions and conditions of this chapter shall be interpreted and applied in a manner consistent with state law and V.T.C.A., Local Government Code ch. 211, in particular.

(6) *Master plan.* All zoning applications shall conform to the master plan for the community and be consistent with all of the elements thereof.

a. Where the proposed zoning application is inconsistent with one or more of the elements of the master plan, the developer may petition the city for amendment to the particular element or elements of the master plan either prior to, or concurrent with, submitting a request for

subdivision plat or development plan approval. Inconsistency with the provisions of the master plan shall be grounds for disapproval of the zoning application by the city.

b. Where the proposed zoning is for a zoning district or category provided for in this chapter but that is not included on the master plan existing on the date of the ordinance from which this chapter is derived, or not existing on the date of such application, the applicant shall propose an amendment to the master plan and provide information and documentation in support of such amendment.

(7) *Consistency with chapter 41.* All development projects within the corporate limits of the city shall be in conformance with chapter 41, subdivisions. Where the proposed development requires a zoning classification or approval other than that currently applying to the property to be developed, the developer shall make appropriate application to secure the necessary zoning classification or approval required for the proposed development would comply with this chapter.

(Ord. No. 438, § 71, 11-24-2003)

Sec. 53-1198. - Board of adjustment.

(a) *Established.* A board of adjustment is established in accordance with the provisions of V.T.C.A., Local Government Code ch. 211, regarding the zoning of cities and with the powers and duties as provided in said state statute.

(b) *Organization and membership.*

(1) *Regular membership.* The board of adjustment shall consist of five citizens appointed or reappointed by the mayor and confirmed by the city council. Members of the board of adjustment shall be removable for cause by the city council, upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of the member whose term becomes vacant. The board of adjustment shall elect its own chair, who shall serve for a period of one year or until his successor is elected.

(2) *Alternate members.* The board of adjustment shall also consist of not more than four alternate members who will serve in the absence of one or more regular members when requested to do so by the mayor or city manager. Alternate members shall be appointed in the same manner as regular members; shall serve for the same period as a regular member; and are subject to removal in the same manner as a regular member. Vacancies among the alternate members shall be filled in the same manner as vacancies among the regular members.

(c) *Meetings.* Meetings of the board of adjustment shall be held at the call of the chair and at such other times as the board of adjustment may determine.

(d) *Hearings.* All meetings and hearings held by the board of adjustment shall be public; provided that upon the advice and consent of the city attorney the board of adjustment may go into executive session pursuant to V.T.C.A., Local Government Code ch. 551.

(e) *Rules and regulations.* The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and such minutes shall be immediately filed in the office of the board of adjustment and shall be a public record. The board of adjustment shall act by resolution in which four members must concur. The board of adjustment may adopt rules in accordance and consistent with this chapter as necessary and required. A copy of any such rules shall be furnished to any person requesting same. All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith. The city attorney may prepare guidelines and criteria regarding the legal responsibilities of the board of adjustment members and the legal limits of the discretion granted to the board of adjustment. The city attorney may present these guidelines to the board of adjustment at their first meeting every year.

(f) *Appeals.*

(1) *Procedure.* Any person aggrieved by a decision of an administrative officer in the enforcement of V.T.C.A., Local Government Code ch. 211, this chapter, or any officer, department, board or bureau of the city affected by any such decision by an administrative officer, may appeal such decision to the board of adjustment. Such an appeal shall be made by filing with the office of the board of adjustment and the officer whose action is being appealed, a notice of appeal specifying the grounds thereof. The officer from which the appeal is taken shall forthwith transmit to the board of adjustment all of the papers constituting the record upon which the action appealed from is taken.

(2) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer whose decision is appealed shall certify to the board of adjustment that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted for just cause by the board of adjustment, or by a court of record, after notice to the officer from whom the appeal is taken.

(3) *Notice of hearing on appeal.* The board of adjustment shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall give public notice of the hearing and due notice to the parties in interest.

(4) *Decision by board.* The board of adjustment shall decide appeals within a reasonable time. Any part to the appeal may appear in person or by agent or attorney at any hearing. The board of adjustment may, upon the concurring vote of four members, reverse or affirm, in whole or in part, or modify the administrative official's order, requirement or decision, and make the correct order, requirement, decision, or determination on the matter appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made, and to that end, shall have all powers of the officer or department from whom the appeal is taken.

(g) *Powers and duties of the board of adjustment.*

(1) *Appeals based on error.* The board of adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of V.T.C.A., Local Government Code ch. 211, or this chapter.

(2) *Special exceptions.* The board of adjustment shall have the power to hear and decide special exceptions to the terms of this chapter when this chapter requires the board of adjustment to do so. Such special exceptions shall be as follows:

a. To permit a public utility or public service use or structure in any district as necessary to house equipment, pumps, switching gear, and similar devices only, required for the provision of the utility service or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the provision of utility service and the public health, convenience, safety or general welfare.

b. To grant a permit for the extension of a use, height or area regulation into an adjoining district for any lot platted in an approved subdivision, where the boundary line of the district divides such lot and the lot was in a single ownership on June 3, 1991.

c. Authorize a variance from the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, and where the topography or unusual shape of the lot and regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

(h) *Variances.* The board of adjustment shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, including the following:

(1) *Yard and setback.* Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardship in the carrying out of these provisions due to an irregular shape of the lot, topography or other conditions; provided that such variance will not significantly affect any adjoining property or the general welfare.

(2) *Structures.* Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter relating to the construction or alteration of a building or structure or the use of land will impose unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this chapter as are in harmony with its general purpose and intent, but only when the board of adjustment is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance as established by this chapter, and at the same time, the surrounding property will be property protected; provided that the board of adjustment shall not in any event permit a use on any property that is not permitted within the zoning category for which such property is zoned.

(i) *Changes.* The board of adjustment shall have no authority to change any provision of this chapter and its jurisdiction is limited to hardship and borderline cases which may arise from time to time.

(Ord. No. 438, § 72, 11-24-2003)

Sec. 53-1199. - Conditions for issuing a building permit.

No building permit shall be issued for any new structure or change, improvement or alteration of any existing structure, on any lot or tract of land and no municipal utility service will be furnished to such lot or tract which does not comply with the provisions of this chapter and all applicable elements of the master plan, except as herein exempted, or upon the written application and approval of a variance.

(Ord. No. 438, § 73, 11-24-2003)

Sec. 53-1200. - Certificates of occupancy.

(a) *Policy and application.* Certificates of occupancy shall be required for any of the following:

(1) Occupancy and use of any structure or building hereafter erected or structurally altered.

(2) Change in use of an existing building to a use of a different classification.

No occupancy of any new, or altered portion of any, structure or building, or any such building or structure for which there is a change of use, shall take place until a certificate of occupancy therefor shall have been issued by the city building official.

(b) *Procedure.*

(1) *New and altered structures.* Written application for a certificate of occupancy for a new building, or for an existing building which is to be altered, shall be made at the same time as the application for the building permit for such building. Said certificate shall be issued within three days after a written request for the same has been made to said city building official or his agent after the erection or alteration of such building or part thereof has been completed in conformity with the provisions of this chapter and all applicable city codes and ordinances.

(2) *Change in use.* Written application for a certificate of occupancy for the use of vacant land, or for a change in the use of land or a building, or for a change in a nonconforming use, as herein provided shall be made to the city building official. If the proposed use is in conformity with the provisions of this chapter, the certificate of occupancy shall be issued within three days after the application for same has been made.

(c) *Approval.* Every certificate of occupancy shall state that the building or the proposed use of a building or land complies with all provisions of law. A record of all certificates of occupancy shall be kept in file in the office of the city building official or his agent and copies shall be furnished on request to any person having proprietary or tenancy interests in the building or land affected.

(d) *Temporary certificate of occupancy.* Pending the issuance of a regular certificate of occupancy, a temporary certificate may be issued by the city building official for a period not exceeding six months, during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary certificates shall not be construed as in any way altering the respective rights, duties or obligations of the owners, or of the city, relating to the use or occupancy of the premises or any other matter covered by this chapter.

(e) *Nonconforming uses.* A certificate of occupancy shall be required for all lawful nonconforming uses of land or buildings created by adoption of this chapter. Application for such certificate of occupancy for a nonconforming use shall be filed with the city building official by the owner or lessee of the building or land occupied by such nonconforming use within one year of the effective date of the ordinance from which this chapter is derived. It shall be the duty of the city building official to issue a certificate of occupancy for a lawful nonconforming use, and the refusal of the city building official to issue a certificate of occupancy for such nonconforming use shall be evidence that said nonconforming use was either illegal or did not lawfully exist at the effective date of the ordinance from which this chapter is derived.

(Ord. No. 438, § 74, 11-24-2003)

Sec. 53-1201. - Fees.

To defray the costs of administering this chapter, the applicant seeking plat approvals shall pay to the city, at the time of submittal, the prescribed fees as set forth in the current administrative fee schedule approved by the council, and on file in the office of the city.

(Ord. No. 438, § 75, 11-24-2003)

Sec. 53-1202. - Amendments.

The council may, from time to time, adopt, amend and make public rules and regulations for the administration of this chapter. This chapter may be enlarged or amended by the council after public hearing, due notice of which shall be given as required by law.

(Ord. No. 438, § 76, 11-24-2003)

Sec. 53-1203. - Violations.

Except as otherwise provided for in this chapter, it shall be unlawful for any person to develop, improve or sell any lot, parcel, tract or block of land within the city's territorial jurisdiction, regardless of the size or shape of said lot, parcel, tract or block, unless such lot, parcel, tract or block of land conforms with this chapter.

(Ord. No. 438, § 77, 11-24-2003)

Sec. 53-1204. - Enforcement.

(a) *Administrative action.* The building official, city engineer and/or the city manager shall enforce this chapter by appropriate administrative action, including, but not limited to, the rejection of plans, maps,

plats and specifications not found to be in compliance with this chapter and good engineering practices, and the issuance of stop work orders.

(b) *Court proceedings.* Upon the request of the city council the city attorney shall file an action in the district courts to enjoin the violation or threatened violation of this chapter, or to obtain declaratory judgment, and to seek and recover court costs and attorney fees, and/or to recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter.

(Ord. No. 438, § 78, 11-24-2003)

Sec. 53-1205. - Amendments.

(a) *Statement of intent.* For the purpose of establishing and maintaining sound, stable and desirable development within the territorial limits of the city, this chapter shall not be amended except to correct an error in the ordinance, or because of changed or changing conditions in a particular area or in the city generally, or to rezone an area, extend the boundary of an existing zoning district or to change the regulations and restrictions thereof, all in accordance with a comprehensive plan. The council may, from time to time, adopt, amend and make public rules and regulations for the administration of this chapter. This chapter may be enlarged or amended by the council after public hearing, due notice of which shall be given as required by law.

(b) *Amendment limitation for rezoning.* Subject to the limitations of the foregoing statement of intent, an amendment of this chapter may be requested by any person, provided that an amendment to rezone any property may be initiated only by:

(1) The city council on its own motion;

(2) The planning and zoning commission; or

(3) Petition by the landowner or his authorized agent

(c) *Responsibility for change.* The city council has sole responsibility for changes in the zoning map and changes in this chapter. The zoning and rezoning of land is in the legislative discretion of the city council. Zoning and rezoning shall be by ordinance only.

(d) *Referral of amendment to planning and zoning commission.* Upon its own motion, a request by the planning and zoning commission, or the receipt of an administratively complete petition and application to zone or rezone a lot, tract or parcel of land, which petition and application has been examined and approved as to form by the city manager, shall be referred to the planning and zoning commission for consideration, public hearing, and recommendation to the city council. The council may not enact a rezoning amendment until the planning and zoning commission has held a public hearing and made its recommendation to the city council, or has made a final vote on the matter without obtaining a majority, on the zoning or rezoning of the property.

(e) *Action by the planning and zoning commission.* The planning and zoning commission shall cause such study and review to be made as advisable and required, shall give public notice and hold a public hearing as provided by state law, and shall recommend to the council such action as the planning and zoning commission deems proper. Written notice of the proposed zoning change shall be forwarded to the owner of each tract or parcel of land that is within 200 feet of the property for which zoning is requested, not less than ten days prior to the date of the public hearing to be held by the planning and zoning commission. If the city owns any property within 200 feet of the property proposed to be zoned or rezoned, it shall not be necessary to mail any such notice to the city. The application for zoning or rezoning, and the retained copies of the notices sent to owners within the 200 feet, shall be deemed to be sufficient written notice to the city to satisfy all requirements.

(f) *Action by the council.* The city council shall give public notice and hold a public hearing before taking final action to zone or rezone any land.

(g) *Public hearing and notice of the proposed zoning change.*

(1) Not less than ten days prior to the date of the public hearing to be held by the planning and zoning commission on each zoning or rezoning, written notice of the public hearing and the zoning proposed shall be given by U.S. mail to the owner of each lot, tract or parcel of land within 200 feet of the lot, tract or parcel being considered for zoning. Such notices shall be mailed by first class mail addressed to the persons or firms to whom the properties are assessed on the city tax rolls.

(2) a. Posted notice. A minimum of one sign shall be placed on each street frontage. Property with multiple street frontages shall have the requisite sign on each street. Signs shall be placed in a visible, unobstructed location near the front property line.

b. The notification signs shall be left in place until final action is taken on the request. unless the case is formally withdrawn by the applicant prior to a final decision. It shall be the responsibility of the applicant to periodically check sign locations to verify that signs remain in place and have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs.

(3) Notice of the public hearing to be held by the city council shall be given by publishing such notice at least once in a newspaper of general circulation in the city, at least 15 days prior to the date set for public hearing.

(4) If the zoning or rezoning is proposed by the city council or the planning and zoning commission, notice of the proposed zoning change shall be made by the city manager mailing notification by first class mail to the person or firm to whom the property is assessed on the city tax rolls, and to all persons or firms to whom property within 200 feet of the proposed zoning change is assessed on the city tax rolls.

(5) The required notice for a public hearing having been given for the zoning or rezoning of a tract of land, the planning and zoning commission or the city council may, as applicable, continue such matter to subsequent public meetings for consideration and may in the same zoning process or proceeding recommend zoning/rezoning or, as applicable, zone or rezone the property for which notice was given for a use or zoning district that is a less intensive use than the use for which the notices were given, without additional or further notices being given; provided that the less intensive district is within the same general use category, e.g., duplex requested and single-family zoning granted, multiple-family zoning requested and the granted rezoning is a less intensive multiple-family zoning, duplex or single-family.

(h) *Protest of proposed amendment.* If a protest against any proposed rezoning or zoning change for any land is presented in writing to the city secretary prior to the public hearing thereon, duly signed by the owners of 20 percent or more either of the area of lots included in the proposed change or of the lots or land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all members of the city council.

(i) *Procedure for amendment petition.*

(1) *Filing of application.* All petitions to change zoning or rezone property shall contain at least the following:

a. The petitioners name, address, and interest in the property described in the petition, as well as the name, address and interest of every person having a legal or an equitable interest in the land covered by the petition;

b. The nature and effect of the proposed amendment and zoning or permit requested;

c. A fully scaled map showing:

1. The land affected by the proposed amendment;

2. A legal description of the land;

3. The present zoning classification of the land;

4. The zoning classification of all abutting land; and

5. All public and private rights-of-way and easements bounding and intersecting the land.

d. The names and addresses of the owners of all land within 200' of the land to be rezoned, or for which a permit is sought.

e. If applicable, the alleged error in the ordinance from which this chapter is derived, which would be corrected by the proposed amendment, together with a detailed explanation of such error and how the proposed amendment will correct the same.

f. The changed or unchanging conditions, if any, in the area or in the municipality generally, which make the proposed amendment reasonably necessary.

g. Evidence that the petition is in accordance with the comprehensive plan, or that support amendment of the comprehensive plan.

h. A statement of all other circumstances, factors and reasons the applicant offers in support of the proposed amendment.

(2) *Time limitation.* If a petition for rezoning is denied by the city council, another petition for reclassification of the same property or any portion thereof shall not be filed within a period of 12 months from the date of final denial, except with the permission of the city council.

(Ord. No. 438, § 79, 11-24-2003; Ord. No. 737, § 2(Exh. A), 8-20-2013)

Secs. 53-1206—53-1228. - Reserved.

ARTICLE X. - CLOSING PROVISIONS

Sec. 53-1229. - Construction.

The terms and provisions of this chapter shall not be construed in a manner to conflict with V.T.C.A., Local Government Code ch. 211, and if any term or provision of this chapter shall appear to conflict with any term, provision or condition of V.T.C.A., Local Government Code ch. 211, such chapter term or provision shall be read, interpreted and construed in a manner consistent with and not in conflict with state statute, and, if possible, in a manner to give effect to both. The standard and accepted rules of statutory construction shall govern in construing the terms and provisions of this chapter. The terms, provisions, conditions, authority, restrictions, limitations, and discretion provided in this chapter are authorized by the city Charter, and this chapter shall be further construed in a manner consistent with the power of a home rule city acting under the authority of its city Charter.

(Ord. No. 438, § 80, 11-24-2003)

Sec. 53-1230. - Uses permitted in certain districts.

The following uses are permitted as stated for each district:

EXHIBIT A

SIC Code	SIC Type	SIC Code Description	Primary Zoning	Secondary Zoning	Third Zoning	Fourth Zoning
B, Billboards						

5418 5000	A	Billboards	B			
CBD-1, Central business district 1						
4533 1000	Retail	Antique dealer	CBD-1	CBD-2	RS	CM/W/E
4536 2000	Retail	Art gallery	CBD-1	CBD-2	RS	CM/W/E
3118 1100	Retail	Bakeries baking and selling	CBD-1	CBD-2	RS	CM/W/E
4452 9100	Retail	Bakeries, selling only	CBD-1	CBD-2	RS	CM/W/E
4461 2000	Retail	Barber and beauty supplies	CBD-1	CBD-2	RS	CM/W/E
4461 2000	Retail	Beauty and barber supplies	CBD-1	CBD-2	RS	CM/W/E
4511 1007	Retail	Bicycle sales and service	CBD-1	CBD-2	RS	CM/W/E
4452 9200	Retail	Candy and nut and confectionery store	CBD-1	CBD-2	RS	CM/W/E
4481 9001	Retail	Clothing bridal shop	CBD-1	CBD-2	RS	CM/W/E
4481 9002	Retail	Clothing, formal wear (sale and rent)	CBD-1	CBD-2	RS	CM/W/E
4481 4001	Retail	Clothing resale (used)	CBD-1	CBD-2	RS	CM/W/E
4481 9002	Retail	Clothing, used (resale)	CBD-1	CBD-2	RS	CM/W/E

4452 9901	Retail	Coffee and tea retailer	CBD-1	CBD-2	RS	CM/W/E
4452 9901	Retail	Coffeehouse	CBD-1	CBD-2	RS	CM/W/E
4532 9002	Retail	Collectibles (not antiques)	CBD-1	CBD-2	RS	CM/W/E
4457 9200	Retail	Confectionery store	CBD-1	CBD-2	RS	CM/W/E
4539 9800	Retail	Engravers and trophy shops	CBD-1	CBD-2	RS	CM/W/E
7221 1004	Retail	Fast food donut	CBD-1	CBD-2	RS	CM/W/E
7221 1014	Retail	Fast food, sandwich	CBD-1	CBD-2	RS	CM/W/E
4531 1000	Retail	Florists	CBD-1	CBD-2	RS	CM/W/E
4532 2000	Retail	Gift shop and greeting cards	CBD-1	CBD-2	RS	CM/W/E
4532 2000	Retail	Greeting cards and gift shop	CBD-1	CBD-2	RS	CM/W/E
4483 1000	Retail	Jewelry store	CBD-1	CBD-2	RS	CM/W/E
4451 5001	Retail	Jewelry store, costume	CBD-1	CBD-2	RS	CM/W/E
4461 2001	Retail	Kiosk, beauty products	CBD-1	CBD-2	RS	CM/W/E

4483 1001	Retail	Kiosk, jewelry	CBD-1	CBD-2	RS	CM/W/E
4532 2001	Retail	Novelty and party and souvenir shop	CBD-1	CBD-2	RS	CM/W/E
4452 8200	Retail	Nut and candy and confectionery store	CBD-1	CBD-2	RS	CM/W/E
7221 1002	Retail	Restaurant, without bar	CBD-1	CBD-2	RS	CM/W/E
7222 1301	Retail	Snack bars	CBD-1	CBD-2	RS	CM/W/E
4532 2001	Retail	Souvenir and novelty and party shop	CBD-1	CBD-2	RS	CM/W/E
4539 9809	Retail	Specialty products, NEC	CBD-1	CBD-2	RS	CM/W/E
4452 9901	Retail	Tea and coffee retailer	CBD-1	CBD-2	RS	CM/W/E
4539 9808	Retail	Trophy shops and engravers	CBD-1	CBD-2	RS	CM/W/E
5412 1100	Services	Accounting and bookkeeping	CBD-1	CBD-2	RS	CM/W/E
6211 1101	Services	Acupuncturist	CBD-1	CBD-2	RS	CM/W/E
5742 9100	Services	Adjustment services	CBD-1	CBD-2	RS	CM/W/E
5415 1000	Services	Advertising agencies	CBD-1	CBD-2	RS	CM/W/E

5313 2000	Services	Appraisers	CBD-1	CBD-2	RS	CM/W/E
5413 1000	Services	Appraisers	CBD-1	CBD-2	RS	CM/W/E
5414 3002	Services	Artist, commercial artist	CBD-1	CBD-2	RS	CM/W/E
7116 1000	Services	Artist fine arts	CBD-1	CBD-2	RS	CM/W/E
5411 1000	Services	Attorneys	CBD-1	CBD-2	RS	CM/W/E
8121 1100	Services	Barbershop	CBD-1	CBD-2	RS	CM/W/E
8121 1201	Services	Beauty shop and barbershop combo	CBD-1	CBD-2	RS	CM/W/E
8121 1200	Services	Beauty shop	CBD-1	CBD-2	RS	CM/W/E
8412 1100	Services	Bookkeeping and accounting	CBD-1	CBD-2	RS	CM/W/E
5239 3001	Services	Business and financial consulting, NEC	CBD-1	CBD-2	RS	CM/W/E
5239 1000	Services	Business credit offices	CBD-1	CBD-2	RS	CM/W/E
5313 9000	Services	Business office NEC	CBD-1	CBD-2	RS	CM/W/E
0241 1000	Services	Child day care services	CBD-1	CBD-2	RS	CM/W/E

6213 1000	Services	Chiropractors	CBD-1	CBD-2	RS	CM/W/E
8131 1000	Services	Churches, not exempted	CBD-1	CBD-2	RS	CM/W/E
5614 4000	Services	Collection services	CBD-1	CBD-2	RS	CM/W/E
5415 1200	Services	Computer consultant	CBD-1	CBD-2	RS	CM/W/E
5415 1100	Services	Computer programming service	CBD-1	CBD-2	RS	CM/W/E
5415 1900	Services	Computer services, NEC	CBD-1	CBD-2	RS	CM/W/E
5415 1101	Services	Computer software development	CBD-1	CBD-2	RS	CM/W/E
5239 9900	Services	Consultants, NEC	CBD-1	CBD-2	RS	CM/W/E
6241 9000	Services	Counseling, social services	CBD-1	CBD-2	RS	CM/W/E
5614 9200	Services	Court reporting services	CBD-1	CBD-2	RS	CM/W/E
6212 1000	Services	Dentist	CBD-1	CBD-2	RS	CM/W/E
5414 2000	Services	Designer, building/industrial	CBD-1	CBD-2	RS	CM/W/E
5418 6000	Services	Direct mail ad service	CBD-1	CBD-2	RS	CM/W/E

5413 4000	Services	Drafting services	CBD-1	CBD-2	RS	CM/W/E
8121 9902	Services	Electrolysis clinic	CBD-1	CBD-2	RS	CM/W/E
5413 3000	Services	Engineers	CBD-1	CBD-2	RS	CM/W/E
5413 8001	Services	Environmental services	CBD-1	CBD-2	RS	CM/W/E
8129 9001	Services	Event planning services	CBD-1	CBD-2	RS	CM/W/E
8121 1202	Services	Facial salon, skin care	CBD-1	CBD-2	RS	CM/W/E
5239 3001	Services	Financial consulting, NEC	CBD-1	CBD-2	RS	CM/W/E
5239 9901	Services	Financial services, NEC	CBD-1	CBD-2	RS	CM/W/E
8121 1300	Services	Fingernail salon	CBD-1	CBD-2	RS	CM/W/E
5413 3001	Services	Geologist	CBD-1	CBD-2	RS	CM/W/E
5414 3001	Services	Graphic designer	CBD-1	CBD-2	RS	CM/W/E
5617 2001	Services	House cleaning and maid service	CBD-1	CBD-2	RS	CM/W/E
5242 1000	Services	Insurance agents and brokers	CBD-1	CBD-2	RS	CM/W/E

5414 1000	Services	Interior designers	CBD-1	CBD-2	RS	CM/W/E
5141 9400	Services	Internet, marketing, com	CBD-1	CBD-2	RS	CM/W/E
5141 9300	Services	Internet, website designer	CBD-1	CBD-2	RS	CM/W/E
5239 3000	Services	Investment advice and management	CBD-1	CBD-2	RS	CM/W/E
5411 1001	Services	Legal services	CBD-1	CBD-2	RS	CM/W/E
5222 9100	Services	Loan office, personal	CBD-1	CBD-2	RS	CM/W/E
5617 2001	Services	Maid services and housecleaning	CBD-1	CBD-2	RS	CM/W/E
5416 1300	Services	Marketing services	CBD-1	CBD-2	RS	CM/W/E
6213 9901	Services	Massage therapeutic	CBD-1	CBD-2	RS	CM/W/E
6211 1101	Services	Medical, acupuncturist	CBD-1	CBD-2	RS	CM/W/E
6213 1000	Services	Medical, chiropractors	CBD-1	CBD-2	RS	CM/W/E
6212 1000	Services	Medical, dentist	CBD-1	CBD-2	RS	CM/W/E
6213 9901	Services	Medical, massage therapeutic	CBD-1	CBD-2	RS	CM/W/E

6213 2000	Services	Medical, optometrist	CBD-1	CBD-2	RS	CM/W/E
6213 4001	Services	Medical, physical therapist	CBD-1	CBD-2	RS	CM/W/E
6213 9100	Services	Medical, podiatrist	CBD-1	CBD-2	RS	CM/W/E
6213 9900	Services	Medical, practitioners NEC	CBD-1	CBD-2	RS	CM/W/E
6211 1200	Services	Medical, psychiatrist	CBD-1	CBD-2	RS	CM/W/E
6213 3000	Services	Medical, psychologist	CBD-1	CBD-2	RS	CM/W/E
6211 1201	Services	Medical, psychotherapist	CBD-1	CBD-2	RS	CM/W/E
6213 4000	Services	Medical, speech pathology	CBD-1	CBD-2	RS	CM/W/E
3152 1101	Services	Monogram shop	CBD-1	CBD-2	RS	CM/W/E
6213 2000	Services	Optometrist	CBD-1	CBD-2	RS	CM/W/E
5222 9100	Services	Personal loans office	CBD-1	CBD-2	RS	CM/W/E
5419 2200	Services	Photographer, commercial	CBD-1	CBD-2	RS	CM/W/E
5419 2100	Services	Photographer, portrait	CBD-1	CBD-2	RS	CM/W/E

6213 4001	Services	Physical therapist	CBD-1	CBD-2	RS	CM/W/E
4422 9901	Services	Picture framing store	CBD-1	CBD-2	RS	CM/W/E
6213 9100	Services	Podiatrist	CBD-1	CBD-2	RS	CM/W/E
5616 1101	Services	Polygraph examiners	CBD-1	CBD-2	RS	CM/W/E
5418 6000	Services	Print, direct mail and ad service	CBD-1	CBD-2	RS	CM/W/E
5111 9901	Services	Print, publisher (no printing)	CBD-1	CBD-2	RS	CM/W/E
5616 1200	Services	Private investigator	CBD-1	CBD-2	RS	CM/W/E
6211 1200	Services	Psychiatrist	CBD-1	CBD-2	RS	CM/W/E
6213 3000	Services	Psychologist	CBD-1	CBD-2	RS	CM/W/E
6211 1201	Services	Psychotherapist	CBD-1	CBD-2	RS	CM/W/E
5418 2000	Services	Public relation firms	CBD-1	CBD-2	RS	CM/W/E
5111 9901	Services	Publisher (no printing)	CBD-1	CBD-2	RS	CM/W/E
5312 1000	Services	Real estate agent, broker and management	CBD-1	CBD-2	RS	CM/W/E

5259 9000	Services	Real estate developer and investor	CBD-1	CBD-2	RS	CM/W/E
5413 8000	Services	Research services	CBD-1	CBD-2	RS	CM/W/E
3152 1201	Services	Seamstress	CBD-1	CBD-2	RS	CM/W/E
5614 1000	Services	Secretarial services	CBD-1	CBD-2	RS	CM/W/E
7139 4000	Services	Spas, day health spas	CBD-1	CBD-2	RS	CM/W/E
6213 4000	Services	Speech pathology	CBD-1	CBD-2	RS	CM/W/E
5231 2000	Services	Stock brokers	CBD-1	CBD-2	RS	CM/W/E
3152 1200	Services	Tailor	CBD-1	CBD-2	RS	CM/W/E
7114 1000	Services	Talent agents	CBD-1	CBD-2	RS	CM/W/E
5412 1300	Services	Tax return preparation	CBD-1	CBD-2	RS	CM/W/E
5614 2100	Services	Telephone answering service	CBD-1	CBD-2	RS	CM/W/E
5411 9100	Services	Title abstract companies	CBD-1	CBD-2	RS	CM/W/E
5615 1000	Services	Travel agencies	CBD-1	CBD-2	RS	CM/W/E

8129 9002	Services	Wedding chapel	CBD-1	CBD-2	RS	CM/W/E
8129 9001	Services	Wedding planning and coordinating	CBD-1	CBD-2	RS	CM/W/E
CBD-2, Central business district-2						
4431 1100	Retail	Appliance store	CBD-2	RS	W	CM/E
4431 1103	Retail	Appliance store, used only	CBD-2	RS	W	CM/E
4511 2001	Retail	Arts and crafts store	CBD-2	RS	W	CM/E
4413 1002	Retail	Auto radio and sound systems, sales and service	CBD-2	RS	W	CM/E
4413 1002	Retail	Auto sound systems and radio, sales and service	CBD-2	RS	W	CM/E
4421 1002	Retail	Bed and mattress sales	CBD-2	RS	W	CM/E
4422 9100	Retail	Blinds and drapery stores	CBD-2	RS	W	CM/E
4512 1100	Retail	Bookstore, new	CBD-2	RS	W	CM/E
4512 1102	Retail	Bookstore, used	CBD-2	RS	W	CM/E
4431 3000	Retail	Cameras and photo supplies	CBD-2	RS	W	CM/E
4422 1000	Retail	Carpet and floor coverings	CBD-2	RS	W	CM/E

4541 1000	Retail	Catalog showrooms	CBD-2	RS	W	CM/E
7223 2000	Retail	Catering service	CBD-2	RS	W	CM/E
4511 2004	Retail	Ceramic products supplies	CBD-2	RS	W	CM/E
4481 3000	Retail	Clothing, children and infant	CBD-2	RS	W	CM/E
4481 5000	Retail	Clothing, costume and dance (sale and rent)	CBD-2	RS	W	CM/E
4481 5000	Retail	Clothing, dance and costume (sale and rent)	CBD-2	RS	W	CM/E
4481 4000	Retail	Clothing, family	CBD-2	RS	W	CM/E
4481 9008	Retail	Clothing, furrier	CBD-2	RS	W	CM/E
4481 3000	Retail	Clothing, infant and children	CBD-2	RS	W	CM/E
4481 2001	Retail	Clothing, maternity	CBD-2	RS	W	CM/E
4481 1000	Retail	Clothing, men and boys	CBD-2	RS	W	CM/E
4481 1001	Retail	Clothing, men's accessory	CBD-2	RS	W	CM/E
4481 9006	Retail	Clothing, NEC	CBD-2	RS	W	CM/E

4481 9005	Retail	Clothing, T-shirts	CBD-2	RS	W	CM/E
4481 9004	Retail	Clothing, western wear	CBD-2	RS	W	CM/E
4481 2002	Retail	Clothing, women's accessory	CBD-2	RS	W	CM/E
4481 9000	Retail	Clothing, women's lingerie	CBD-2	RS	W	CM/E
4481 2000	Retail	Clothing, women's ready wear	CBD-2	RS	W	CM/E
4539 9805	Retail	Coin and gold dealer	CBD-2	RS	W	CM/E
4539 9806	Retail	Comic book store	CBD-2	RS	W	CM/E
4431 2001	Retail	Computer, software sales	CBD-2	RS	W	CM/E
4431 2000	Retail	Computers and electronics sales	CBD-2	RS	W	CM/E
7223 1000	Retail	Concession operators	CBD-2	RS	W	CM/E
4471 1000	Retail	Convenience store, no gas	CBD-2	RS	W	CM/E
4461 2002	Retail	Cosmetics and perfume retailer	CBD-2	RS	W	CM/E
4511 2005	Retail	Crafts mall booth	CBD-2	RS	W	CM/E

4511 2001	Retail	Crafts store	CBD-2	RS	W	CM/E
4532 2003	Retail	Curio shop, imported goods	CBD-2	RS	W	CM/E
722410 (NAICS)	Retail	Dance hall	CBD-2	RS	W	CM/E
4521 1000	Retail	Department stores	CBD-2	RS	W	CM/E
4529 1000	Retail	Department stores, discount	CBD-2	RS	W	CM/E
4422 9100	Retail	Drapery and blind stores	CBD-2	RS	W	CM/E
4461 1000	Retail	Drug stores	CBD-2	RS	W	CM/E
4441 3001	Retail	Electric and hand tool store	CBD-2	RS	W	CM/E
4431 2000	Retail	Electronics and computers sales	CBD-2	RS	W	CM/E
4431 1200	Retail	Electronics and TV and stereo	CBD-2	RS	W	CM/E
4511 1002	Retail	Exercise equipment sales	CBD-2	RS	W	CM/E
4511 3001	Retail	Fabric shop	CBD-2	RS	W	CM/E
7221 1006	Retail	Fast food, BBQ	CBD-2	RS	W	CM/E

7221 1007	Retail	Fast food, chicken	CBD-2	RS	W	CM/E
7221 1009	Retail	Fast food, fish	CBD-2	RS	W	CM/E
7221 1010	Retail	Fast food, hamburger	CBD-2	RS	W	CM/E
7221 1011	Retail	Fast food, ice cream	CBD-2	RS	W	CM/E
7221 1012	Retail	Fast food, Mexican	CBD-2	RS	W	CM/E
7221 1016	Retail	Fast food, NEC	CBD-2	RS	W	CM/E
7221 1013	Retail	Fast food, pizza	CBD-2	RS	W	CM/E
7221 1015	Retail	Fast food, steak	CBD-2	RS	W	CM/E
7221 1017	Retail	Fast food, taco stand	CBD-2	RS	W	CM/E
4442 2002	Retail	Feed store	CBD-2	RS	W	CM/E
4452 1000	Retail	Fish and meat markets	CBD-2	RS	W	CM/E
4511 1003	Retail	Fishing tackle shop	CBD-2	RS	W	CM/E
4422 1000	Retail	Floor covering and carpet	CBD-2	RS	W	CM/E

7223 3000	Retail	Food preparation commissary	CBD-2	RS	W	CM/E
4421 1000	Retail	Furniture store, new	CBD-2	RS	W	CM/E
4421 1003	Retail	Furniture store, used	CBD-2	RS	W	CM/E
4421 1001	Retail	Furniture stores, office	CBD-2	RS	W	CM/E
4451 1001	Retail	General stores, rural	CBD-2	RS	W	CM/E
4539 9805	Retail	Gold and coin dealer	CBD-2	RS	W	CM/E
4471 1000	Retail	Grocery, convenience store, no gas	CBD-2	RS	W	CM/E
4452 9900	Retail	Grocery, food store, NEC	CBD-2	RS	W	CM/E
4452 1000	Retail	Grocery, meat and fish markets	CBD-2	RS	W	CM/E
4452 3000	Retail	Grocery, produce market	CBD-2	RS	W	CM/E
4451 1001	Retail	Grocery, rural (general store)	CBD-2	RS	W	CM/E
4451 1000	Retail	Grocery, supermarket	CBD-2	RS	W	CM/E
4213 3001	Retail	Gutter sales and installers	CBD-2	RS	W	CM/E

4441 3001	Retail	Hand and electric tool store	CBD-2	RS	W	CM/E
4441 3000	Retail	Hardware stores	CBD-2	RS	W	CM/E
4461 9100	Retail	Health food and vitamin store	CBD-2	RS	W	CM/E
4461 9900	Retail	Hearing aids sales	CBD-2	RS	W	CM/E
4431 1203	Retail	Hi-fi stereo equipment sales	CBD-2	RS	W	CM/E
4511 2003	Retail	Hobby and games shop	CBD-2	RS	W	CM/E
4422 9900	Retail	Home furnishings, NEC	CBD-2	RS	W	CM/E
4511 2002	Retail	Kiosk, arts and crafts	CBD-2	RS	W	CM/E
4512 1101	Retail	Kiosk, books	CBD-2	RS	W	CM/E
4481 9009	Retail	Kiosk, clothing	CBD-2	RS	W	CM/E
4511 2002	Retail	Kiosk, crafts	CBD-2	RS	W	CM/E
7222 1302	Retail	Kiosk, food	CBD-2	RS	W	CM/E
4481 9011	Retail	Kiosk, NEC	CBD-2	RS	W	CM/E

4481 9010	Retail	Kiosk, T-shirts	CBD-2	RS	W	CM/E
4483 2000	Retail	Leather goods and luggage sales	CBD-2	RS	W	CM/E
4216 1001	Retail	Lighting fixtures, retail	CBD-2	RS	W	CM/E
4483 2000	Retail	Luggage and leather goods sales	CBD-2	RS	W	CM/E
4512 1200	Retail	Magazine and news stands	CBD-2	RS	W	CM/E
4541 1001	Retail	Mail order sales	CBD-2	RS	W	CM/E
4421 1002	Retail	Mattress and bed sales	CBD-2	RS	W	CM/E
4452 1000	Retail	Meat and fish markets	CBD-2	RS	W	CM/E
4211 2001	Retail	Mobile tool distributor	CBD-2	RS	W	CM/E
4539 9807	Retail	Monuments and tombstones	CBD-2	RS	W	CM/E
4512 2000	Retail	Music, records and CD's and tapes	CBD-2	RS	W	CM/E
4511 4000	Retail	Musical instruments	CBD-2	RS	W	CM/E
4511 3000	Retail	Needlework and sewing supplies	CBD-2	RS	W	CM/E

4512 1200	Retail	News and magazine stands	CBD-2	RS	W	CM/E
4421 1001	Retail	Office furniture store	CBD-2	RS	W	CM/E
4532 1000	Retail	Office supply	CBD-2	RS	W	CM/E
4461 3000	Retail	Optical goods store	CBD-2	RS	W	CM/E
4214 5001	Retail	Orthopedic appliances	CBD-2	RS	W	CM/E
4539 9804	Retail	Paging equipment and supplies	CBD-2	RS	W	CM/E
4441 2000	Retail	Paint and wallpaper stores	CBD-2	RS	W	CM/E
5222 9800	Retail	Pawn shops	CBD-2	RS	W	CM/E
4461 2002	Retail	Perfume and cosmetics retailer	CBD-2	RS	W	CM/E
4539 1000	Retail	Pet shop and supplies	CBD-2	RS	W	CM/E
4461 1001	Retail	Pharmacy	CBD-2	RS	W	CM/E
4431 3000	Retail	Photo supplies and cameras	CBD-2	RS	W	CM/E
4512 2000	Retail	Records and cd's and tapes	CBD-2	RS	W	CM/E

7221 1005	Retail	Restaurant - cafes and diners	CBD-2	RS	W	CM/E
7222 1200	Retail	Restaurant, cafeteria	CBD-2	RS	W	CM/E
7221 1001	Retail	Restaurant, with bar	CBD-2	RS	W	CM/E
7221 1002	Retail	Restaurant, without bar	CBD-2	RS	W	CM/E
7221 1003	Retail	Restaurant with bar, multi-location	CBD-2	RS	W	CM/E
7221 1004	Retail	Restaurant w/o bar, multi-location	CBD-2	RS	W	CM/E
4539 9800	Retail	Retail stores, NEC	CBD-2	RS	W	CM/E
4511 1008	Retail	Saddle shops	CBD-2	RS	W	CM/E
4511 3000	Retail	Sewing and needlework supplies	CBD-2	RS	W	CM/E
4431 1101	Retail	Sewing machine sales and service	CBD-2	RS	W	CM/E
4482 1004	Retail	Shoe store, athletic	CBD-2	RS	W	CM/E
4482 1002	Retail	Shoe store, ladies	CBD-2	RS	W	CM/E
4482 1003	Retail	Shoe store, men's	CBD-2	RS	W	CM/E

4482 1001	Retail	Shoe store, mixed	CBD-2	RS	W	CM/E
4482 1005	Retail	Shoe store, western boots	CBD-2	RS	W	CM/E
4511 1000	Retail	Sporting goods stores	CBD-2	RS	W	CM/E
4431 1200	Retail	Stereo and electronics and TV	CBD-2	RS	W	CM/E
4431 1203	Retail	Stereo and hi-fi equipment sales	CBD-2	RS	W	CM/E
4431 1201	Retail	Telephone, business systems sales	CBD-2	RS	W	CM/E
4431 1202	Retail	Telephone, retail sales (noncommercial)	CBD-2	RS	W	CM/E
4431 1200	Retail	Television and stereo and electronics	CBD-2	RS	W	CM/E
4431 1200	Retail	Television, stereo and electronics	CBD-2	RS	W	CM/E
4539 9100	Retail	Tobacco stores retail	CBD-2	RS	W	CM/E
4539 9807	Retail	Tombstones and monuments	CBD-2	RS	W	CM/E
4211 2001	Retail	Tool distributor, mobile	CBD-2	RS	W	CM/E
4441 3001	Retail	Tool store, hand and electric	CBD-2	RS	W	CM/E

4511 2000	Retail	Toy stores	CBD-2	RS	W	CM/E
4431 1200	Retail	TV and stereo and electronics	CBD-2	RS	W	CM/E
4431 1102	Retail	Vacuum cleaner sales and service	CBD-2	RS	W	CM/E
4529 9000	Retail	Variety stores	CBD-2	RS	W	CM/E
5322 3000	Retail	Video tape rental and sales	CBD-2	RS	W	CM/E
4461 9100	Retail	Vitamin and health food store	CBD-2	RS	W	CM/E
4441 2000	Retail	Wallpaper and paint stores	CBD-2	RS	W	CM/E
4543 9001	Retail	Water filters and softeners sales	CBD-2	RS	W	CM/E
4543 9001	Retail	Water softeners and filters sales	CBD-2	RS	W	CM/E
6219 1000	Services	Ambulance service	CBD-2	RS	W	CM/E
5221 1001	Services	Automatic teller machine location	CBD-2	RS	W	CM/E
8129 3000	Services	Automobile parking lot	CBD-2	RS	W	CM/E
8129 9000	Services	Bail bonds	CBD-2	RS	W	CM/E

5221 1000	Services	Banks	CBD-2	RS	W	CM/E
7139 9003	Services	Billiards, pool hall	CBD-2	RS	W	CM/E
7132 9000	Services	Bingo halls	CBD-2	RS	W	CM/E
8139 1000	Services	Business associations	CBD-2	RS	W	CM/E
8112 1101	Services	Camera and VCR repair	CBD-2	RS	W	CM/E
8111 9201	Services	Carwash, self service	CBD-2	RS	W	CM/E
5223 9000	Services	Check cashing service	CBD-2	RS	W	CM/E
8134 1000	Services	Civic, social and fraternal associations	CBD-2	RS	W	CM/E
5133 9000	Services	Communication services, NEC	CBD-2	RS	W	CM/E
8112 1200	Services	Computer maintenance and repair	CBD-2	RS	W	CM/E
5324 2000	Services	Computer rental and leasing	CBD-2	RS	W	CM/E
5614 5000	Services	Credit reporting service	CBD-2	RS	W	CM/E
5221 3000	Services	Credit unions	CBD-2	RS	W	CM/E

7139 9006	Services	Dance and yoga studio	CBD-2	RS	W	CM/E
5616 1200	Services	Detective and security guard service	CBD-2	RS	W	CM/E
8123 3101	Services	Diaper service	CBD-2	RS	W	CM/E
6211 1100	Services	Doctors and clinics	CBD-2	RS	W	CM/E
8112 1900	Services	Electronic repair	CBD-2	RS	W	CM/E
5613 1000	Services	Employment agencies	CBD-2	RS	W	CM/E
5121 1000	Services	Film and/or video production	CBD-2	RS	W	CM/E
8114 2000	Services	Furniture refinishing and repair	CBD-2	RS	W	CM/E
5241 2800	Services	Insurance carriers and service, NEC	CBD-2	RS	W	CM/E
5141 9200	Services	Internet - host/collocation facility	CBD-2	RS	W	CM/E
5141 9100	Services	Internet, I.S.P. (internet service provider)	CBD-2	RS	W	CM/E
5617 2000	Services	Janitorial services	CBD-2	RS	W	CM/E
8114 9001	Services	Jewelry and clock and watch repair	CBD-2	RS	W	CM/E

8123 1000	Services	Laundry, coin operated	CBD-2	RS	W	CM/E
8123 2001	Services	Laundry, pickup station	CBD-2	RS	W	CM/E
8139 4000	Services	Lobbyist and political organizations	CBD-2	RS	W	CM/E
5616 2200	Services	Locks and locksmiths	CBD-2	RS	W	CM/E
5614 9900	Services	Mailbox rental services	CBD-2	RS	W	CM/E
5614 3100	Services	Mailing printing services	CBD-2	RS	W	CM/E
5611 1003	Services	Manufacturers rep office	CBD-2	RS	W	CM/E
6116 2000	Services	Martial arts schools	CBD-2	RS	W	CM/E
6211 1100	Services	Medical, doctors and clinics	CBD-2	RS	W	CM/E
6211 1100	Services	Medical clinics	CBD-2	RS	W	CM/E
8139 9000	Services	Membership organization, NEC	CBD-2	RS	W	CM/E
5611 1003	Services	Mfg. Rep./sales office	CBD-2	RS	W	CM/E
5223 1000	Services	Mortgage bankers and brokers	CBD-2	RS	W	CM/E

5121 3100	Services	Movie theatre	CBD-2	RS	W	CM/E
7111 3000	Services	Musical groups and artists	CBD-2	RS	W	CM/E
5141 1000	Services	News services (no printing)	CBD-2	RS	W	CM/E
8129 3000	Services	Parking lot	CBD-2	RS	W	CM/E
3231 1400	Services	Photocopy and duplicating service	CBD-2	RS	W	CM/E
8129 2200	Services	Photofinishing lab, 1-hour	CBD-2	RS	W	CM/E
8129 2201	Services	Photofinishing lab - pickup only	CBD-2	RS	W	CM/E
8139 4000	Services	Political organizations and lobbyist	CBD-2	RS	W	CM/E
7139 9003	Services	Pool hall, billiards	CBD-2	RS	W	CM/E
3231 1400	Services	Print, photocopy and duplicating service	CBD-2	RS	W	CM/E
3231 1300	Services	Print, silk screen	CBD-2	RS	W	CM/E
8139 2000	Services	Professional membership associations	CBD-2	RS	W	CM/E
5131 1200	Services	Radio station	CBD-2	RS	W	CM/E

8112 1100	Services	Radio and television repair shop	CBD-2	RS	W	CM/E
5122 4000	Services	Recording studios	CBD-2	RS	W	CM/E
5611 1003	Services	Sales office/manufacturers rep.	CBD-2	RS	W	CM/E
6116 2000	Services	Schools, martial arts	CBD-2	RS	W	CM/E
6114 1000	Services	Schools, business and secretary	CBD-2	RS	W	CM/E
6114 2000	Services	Schools, computer	CBD-2	RS	W	CM/E
6116 9200	Services	Schools, driving schools	CBD-2	RS	W	CM/E
6117 1000	Services	Schools, educational	CBD-2	RS	W	CM/E
6115 1200	Services	Schools, flying	CBD-2	RS	W	CM/E
6114 1000	Services	Schools, secretary and business	CBD-2	RS	W	CM/E
6115 1900	Services	Schools, vocational	CBD-2	RS	W	CM/E
5616 1200	Services	Security guard and detective service	CBD-2	RS	W	CM/E
8114 3000	Services	Shoe repair	CBD-2	RS	W	CM/E

3231 1300	Services	Silk screen printing	CBD-2	RS	W	CM/E
5413 7000	Services	Surveying services	CBD-2	RS	W	CM/E
8121 9901	Services	Tanning salons	CBD-2	RS	W	CM/E
5614 4200	Services	Telemarketing service	CBD-2	RS	W	CM/E
8112 1100	Services	Television and radio repair shop	CBD-2	RS	W	CM/E
5613 2000	Services	Temporary help services	CBD-2	RS	W	CM/E
5121 3100	Services	Theater, indoor movie	CBD-2	RS	W	CM/E
7111 1000	Services	Theater, live	CBD-2	RS	W	CM/E
7113 2000	Services	Theatrical productions and services	CBD-2	RS	W	CM/E
5615 2000	Services	Tour operators	CBD-2	RS	W	CM/E
8112 1100	Services	TV and radio repair shop	CBD-2	RS	W	CM/E
8139 3000	Services	Unions and other labor groups	CBD-2	RS	W	CM/E
8114 2001	Services	Upholstery repair shop	CBD-2	RS	W	CM/E

8112 1101	Services	VCR and camera repair	CBD-2	RS	W	CM/E
5419 4000	Services	Veterinary clinic and services	CBD-2	RS	W	CM/E
7131 2000	Services	Video arcade	CBD-2	RS	W	CM/E
8114 9001	Services	Watch and clock and jewelry repair	CBD-2	RS	W	CM/E
7139 9006	Services	Yoga and dance studio	CBD-2	RS	W	CM/E
RS, retail and service						
3121 3000	Mfg	Food, winery (wine)	RS	W	CM	
4529 9002	Retail	Auto and home supply stores	RS	W	CM	
4411 2001	Retail	Auto dealer, consignment	RS	W	CM	
4411 1000	Retail	Auto dealer, new	RS	W	CM	
4411 1001	Retail	Auto dealer, truck (new)	RS	W	CM	
4411 2000	Retail	Auto dealer, used	RS	W	CM	
4413 1000	Retail	Auto parts, new	RS	W	CM	
7224 1001	Retail	Bar	RS	W	CM	

4412 2200	Retail	Boat dealers	RS	W	CM	
4543 9000	Retail	Bottled water	RS	W	CM	
7224 1004	Retail	Brew pub	RS	W	CM	
4441 1000	Retail	Building materials	RS	W	CM	
4532 1001	Retail	Business machines, sales and service	RS	W	CM	
4452 9201	Retail	Candy and nuts kiosk	RS	W	CM	
4441 9001	Retail	Ceiling fans	RS	W	CM	
5532 2000	Retail	Costume sales and rental	RS	W	CM	
7224 1001	Retail	Drinking place, bar	RS	W	CM	
7224 1004	Retail	Drinking place, brew pub	RS	W	CM	
4441 9001	Retail	Fans (ceiling)	RS	W	CM	
4218 2000	Retail	Farm equipment sales	RS	W	CM	
7223 3001	Retail	Fast food, mobile food vendor, auto	RS	W	CM	

7223 3002	Retail	Fast food, mobile food vendor, cart	RS	W	CM	
5616 2100	Retail	Fire and security systems	RS	W	CM	
4442 2000	Retail	Garden and lawn supplies	RS	W	CM	
4471 1003	Retail	Gas (self-serv), gas, no grocery	RS	W	CM	
4471 1002	Retail	Gas (self-serv), gas and grocery and carwash	RS	W	CM	
4471 1001	Retail	Gas (self-serv), gas and grocery	RS	W	CM	
4471 9000	Retail	Gas service station	RS	W	CM	
4529 9001	Retail	General merchandise nec	RS	W	CM	
4441 9002	Retail	Glass and mirror, home and commercial	RS	W	CM	
4511 1001	Retail	Golf and tennis, club pro shops	RS	W	CM	
4412 2900	Retail	Golf cart sales	RS	W	CM	
4511 1004	Retail	Golf equipment	RS	W	CM	
4511 1006	Retail	Gun shop	RS	W	CM	CBD-2

4539 9802	Retail	Hot tub and spas sales	RS	W	CM	
5322 9200	Retail	Jet ski and boat rental	RS	W	CM	
4452 9201	Retail	Kiosk, candy and units	RS	W	CM	
4442 2000	Retail	Lawn and garden supplies	RS	W	CM	
4442 1000	Retail	Lawn mower sales and service	RS	W	CM	
4453 1000	Retail	Liquor stores	RS	W	CM	
4441 9000	Retail	Lumber yard	RS	W	CM	
4441 9002	Retail	Mirror and glass, home and commercial	RS	W	CM	
7223 3001	Retail	Mobile food vendor, auto and trailer	RS	W	CM	
7223 3002	Retail	Mobile food vendor, cart	RS	W	CM	
4412 2100	Retail	Motorcycle dealers	RS	W	CM	
4412 2101	Retail	Motorcycle parts, used only	RS	W	CM	
4442 2000	Retail	Nursery (lawn and garden)	RS	W	CM	

4452 9201	Retail	Nuts and candy kiosk	RS	W	CM	
4511 1001	Retail	Pro shops, golf or tennis	RS	W	CM	
5322 9900	Retail	Rental center, furniture and appliances	RS	W	CM	
5323 1000	Retail	Rental center, tools and equipment	RS	W	CM	
4511 1005	Retail	Scuba dive gear shop	RS	W	CM	
5616 2100	Retail	Security and fire systems	RS	W	CM	
4539 9802	Retail	Spas and hot tub sales	RS	W	CM	
4539 9803	Retail	Swimming pool supplies	RS	W	CM	
4511 1001	Retail	Tennis and golf, club pro shops	RS	W	CM	
4413 2000	Retail	Tire store	RS	W	CM	
4413 2001	Retail	Tire store, used	RS	W	CM	
2351 1005	Services	Air conditioning and heating services	RS	W	CM	
6233 1101	Services	Alternative living center	RS	W	CM	

8114 9004	Services	Appliance repair, household	RS	W	CM	
8111 1806	Services	Auto detailing	RS	W	CM	
8111 1807	Services	Auto inspection station	RS	W	CM	
8111 1802	Services	Auto repair, air conditioning	RS	W	CM	
8111 2100	Services	Auto repair, body and paint	RS	W	CM	
8111 1200	Services	Auto repair, brakes and muffler	RS	W	CM	
8111 1804	Services	Auto repair, electrical	RS	W	CM	
8111 1100	Services	Auto repair, general repair	RS	W	CM	
8111 9100	Services	Auto repair, lube and oil	RS	W	CM	
3227 1001	Services	Auto repair, machine shop	RS	W	CM	
8111 1200	Services	Auto repair, muffler and brakes	RS	W	CM	
8111 1801	Services	Auto repair, NEC	RS	W	CM	
8111 1805	Services	Auto repair, radiator	RS	W	CM	

8111 1300	Services	Auto repair, transmission	RS	W	CM	
8111 1803	Services	Auto repair, tune-up shop	RS	W	CM	
8111 2200	Services	Auto repair, windshield	RS	W	CM	
7211 9100	Services	Bed and breakfast	RS	W	CM	
3399 5000	Services	Billboard business office	RS	W	CM	
8114 9002	Services	Boat and boat motor repair	RS	W	CM	
3231 2100	Services	Bookbinding service	RS	W	CM	
5619 9000	Services	Business services, NEC	RS	W	CM	
5132 1000	Services	Cable television	RS	W	CM	
8111 9200	Services	Carwash, automatic	RS	W	CM	
8111 9202	Services	Carwash, drive-thru	RS	W	CM	
7111 9000	Services	Carnival	RS	W	CM	
5617 4000	Services	Carpet and upholstery cleaning	RS	W	CM	

3231 1000	Services	Commercial printing, lithography	RS	W	CM	
3231 1900	Services	Commercial printing, NEC	RS	W	CM	
3344 1303	Services	Computers and electronics, research development	RS	W	CM	
6231 1000	Services	Convalescent and nursing homes	RS	W	CM	
4922 1000	Services	Courier services	RS	W	CM	
3391 1600	Services	Dental laboratories	RS	W	CM	
8129 9004	Services	Disc jockey and party service	RS	W	CM	
8129 1000	Services	Dog and cat kennel	RS	W	CM	
7213 1001	Services	Dormitory (student)	RS	W	CM	
3344 1303	Services	Electronics and computers, research development	RS	W	CM	
4218 3000	Services	Elevator sales and service	RS	W	CM	
6214 9300	Services	Emergency clinic	RS	W	CM	
7213 1000	Services	Fraternity and sorority houses	RS	W	CM	

8122 1000	Services	Funeral home	RS	W	CM	
8111 2201	Services	Glass tinting, auto and home	RS	W	CM	
7139 4004	Services	Gyms	RS	W	CM	
6213 9902	Services	Health service, NEC	RS	W	CM	
2351 1005	Services	Heating and air conditioning services	RS	W	CM	
4871 1000	Services	Horse-drawn carriage service	RS	W	CM	
6221 1000	Services	Hospital	RS	W	CM	
7211 1000	Services	Hotel	RS	W	CM	
8129 1000	Services	Kennels, dogs and cats	RS	W	CM	
6214 9200	Services	Kidney dialysis clinics	RS	W	CM	
6215 1104	Services	Laboratories, analytical	RS	W	CM	
6215 1101	Services	Laboratories, analytical	RS	W	CM	
3391 1600	Services	Laboratories, dental	RS	W	CM	

6215 1100	Services	Laboratories, medical	RS	W	CM	
6215 1102	Services	Laboratories, pathological	RS	W	CM	
6215 1105	Services	Laboratories, research and development	RS	W	CM	
6215 1106	Services	Laboratories, testing	RS	W	CM	
6215 1103	Services	Laboratories, X-ray	RS	W	CM	
5416 9000	Services	Landscape planning and service	RS	W	CM	
8123 3100	Services	Laundry, linen service	RS	W	CM	
8123 3102	Services	Laundry, uniform service	RS	W	CM	
3231 2202	Services	Litho platemaking printing	RS	W	CM	
6219 1000	Services	Medical, ambulance service	RS	W	CM	
6214 9300	Services	Medical, emergency clinic	RS	W	CM	
6213 9902	Services	Medical, health service, NEC	RS	W	CM	
6221 1000	Services	Medical, hospital	RS	W	CM	

6214 9200	Services	Medical, kidney dialysis clinic	RS	W	CM	
6215 1200	Services	Medical, magnetic imaging center	RS	W	CM	
6222 1000	Services	Medical, rehabilitation clinics	RS	W	CM	
6222 1001	Services	Medical rehabilitation services	RS	W	CM	
7211 1001	Services	Motel	RS	W	CM	
5121 2000	Services	Motion picture, distribution	RS	W	CM	
8114 9003	Services	Motorcycle repair	RS	W	CM	
6231 1000	Services	Nursing and convalescent homes	RS	W	CM	
8129 1001	Services	Pet grooming	RS	W	CM	
8129 2100	Services	Photofinishing labs	RS	W	CM	
7139 4004	Services	Physical fitness facilities	RS	W	CM	
3231 2100	Services	Print, bookbinding	RS	W	CM	
3231 1000	Services	Print, commercial lithography	RS	W	CM	

3231 1900	Services	Print, commercial, NEC	RS	W	CM	
3231 2202	Services	Print, litho platemaking	RS	W	CM	
3231 2201	Services	Print, typesetting	RS	W	CM	
3344 1303	Services	Research and development, electronics and computers	RS	W	CM	
6222 1000	Services	Rehabilitation clinics	RS	W	CM	
6233 1100	Services	Retirement homes, full service	RS	W	CM	
5616 2101	Services	Security systems service	RS	W	CM	
5415 1901	Services	Semiconductor industry services	RS	W	CM	
3399 5000	Services	Sign and billboard business office	RS	W	CM	
8114 1100	Services	Small engine repair	RS	W	CM	
7213 1000	Services	Sorority and fraternity houses	RS	W	CM	
5131 2000	Services	TV station	RS	W	CM	
8121 9903	Services	Tattoo parlor	RS	W	CM	

7115 1001	Services	Taxidermists	RS	W	CM	
5132 1000	Services	Television, cable	RS	W	CM	
5131 2000	Services	Television station	RS	W	CM	
3262 1200	Services	Tire repair and retreading	RS	W	CM	
3231 2201	Services	Typesetting	RS	W	CM	
8123 3102	Services	Uniform service, laundry	RS	W	CM	
5321 1200	Transp.	Auto lease agency office	RS	W	CM	
5321 1100	Transp.	Auto rental agency office	RS	W	CM	
4884 9000	Transp.	Bus terminal facility	RS	W	CM	
4853 2000	Transp.	Limousine rental	RS	W	CM	
4853 1001	Transp.	Taxicabs (driver owned)	RS	W	CM	
5321 2002	Transp.	Trailer rental	RS	W	CM	
5321 2001	Transp.	Truck, rental and lease, vehicle only	RS	W	CM	

5321 2000	Transp.	Truck rental and leasing office	RS	W	CM	
W, Warehouse district						
2351 1002	Constr.	Air conditioning and heating contractor	W	CM		
2354 1000	Constr.	Brick and stone mason contractor	W	CM		
2349 2000	Constr.	Cable installation contractor	W	CM		
2355 1000	Constr.	Carpentry work contractor	W	CM		
2355 2000	Constr.	Carpet and floor laying contractor	W	CM		
2333 2000	Constr.	Commercial buildings contractor	W	CM		
2357 1001	Constr.	Concrete contractor	W	CM		
2359 9000	Constr.	Construction contractors, NEC	W	CM		
2351 1002	Constr.	Contractor, air conditioning and heating	W	CM		
2354 1000	Constr.	Contractor, brick and stone mason	W	CM		
2349 2000	Constr.	Contractor, cable installation	W	CM		
2355 1000	Constr.	Contractor, carpentry work	W	CM		

2355 2000	Constr.	Contractor, carpet and floor laying	W	CM		
2333 2000	Constr.	Contractor, commercial bldg.	W	CM		
2357 1001	Constr.	Contractor, concrete	W	CM		
2359 9000	Constr.	Contractor, construction NEC	W	CM		
2359 4000	Constr.	Contractor, demolition and wrecking	W	CM		
2354 2000	Constr.	Contractor, drywall and insulation	W	CM		
2353 1000	Constr.	Contractor, electrical	W	CM		
2359 3000	Constr.	Contractor, excavating and foundation	W	CM		
2359 9001	Constr.	Contractor, fencing	W	CM		
2357 1002	Constr.	Contractor, foundation repair	W	CM		
2359 9003	Constr.	Contractor, general	W	CM		
2359 2000	Constr.	Contractor, glass and glazing	W	CM		
2341 1000	Constr.	Contractor, highway and road construction	W	CM		

2351 1004	Constr.	Contractor, lawn sprinkler systems	W	CM		
2351 1003	Constr.	Contractor, mechanical	W	CM		
2352 1000	Constr.	Contractor, paint and wallpaper hanger	W	CM		
2341 1001	Constr.	Contractor, paving (not road)	W	CM		
2351 1001	Constr.	Contractor, plumbing	W	CM		
2356 1000	Constr.	Contractor, roofing and siding	W	CM		
2332 1000	Constr.	Contractor, single-family residence	W	CM		
2359 1000	Constr.	Contractor, steel erectors	W	CM		
2359 9002	Constr.	Contractor, swimming pool	W	CM		
2354 3000	Constr.	Contractor, tile and marble	W	CM		
2349 1000	Constr.	Contractor, utility	W	CM		
2359 4000	Constr.	Demolition and wrecking work	W	CM		
2358 1000	Constr.	Drilling contractor, water well	W	CM		

2354 2000	Constr.	Drywall and insulation contractor	W	CM		
2353 1000	Constr.	Electrical contractor	W	CM		
2359 3000	Constr.	Excavating and foundation contractor	W	CM		
2359 9001	Constr.	Fencing contractor	W	CM		
2355 2000	Constr.	Floor and carpet laying contractor	W	CM		
2357 1002	Constr.	Foundation repair contractor	W	CM		
2359 9003	Constr.	General contractor office	W	CM		
2359 2000	Constr.	Glass and glazing contractor	W	CM		
2351 1002	Constr.	Heating and air conditioning contractor	W	CM		
2341 1000	Constr.	Highway and road construction contractor	W	CM		
2332 1000	Constr.	Home construction contractor	W	CM		
2354 2000	Constr.	Insulation and drywall contractor	W	CM		
2354 1000	Constr.	Mason, brick and stone contractor	W	CM		

2351 1003	Constr.	Mechanical contractors	W	CM		
2352 1000	Constr.	Paint and wallpaper hanging contractor	W	CM		
2341 1001	Constr.	Paving contractors (not road)	W	CM		
2351 1001	Constr.	Plumbing contractor	W	CM		
2332 1000	Constr.	Residential home construction	W	CM		
2341 1000	Constr.	Road and highway construction contractor	W	CM		
2356 1000	Constr.	Roofing and siding contractor	W	CM		
2356 1000	Constr.	Siding and roofing contractor	W	CM		
2332 1000	Constr.	Single-family residence home contractor	W	CM		
2351 1004	Constr.	Sprinkler systems contractor, lawn	W	CM		
2359 1000	Constr.	Steel erectors	W	CM		
2359 9002	Constr.	Swimming pool contractor	W	CM		
2354 3000	Constr.	Tile and marble contractor	W	CM		

2349 1000	Constr.	Utility contractor	W	CM		
2352 1000	Constr.	Wallpaper hanging and paint contractor	W	CM		
2351 1004	Constr.	Water sprinkler systems contractor	W	CM		
2358 1000	Constr.	Water well drilling contractor	W	CM		
2359 4000	Constr.	Wrecking and demolition work	W	CM		
3399 2000	Mfg.	Athletic and sporting goods manufacturing	W	CM		
3371 1000	Mfg.	Cabinet shop	W	CM		
3152 9000	Mfg.	Clothing mfg., NEC	W	CM		
3342 9000	Mfg.	Communication devices manufacturing (not telephone)	W	CM		
3344 1200	Mfg.	Computer, circuit board manufacturing	W	CM		
3341 1300	Mfg.	Computer, computer manufacturing	W	CM		
3344 1301	Mfg.	Computer, cabless semiconductor	W	CM		
3341 1900	Mfg.	Computer, peripheral equip	W	CM		

3344 1300	Mfg.	Computer, semiconductor manufacturing (not 3332 9500)	W	CM		
3332 9500	Mfg.	Computer, semiconductor manufacturing equip	W	CM		
3344 1302	Mfg.	Computer, semiconductor testing	W	CM		
3341 1301	Mfg.	Computer, terminal manufacturing	W	CM		
3399 1400	Mfg.	Costume jewelry manufacturing	W	CM		
3345 1100	Mfg.	Detection and search and navigation equip	W	CM		
3399 3100	Mfg.	Doll manufacturer	W	CM		
3363 2200	Mfg.	Electrical equip manufacturing, vehicle	W	CM		
3344 1900	Mfg.	Electronic components manufacturing	W	CM		
3344 1700	Mfg.	Electronic connectors manufacturing	W	CM		
3118 1200	Mfg.	Food, bread products	W	CM		
3113 2000	Mfg.	Food, candy products	W	CM		
3118 2100	Mfg.	Food, cookies and chips and snacks	W	CM		

3119 9100	Mfg.	Food, prepared (nonfrozen)	W	CM		
3119 4100	Mfg.	Food, sauces and condiments	W	CM		
3371 2500	Mfg.	Furniture mfg., household	W	CM		
3334 1400	Mfg.	Heating and fireplace equipment mfg.	W	CM		
3371 2501	Mfg.	Household fixtures, NEC	W	CM		
3371 2500	Mfg.	Household furniture mfg.	W	CM		
3345 1300	Mfg.	Industrial measurement products	W	CM		
3399 1300	Mfg.	Jeweler findings manufacturing	W	CM		
3399 1400	Mfg.	Jewelry mfg., costume jewelry	W	CM		
3399 1100	Mfg.	Jewelry mfg., precious metal	W	CM		
3351 2900	Mfg.	Lighting equip, NEC	W	CM		
3327 1000	Mfg.	Machine shop (not auto)	W	CM		
3335 1500	Mfg.	Machine tool and accessories manufacturing	W	CM		

3233 2300	Mfg.	Metal work, ornamental	W	CM		
3149 9900	Mfg.	Sewing gift products	W	CM		
4539 9810	Retail	Chemical retailer, NEC	W	CM		
4442 2001	Retail	Dirt and loam product sales	W	CM		
7224 1003	Retail	Drinking place, nightclub	W	CM		
4533 1004	Retail	Flea market booth	W	CM		
5311 2000	Retail	Flea market operator	W	CM		
4412 2901	Retail	Heavy equipment sales	W	CM		
4543 1200	Retail	Liquefied petro/bottled gas	W	CM		
7224 1005	Retail	Men's club	W	CM		
4539 3000	Retail	Mobile home dealers	W	CM		
5614 9101	Retail	Mobile home repossession service	W	CM		
7224 1003	Retail	Nightclub	W	CM		

4539 3001	Retail	Portable buildings and mobile office sales	W	CM		
4412 1000	Retail	RV and utility trailer dealers	W	CM		
4412 1000	Retail	Trailer and RV dealers	W	CM		
4412 1000	Retail	Utility trailer and RV dealers	W	CM		
4931 1001	Retail	Warehouse off-site storage (retail and wholesale)	W	CM		
4881 9000	Services	Aircraft service and repair	W	CM		
8113 1001	Services	Armature rewinding shop	W	CM		
5616 1300	Services	Armored car service	W	CM		
4543 9002	Services	Coffee service, office	W	CM		
4922 1000	Services	Delivery services	W	CM		
8123 2000	Services	Laundry, cleaning plant	W	CM		
5617 3001	Services	Lawn and garden services	W	CM		
5311 3000	Services	Miniwarehouse office	W	CM		

4842 2000	Services	Mobile home, transport service	W	CM		
4841 1002	Services	Movers, home and office	W	CM		
5111 1000	Services	Newspaper (publish and print)	W	CM		
4889 9100	Services	Packing and carting service	W	CM		
5617 1000	Services	Pest control	W	CM		
5111 1000	Services	Print, newspaper (publish and print)	W	CM		
5111 9900	Services	Print, publishing and printing	W	CM		
5111 9900	Services	Publishing and printing	W	CM		
8114 9000	Services	Repair services, NEC	W	CM		
7139 9004	Services	Rifle and pistol range	W	CM		
5617 3002	Services	Tree surgeon and services	W	CM		
5617 4000	Services	Upholstery and carpet cleaning	W	CM		
4542 1000	Services	Vending machine, office	W	CM		

4542 1001	Services	Vending machine equip, various loc.	W	CM		
4931 2000	Services	Warehousing, refrigerated	W	CM		
4931 1000	Services	Warehousing and storage, general	W	CM		
8113 1000	Services	Welding shop	W	CM		
4884 1000	Services	Wrecker service	W	CM		
4855 1000	Transp.	Bus charter service	W	CM		
4852 1000	Transp.	Bus lines	W	CM		
4851 1300	Transp.	Local and suburban transit	W	CM		
4841 1000	Transp.	Local trucking w/o storage	W	CM		
4841 1001	Transp.	Local trucking with storage	W	CM		
0000 4010	Transp.	Railroad side track	W	CM		
4854 1000	Transp.	School buses	W	CM		
4853 1000	Transp.	Taxicab company	W	CM		

4889 9900	Transp.	Transportation services, NEC	W	CM		
4841 2100	Transp.	Trucking, except local	W	CM		
4884 9001	Transp.	Trucking terminal facility	W	CM		
2211 2200	Utilities	Electric companies	W	CM		
4217 3000	Whsale	Air conditioning and heating equipment	W	CM		
4216 2000	Whsale	Appliance wholesaler - electrical	W	CM		
4219 2000	Whsale	Arts and crafts wholesaler	W	CM		
4211 1000	Whsale	Auto wholesaler	W	CM		
4211 2000	Whsale	Automotive parts wholesaler	W	CM		
4228 1000	Whsale	Beer distributor	W	CM		
4224 9001	Whsale	Bottled water distributor	W	CM		
4213 2000	Whsale	Brick and stone wholesaler	W	CM		
4213 9000	Whsale	Building materials, NEC	W	CM		

4224 3000	Whsale	Dairy products wholesaler	W	CM		
4222 1000	Whsale	Drugs and toiletries wholesaler	W	CM		
4216 1000	Whsale	Electrical equipment and supplies	W	CM		
4216 2000	Whsale	Electrical appliances	W	CM		
4216 9000	Whsale	Electronic parts and equipment	W	CM		
4229 3000	Whsale	Florists and flowers supply, wholesaler	W	CM		
4226 9000	Whsale	Gas, industrial and medical	W	CM		
4224 1000	Whsale	Grocery distributor, wholesaler	W	CM		
4217 1000	Whsale	Hardware wholesaler	W	CM		
4217 3000	Whsale	Heating and ac equipment	W	CM		
4218 4000	Whsale	Industrial supplies	W	CM		
4213 3000	Whsale	Insulation and siding and roofing	W	CM		
4218 5000	Whsale	Janitorial supplies	W	CM		

4219 4000	Whsale	Jewelry wholesaler	W	CM		
4228 2000	Whsale	Liquor and wine wholesaler	W	CM		
4229 2000	Whsale	Magazine and newspaper wholesaler	W	CM		
4213 2000	Whsale	Masonry products wholesaler	W	CM		
4214 5000	Whsale	Medical goods and equipment	W	CM		
4229 2000	Whsale	Newspaper and magazine wholesaler	W	CM		
4221 2000	Whsale	Office supplies wholesaler	W	CM		
4229 5000	Whsale	Paint wholesaler	W	CM		
4221 3000	Whsale	Paper wholesaler	W	CM		
4217 2000	Whsale	Plumbing fixtures and supplies	W	CM		
4224 4000	Whsale	Poultry products wholesaler	W	CM		
4224 8000	Whsale	Produce wholesaler	W	CM		
4214 9000	Whsale	Professional equipment and supplies, NEC	W	CM		

4217 4000	Whsale	Refrigeration equipment	W	CM		
4214 4000	Whsale	Restaurant equipment and supplies	W	CM		
4213 3000	Whsale	Roofing and siding and insulation	W	CM		
4213 3000	Whsale	Siding and roofing and insulation	W	CM		
4224 9000	Whsale	Soft drinks distributor	W	CM		
4213 2000	Whsale	Stone and brick wholesaler	W	CM		
4211 3000	Whsale	Tire wholesaler	W	CM		
4229 4000	Whsale	Tobacco products wholesaler	W	CM		
4222 1000	Whsale	Toiletries and drugs wholesaler	W	CM		
4229 9000	Whsale	Wholesale trade, NEC	W	CM		
CM, Construction and manufacturing						
3379 1000	Mfg.	Bed and mattress manufacturing	CM			
3121 2000	Mfg.	Beer brewery	CM			
3251 9000	Mfg.	Biological products manufacturing	CM			

3121 2000	Mfg.	Brewery (beer)	CM			
3252 2100	Mfg.	Cellulose manmade fibers manufacturing	CM			
3259 9800	Mfg.	Chemical products, NEC	CM			
3273 2000	Mfg.	Concrete (ready mix plant)	CM			
3254 1200	Mfg.	Drug and pharmaceuticals manufacturing	CM			
3259 2000	Mfg.	Explosives manufacturing	CM			
3371 2501	Mfg.	Fixture manufacturing, NEC	CM			
3121 2000	Mfg.	Food, brewery (beer)	CM			
3114 2200	Mfg.	Food, canned goods	CM			
3115 1100	Mfg.	Food, dairy products	CM			
3119 4200	Mfg.	Food, flavor extracts and syrups	CM			
3112 1100	Mfg.	Food, flour and grain products	CM			
3119 9900	Mfg.	Food, food manufacturer, NEC	CM			

3114 1200	Mfg.	Food, frozen goods	CM			
3121 1300	Mfg.	Food, ice manufacturer	CM			
3116 1200	Mfg.	Food, sausage and prepared meats	CM			
3121 1100	Mfg.	Food, soft drink and carbonated water	CM			
3332 9400	Mfg.	Food products machinery manufacturing	CM			
3353 1200	Mfg.	Generator and motor manufacturing	CM			
3121 1300	Mfg.	Ice manufacturer	CM			
3251 2000	Mfg.	Industrial gases manufacturing	CM			
3274 1000	Mfg.	Lime manufacturing	CM			
2123 1100	Mfg.	Limestone mining	CM			
3372 1200	Mfg.	Lumber mill	CM			
3219 9100	Mfg.	Manufactured homes manufacturing	CM			
3121 1300	Mfg.	Manufactured ice	CM			

3399 9900	Mfg.	Manufacturing industry, NEC	CM			
3379 1000	Mfg.	Mattress and bed manufacturing	CM			
3345 1900	Mfg.	Measuring devices manufacturing, NEC	CM			
3345 1300	Mfg.	Measurement products, industrial	CM			
3328 1200	Mfg.	Metal coating, plastics and resin	CM			
3328 1300	Mfg.	Metal plating and polishing	CM			
3329 9000	Mfg.	Metalwork, NEC	CM			
3372 1201	Mfg.	Millwork	CM			
3219 9100	Mfg.	Mobile homes manufacturing	CM			
3353 1200	Mfg.	Motor and generator manufacturing	CM			
3212 1900	Mfg.	Mulch and reconstituted wood	CM			
3345 1100	Mfg.	Navigation and detection and search equip. I	CM			
3279 9900	Mfg.	Nonmetallic mineral product manufacturing	CM			

3333 1300	Mfg.	Office machines manufacturing	CM			
3331 3200	Mfg.	Oil field machinery manufacturing	CM			
3391 1500	Mfg.	Ophthalmic goods	CM			
3251 9900	Mfg.	Organic chemicals, NEC	CM			
3222 2100	Mfg.	Paper and plastic film manufacturing	CM			
3256 2000	Mfg.	Perfumes and cosmetics manufacturing	CM			
3254 1200	Mfg.	Pharmaceuticals manufacturing	CM			
3333 1500	Mfg.	Photo equip and access, manufacturing	CM			
3261 5000	Mfg.	Plastic foam products manufacturing	CM			
3261 9900	Mfg.	Plastics mfg., NEC	CM			
3273 9000	Mfg.	Precast concrete product manufacturing	CM			
3391 1300	Mfg.	Prosthetic and surgical products manufacturing	CM			
3211 1300	Mfg.	Sawmills	CM			

3345 1100	Mfg.	Search and detection and navigation equip. I	CM			
2356 1001	Mfg.	Sheet metal work	CM			
3399 9901	Mfg.	Soundproof room manufacturing	CM			
3399 2000	Mfg.	Sporting and athletic goods manufacturing	CM			
3312 1000	Mfg.	Steel pipe and posts manufacturing	CM			
3212 1400	Mfg.	Structural wood member manufacturing	CM			
3391 1300	Mfg.	Surgical and prosthetic products manufacturing	CM			
3353 1300	Mfg.	Switchboard apparatus manufacturing	CM			
3342 1000	Mfg.	Telephone equipment manufacturing	CM			
3345 1400	Mfg.	Totalizing fluid device manufacturing	CM			
3362 1400	Mfg.	Trailer and trailer hitch manufacturing	CM			
3363 2200	Mfg.	Vehicle electrical equip manufacturing	CM			
3399 9902	Mfg.	Water and waster systems manufacturing	CM			

3326 1800	Mfg.	Wire products mfg., NEC	CM			
3212 1900	Mfg.	Wood products, mulch and reconstituted	CM			
3219 9000	Mfg.	Wood products mfg., NEC	CM			
4413 1001	Retail	Auto parts, used and salvage	CM			
4512 1201	Retail	Book store, adult	W	CM		
2123 2100	Retail	Construction sand and gravel	CM			
7224 1005	Retail	Drinking place, men's club	W	CM		
5323 1001	Retail	Rental center, heavy equipment	CM			
2123 2100	Retail	Sand and gravel, construction	CM			
4215 1000	Retail	Steel sales	CM			
1119 9800	Services	Agriculture services, NEC	CM			
8129 9003	Services	Escort service	W	CM		
5621 1100	Services	Garbage collection service	CM			

8121 9900	Services	Modeling and massage studio	W	CM		
2131 1100	Services	Oil well drilling and service	CM			
4219 3000	Services	Recycling, scrap and metals	CM			
5621 1100	Services	Refuse collection systems	CM			
5629 9101	Services	Septic tank cleaning	CM			
5629 9100	Services	Toilets, portable	CM			
4227 2000	Whsale	Fuel oil dealers	CM			
4227 1000	Whsale	Petroleum bulk terminals	CM			
E, Entertainment district						
7139 9000	Services	Amusement and recreation, NEC	E	case-by-case		
7131 1000	Services	Amusement parks	E	case-by-case		
7139 5000	Services	Bowling alley	E	case-by-case		
7212 1400	Services	Camps, sporting and recreational	E	case-by-case		
7139 1000	Services	Country club	E	case-by-case		

7139 1000	Services	Golf course, country club	E	case-by-case		
7139 9005	Services	Golf course, driving range	E	case-by-case		
7139 9001	Services	Golf course, miniature	E	case-by-case		
7139 1001	Services	Golf course, public course	E	case-by-case		
7139 9002	Services	Horse stables	E	case-by-case		
7139 4003	Services	Ice skating rink	E	case-by-case		
7212 1400	Services	Recreational and sporting camps	E	case-by-case		
7139 4001	Services	Roller skating rink	E	case-by-case		
7139 4003	Services	Skating rink, ice	E	case-by-case		
7139 4001	Services	Skating rink, roller	E	case-by-case		
7212 1400	Services	Sporting and recreational camps	E	case-by-case		
7139 9002	Services	Stables, horses	E	case-by-case		
7139 4002	Services	Tennis club	E	case-by-case		

7212 1100	Services	Trailer parks and campsites	E	case-by-case		
TU, Transportation and utilities						
5133 2100	Services	Pager communications network	TU			
5131 1201	Services	Radio station tower	TU			
5131 2001	Services	TV broadcasting tower	TU			
5133 2100	Services	Telecommunications network, pager	TU			
5131 2001	Services	Television broadcasting tower	TU			
5131 1201	Services	Tower, radio station	TU			
5131 2001	Services	Tower, TV broadcasting	TU			
4881 1900	Transp.	Airports and flying fields	TU			
5133 1001	Utilities	Fiber optic telecommunications	TU			
2212 1000	Utilities	Natural gas distribution	TU			
4862 1000	Utilities	Natural gas transmission	TU			
4869 1000	Utilities	Refined gas and oil pipeline	TU			

5133 1001	Utilities	Telecommunications, fiber optic	TU			
5133 2201	Utilities	Telecommunications equipment and/or tower	TU			
5133 1000	Utilities	Telecommunications network, wired	TU			
5133 2201	Utilities	Tower, telecommunications	TU			
2213 2000	Utilities	Wastewater treatment system	TU			
2213 1000	Utilities	Water supply utility	TU			
5133 1000	Utilities	Wired telecommunications network	TU			

Zoning Code Definitions

B	Billboards	For billboards only
CBD-1	Central business district 1	Most restrictive of all district
CBD-2	Central business district 2	A little less restrictive than CBD-1
CM	Construction and manufacturing district	Areas for manufacturing and construction
E	Entertainment district	Areas set aside for entertainment bus
RS	Retail/services district	Areas for most retail and service type
TU	Transportation and utilities	Areas for communication towers, cab
W	Warehouse district	Businesses typically located in warehouses
R-3-3	Multifamily residential 3 district	Area set aside for apartment complex

(Ord. No. 438, exh. A, 11-24-2003; Ord. No. 438-17, §§ 2, 3, 9-21-2004; Ord. No. 539, § 2, 5-20-2008; Ord. No. 711, § 2(Exh. A), 10-16-2012; Ord. No. 825, § 5, 10-21-2014)

Sec. 53-1231. - Grow Green Plant Guide.

The Grow Green Plant Guide was created to help residents select beautiful native and adapted plants which are naturally drought tolerant and resistant to pests and diseases. The less watering, fertilizing, and chemical control required in yards, the more contribution to the conservation and preservation of precious water resources, streams, lakes, and aquifers is possible. The guide was made possible through a partnership between the City of Austin and the state cooperative extension. The rating system is as follows:

(1) *Highly recommended.* Plants are chosen for their pest resistance, hardiness in the regional climate, and utility in the landscape.

(2) *Recommended.* Limited opportunity to use in the landscape due to their location or native range.

(3) *Water.* Refers to the plant's water needs.

(4) *VL (very low).* Water occasionally during very dry conditions.

(5) *L (low).* Water thoroughly every three to four weeks if no rainfall.

(6) *M (medium).* Water thoroughly every two to three weeks if no rainfall.

(7) *H (high).* Water thoroughly every five to seven days if no rainfall.

(8) *Availability.* Most plants on the list are readily available.

a. *D (difficult).* May be difficult to find.

b. *Native.* Texas Native Wildflower Center approved native plant.

c. *Wildlife.* Flowers, leaves or berries attract butterflies, insects and/or birds.

d. *Deer-resistant.* There is very little guarantee that, when very hungry, deer will not eat almost any plant; the following are guidelines:

1. Somewhat deer-resistant.

2. Usually deer-resistant.

Common name	Rating	Height	Spread	Light	Evergreen/Deciduous	Flower season	Color	Water	Availability	Maintenance	Texas native	Wildlife	Deer resist	Comments
	Large Trees													
Arizona Cypress *Cupressus arizonica*	2	25'-50'	25'-50'	Sun	E		Blue-silver foliage	L		Prune for shape only				Triangular shaped foliage; well suited to limestone

														soils; attractive peeling red bark; some disease problems
Big Tooth Maple *Acer grandidentatum*	1	20' - 30'	20' - 30'	Sun/part shade	D		Red and gold fall foliage	M	D	Prune for shape or to raise canopy	+ •			Needs good soil depth; outstanding fall color
Bradford Pear *Pyrus callerya na*		25' - 40'		Full sun/part shade	E		White	M		Prune for shape or to raise canopy				Likes moist, well-drained soil; flower has unpleasant odor; 25-30 year life span; disease resistant
Cherry Laurel *Prunus carolinia na*	2	25' - 30'	15' - 25'	Sun/part shade	E		Dark green foliage	M		Prune for shape only and/or to raise canopy	•	•		Screening plant, wildlife food; does not like hot, dry locations; requires deep soil and good drainage or is

														susceptible to chlorosis; too vigorous to use as a hedge
Chinese Pistache *Pistacia chinensis*	2	25'-40'	25'-40'	Sun	D		Burgundy red fall foliage	M		Prune for shape or to raise canopy				Compact when older; moderate growth rate; long-lived; can be invasive; tall and lanky when young, but fills out
Crape Myrtle *Lagerstroemia indica*	2	4'-25'	4'-20'	Sun	D	Summer	White, pink, lavender flowers; varied fall foliage	M		Prune for shape or to raise canopy; do not chop tops!				Showy flowers; choose mildew-resistant varieties, many of which are named after Native American tribes, e.g., Sioux, Hopi; trees need good air flow; note

														mature size when selecting variety
Cypress, Bald *Taxodium distichum*	1	60' - 100'	25' - 50' +	Sun/part shade	D		Copper leaves in fall	H		Pruning not necessary	+ •			Use western seed source only; requires deep, moist soil conditions and moisture; foliage dries up in dry, hot location
Cypress, Montezuma *Taxodium mucronatum*	1	to 75'	25' - 50'	Sun/part shade	D		Bronze leaves in fall	M		Pruning not necessary	•		•	Similar to Bald Cypress but more adapted to dry, stressful conditions
Eastern Walnut *Juglans nigra*		50'	40'	Sun	N	Fall	Varied leaves	M	D	Prune for shape or to raise canopy				Provides shade; edible nut; roots give off toxins

Elm, American *Ulmus americana*		53' - 80'		Sun/party shade	N	Fall	Varied leaves	M		Prune for shape or to raise canopy	•			Fast-growing, easily transplanted; will grow in many situations; shallow roots; weak wood; susceptible to Dutch Elm and other diseases and bugs
Elm, Cedar *Ulmus crassifolia*	1	25' - 50'	25' - 35'	Sun/part shade	D		Gold leaves in fall	L		Prune for shape or to raise canopy	+ •	•		Upright form; adapted to rocky soils; can withstand heavy, poorly drained clay soils and soils that are moderately compacted; susceptible to powdery mildew

Elm, Lacebark *Ulmus parvifolia*	2	30' - 40'	30' - 40'	Sun	D			M		Prune for shape or to raise canopy				Nearly evergreen; open spreading form; attractive exfoliating bark; drought tolerant
Escarpment Black Cherry *Prunus serotina var. eximia*	2	25' - 50'	to 25'	Sun	D		Yellow fall foliage	M	D	Prune for shape or to raise canopy	+ •	•		Fruit bearing, wildlife food; not for heavy, clay soils; foliage may be toxic and can be fatal if consumed; relatively short-lived
Honey Mesquite *Prosopis glandulosa*	1	25' - 30'	25' - 30'	Sun	D	March-Sept.	Creamy white	L	D	Prune for shape or to raise canopy	+ •	•	•	2"-3" long blooms; bright green foliage and weeping shape; very slow growing; thorns; excellent nectar source

Oak, Blackjack *Quercus marilandica*	2	50'	45'	Sun/part shade	D			L	D	Avoiding pruning or injuring the bark from February 1 to June 1 to help prevent oak wilt	•			Needs well drained soil
Oak, Bur *Quercus macrocarpa*	2	50'+	50'+	Sun/part shade	D			M		Prune for shape or to raise canopy	+•	•		Large, majestic, very adaptable, needs lots of space; moderate growth rate; susceptible to powdery mildew
Oak, Chinquapin *Quercus muhlenbergii*	1	50'+	25'-50'	Sun/part shade	D			M		Prune for shape or to raise canopy	+•	•		Stately form; good for deeper soils; requires additional water until establishe

														d; moderate growth rate
Oak, Durand *Quercus sinuata*		to 90'	to 60'	Sun	N			L	D	Prune for shape or to raise canopy	•			Likes hard limestone; solitary
Oak, Escarpment Live *Quercus fusiformis*	1	30' - 40'	40' +	Sun/part shade	E			L		Avoid pruning or injuring the bark from February 1 to June 1 to help prevent oak wilt	+ •			Preferred live oak for shallow, limestone soils; oak wilt susceptible
Oak, Lacey *Quercus glaucoides*	1	20' - 30'	25'	Sun/part shade	D		Bluish-green foliage	L		Prune for shape or to raise canopy	+ •			Ideal for small urban yards; slow growth; tolerates shallow, limestone soil

Oak, Southern Live *Quercus virginiana*	2	30' - 50'	50' +	Sun/part shade	E			L		Avoid pruning or injuring the bark from February 1 to June 1 to help prevent oak wilt	•	•		Oak wilt susceptible; likes large open spaces; if west on shallow soil, use Escarpment Live Oak
Oak, Monterey (Mexican white) *Quercus polymorpha*	1	30' - 40'			E			L		Prune for shape only and/or to raise canopy				Medium-size leaves, handsome tree; prefers deep soil
Oak, Shumard *Quercus shumardii*	2	50' +	50' +	Sun	D		Red foliage in fall	L		Avoid pruning or injuring the bark from February 1 to June 1 to help preve	•	•		Deep, well drained soil; if west on shallow soil, use Texas Red Oak instead

										nt oak wilt				
Oak, Texas Red *Quercus texana ;I;(Quercus buckleyi)*	1	25' - 50'	to 25'	Sun/part shade	D		Bright red/orange fall foliage	L		Avoid pruning or injuring the bark from February 1 to June 1 to help prevent nt oak wilt	+ •	•		Well adapted to rocky soils; susceptible to oak wilt; outstanding tree
Pecan *Carya illinoiensis*	2	50' +	50' +	Sun	D			M		Prune for shape or to raise canopy	+ •	•		Tall impressive tree; nut producing; for good, deep soils only; susceptible to disease and insects
Soapberry *Sapindus Drummondii*	2	20' - 30'	20' - 30'	Sun/part shade	D	Spring	White flowers; yellow foliage in fall	L	D	Prune for shape or to raise canopy	• +		•	Rapid growth rate; prefers moist soil; berries poisonous to humans

														but good wildlife food; short-lived
Texas Ash *Fraxinus texensis*	1	40' - 50'	40'	Sun/part shade	D			L	D	Prune for shape or to raise canopy	+ •	•		Fast-growing; only Ash appropriate for Austin area; foliage turns bronze/yellow/mauve muted tones in fall
SMALL TREES/LARGE SHRUBS														
American Smoke Tree *Cotinus obovatus*	1	15'	10' - 15'	Sun/part shade	D	Mid-spring	Pink to purple cloud-like floral display	M	D	Prune for shape only or to raise canopy	+ •		•	Prefers well drained, rocky limestone soils; plant facing north or east; does best with a break from the hot afternoon sun

Anacacho Orchid Tree *Bauhinia congesta*	1	8'-12'	8'-10'	Sun/part shade	D	March-May	White or pale pink	L		Prune for shape only or to raise canopy				Prefers well drained soil; small, light green leaves look like cloven hooves
Carolina Buckthorn *Rhamnus carolinia na*	1	12'-15'	15'	Sun/part shade	D		Yellow foliage in fall	ML	D	Prune for shape only or to raise canopy	•	•	•	Understory tree with glossy leaves, red berries for wildlife; needs moisture
Chitalpa *Chitalpa tashkentensis*		15'-25'		Full sun	N		Lavender, pink and white	M	D	Prune for shape only or to raise canopy				Susceptible to Alterneria leaf spot, leaf blight, wilt and premature defoliation
Desert Willow *Chilopsis linearis*	1	15'-25'	15-20'	Sun/part shade	D	Spring to fall	White, pink or burgundy	L		Prune for shape only or to raise canopy	• +	•	•	Trumpet-shaped, 3" long flower; needs well-drained site; airy foliage casts a light

														shade for under-plantings
Eve's Necklace *Sophora affinis*	1	10' - 15'	10'	Sun/part shade	D	Spring	Pink	L	D	Prune for shape only or to rise canopy	+ •	•		4"-6" drooping clusters; will tolerate poorly drained, clay soils; good nectar plant
Flameleaf Sumac *Rhus copallina*	1	10' - 20'	10' - 15'	Sun/part shade	D		Orange/red fall foliage	L		Prune for shape only or to raise canopy	•	•	•	Food for bees, mammals, and birds; thicket-forming; good for wildscapes
Goldenball Leadtree *Leucaena retusa*	1	12' - 15'	12' - 15'	Sun/part shade	D	April to October	Gold	L		Prune for shape only or to raise canopy	• +	•		1" round globes; fragrant; blooms fairly fast growing; airy foliage casts light shade for underplantings; deer browse leaves

Mexican Buckeye *Ungnadia speciosa*	1	15' - 25'	15' - 25'	Sun/part shade	D	Early spring	Pink	L	D	Prune for shape only or to raise canopy right after bloom	+ •	•	•	1" bloom; fragrant; multi-trunk; shrubby; does well as understory plant
Mexican Plum *Prunus mexicana*	1	15' - 25'	8'-10'	Sun/part shade	D	Spring	White	L		Prune for shape only or to raise canopy	• +	•		Edible fruit; needs good drainage and fair amount of soil; short-lived
Mountain Laurel, Texas *Sophora secundiflora*	1	12' - 20'	8'-10'	Sun/part shade	E	Spring	Purple	VL		Prune for shape only or to raise canopy	+ •	•		Showy flowers with strong grade bubble gum fragrance; poisonous seeds; needs good drainage; occasional caterpillar problems

Oak, Shin *Quercus sinuata brevifolia*		10' - 20'		Sun/part shade	N			L	D	Prune for shape only or to raise canopy	•			Almost evergreen; acorns
Poinciana, Bird of Paradise *Caesalpinia gilliesii*	1	6'	12'	Sun/part shade	D	Summer	Yellow and red	L		Prune for shape only				Withstands freezes; disease and pest resistant; seeds are toxic
Poinciana, Mexican Bird of Paradise *Caesalpinia mexicana*	2	10' - 15'	10'	Sun	D	Summer	Yellow	L		Prune for shape only				Blooms entire warm season; seeds are toxic
Poinciana, Red Bird of Paradise Pride of Barbados *Caesalpinia pulcherrima*	1	6'	6'	Sun	D	Summer	Red/orange and yellow	L		Prune for shape only			+ •	Showy flowers; freezes in winter; seeds are toxic

Pomegranate *Punica granatum*	2	10'	8'	Sun/part shade	D		Orange flowers; yellow fall color	L		Prune for shape only or to raise canopy		•		Bears edible fruit
Possum haw Holly *Ilex decidua*	1	12' - 15'	12'	Sun/part shade	D			M		Prune for shape only or to raise canopy	+ •	•	•	Striking red berries on bare branches in winter
Red Buckeye *Aesculus pavia*	1	10' - 20'	10' - 20'	Sun/part shade	D	Early to late spring	Bright red flowers	L	D	Prune for shape only or to raise canopy right after bloom	+ •	•	• +	Flashy bloomer; appropriate for wildscapes; provides wildlife food but is toxic to humans; loses leaves in late summer; best as understory tree
Redbud, Mexican *Cercis canadensis*	1	20'	8'	Sun	D	Early spring	Pinkish purple	VL		Prune for shape only or to	+ •	•		Twigs and petioles covered with dense

'mexicana'										raise canopy				fuzz; leaves have wavy edges; likes well drained sites; more drought tolerant and smaller than Texas Redbud
Redbud, Texas *Cercis canadensis var. texensis*	1	10' - 25'	15'	Sun/part shade	D	Early spring	Pinkish purple	L		Prune for shape only or to raise canopy	+ •	•	•	Can be short lived; Mexican Redbud is smaller; has shiny leaves; look for true Texas Redbud because eastern variety is less adapted
Retama Jerusalem Thorn *Parkinsonia aculeata*	2	12' - 15'	12' - 15'	Part shade /sun	D	Spring to fall	Yellow	VL	D	Prune for shape only or to raise canopy	•			Tolerant of dry soils; fragrant blooms; green trunk and branches; seeds out;

														root suckers; thorns; fast growing, short-lived
Roughleaf Dogwood *Cornus drummondii*	1	12' - 15'	12'	Sun/part shade	D	Spring	White; fall color	L		Prune for shape only or to raise canopy	+ •	•		Easier to grow than Eastern Dogwood; susceptible to leaf spot fungus; recommended for wildscape; thicket-forming; good nectar and seed source
Senna, Flowering *Cassia corymbosa*	2	8'	8'-10'	Sun	D	Summer to fall	Yellow	L		Prune for shape or to raise canopy right after bloom		•	+ •	Dark green leaves; showy bloomer; susceptible to extremely cold weather
Senna, Lindheimer *Cassia*	1	4'	4'	Part shade/sun	D	Late summer to fall	Yellow	L		Prune for shape right	•	•	•	Needs good drainage; gray foliage;

lindheimeriana										after bloom				very tolerant of poor, rocky soils
Texas Persimmon *Diospyros texana*	1	25'	20'	Sun/part shade	D			L		Prune for shape only or to raise canopy	• +	•	•	Attractive, smooth gray bark, wildlife food; grows best in shallow, rocky limestone soils; female trees are fruit-bearing so can be messy; slow grower
Texas Pistachio *Pistacia texana*	1	12' - 20'	15' - 20'	Sun/part shade	D	Spring	White	L	D	Prune for shape only or to raise canopy	+ •	•		Excellent hedge; blooms followed by red 4"-6" fruit clusters on female plants only; birds like red berries

Yaupon Holly *Ilex vomitoria*	1	15'	10' - 15'	Sun/part shade	E	Winter	Red berries	L		Prune for shape only or to raise canopy	+ •	•	•	Small shade tolerant tree; females produce red berries in winter that attract birds; free of insects and diseases; poisonous
SHRUBS														
Agarita *Berberis trifoliata*	1	3'-7'	6'	Sun/part shade	E	Feb-April	Yellow	L	D	Prune for a natural look; shaping not necessary	+ •	•	+ •	Prickly leaves (not pedestrian friendly), fragrant flowers, edible, red berries in spring; bluish-green, holly-like foliage; excellent nesting shrub for birds
Agave Century Plant	1	1'-6'	1'-6'	Sun	E			L		Prune old bloom	+ •		+ •	Many types and sizes; lives

Agave sp.										stalks at base				long but dies after blooming; choose location with caution because leaves have long, sharp spines; some types native to Texas
Althea *Hibiscus syriacus*		to 12'	to 6'	Full sun/part shade	N	Summer		M		Prune for shape only (shrubs and trees) and/or to raise canopy (trees)				Litter; insects and sooty mold problems in shady areas
American Beautyberry *Callicarpa americana*	2	4'-6'	6'	Part shade/shade	D		Purple fruit	M		Shaping not usually necessary	+ •	•		Attractive berries in fall and winter; needs deeper soil; wildlife food;

														prefers dependable moisture
Arrowwood *Viburnum dentatum*		10'	5'	Sun	N	Fall	Magenta	L	D	Pick prune the "wild hairs" for a natural look; shaping not necessary (shrubs, trees)	•		•	1/2 inch spikes
Artemisia *Artemisia 'Powis Castle'*	1	1'	3'-6'	Sun	E			L		Prune removing top½ at end of May. Prune to a 3" height in mid-winter			+ •	Aromatic, lace-like gray foliage; berries are beautiful
Barbados Cherry *Malpigh*	1	3'	2'	Sun/part shade	E	March to Dec.	White to pale pink	M	D	Prune to shape only;	• +	•		½" delicate, crepe-paper

ia glabra										responds well to shaping				flowers followed by red berries that attract birds
Barberry, Japanese *Berberis thunbergii*		3'-6'	4'-7'	Sun/part shade	Y	Fall	Red fruit and varied leaf color	M						Thoryn; *B. thunbergii* and *B. verruculosa* are fairly disease-free
Barberry, Japanese *Berberis thunbergii 'Atropurpurea'*	2	4'-6'	4'-6'	Sun/part shade	D			M		Minimal pruning only to maintain natural arching shape				Colorful burgundy foliage; dense form with thorns; best color in full sun; needs good drainage; dwarf form (to 2') also available
Basket Grass (Sacahuista) *Nolina texana*	1	2'	3'	Sun/part shade	E	Fall	Cream-colored plume	L		Remove old bloom stalks at base	+ •		+ •	Grass-like mounding form effective on slopes; keep away from walkways as leaves

														have sharp edges
Black Dalea *Dalea frutescens*	1	1'-3'	3'	Sun	D	Fall	Purple	L		Prune removing top½ at end of May. Prune to a 3" height after first frost browns leaves; mulch for winter	+ •	•		Requires little water, long roots will find water some distance away; excellent nectar source
Bush Germander *Teucrium fruticans*	2	4'-6'	4'-6'	Sun or shade	D	Summer	Lavender with blue flowers	L		Prune the "wild hairs" for a natural look; shaping not necessary			•	Don't overwater; perennial; attractive, silvery gray-green foliage; smaller, compact varieties available

Butterfly Bush *Buddleja davidii*	2	5'	5'	Sun/part shade	D	Summer and Fall	White, pink, violet, purple	M		Pick prune the "wild hairs" for a natural look; shaping not necessary	•			Long bloom spikes are aromatic; prone to mite problems; attracts butterflies
Butterfly Bush, Wooly *Buddleja marrubiifolia*	1	5'	5'	Sun	D	Summer	Orange	L	D	Pick prune the "wild hairs" for a natural look; shaping not necessary	+ •	•		Interesting ½" flower; peach-fuzz type foliage; needs good drainage; attracts butterflies; native to south Texas
Coralberry *Symphoricarpos orbiculatus*	2	2'-3'	3'	Part shade	D	Winter	Magenta berries	M		Prune removing top ½ at end of May. Prune to a 3" height after	+ •	•		Attractive fleshy berries in late fall and winter; spreads by runners; susceptible to powdery mildew;

										first frost browns leaves, then mulch				needs moist soil with compost added
Cotoneaster *Cotoneaster sp.*	2	3'-5'	4'-6'	Sun/shade	E		Red berries	M		Prune for a natural look; shaping not necessary.			•	Silver-gray to dark green foliage; attractive fleshy berries; susceptible to fire blight and spider mites
Esperanza/Yellow Bells *Tecoma stans*	1	4'-5'	5'	Sun/part shade	D	Summer through Fall	Yellow or orange	M		Remove spent blooms; prune to 3" after first frost, then mulch	• +		•	Showy blooms; native type has narrow leaves; "Gold Star" is an improved variety with larger leaves; blooms even when small

Evergreen Sumac *Rhus virens*	1	8'	8'	Sun or shade	E	Late summer	White	L		Prune for a natural look, shaping not necessary	+ •	•	•	Glossy leaves turn burgundy in cool season; fuzzy, orange/red berries provide food for birds and other wildlife
Flame Acanthus *Anisacanthus quadrifidus var. wrightii*	1	4'	4'	Sun/part shade	D	Summer to fall	Orange	M		Prune removing top ½ at end of May. Prune to a 3" height after first frost browns leaves	+ •	•	• +	Attract humingbirds and butterflies; readily re-seeds; can be used a perennial hedge
Fragrant Sumac (Aromatic) *Rhus aromatica*	1	3'-6'	4'-6'	Sun/part shade	D		Vibrant fall leaves	L	D	Prune the "wild hairs" for a natural look;	+ •	•	•	Wildlife food; leaves confused with poison ivy

										shaping not necessary				
Glossy Abelia *Abelia grandiflora*	2	6'	6'	Sun	E	Summer to fall	White/ pink	M		Prune the "wild hairs" for a natural look; shaping not necessary				Fast growth; tolerates city conditions well
Holly, Burford *Ilex cornuta 'Burfordii'*	2	15' - 20'	10' - 15'	Sun/part shade	E	Spring	White blooms; red berries	M		Prune for a natural look; shaping not necessary			•	Susceptible to scale insects
Holly, Dwarf Burford *Ilex cornuta 'Burfordii Nana'*	2	8'	8'	Sun/part shade	E	Spring	White blooms; red berries	M		Prune for shape only or to raise canopy			•	Dwarf-type grows slower but still gets large; dense leaf coverage; susceptible to scale insects

Holly, Dwarf Chinese *Ilex cornuta 'Rotunda nana'*	2	3'-4'	3'-6'	Sun/shade	E			M		Prune for a natural look; shaping not necessary			•	Rigid leaves with sharp needle points; not pedestrian friendly
Holly, Dwarf Yaupon *Ilex vomitoria 'Nana'*	1	2'-4'	2'-4'	Sun/part shade	E	Summer	White	L		Prune for a natural look; shaping not necessary	•			Low, mounding shrub
Indian Hawthorne *Paphiolepis indica*		3'-4'	3'-4'	Sun	Y		White or pink	M		Prune for a natural look; shaping not necessary			•	Susceptible to fungal leaf spot
Kidneywood *Eysenhardtia texana*	1	8'-10'	7'	Sun/part shade	D	Spring to fall	White	L	D	Prune immediately after bloom for shape only or to trim	+ •	•		Fragrant flowers attract butterflies; blooms off and on through the season; loose, airy foliage

										up into mini-tree form				smells like citrus when crushed
Lantana, Pink *Lantana camara*	2	3'-5'	4'-5'	Sun	D	Summer to fall	Pink and yellow	L		Cut top ½ at end of May. Prune to 3" height after first frost browns leaves; mulch	•	•	•	Some types can be invasive; give lots of room; attracts butterflies
Lantana, Texas *Lantana horrida*	1	3'-5'	4'-5'	Sun	D	Summer to fall	Orange and yellow	L		Cut top ½ at end of May. Prune to 3" height after first frost browns leaves; mulch	+ •	•	•	Prickly; give lots of room; attracts butterflies

Mistflower, White (Shrubby White Boneset) *Ageratina havanense*	1	5'	5'	Sun/part shade	D	Fall	White	M		Cut top ½ at end of May. Prune to 3" height after first frost browns leaves; mulch	+ •	•		Fragrant, white puffy flowers attract butterflies; good for poor, rocky conditions; large and arching branches
Mistflower, Blue Blue Boneset *Eupatorium coelestinum*	1	1.5'-3'	2'-3'	Sun/part shade	D	July-October	Lavender	M		Cut top ½ at end of May. Prune to 3" height after first frost browns leaves; mulch	•	•		Attracts butterflies; prefers moist conditions; best in morning sun or part shade
Mountain Sage *Salvia regla*	1	3'-5'	3'-4'	Part shade	D	Late summer/fall	Red to orange	M	D	Cut top ½ at end of May. Prune to 3"	+ •	•		1" long blossoms; attracts humming birds; does best beneath

										height after first frost browns leaves; mulch				taller shrub or tree that provides afternoon shade
Nandina (dwarf-types) *Nandina sp*	2	3'-6'	2'-4'	Sun/shade	E			L		Prune older, fading shoots at ground level to promote new low growth			•	Choose dwarf varieties only; tall, berrying types can be invasive and lack cool season orange to burgundy foliage color; may be chlorotic in high pH soils
Nandina, Gulf Stream *Nandina domestica "Gulf Stream"*	2	2'	2'		Y		Orange and scarlet foliage	L		Prune for a natural look; shaping not necessary				Smaller than the species but slightly larger than the dwarf form, "Nana"; graceful,

														bamboo-like foliage
Nandina, Harbour Dwarf *Nandina domestica "Harbour Dwarf"*	2				Y			L						
Nandina, Moon Bay *Nandina domestica 'Moon Bay'*	2				Y			L						
Nandina, Nana *Nandina domestica 'nana'*	2	2'		Sun or shade	Y			L		Prune for a natural look; shaping not necessary			•	Different sizes available, may seed in the wild; will run and colonize quickly
Oleander *Nerium oleander*	2	5'-20'	5'-15'	Sun	E	Summer	Pinks, white, purple, lavender	L		Prune for a natural look; shaping not			+ •	May freeze; cut back cold damaged tops in late winter; all parts poisonous

										necessary				if eaten; susceptible to a bacterial blight; very deer resistant; can be used as an informal hedge/screen
Palmetto, Dwarf Texas *Sabal minor*	1	4'-5'	4'-5'	Sun/part shade	E			M	D	Prune only to remove damaged fronds	+ •		•	Tropical but tough; native to east Texas
Primrose Jasmine *Jasminum mesnyi*	2	6'	15'	Sun/part shade	E	Early spring to summer	Yellow	M		Prune for a natural look, shaping not necessary; can be hedge			•	Very large; for hanging over walls or cliffs; good for erosion control
Rock Rose *Pavonia*	1	2'	3'	Sun or shade	D	Summer	Pink	L		Prune removing top ½ at end	+ •	•	•	Small shrub with 1.5" hibiscus-like

lasiopetala										of May. Prune to a 3" height after first frost browns leaves; mulch				blooms; more prone to powdery mildew in shade; very few blooms after spring; biennial; reseeds freely; attract butterflies
Rose, Belinda's Dream *Rosa "Belinda's Dream"*	2	4'	4'	Sun	E	Spring to frost	Pink	M		Prefers drip or soaker hose irrigation				Repeat bloomer; fragrant; disease tolerant; good shrub form with large blooms
Rose, Knock Out *Rosa "Knock Out"*	2	3'	3'	Sun	E	Spring to frost	Red	M		Prefers drip or soaker hose irrigation				Purplish new growth; repeat bloomer; new variety showing good disease resistance

Rose, Livin' Easy *Rosa "Livin' Easy"*	2	4'	3'	Sun	E	Spring to frost	Coral to orange	M		Prefers drip or soaker hose irrigation				Repeat bloomer; new variety recommended showing good disease resistance; upright growth habit
Rose, Marie Pavie *Rosa "Marie Pavie"*	2	3'	3'	Sun/part shade	E	Spring to frost	White to pale pink	M		Prefers drip or soaker hose irrigation				Antique rose; repeat bloomer; fragrant, double bloom; few thorns; disease tolerant
Rose, Mutabilis *Rosa "Mutabilis"*	2	6'	8'	Sun	E	Spring to frost	Copper yellow to pink	M		Prune for a natural look, shaping not necessary; prefers drip or soaker hose				Antique rose; very drought tolerant rose; copper yellow flowers turn to a pretty pink, repeat bloomer;

										irrigation				disease resistant
Rose, Nearly Wild *Rosa "Nearly Wild"*	2	3'	4'	Sun	E	Spring to frost	Deep pink	M		Prefers drip or soaker hose irrigation				Single pink bloom; repeat bloomer; disease resistant; needs soil with compost added
Rose, Old Blush *Rosa "Old Blush"*	2	5'	5'	Sun	E	Spring to frost	Deep pink	M		Prefers drip or soaker hose irrigation				Antique rose; repeat bloomer; disease resistant
Rosemary *Rosmarinus officinalis*	1	4'	4'-6'	Sun	E	On and off all year	Pale Blue	M		Prune for a natural look or shape as desired; cut back by ½ in winter to prevent			+ •	Culinary herb, upright shrub, trailing types also available; good drainage required; prone to disease problems in wet conditions

										leggy look				
Sage, Texas *Leucophyllum frutescens*	1	4'-5'	4'-5'	Sun	E	Spring to summer	Lavender, purple, pink or white	L		Prune for a natural look, shaping not necessary; do not shear!	+ •		•	Gray leaves provide color contrast to lavender flowers; green-leaved varieties also available; blooms off and on through the growing season
Sotol, Texas *Dasylirion texanum*	1	2'-3'	4'	Sun	E	Early summer	Chartreuse to tan	L		Remove old bloom stalks at the base	+ •		•	Long, blade-like leaves with sharp edges (not pedestrian friendly); needs space
Southern Wax Myrtle *Myrica cerifera*	2	10'-12'	15'	Full sun/part shade	E			M		Prune for shape only or to raise	•	•	•	Fast-growing screen; grows best in deeper soils; wildlife

										canopy				food; root suckers; foliage aromatic when crushed
Spirea *Spiraea sp.*		3'-10'		Sun/part shade	N	Spring to Fall	White in spring; pink, red or white summer to fall	M						Easy to grow; bridal wreath type-clusters; shrubby, much lower-growing type-pink, red or white flowers summer to fall
St. John's Wort *Hypericum frondosum*					Y		Yellow	M		Prune for a natural look; shaping not necessary			•	Showy flowers
Turk's Cap *Malvaviscus arboreus*	1	4'-6"	5'	Sun or shade	D	Summer	Red	L		Prune to keep confined or	+ •	•	•	Fruit for wildlife, colonizing; susceptible to freeze;

										when leggy				can be invasive
Wax Myrtle, Dwarf *Myrica pusilla*	2	5'	5'	Sun/part shade	E			M		Prune for a natural look; shaping not necessary	•			Tough, adaptable shrub makes a good 4'-6' screen; foliage aromatic when crushed
Yucca, Paleleaf *Yucca pallida*	1	1'	2'	Sun/part shade	E	Summer	White	L		Remove old bloom stalk at the base	•	•	•	Leaves pale blue-green; deer will eat blooms but not foliage
Yucca, Red *Hesperaloe parviflora*	1	2'-4'	4'	Sun	E	Spring to Summer	Coral spike	L		Remove old bloom stalks at the base	+ •	•	•	May colonize; deer will eat blooms but not foliage; attracts humming birds
Yucca, Softleaf *Yucca recurvifolia*	1	4'-6'	3'	Sun/part shade	E	Summer	White to pale green	L		Remove old bloom stalks at the base	•		•	Soft, pliable foliage; deer eat blooms

														but not foliage
Yucca, Twistleaf *Yucca rupicola*	1	1'-2'	2'	Sun/part shade	E	Summer	White	L		Remove old bloom stalks at the base; divide if crowded	+ •		+ •	Old leaves are twisted; deer eat blooms but not foliage
FLOWERING PERENNIALS														
Black-eyed Susan *Rudbeckia hirta*	1	1'-2'	1'-2'	Sun or shade	D	Summer	Yellow with dark centers	M		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves; mulch for winter	+ •	•	+ •	3" daisy-like blooms in summer; seed sown in fall or spring; butterfly nectar
Blackfoot Daisy *Melampodium*	1	6'-12"	1'-1.5'	Sun	D	Spring and summer	White with yellow	VL		Prune top ½ at end of May,	+ •	•	•	Short daisy-like blooms all spring and summer;

leucanthum										and to a 3" ht. after first frost browns leaves; hates overhead watering				will rot if kept moist; nectar
Bulbine *B. frutescens or caulescens*	1	2'	2.5'	Sun	E	Summer	Orange and yellow or yellow	L	D	Trim off old bloom stalks as they decline				Aloe-like leaves; can freeze
Bush Morning Glory *Ipomoea leptophylla*	2	7'	7'	Sun	D	Summer	Lavender/violet	M	D	Prune only to trim long shoots and shape plant	•			Tall, tender shrub; 6"-8" Morning Glory-like blooms
Butterly Weed *Asclepias*	1	2'-5'	1'	Sun or shade	D	Summer	Orange/yellow	L		Prune top ½ at end of May,	+•	•	•	Flowers attract Monarch butterflies; reseeds

tuberosa										and to a 3" ht. after first frost browns leaves				freely; short-lived; perennial only in mild winter
Butterfly Weed, Mexican (Tropical Mikweed) *Asclepias currasavica*	1	3'-4'	1'-2'	Sun or part shade	D	Summer to fall	Yellow or orange and yellow	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves		•		Flowers attract Monarch butterflies; foliage is good larval food for Monarchs reseeds freely; short-lived
Cast Iron Plant *Aspidistra elatior*	2	3'	2'-3'	Shade	E			L		Remove damaged foliage to 3" height in spring			•	Long green leaves; requires shade; good, slow-growing understory plant
Chile Pequin *Capsicu*	1	2'-4'	2'-4'	Sun/part shade	D		White	L	D	Prune top ½ at end of May	+ •	•	•	Peppers are very hot; perennial only in

m annuum										and to a 3" height after first frost brown leaves				mild winter; reseeds
Cigar Plant *Cuphea micropetala*	2	2'-4'	3'	Full sun	D	Summer to frost	Orange and yellow	L		Prune top ½ at end of May and to a 3" height after first frost brown leaves		•		Great humming bird plant
Columbine, Red *Aquilegia canadensis*	1	2'	2'	Part shade/shade	D	Spring	Red	M		Prune off spent foliage and seedheads in late May	+ •	•	•	Likes dry shade; reseeds to return in cool season; susceptible to leaf miners; highly attractive to humming birds

Columbine, Yellow *Aquilegia chrysantha var. hinkleyana*	1	2'	2'	Part shade/shade	D	Spring	Yellow	M		Prune off spent foliage and seedheads in late May	+ •	•	•	Pretty flowers; likes dry shade; reseeds to return in cool season; native to Big Bend; susceptible to leaf miners; attractive to some humming birds
Copper Canyon Daisy *Tagetes lemmonii*	1	3'	4'	Sun	D	Fall	Yellow	L		Prune to the size mound you want			+ •	Daisy-like flower; strongly scented leaves; native to Mexico; runners root
Coreopsis *Coreopsis lanceolata*	2	1'-1.5'	1-1/2'-2'	Sun/part shade	D	Spring to Summer	Yellow	M		Prune off old blooms for repeated flowering	+ •	•	•	Cheerful flowers; native to east and southeast Texas; butterfly plant
Damianita *Chrysact*	1	1'-2'	2'-3'	Sun	E	Spring and some	Golden yellow	L		Prune early spring	+ •	•	•	Drought hardy and aromatic

ina mexicana						summer				and late summer to shape				foliage; mainly blooms in spring, on and off through summer; needs good drainage; native to west Texas
Daylilly *Hemerocalls fulva*		to 4' in bloom		Sun		Summer to early fall	Orange, yellow, pink, red, brown, green	M		Remove old bloom stalks, prune to a 3" height after first frost browns leaves				Strap-like leaves; large, erect, funnel to bell-shaped blooms; susceptible to aphids and thrips
Fall Aster *Aster oblongifolius*	1	2'-4'	3'-4'	Sun/part shade/shade	D	Fall	Purple/lavender	M		Prune topy ½ at end of May and to a 3" height after hard frost	+ •	•		Delicate fall flowers; nectar source

Fan Flower *Scaevola aemula*				Sun/part shade				M						Spreading tender perennial
Fern, Holly *Cyrtomium falcatum*	2	2'-3'	3'	Shade	E			M		Prune to 3" height after frost or in late winter				Likes shady, moist areas
Fern, River *Thelypteris kunthii*	2	2'-3'	3'	Shade	D			M		Prune to 6" above ground after first hard freeze; mulch well	•			Likes shady, moist areas
Firebush *Hamelia patens*	1	2'-2.5'		Sun	D	Summer to Fall	Orange-red flower; burgundy leaves in fall	M		Prune to 6" above ground after first hard freeze; mulch well		•		Fiery leaves and flowers; turn bluish red in autumn; attracts humming birds; native to Mexico; needs regular

														moisture to establish
Gaura *Gaura lindheimeri*	1	2'	3'	Sun	D	Spring to Summer	Pink or white/ pink	L		Prune to 6" above ground after first hard freeze; mulch well	+ •		•	Tall flower spikes adorned with 1 flowers that appear as fluttering butterflies in the wind
Gayfeather *Liatris mucronata*	1	1'-3'	1'-1-1/2'	Sun	D	Aug. to Dec.	Purple to rose pink	L		Prune top ½ at end of May and to a 3" height after first frost brown leaves	+ •	•	•	Purple, 4"-9" spikes; likes well-drained limestone soil; great source of nectar for humming birds and insects
Gregg Dalea *Dalea greggii*	1	4'-9"	6'-12"	Full sun	E	Late spring to fall	Purple	L	D	Prune to a 3" height after first frost browns	+ •	•	•	Silvery blue-green leaves; dry soil; winter-hardy; may also be used as

										leaves (perennial)				a groundcover; primary bloom period in fall; nectar source
Hibiscus, Perennial *Hibiscus moscheutos Hibiscus coccineus*	1	4'	4'	Full sun	D	Summer to frost	Bright red blooms	L		Cut to 6" after first hard freeze	+ •			Showy bloom; choose varieties such as "Flare", "Moy Grande", "Lord Baltimore", and "Texas Star"
Hibiscus, Heartleaf *Hibiscus cardiophyllus*	1	3'-5'	3'-5'	Sun or shade		Summer	Red	L	D	Prune to a 3" height after first frost browns leaves (perennial)	•			
Hibiscus, Lord Baltimore *Hibiscus*	1	5'	5'	Full sun		Summer to frost	Red	L						Showy bloom; lobed leaves

"Lord Baltimore"														
Hibiscus, Moy Grande *Hibiscus "Moy Grande"*	1	5'	5'	Full sun		Summer to early fall	Pink	L		Remove old blooms and developing seed pods to encourage reblooming				Largest hibiscus blooms;
Hibiscus, Texas Star *Hibiscus " Texas Star"*	1							M						
Hymenoxys Four Nerve Daisy *Tetraneuris scaposa*	1	1'	18"	Sun/part shade	E	March to June and Sept. to Oct.	Yellow	L		Prune to a 3" height after first frost browns leaves	+ •	•	•	Daisy-like blooms grow from small gray-green tuft; needs good drainage; highly drought tolerant; nectar; small birds eat seeds

Indigo Spires *Salvia "Indigo Spires"*	1	3'	5'	Sun/part shade	D	All summer	Blue/purple	M		Prune to a 3" height after first frost browns leaves	•	•	•	Allow room to mound and spread
Iris, Bearded *Iris albicans*	2	1'-1-1/2'	3+'	Sun	E	Spring	Many	M		Clean out in January; divide in fall			•	Flowers with stunning blooms in many colors; spreads slowly; needs well drained soil; old cemetery iris is tougher and tolerates shade
Iris, Butterfly/Bicolor (African) *Dietes*	2	4'	2'-3'	Sun/part shade	E	Spring to early summer	White with yellow or purple-blue markings	L		Prune ragged foliage; divide clumps every 3-5 years			•	Individual flowers last one day; forms clumps of long, narrow iris-like foliage

Jerusalem Sage *Phlomis fruticosa*	2	2'-3'	3'	Sun	E	Summer	Yellow	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves			•	Unusual flowers; multi-tiered; attractive gray-green foliage
Lantana *Lantana × hybrida (many varieties)*	2	2'	4'	Full sun	D	Spring to frost	Yellow	M		Prune for a natural look; shaping not necessary		•	•	May be used as a groundcover; hummingbird delight; low maintenance; prolific blooming
Lantana, Trailing *Lantana montevidensis*	2	1'	4'	Full sun/part shade	D	Spring to Frost	Lanender/purple, white	L		Prune in late winter for a natural look; shaping not necessary		•	•	May be used as a groundcover; very tolerant of poor, dry sites; resistant to lantana lacebugs; attracts butterflies

Mexican Honeysuckle *Justicia spicigera*	2	2'	4'	Sun/part shade	E	Spring to frost	Orange	L		Prune back as needed to encourage fullness		•	•	Humming bird plant; very tidy, mounding plant
Mexican Mint Marigold *Tagetes lucida*	2	2-1/2'	2'	Sun/part shade	D	Fall	Yellow/orange	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves			+ •	Anise-flavored culinary herb; spreads over time
Mexican Oregano *Poliomintha longiflora*	2	8"	3'	Sun	E	Summer	Lavender/pink	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves			+ •	Aromatic foliage; brown, withering flower stays on plant

Pink Skullcap *Scutellaria suffrutescens*	1	8"-1'	2'	Sun/part shade	D	Summer	Dark pink	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves	•	•	•	Low growing; very tidy mounding plant; attracts small, nectaring insects
Plumbago *Plumbago auriculata*	2	4'	6'	Sun/part shade	D	Summer	Sky blue or white	M		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves		•	•	Light green foliage; does best with morning sun and afternoon shade; attracts humming birds
Primrose, Silverleaf *Oenothera macrocarpa*	1	1'-1.5'	3'	Sun/part shade	D	Spring to summer	Yellow	L	D	Prune to 3" after first frost browns leaves	+•	•	•	Large yellow buttercup-like flower that close and fade to pink

Purple Coneflower *Echinacea purpurea*	1	2'	1.5'	Sun/part shade	D	Spring to summer	Violet or white	M		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves	+ •	•	•	Daisy-like flowers; native and hybrid varieties available; good butterfly plant
Ruellia, Dwarf *Ruellia brittoniana*	2	10"	3'	Sun/part shade	D	Spring to summer	Blue/purple to pink	M		Prune to 3" after first frost browns leaves	•		•	Dwarf variety include "Katie" or "Bonita"; reseeds profusely
Sage, Cedar *Salvia roemeriana*	2	1'-2'	3'	Shade/part shade	D	Spring to summer	Red	L		Prune to 3" after first frost browns leaves	+ •	•	+ •	Reseeds freely; red bloom spikes bring color to shady spots; great for humming birds
Sage, Germander *Salvia*	•	2'						L						

chamaedyoides													
Sage, Majestic *Salvia guaranitica*	2	4'	5'	Sun to shade	D	Spring to Summer	Blue/purple	L		Prune to 3" after first frost browns leaves		•	+ •	Reseeds freely; attractive green foliage and spike blooms with long florets
Sage, Mealy Blue *Salvia farinacea*	1	2'	1'-1'	Sun to part shade	D	Spring to Summer	Light blue or white	L		Prune to a 3" height after first frost browns leaves (perennial)	+ •	•	+ •	Reseeds freely; wet conditions promote lanky growth; best kept on the dry side; attracts humming birds and some butterflies
Sage, Mexican Bush *Salvia leucantha*	1	4'	4'	Sun	D	Late summer to fall	Purple and white or solid purple	L		Prune by ½ in May, then to a 3" height after first frost			+ •	Silver-green lance-like foliage; attractive mounding plant form if pruned in May; brittle stems

Sage, Penstemon Big Red Sage *Salvia penstemonoides*	2	3'-4'	1'-2'	Sun to part shade	D	Summer to Fall	Reddish Coral	M		Prune by ½ in May, then to a 3" height after first frost	+ •	•	+ •	Humming birds love the tall, spiked blooms; attractive, glossy leaves
Sage, Russian *Perovaskia atriciplifolia*	2	3'	3'	Sun	D	Late Summer to Fall	Blue	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves; remove old bloom spikes			+ •	Lacey leaves and blue flowers; spiky stalks
Sage, Scarlet or "Tropical" *Salvia coccinea*	2	1.5'-2'	2'	Shade	D	Late spring to fall	Red	M		Prune top ½ at end of May, and to a 3" ht. after	+ •	•	+ •	Short-lived perennial; reseeds profusely; "Lady in Red" a good dwarf

										first frost browns leaves				variety; outstanding humming bird plant; attracts butterflies; small birds eat seeds
Salvia, Gregg *Salvia greggii*	1	2'-3'	2'-3'	Sun/part shade	E	Spring to frost	Red, pink, white or coral	M		Cut back by 1/3 after first frost browns leaves; shear back in spring to encourage bushiness	+ •	•	+ •	1" long blooms; humming birds love them; can get leggy
Shrimp Plant *Justicia brandegeana*	2	3'	4'	Morning sun, afternoon shade	D	Spring to fall	Copper/bronze with white	L		Sheer back in spring to encourage business, then		•	•	Prefers damp, well-drained soil; 3"-6" long flowers provide season-long color;

										leave along				great humming bird plant
Texas Betony *Stachys coccinea*	1	1'-1.5'	2'-3'	Sun to shade	D	Summer to fall	Coral/red	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves	+ •		+ •	Constantly blooming groundcover; nice gray green foliage
Verbena, Prairie *Verbena bipinnatifida*	2	6'-12"	2'	Sun	E	Spring to frost	Lavender	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves	•	•	•	Spreading habit; low growing groundcover with finely cut leaves; butterflies enjoy
Yarrow *Achillea millefolium*	1	1'-2'	3'	Shade to sun	E	Late spring and summer	White, yellow, red, pink	M		Prune top ½ at end of May, and to a 3"		•	+ •	Forms solid mat groundcover with finely-cut, fern-like leaves;

										ht. after first frost browns leaves; cut off old bloom stalks				butterflies enjoy nectar
Yarrow, Milfoil *Achillea millefolium*	1	2'-3'		Shade	Y	Late spring and summer	Varied						••	Old fashioned favorite; colors available
Zexmenia *Wedelia texana*	1	1-1/2'-2'	3'	Sun/part shade	E	Spring to Frost	Orange/yellow	L		Prune top ½ at end of May, and to a 3" ht. after first frost browns leaves	+•	•	•	Reseeds freely; blooms continuously though not profusely; use in combination with other blooming plants
ORNAMENTAL GRASSES														
Bamboo Muhly *Muhlen*	1	5'-6'	3'-4'	Sun/part shade	E	Winter	Purple	L		Cut back to 8" height prior		•	+•	Tall, bushy growth

bergia dumosa										to new spring growth				
Big Bluestem *Andropogon gerardii*	2	3'-6'	3'	Sun	E	Fall	Bluish leaves to rust in fall	L	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	Reseeds; more appropriate in meadow, prairie or wetland
Big Muhly *Muhlenbergia lindheimeri*	1	2'-5'	3'	Sun/part shade	D	Fall	White 6' stalk	L		Cut back to 8" height prior to new spring growth	+ •	•	+ •	Good substitute for pampas grass; feather-like blooms in fall
Bushy Bluestem *Andropogon glomeratus*	2	4'-5'	2'	Sun	D	Fall	Rust colored seed heads	L-H	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	Needs moisture; reseeds; more appropriate in meadow, prairie or wetland; can be invasive

Deer Muhly *Muhlenbergia rigens*	2	1'	1'	Sun	D	Fall	Tiny, wispy heads	L	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	Dense clump grass
Dwarf Fountain Grass *Pennisetum alopecuroides*	2	3'	2'	Sun	D	Fall	White seed heads	M		Cut back to 8" height prior to new spring growth				Ornamental with tufts of seed heads; needs moisture in dry periods
Gulf Muhly *Muhlenbergia capillaris*	1	2-1/2'	2'	Sun/part shade	D	Fall	Pink feathery seed heads	L	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	Reseeds; more appropriate in meadow, prairie or wetland
Indian Grass *Sorghastrum nutans*	2	3'-5'	5'	Sun	D	Fall	Bright gold	L-H	D	Cut back to 8" height prior to new spring	+ •	•	+ •	Tall seed heads in fall; reseeds; more appropriate in meadow,

										growth				prairie or wetland
Inland Seaoats *Chasmanthium latifolium*	1	2'-4'	6'-8'	Part shade/shade	D	Summer and fall	Ivory seeds	L-H		Cut back to 8" height prior to new spring growth	+ •	•	+ •	Graceful, drooping wheat-like seed heads; spreads freely; appropriate for woodland; good understory plant; prefers moist areas
Little Bluestem *Schizachyrium scoparium*	2	3'-4'	1-1/2'	Sun	D	Fall	White seed tufts in fall	L	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	Prairie plant appropriate in mass plantings; reseeds; more appropriate in meadow, prairie or wetland
Mexican Feather grass (Wiregrass) *Stipa*	1	2'	2'	Sun	D			M		Cut back to 8" height prior to new spring	•	•	•	Elegant weeping form; very drought tolerant; reseeds; more appropriat

tenuissima										growth				e in meadow, prairie or wetland
Seep Muhly *Muhlenbergia reverchonii*	2	1'-3'	2'	Sun	D	Fall	Tiny blooms	L-M	D	Cut back to 8" height prior to new spring growth	+ •	•	•	Mostly found in limestone prairies growing in low-lying wet areas; reseeds; more appropriate in meadow, prairie or wetland
Sideoats Grama *Bouteloua curtipendula*	2	2'-3'	1'	Sun/part shade	D	Fall		L	D	Cut back to 8" height prior to new spring growth	+ •	•	+ •	State grass of Texas, side hanging seed pods; easy to grow from seed; drought tolerant; reseeds; more appropriate in meadow or prairie

Switch Grass *Punica virgatum*	2	6'	4'	Sun/part shade	D	Fall	Reddish tint	L-H	D	Cut back to 8" height prior to new spring growth	•	•	+•	Upright, tall habit; usually has a reddish tint; prefers moist areas; reseeds; more appropriate in meadow, prairie or wetland
Wild Rye *Elymus canadensis*	2	3'	2'	Sun/part shade	D	Winter	Bllue-green seedheads	L	D	Cut back in summer	+•	•	•	Dormant in summer; green in winter; reseeds; more appropriate in meadow or prairie
VINES GROUNDCOVER														
Asian Jasmine *Trachelospermum asiaticum*	2	10'-18"	20'-25'	Sun/part shade	E			M		Prune to 4" height in February				Vining groundcover; may burn in full sun; supresses weed plants

Aztec Grass *Ophiopogon japonicus*	2	1'	1'-1.5'	Part shade/shade	E			M		Cut back to 3" in February			Groundcover; similar to Liriope with white variegated leaves; no pests or diseases
Carolina Jessamine *Gelsemium sempervirens*	1	to 20'	10'	Sun/part shade	E	Early Spring	Yellow	M		Prune annually to limit spread; prune only to direct and control growth	+ •	•	•	Vine; very aggressive; fragrant bright yellow flower in late winter-early spring; attracts humming birds
Coral Honeysuckle *Lonicera sempervirens*	1		12'	Sun/part shade	E	Spring to summer	Coral	M		Prune for a natural look; shaping not necessary	+ •	•	•	Vine; coral tubular blooms on evergreen vines attract humming birds; can be used as a shrub
Coral Vine *Antigon*	2		30'-40'	Sun/part shade	D	Late summer	White or rose pink	M		Prune for a natural		•		Vine; small flowers; rapidly

on leptopus						and fall				look; shaping not necessary				growing climber that holds on by tendrils, quickly covers adjacent plants and structures; attracts butterflies; dies back each winter
Crossvine *Bignonia capreolata*	1		to 50'	Part shade/shade	E	Summer	Brick-red with yellow throat or coral	L		Prune for a natural look; shaping not necessary	+ •	•	•	Vine; very aggressive; prune annually; high climber; "Tangerine Beauty" variety has bright coral blooms; attracts humming birds
English Ivy *Hedera helix*	2	30'-40'	6'-10"	Shade	Y		Bright yellow	M		Prune for a natural look; shaping not				Vine/groundcover; very aggressive; prune annually; fragrant flower

										neces sary				
Fig Vine *Ficus pumila*	2		to 60' +	Full Sun/p art shade	E	Sum mer		M		Prune for a natur al look; shapi ng not neces sary				Vine; may become pest if growth not controlled ; free of insects and disease pests; susceptibl e to very hard freezes
Frogfruit *Phyla incisa*	2	4"		Sun to shade	E	Sprin g to fall	White	M	D	Prune for a natur al look; shapi ng not neces sary	+ •	•	•	Groundco ver; spreads rapidly; wetland indicator; small flower; larval host plant to butterflies
Horseher b *Calyptoc arpus vialis*	2	8'-10 "		Part shade /shad e	E	Sprin g to fall	Yellow	L	D	Prune for a natur al look; shapi ng not neces sary	+ •		•	Groundco ver; recomme nded for revegetati on; abundant in shady

														areas and lawns
Japanese Honeysuckle *Lonicera japonica*		20' - 30'		Sun or shade	E			M		Prune for a natural look; shaping not necessary			•	Groundcover; can be invasive, use on slopes for erosion control
Lady Banksia Rose *Rosa banksiae*	2		20 +'	Full sun	E	Spring	White to yellow	M		Prune after spring bloom to control and direct growth				Vine; fast growing; climbing; requires sturdy support; relatively free of pests associated with most roses
Leadwort Plumbago *Ceratostigma plumbaginoides*	2	6'-12 "	3'-5'	Sun/part shade	E	Summer	Blue	L		Prune for a natural look; shaping not necessary			•	Groundcover; deep blue flowers and green foliage with burgundy tinge
Liriope *Liriope muscari*	2	12' - 18 "	12 "	Part shade to shade	E		Purple Spikes	M		Prune yellow or unattractive				Groundcover; clump-like

										foliage				evergreen foliage
Monkey Grass (Mondo Grass) *Ophiopogon japonicus*	2	4'-8"	12+"	Sun to part shade	E			M		Prune yellow or unattractive foliage			•	Groundcover; fertile, well-drained soil; clusters of flowers close to the leaves; dwarf form also available
Oregano *Origanum vulgare*	2	4"	4'	Sun	E	Summer	White to rosy pink	M		Prune removing top½ at end of May. Prune to a 3" height after first frost browns leaves			•	Groundcover; sprawling plant; pungently aromatic; flavorful leaves used in cooking
Passion Vine *Passiflora*	2	7'	3'-4'	Full Sun/part shade	D	Mid-summer to fall	Lavender or red	M		Prune only to direct and	•	•		Vine; perennial; zebra long wing and Julia

incarnata										control growth				butterfly caterpillars may defoliate; exotic flower; fast growth
Periwinkle, Littleleaf *Vinca minor*	2	10'-12"	25+'	Partial shade	E	Summer	White, blue or purple	M		Prune for a natural look; shaping not necessary			•	Vining groundcover
Pigeonberry *Rivina humilis*	2	1'-1.5'	2'	Part shade/shade	D	Spring to fall	White/ Pink	M	D	Prune for a natural look; shaping not necessary	+ •	•	•	Groundcover; spreads rapidly; tolerates moist or dry soil; attractive red berries are prized by birds
Purple Heart *Secreasea pallida*	2	1'	8+'	Sun to part shade	E	Summer	Purple leaves and flowers	L		Keep confined by pruning				Groundcover; invasive
Santolina (Lavend	2	1'-2'	1'-2'	Sun	E	Spring	Yellow	VL		Prune unattractive			+ •	Shrubby groundcover; fine

er Cotton) *Santolina chamaecyparissus*										foliage				textured, aromatic evergreen foliage; requires excellent drainage; not long-lived; gray or green leaf varieties
Sedge, Berkeley *Carex tumulicola*	2	1'	1'	Sun to shade	E	Summer	Yellow	L	D	Prune unattractive foliage			•	Groundcover; excellent evergreen grass-like; needs occasional moisture
Sedge, Meadow *Carex perdentata*	1	1'-1.5'	1.5'	Sun to part shade	E	Summer		L	D	Prune unattractive foliage	+ •		•	Groundcover; excellent evergreen grass-like foliage; drought tolerant
Sedge, Texas *Carex texensis*	1	6'-8"	8"	Shade	E	Summer		L	D	Prune unattractive foliage	+ •		•	Groundcover; small enough to plant in between stone walkways and tough enough for turf;

														will take traffic
Sedump (Stonecrop) *Sedum nuttallianum*	2	6"	1'	Shade to sun	E	Summer	White	L		Prune unattractive foliage	+ •		•	Groundcover; rock garden plant
Silver Pony-foot *Dichondra argentea*	1	2'-4"	2.5'	Sun to part shade	D		Silver-gray leaves	L	D	Keep confined by pruning	• +		•	Groundcover; attractive, silver gray foliage on low growing runners; good drainage is critical
Sweet Autumn Clematis *Clematis paniculata*	2	20'-30'		Full sun	D	Fall	White	L		Prune for a natural look; shaping not necessary				Vine; evergreen; vigorous; silvery fruiting plumes; fragrance; pest free
Trumpet Vine *Campsis radicans*	2		20'-30'	Sun or shade	D	Summer	Orange/coral	L		Prune to control growth	+ •	•		Vine; attracts humming birds; trumpet shape flower; invasive; pick up

														seed pods; "Madame Galen" or "Georgia" are among the available varieties
Virginia Creeper *Parthenocissus quinquefolia*	1		to 25'+	Sun or shade	D		Scarlet fall foliage	L		Prune for a natural look; shaping not necessary	+•	•	•	Vine; adaptable deciduous vine; vigorous cover; pest free
Wooly Stemodia *Stemodia lanata or tomentosa*	1	5"	12"	Sun	D	Summer	Silvery leaves; purple blooms	L		Prune to 3" height after first frost brown leaves	+•		•	Groundcover; delicate blooms

(Ord. No. 438, exh. B, 11-24-2003)

Secs. 53-1232—53-1260. - Reserved.

ARTICLE XI. - WIRELESS TELECOMMUNICATION FACILITIES

Sec. 53-1261. - In general.

(a) Preexisting wireless telecommunications facilities ("WTF") for which a permit has been issued prior to the effective date the ordinance from which this article derives shall not be required to meet the requirements of this article except as further specified in section 53-1272.

(b) WTFs and antennas shall be considered a permitted use in RS retail and services district, W warehouse district, CM construction and manufacturing district, E Entertainment District and TU transportation and utilities district if all the requirements of this article are satisfied.

(Ord. No. 560, § 1, 1-20-2009)

Sec. 53-1262. - Definitions.

Alteration. Any modification, replacement, or reconstruction that materially increases the height or any other dimension of a WTF.

Antenna. Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.

(1) *Omni-directional antenna* (also known as a whip antenna) transmits and receives radio frequency signals in a 360-degree radial pattern.

(2) *Directional antenna* (also known as a panel antenna) transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

(3) *Parabolic antenna* (also known as a dish antenna or satellite dish) is a bowl-shaped device for the reception and/or transmission of radio frequency signals in a specific directional pattern.

Attached wireless telecommunication facility. A wireless telecommunication facility that is affixed to an existing structure that is not primarily used for the support or attachment of a wireless telecommunication facility and is not a normal component of such a facility.

Co-location. When more than one wireless telecommunications provider shares a wireless telecommunications support structure.

Compound. The fenced WTF area which may be a portion of a parcel or site, or the entire parcel or site.

Direct-to-home services. The distribution or broadcasting or programming or services by satellite directly to the subscriber's premises without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite; examples are direct broadcast satellites (DBS), multichannel multipoint distribution (MMDS), and television broadcast stations (TVBS).

Existing support structure. Any structure existing prior to the adoption of this chapter that currently supports or can support a wireless telecommunication facility.

FAA. Federal Aviation Administration.

FCC. Federal Communications Commission.

Height. The distance measured from ground level at the base of a wireless telecommunication facility to the highest point on the facility including any antenna or related equipment.

Historic resource. Any district, structure or site designated as historically significant by any lawfully authorized local, state or federal historic preservation entity or governmental entity, including the city.

Intermediate facility. A WTF measuring no more than 110 feet (or 33 meters) but greater than 35 feet (or 10.5 meters) in height.

Major facility. A WTF measuring greater than 110 feet (or 33 meters) in height.

Minor facility. A WTF measuring 35 feet (or 10.5 meters) or less in height (includes private or commercial ham radio operators, repeaters, whip, directional, or parabolic antennas or any other small antenna facility).

Related equipment. All equipment or structures ancillary to the transmission and reception of voice and data via radio frequencies; such equipment or structures may include, but is not limited to, cable, conduit and connectors, cabinets, and fencing.

Service provider. Any company, corporation, alliance, individual or other legal entity that provides a wireless telecommunication service directly to the public for a fee or to such classes of users as to be effectively available directly to the public regardless of the facilities used; services include, but are not limited to portable phones, car phones, pagers, digital data transmission, or radio or television communications.

Stealth technology or *stealth facility.* Design technology that blends the WTF into the surrounding environment, so it is unrecognizable as a telecommunications facility; examples of stealth facilities include but are not limited to architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements such as church spires or window wall, and antenna structures designed to resemble light poles or flagpoles.

Support structure. Any structure that supports a wireless telecommunication facility; support structure types include, but are not limited to, any existing or newly constructed structure such as buildings, water towers, light poles, stanchions, monopoles, lattice towers, wood poles or guyed towers.

Transmission tower. A wireless telecommunications support structure designed primarily for the support and attachment of a wireless telecommunications facility. Transmission towers include:

(1) *Monopole tower.* A self-supporting structure composed of a single spire used to support telecommunications antenna and/or related equipment.

(2) *Lattice tower.* A self-supporting three- or four-sided, open, steel frame structure used to support telecommunications antenna and/or related equipment.

(3) *Guyed tower.* An open, steel frame that requires wires and anchor bolts for support.

Wireless telecommunication facility (WTF). An unstaffed facility operating for the transmission and reception of low-power radio signals consisting of an equipment shelter or cabinet, a support structure, antennas (e.g. omni-directional, panel/directional, or parabolic) and related equipment.

Wireless telecommunications facility (WTF or towers) means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This definition does not include any structure erected solely for a residential, non-commercial individual use, such as television antennas, satellite dishes or amateur radio antennas.

(Ord. No. 560, § 2, 1-20-2009; Ord. No. 851, § 3, 6-2-2015)

Sec. 53-1263. - Setbacks.

(a) The standard setbacks for each zoning district shall apply to WTFs with additional setbacks or separation being required in the sections below.

(b) Transmission towers shall be placed a minimum distance equal to the height of the tower plus two hundred feet away from any residential structure or residential zone boundary. No guy wires shall be used.

(Ord. No. 560, § 3, 1-20-2009)

Sec. 53-1264. - Height limitations.

In no case shall a proposed transmission tower exceed 200 feet within the city limits.

(Ord. No. 560, § 4, 1-20-2009)

Sec. 53-1265. - Towers along major thoroughfares and gateways.

To preserve and protect the city's major thoroughfares, WTFs must be set back from freeways, expressways, and major and minor arterials by a distance equal to three times the WTF height. The setback for these areas is determined by measuring from the centerline of the right-of-way of the thoroughfare with the following exceptions: all direct-to-home services, citizen's band radio, and all stealth facilities.

(Ord. No. 560, § 5, 1-20-2009)

Sec. 53-1266. - Separation between towers.

(a) The city desires to protect its natural beauty and skyline by limiting the number of towers per square mile. Densities for towers are calculated using the following:

(1) For minor facilities, towers shall be separated by a minimum of the height of the tower multiplied by 50.

(2) For intermediate facilities, towers shall be separated by a minimum of the height of the tower multiplied by 45.

(3) For major facilities, towers shall be separated by a minimum of the height of the tower multiplied by 25.

(b) Exception. Stealth facilities are not subject to subsection (a) of this section.

(Ord. No. 560, § 6, 1-20-2009)

Sec. 53-1267. - Additional uses permitted on lot.

WTFs may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which the WTF is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of ten feet.

(Ord. No. 560, § 7, 1-20-2009)

Sec. 53-1268. - Shared facilities and co-location policy.

FCC-licensed wireless communication providers are encouraged to construct and site their WTFs with a view towards sharing facilities with other utilities, to co-location with other existing WTFs and to accommodate the future co-location of other future WTFS, where technically, practically, and economically feasible. The city reserves the right to notify other registered wireless communication providers of new WTF applications to promote co-location.

(Ord. No. 560, § 8, 1-20-2009)

Sec. 53-1269. - Review process.

(a) The planning department has three review processes, which may apply to the development of WTFs.

(1) *Platting.* The normal platting requirements as required by the city subdivision ordinance and the Texas Local Government Code shall apply to WTFs.

(2) *WTF registration.* This process is required for certain minor use subcategories and all intermediate and major subcategories with the exception of direct-to-home services and citizen's band radio. The applicant can register by submitting the appropriate information to the planning department. This information will be used to aid in long range planning.

(3) *Assigned city staff.* City staff as assigned by the city manager oversee site design and development for the city. They may implement any of the site-specific criteria set forth in this chapter in addition to other local government codes and ordinances.

(b) To make application for site development review, the following is required:

(1) Completed application for site development review and application fee submitted to the planning department.

(2) WTF facility plan. A drawing and any supporting documents that identifies:

a. The location of existing applicant-owned wireless telecommunication facilities in Williamson and/or Travis County.

b. The type and height of each existing facility.

c. The current proposed facility.

d. The type and height of the proposed facility.

e. At least three co-location alternatives to the applicant's own development along with proof of a genuine effort in co-locating on or attaching to an existing support structure; a certified letter addressed to potential lessors is recommended in addition to evidence that demonstrates that no existing tower or support structure can accommodate the applicant's proposed WTF. Any of the following may be submitted as evidence:

1. No existing structures are located within the geographic area required to meet applicant's engineering requirements.

2. Existing structures are of insufficient height to meet applicant's engineering requirements.

3. Existing 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 antenna on the existing structures, or the antenna on the existing structures would cause interference with the applicant's proposed antenna.

5. The fees, costs, or contractual provisions required by the owner in order to share an existing structure or to adapt an existing support structure for sharing are unreasonable. Costs exceeding those for new tower development are presumed to be unreasonable.

6. The applicant demonstrates that there are other limiting factors that render existing structures unsuitable.

The plan will assist the city in understanding the need for any new wireless telecommunication facility, assess the land use impacts, and aid in comprehensive land use planning. It is not necessary to reveal future plans or locations for additional proposed facilities.

(3) Proof of compliance with FCC regulations.

(4) Notification of an impending environmental assessment required by the National Environmental Protection Agency (NEPA) and a copy when the assessment is completed (if applicable).

(5) A letter addressed to the city declaring an intent and willingness to build out a proposed tower to allow at least 2 other service providers.

(6) Copies of a site plan (the site plan is not the same as the WTF facility plan) as per assigned city staff requirements; including signature lines for both the owner of the WTF and/or the owner of

the property indicating an agreement to remove the entire WTF and any related equipment within 60 days of abandonment.

(7) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

(8) Upon receipt of all of the above items, the assigned city staff will process the application and review the site plan.

(Ord. No. 560, § 9, 1-20-2009; Ord. No. 851, § 3, 6-2-2015)

Sec. 53-1270. - Site development criteria for WTFs review process.

The site development requirements for WTFs follow the normal standards for any other type of development according to city code and ordinances. However some additional standards apply to these sites as follows:

(1) Additional setbacks and separation requirements. Transmission towers shall be placed a minimum distance equal to the height of the tower plus 100 feet away from any residential structure or residential zone boundary. No guy wires shall be used. However, if the minimum distance equal to the height of the tower away from any residential structure or residential zone boundary is less than the following, the greater shall apply.

WTF height, excluding antenna array, does not exceed:

a. 100 feet, if the WTF is at least 200 up to 250 feet from any residential district,

b. 125 feet, if the WTF is at least 250, up to 540 feet from any residential district;

c. 150 feet, if the WTF is 540 feet or more from any residential district.

(2) Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

(3) Special aesthetic and lighting standards.

a. New transmission towers shall maintain a galvanized steel finish or be painted in accordance with any applicable standards of the FAA.

b. The design of the related buildings and equipment shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the facility to the natural setting and built environment.

c. If an antenna is installed on a support 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 unobtrusiveness as possible.

d. WTFs shall not be artificially lighted with the exception of motion detectors as security lighting, except as required by the FAA or other applicable authority. If security lighting is required, the city shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties.

(4) Landscaping and screening. The following requirements shall govern the landscaping and screening for a transmission tower or any parabolic antenna larger than two meters:

a. Tower compounds shall be landscaped with a buffer of plant materials that effectively screens the base of the WTF site from view of public right-of-way. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound. A screening fence may be used in part to screen a WTF, but must be in addition to the required landscaping.

b. Certain parabolic dishes attached to the ground shall be screened from public right-of-way by a combination of siting at or behind the imaginary front line of the most major structure on site (largest in gross floor area) and landscaping a four-foot wide strip between the dish and right-of-way.

c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, where towers are sited on large, wooded parcels, natural growth around the site perimeter may be a sufficient buffer.

d. It is the responsibility of the WTF owner to maintain any required landscaping.

(5) All proposed transmission towers shall provide a point of access from right-of-way which is in conformance with the TCM driveway standards. No off-street parking is required.

(Ord. No. 560, § 10, 1-20-2009)

Sec. 53-1271. - Abandonment.

Any WTF that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such a facility shall remove same within 60 days of receipt of notice from the city notifying owner of such abandonment. If such facility is not removed within said 60 days, the city may remove such facility at the property owner's expense. If there are two or more users of a single WTF, then this provision shall not become effective until all users cease operations on the tower.

(Ord. No. 560, § 11, 1-20-2009)

Sec. 53-1272. - Nonconforming WTFs.

WTFs in existence on the date of the adoption of the ordinance from which this article derives, which do not comply with the requirements of this article (nonconforming WTFs) are subject to the following provisions:

(1) Nonconforming WTFs shall continue in use for the purpose now used, but shall not be expanded without complying with this article, except as further provided in this article.

(2) Nonconforming WTFs which are hereafter damaged or destroyed no more than 50 percent or greater due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit therefore, but not without otherwise complying with this article.

(3) The owner of any nonconforming WTF may replace, repair, rebuild and/or expand such WTF in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this article, so long as such facilities are not increased in height by more than 20 feet and/or setbacks are not decreased by more than ten percent.

(Ord. No. 560, § 12, 1-20-2009)

Sec. 52-1273. - Modification to existing facilities or preexisting facilities which meet the requirements of this article.

(a) Minor modifications to WTFs permitted under this article shall be approved by the development services coordinator. Minor modifications are as follows;

(1) The addition of no more than two antenna arrays to any existing WTF, so long as the addition of the antenna arrays add no more than twenty (20) feet in height to the WTF.

(2) An increase in height of the support structure which is no greater than ten percent, and a decrease in setbacks by no more than ten percent.

(3) Co-locations of up to one antenna array shall be considered a minor modification.

(b) Major modifications. Major modifications to WTFs permitted under this article shall be subject to all terms of the section. Major modifications are any modifications that exceed the definition of minor modifications.

(Ord. No. 560, § 13, 1-20-2009)

Sec. 53-1274. - Penalty.

Any person, firm or corporation violating any of the provisions or terms of this article shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of $500.00 for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

(Ord. No. 560, § 16, 1-20-2009)

EXHIBIT A. - PLUM CREEK PLANNED UNIT DEVELOPMENT[2]

ORDINANCE NO. 311

An ordinance of the City of Kyle, Texas, establishing a planned unit development zoning district; declaring intent and public purpose; providing definitions; approving the Plum Creek Planned Unit Development; providing zoning and use districts; providing regulations, standards and procedures; providing for amendment and variances; providing for administration and enforcement; providing for fees; repealing conflicting ordinances; providing severability, effective date and open meeting clauses; and providing for related matters.

Be it ordained by the city council of the City of Kyle, Texas, that:

Footnotes:

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Editor's note—Printed herein is the Plum Creek Planned Unit Development Ordinance, as adopted by the city council on July 22, 1997. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

ARTICLE I. - GENERAL TERMS, PROVISIONS, AND DEFINITIONS

Sec. 1. - Authority.

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, including particularly V.T.C.A., Local Government Code chs. 43 and 211.

Sec. 2. - Title.

This ordinance shall be known, and may be cited, as the Plum Creek Planned Unit Development ("PUD") Zoning Ordinance of the City of Kyle ("City").

Sec. 3. - General purpose and intent.

(A) *Purpose.* This ordinance is adopted to promote the health, safety, and the general welfare of the city, the owners and future residents of the Plum Creek planned unit development project ("Plum Creek PUD") to protect, preserve, improve, and provide for public the health, safety and general welfare of the present and future citizens of the city and to establish a framework of zoning guidelines and criteria which support the development of the Plum Creek PUD. The Plum Creek PUD is intended to allow mixed development which incorporates compatible residential, commercial, and/or industrial uses within the Plum Creek PUD boundaries. The Plum Creek PUD cannot be implemented under the standard Kyle zoning categories methodology and requires greater design flexibility for a successful development. The requirements established for PUD districts herein shall not supersede or amend the city's present zoning requirements pursuant to Ordinance No. 92 as they apply to the city's jurisdiction outside of the proposed Plum Creek PUD. The Plum Creek PUD shall be a master planned development which utilizes a mix of uses and standards approved by the city council. The application of this ordinance should result in development superior to that which would occur using conventional zoning and subdivision regulations, and will promote the following purposes:

(1) To ensure the safe, orderly, and healthful development and expansion of the city, in accordance with and pursuant to the master plan for [the] Plum Creek PUD;

(2) To conserve, develop, protect, and utilize natural resources, as appropriate and consistent with the public interest and to enhance the preservation of the natural environment;

(3) To prevent the overcrowding of land and avoid undue concentration of population or land uses, and thereby encourage high quality development and innovative design;

(4) To protect and preserve places and areas of historical and cultural importance and significance to the community;

(5) To lessen congestion in the streets and provide convenient, safe, and efficient circulation of vehicular and pedestrian traffic;

(6) To facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, emergency and recreational facilities, and other public requirements;

(7) To promote economic development through an efficient and practical means by which development will ensure the protection of the Edwards Aquifer and the city's drinking water supply; and

(8) To allow for the flexible planning and development of mixed uses throughout the Plum Creek PUD boundaries which promote compatible and different levels of residential, commercial and/or industrial uses.

(B) *Intent.* The requirements of the Plum Creek Planned Unit Development Zoning Ordinance ("Plum Creek PUD zoning ordinance") [chapter 53, exhibit A] are intended and shall apply to the property described as phase I of the Plum Creek PUD. The Plum Creek PUD is further comprised of phase I-A, phase I-B, and phase I-C, as reflected in the Plum Creek Phase I PUD master plan to the "Agreement Between the City of Kyle, Plum Creek Development Partners, Ltd., and William Negley, Trustee, For Development and Annexation of Phase I of the Plum Creek Property," which master plan is attached to this zoning ordinance as exhibit "A." Through the adoption of this ordinance, the city council of the City of Kyle is providing for the implementation of the site development regulations for the Plum Creek PUD and expresses its intent that this zoning ordinance shall be construed in a manner to give effect to the Plum Creek PUD master plan.

Sec. 4. - Definitions of terms and uses within the Plum Creek PUD districts.

For purposes of this Plum Creek PUD zoning ordinance, the use definitions contained herein are established as the use definitions for the Plum Creek PUD as follows:

Accessory building [means] a building which is incidental to and customarily associated with a specific principal use or principal building on the same site.

Accessory dwelling unit [means] a secondary dwelling unit built on a legal lot in addition to a principal dwelling unit or primary residence.

Accessory use structure, or dwelling [means] an accessory use or structure is one customarily a part thereof, which is clearly secondary to a permitted use and which does not change the character thereof, including, but not limited to independent living quarters equipped for garages, bathhouses, greenhouses, or tool sheds.

Administrative and business offices [means] the use of a building or a portion of a building for the provision of executive, management, or administrative services. Typical uses may include administrative offices and services including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, photocopy and reproduction, and business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services.

Alley [means] a minor public or private right-of-way, either two-way or one-way, located through the interior of blocks and providing vehicular and service access to the side or rear of properties.

Antique shop [means] a business which sells items whose value is greater than the original purchase price because of age or intrinsic value.

Apartment building [means] a building or portion thereof used or intended to be used as a home for three or more families or households living independently of each other and equipped for preparation of food.

Apartment hotel [means] a building used or intended to be used as a home of 12 or more families, who are permanent residents, living independently of each other, in which building shall be located on the first floor living units for transient guests, and/or retail sales and service.

Apartment [means] an apartment is a room or group of rooms used as a dwelling for one family unit which does its cooking therein.

Art studio and gallery [means] a use involving the production of works of art, including photographic studios, and the incidental sale to consumers of those works produced on site.

Art studio or gallery [means] a building where objects of art are created or displayed for the public enrichment or where said art objects are displayed for sale, including the teaching of painting and/or sculpting.

Assisted/retirement living [means] a use providing 24 hour supervision and assisted living for more than 15 residents not requiring regular medical attention. This classification includes personal care homes for the physically impaired, and persons 60 years of age or older.

Attendant building [means] a building used to house the manager or attendant of a public or private parking lot.

Automobile repair shop [means] any premises and structures used primarily for the servicing and/or repair of motor vehicles, including paint and body work, engine rebuilding and minor maintenance activities.

Bed and breakfast services [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Bed and breakfast [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Board of adjustment [means] the city's zoning board of adjustment.

Boarding house [means] a building, built and/or used for residential purposes, where meals for five or more persons are served for compensation.

Buffer [means] an area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the use of trees, shrubs, berms and/or fences, and designed to limit views and sound from the site to adjacent properties and vice versa.

Building area [means] the building area of the lot is the gross area covered by the structure when placed on the lot.

Building line [means] a line parallel or approximately parallel to the street line and beyond which buildings may not be erected.

Building official [means] the designated building official for the city.

Building ordinance [means] the building codes and related ordinances of the city providing standards, requirements and regulations for site development and the construction and erection of buildings and structures within the city, including, but not limited to, the electrical code, plumbing code, building code, and minimum housing code, adopted by the city council from time to time.

Building plot [means] the land, lot, lots or tract of land upon which a building or buildings are located, or upon which they are to be constructed, including yards and bounded by the property line.

Building [means] a building is any structure built for the support, shelter, or enclosure of persons, chattels or movable property of any kind and which is affixed to the land.

Build-to-line [means] a line parallel to the street right-of-way which dictates the minimum and maximum front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to-line does not apply to building projections or recesses.

Cafe, restaurant, or cafeteria [means] a commercial eating establishment where snacks or meals are vended for consumption indoors or on the premises.

Carport [means] a structure with one or more sides, covered with a roof and constructed specifically for the storage of one or more motor vehicles.

Child care or child development facilities [means] any children's home, orphanage, institution, private home, residence or other place, whether public, parochial or private, operated for profit or not, which keeps, cares for, has custody of or is attended by four or more children under 16 years of age at any one time, who are not members of the immediate family of any natural person operating any such place, during any part or all of the 24 hours in a day. Also, any institution, home or other place, whether public, parochial or private, conducted for profit or not, which keeps, cares for, has custody of or is attended by any number of children, under 16 years of age, who are not members of the immediate family of any natural person operating such a place, who are mentally or physically handicapped, under medical or social supervision, and not within a hospital, 24 hours a day.

Clinic [means] a public or private station for the examination and treatment of out-patients by an individual or group of doctors, dentists, opticians, veterinarians, or other similar medical professionals.

Cold storage plant [means] a commercial establishment where food or other commodities are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or other commercial businesses. No slaughtering of animals or fowl is allowed on the premises.

Commercial amusement [means] any enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gates for the activity. Commercial amusements include zoos, carnivals, expositions, miniature golf courses, driving ranges, arcades, fairs, exhibitions, athletic contests, rodeos, tent shows, ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows, bowling alleys, pool parlors, and similar enterprises.

Commission [means] the city's planning and zoning commission.

Common property [means] a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites in a planned unit development.

Communication services [means] an establishment engaged in providing broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms, and photocopy and reproduction mechanisms.

Community recreation centers [means] a recreational facility, including both indoor and outdoor facilities, for use by residents and guests of a particular residential community development and/or a planned unit development.

Conditional use [means] an additional use which may be permitted in a district, subject to meeting certain conditions or procedures established by the city council.

Convalescent home [means] any structure used or occupied by three or more persons recovering from illness or being provided geriatric care for compensation.

Corner lot [means] a lot abutting upon two or more streets at their intersections; or lot abutting a crosswalk way.

Corporate campus [means] a planned industrial, research and development and/or office use in a campus-like setting.

Courtyard [means] an arrangement of single family attached and/or detached residential units in which the front of units (except for the end groups of units) generally face each other with one or two sidewalks between them that are more or less perpendicular to a public or private street.

Cultural services [means] a library, museum, or similar registered nonprofit organizational use displaying, preserving, and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

Day care services [means] a facility, or use of a building or portion thereof, for daytime care for children, providing for the supervision and instructional development of preschool children, including nursery schools, preschools, and day care centers for children.

District [means] a zoned section or sections of the city for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Dormitory [means] any structure specifically designed to house student tenants associated with a university, college or school.

Drive-in eating establishment [means] any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption at other places.

Dwelling [means] a dwelling is any building or portion thereof which is designed or used exclusively for residential purposes.

Exterior side yard [means] a yard which faces and is parallel to a side street.

Family [means] a family is any number of related persons living as a single housekeeping unit.

Filling, retail service station [means] an establishment where gasoline, oil and grease, or automobile accessories are sold, supplied, or dispensed to the motor vehicle trade or where motor vehicles receive limited repair, are equipped for use, or where electric storage batteries are charged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment.

Financial services [means] services provided by an establishment primarily engaged in financial and banking activities. Typical uses may include banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services.

Flood plain, intermediate [means] that land which lies within a stream channel or adjacent to a stream channel within which flooding frequently occurs, the elevation above sea level of which shall be as established by the city and made of record. It is land which is required to be kept open and non-urbanized in order to maintain upstream floodplain characteristics and insure continued adequate drainage of adjacent land.

Flood plain, standard [means] that land which includes the intermediate flood plain and that land which lies immediately outside of and adjacent to the intermediate flood plain in which flooding only occasionally occurs, the elevation above sea level of which shall be as established by the city and made of record.

Floor area ratio (FAR) [means] the maximum square footage of total floor area permitted for each square foot of land area.

Food sales [means] an establishment primarily engaged in the retail sale of food or household products for home consumption. Typical uses include grocery stores, delicatessens, meat markets, retail bakeries, and candy shops.

Fraternity, sorority or group student housing [means] a building occupied by and maintained exclusively for students affiliated with an academic or vocational institution.

Garage, commercial [means] a commercial garage is any premises and structure used for housing more than five motor vehicles or where any vehicles are repaired for operation or kept for remuneration, hire or sale, and where a retail service station may be maintained as a secondary use.

Home occupation [means] a home occupation is a commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without the installation of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, and which does not cause the generation of other than normal noise, pedestrian and vehicular traffic. It is an accessory to a residential use subject to the following limitations: (a) the home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioner(s) or within an accessory building (not to include a carport); (b) the residential character of the lot and dwelling shall be maintained; the exterior of the dwelling shall not be structurally altered; and no additional buildings shall be added on the property to accommodate the home occupation; (c) the occupation shall not produce external noise, vibration, smoke, odor, fumes, electrical interference or waste run-off outside the dwelling unit or on the property surrounding the dwelling unit; and (d) no vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on any street adjacent to the property.

Hospital services [means] a facility providing medical, psychiatric, or surgical services for sick or injured persons primarily on an in-patient basis and including ancillary facilities for out-patient and emergency treatment, diagnostics services, training, administration, research, and services to patients, employees or visitors.

Hospital, sanitarium, nursing home, hospice [means] a building or portion thereof used or designated for the housing or treatment of the sick, aged, mentally ill, injured, convalescent or infirm persons; provided that this definition shall not include rooms in any residential dwelling, hotel or apartment hotel not ordinarily intended to be occupied by said persons.

Hotel [means] a building used or intended to be used as living quarters for transient guests, but not excluding permanent guests, and may include a cafe, drugstore, clothes, pressing shop, barbershop or other service facilities for guests for compensation.

Kindergarten [means] any school, private or parochial, operated for profit or not, attended by four or more children at any one time during part of a 24 hour day, which provides a program of instruction for children below the first grade level in which constructive endeavors, object lessons and helpful games are prominent features of the curriculum.

Laundry services [means] an establishment engaged in providing laundering, dry cleaning, or dyeing services. Typical uses shall include bulk laundry and cleaning pants, and linen supply services.

Light manufacturing [means] an establishment engaged in the manufacture of finished products or parts, including packaging of such products, and incidental storage, sales and distribution of such products, but excluding uses that are not traditionally classified as light industrial or manufacturing. Uses defined as traditional light industrial and manufacturing are set forth in article II, part C, section 10 herein.

Lot lines [means] the lines bounding a lot as defined herein.

Lot [means] a parcel of land described and recorded as a lot in the records of Hays County, Texas; or, in the event any other parcel of land is used for one or more buildings, each such parcel of land shall become a separate lot for the purpose of this ordinance, and the boundaries of each such lot shall contain sufficient area to include the buildings and the open spaces required under this ordinance.

Manufactured home [means] a complete living unit manufactured at a location away from the lot on which it will be located as defined in art. 5221f Tex. Rev. Civ. Stat. [V.T.C.A., Occupations Code § 1201.001 et seq.].

Motel [means] a building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers, including groups designated as auto cabins, motor courts, motels and similar designations.

Multi-family residential [means] the use of a site for three or more dwelling units, within one or more buildings, including condominium residential.

Multiple building complex [means] more than one principal building on a building plot.

Neighborhood automobile service station [means] an establishment primarily engaged in automotive-related service. The following are permitted automotive-related services within such definition; automobile washing, automotive repair services, service stations, the sale of fuel, lubricants (including oil change facilities), parts and accessories, or any incidental minor repair services to motor vehicles.

Non-conforming use [means] any building or land lawfully occupied by a use at the time of passage of this ordinance or amendment thereto which does not conform after the passage of this ordinance or amendment thereto with the use regulations of the PUD district in which it is situated.

Occupant car ratio (OCR) [means] the minimum number of parking spaces without parking time limits required for each living unit.

Parking lot [means] a parking area to accommodate the vehicles which utilize or are located in any PUD district, except the "R-1" residential PUD district and "R-2" residential PUD district unless approved by the city council.

Parking space [means] an area used or designed to be used for motor vehicle parking, containing not less than 160 square feet, exclusive of the driveways connecting said space with a street or alley. Said parking space and connecting driveway shall be durably surfaced and so arranged to permit satisfactory ingress and egress of an automobile. Compact parking spaces shall be 128 square feet, exclusive of the driveways connecting said space with the street or alley.

Pasturage [means] land used primarily for the grazing of animal stock.

Permit issuing authority [means] the building official or other city officer, employee or agent designated by lawful authority to issue the applicable permit.

Permitted use [means] a use specifically allowed in one or more of the various districts without the necessity of obtaining a conditional use permit.

Personal and community services [means] an establishment primarily engaged in the provision of frequently or recurrently needed services of a personal nature. Typical uses include beauty and barbershops, seamstress, tailor, shoe repair shops, and dry cleaning pick-up station services.

Personal service shop [means] an establishment for the purpose of supplying limited personal services such as, but not limited to, barber, shoe, boot, or beauty shops.

Personal services [means] an establishment engaged in providing services of a personal nature. Typical uses shall include beauty and barbershops, tailor, and shoe repair services.

Pharmacy [means] a use where medicines are compounded or dispensed.

Planned unit development [means] a zoning district which permits development of larger tracts of land under single or multiple ownership which master planned area requires specific approval by the city council for a development that may not fit standard area and use zoning categories. It is a development of land

under unified control, planned and developed as a whole in a single development operation or a programmed phasing of developments, including streets, utilities, lots or building sites, structures, open spaces and other improvements. This district may permit mixed uses of land (e.g., industrial, commercial, residential) within a single or multiple subdivisions as part of or pursuant to a master plan which seeks to minimize adverse impacts when development occurs to protect the environment and nearby neighborhoods.

Planned unit development district or PUD district [means] a zoning designation for an area within the PUD which must comply with the site development criteria for said PUD district.

Postal facilities [means] postal services, including post office, bulk mail processing, or sorting centers operated by the United States Postal Service or a private postal service.

Product assembly services [means] an establishment engaged in the on-site assembly of products.

Product development services [means] development and testing of products related to research services.

Professional office [means] a use providing professional or consulting services in the fields of law, architecture, design, engineering, accounting, and similar professions.

Property owners association [means] an incorporated, non-profit organization operating under recorded land agreements through which (a) each lot and/or homeowner in a planned unit development or PUD district is automatically a member, (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining common property, and (c) the charge, if unpaid, becomes a lien against the property.

Religious assembly [means] a use (located in a permanent or temporary building) providing regular organized religious worship and religious education incidental thereto.

Research services [means] establishments engaged in research of an industrial or scientific nature. Typical uses include electronics research laboratories, and development and testing of computer software packages.

Restaurant (general) [means] an establishment engaged in the preparation and retail sale of food and beverages for on-premises consumption, including the on-premise sale, service, and consumption of alcoholic beverages as an accessory and secondary use. Typical uses include diners, dinner-houses, but not a drive-in or fast-food restaurant.

Retail food store [means] a retail establishment selling meats, fruits, vegetables, bakery products, dairy products, light hardware and other similar items which are purchased for use and/or consumption off the premises (may be a drive-in or supermarket type).

Retail sales [means] the sale or rental of commonly used goods and merchandise for personal or household use. Typical uses may include department stores, furniture stores, or establishments providing the following products or services; home furnishings and appliances, household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, or specialty items; apparel, jewelry, fabrics, and like items; cameras or photography services; household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, or office supplies; bicycles, wallpaper, carpeting and floor-covering, or automotive parts and accessories (excluding service and installation).

Rooming or boarding house [means] a group of rooms provided for compensation either in a converted single-family home or in a structure specifically designed for such purposes. Both rooms and meals are provided for compensation for more than five persons. No cooking facilities are provided in individual living units.

Safety services [means] facilities to conduct public safety and emergency services, including police and fire protection services and emergency medical and ambulance services.

Setback line [means] a line which marks the setback distance from the property line, and measured from the lot line to the face of the foundation that establishes the minimum required front, side or rear yard space of a building plot.

Shopping center [means] a composite arrangement of shops and stores which provides a variety of goods and services to the general public, when developed as an integral unit.

Signs [means] any device or surface on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected or in any manner outlined or attached and used for advertising purposes.

Single-family attached residential [means] two or more dwelling units constructed on separate legal lots with a common or abutting wall located on the property line. This includes single-family dwelling units with detached garages where only the garages have a common or abutting wall located on the property line.

Single-family detached residential [means] the use of a site for only one dwelling unit.

Site plan [means] a plan showing the use of the land, to include locations of buildings, drives, sidewalks, parking facilities and other structures to be constructed.

Square foot dimensions [means] the square footage computed from the outside dimensions of the dwelling, excluding attached garages, attics, basements, open or screened porches.

Storage and distribution [means] an establishment offering wholesaling, storage, and warehousing services in enclosed structures.

Storage garage [means] a storage garage is any premises and structure used exclusively for the storage of more than five automobiles.

Street [means] a public or private thoroughfare which affords the principal means of access to abutting property.

Structural alterations [means] any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.

Structure principal [means] the principal structure which fulfills the purpose for which the building plot is intended.

Structure [means] anything constructed, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground.

Total car ratio (TCR) [means] the minimum number of parking spaces required for each living unit.

Townhouse residential [means] the use of a series of sites for two or more dwelling units, constructed with common or abutting walls and each located on a separate ground parcel within the total development site, together with common area serving all dwelling units within the townhouse group.

Transportation services [means] a facility for loading, unloading, and interchange of passengers and baggage, between modes of transportation, including bus terminals, railroad stations and public transit facilities utilizing park and ride stations.

Variance [means] a legal modification of the district yard, lot width and yard depth, signs, street parking and loading regulations provisions such as yard, lot width and yard depth, signs, set back and street parking and loading regulations granted due to particular conditions existing within a single piece of property.

Variety store [means] a retail commercial establishment which supplies a variety of household goods, toys, limited light hardware items, candy, some clothing and other general merchandise.

Veterinary services [means] an establishment offering veterinary services and hospitals for animals. Typical uses include pet clinics, and veterinary hospitals for livestock and large animals.

Video rental store [means] an establishment engaged in the sale or rental of motion pictures or games.

Warehouse [means] an establishment engaged in the storage of merchandise or commodities in an enclosed structure.

Yard, front [means] a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street easement line and the main building or any projections

thereof other than the projections of the usual steps, balconies or bays, or unair-conditioned porch. On corner lots, the front yard shall be considered as parallel to the street upon which the yard has its least dimension. For the purpose of determining minimum setbacks on corner lots and alleys, the lot lines shall be deemed to terminate with straight lines, not arcs.

Yard, rear [means] a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of steps, balconies or bays, or unair-conditioned porches, accessory dwellings or detached garages.

Yard, side [means] a yard between the main building and the side line of the lot, and extending from the required front yard to the required rear yard, and being the minimum horizontal distance between a side lot line and the side of any building on the lot. Driveways and sidewalks may be constructed within the side yard. Roofs may extend up to 18 inches into the side yard. A room, bay window or fire place may project two feet into the side yard setback.

Yard [means] an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Zero-lot-line lot [means] a single-family lot that has a side wall along or near one of the lot lines so that a usable yard of a minimum of 7½ feet from the side lot line to the building line is created on the other side of the lot.

Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices.

(Ord. No. 311-3, § 2, 4-19-2008; Ord. No. 687, § 1(Exh. A), 1-17-2012)

ARTICLE II. - PLANNED UNIT DEVELOPMENT ZONING DISTRICT

PART A

Sec. 1. - Plum Creek planned unit development district general provisions.

(A) *Purpose and objectives.* The purpose and intent of the Plum Creek planned unit development district ("Plum Creek PUD") is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the city consistent with accepted urban planning, with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. A planned unit development or "PUD" is a planned unit development district. The Plum Creek PUD rules are designed: (i) to allow development which is harmonious with nearby areas; (ii) to enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance; (iii) to provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs; (iv) to encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods; (v) to facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment; (vi) to provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and (vii) to require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development. Toward these ends, rezoning of and development under this district will be permitted only in accordance with the city's comprehensive plan and the Plum Creek PUD master plan, set forth as "exhibit A" attached hereto, prepared and approved in accordance with the provisions of this ordinance.

(B) *Mixed use development.* The Plum Creek PUD district shall include and allow for compatible mixed uses such as compatible residential, commercial and/or industrial, within a project within the boundaries of a mixed use district, in order to provide the flexibility required for a well-designed and innovative development that will conserve, develop, protect and utilize to their best use the natural resources of the area in a manner that ensures the safe, orderly and healthy development and expansion of the city. In order to promote such development, the PUD may be comprised of a combination of the following PUD districts: (a) residential, (b) neighborhood commercial, (c) commercial, (d) mixed-use development, (e) employment, (f) light industrial, and (g) open space. The outer boundary of the Plum Creek PUD zoning district and the varied PUD districts shall be shown on a map designated as the "Plum Creek PUD official zoning map." Said district map which will include a descriptive legend and percentage of the area for each PUD district which will comprise the Plum Creek PUD, and all notations, references, and other information shown thereon, shall be adopted by ordinance.

(C) *Flexible planning.* When considering a PUD, the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and street lights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc. Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD, as approved, departs from existing codes and ordinances.

Sec. 2. - Zoning application for Plum Creek PUD development.

(A) Submittal, review and approval of application for Plum Creek PUD zoning.

(1) Application for zoning. The owner or applicant shall submit an application for establishing the Plum Creek PUD which shall consist of the following:

(a) A development agreement for the Plum Creek PUD approved by the city Council;

(b) A capital improvements plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD, if appropriate;

(c) A master plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD;

(d) A legal description of all the property within the boundaries of the property identified as the Plum Creek PUD;

(e) Topographical information showing the contour lines within the PUD; and

(f) Vicinity sketches or maps of the PUD which reflect the locations of infrastructure and other requested information not included in items (a) through (e) herein.

(2) The application for zoning of the Plum Creek PUD may not be approved until the city council has approved the development agreement, capital improvements plan, if appropriate, and master plan for the Plum Creek PUD.

(3) Procedures. The application for a PUD shall be submitted to the city secretary who shall file the same with the chairman of the planning and zoning commission. The city council and the commission shall conduct a joint public hearing to consider such application. Notice of the public hearing before the planning commission and city council shall be given in the manner the notice is required to be given under state law. The decision of the planning commission on an application for a PUD shall be forwarded to the city council as a recommendation to grant, with or without conditions, or to deny. The city council's approval of the Plum Creek PUD shall designate and define the boundaries of the PUD and include such conditions as the city council finds are necessary to secure and protect the public health, safety, and general welfare of the PUD and the city.

(4) Approval of a Plum Creek PUD master plan by the city council shall be deemed an expression of approval of the general layout submitted on the Plum Creek PUD master plan as a guide to the installation of major streets, and to the proposed location and categories of land uses (e.g., residential, commercial, industrial).

(B) Criteria for review of PUD zoning application.

(1) Names and address of the developer, record owner, engineer and/or land planner.

(2) Proposed name of the PUD which shall not have the same spelling as or be pronounced similar to the name of any other PUD or subdivision located within the city or within five miles of the city.

(3) Names of the owners of contiguous parcels of land.

(4) Description, by field notes, of the proposed PUD.

(5) Approximate location of proposed land use boundary lines, indicated by heavy lines, and the approximate acreage of the land uses (if such information is available).

(6) Existing sites as follows:

(a) The location, names and description of any and all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the PUD, or intersecting, or contiguous with its boundaries or forming such boundaries.

(b) The location, description and names of existing or recorded residential lots, parks, public areas, permanent structures and other sites within or contiguous with the PUD.

(c) The approximate location, and description, and flow line of existing watercourses and drainage structures within the PUD.

(d) Regulatory flood elevations and boundaries of floodprone areas, including flood ways, if known, within or contiguous with the PUD.

(e) The approximate location of proposed major streets, parks, other public areas, reservations, easements or other rights-of-way, and other sites within the PUD (to the extent such information is available).

(f) A general plan for sewage disposal within the PUD (to the extent such information is available).

(g) Date of preparation, scale of plan and north arrow, for the PUD.

(h) Topographical information for the PUD shall include contour lines on a basis of 20 vertical feet in terrain with a slope of two percent or more.

(i) Location of city limits lines, the outer border of the city's extraterritorial jurisdiction and the PUD boundaries.

(j) Vicinity sketches or maps of the PUD at a scale of not more than 600 feet to an inch which shall show approximate location of proposed major streets, the ultimate destination of water main and possible storm sewer, and sanitary sewer systems.

(k) Any applicable fee established by city ordinance.

(l) The capital improvements plan which demonstrates projected dwelling intensity for uses within the PUD.

(m) Identify intended uses of land within the Plum Creek PUD boundary, in accordance with the PUD districts described herein. Exact building locations, and heights need not be shown on the land use plan for the Plum Creek PUD so long as all areas within which buildings may be constructed or maintained are specifically within required setback lines and height limitations. Provided, however, that the development of each such district shall require the approval of a subdivision plat and an MXD PUD district shall also require the submittal, review and approval, by the city council of a specific site plan for the MXD PUD district setting

forth the specific uses of the tracts within the district, in accordance with the process set forth herein in article II, part A, section 4(D).

(n) Within the Plum Creek PUD, the applicable site development regulations for each PUD district shall be described in the appropriate PUD district subsection in this ordinance.

(o) The Plum Creek PUD master plan shall identify the boundaries and location of each PUD district.

Sec. 3. - Application process for amendment to the Plum Creek PUD master plan.

The following information shall be submitted by the applicant for an amendment to the Plum Creek PUD master plan or for a change in use within the Plum Creek PUD.

(A) Name and address of the owner and applicant.

(B) Address and legal description of the property.

(C) If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner of the property.

(D) Proposed amendment for development. The proposed changes to the Plum Creek PUD master plan for the Plum Creek PUD amendment shall consist of (i) a proposed land use map for the area to be amended, and (ii) any requested waivers from requirements of city ordinances applicable to development.

(E) The amendment to the Plum Creek PUD master plan showing the following information:

(1) The date, scale, north point, title, name of owner, and name of person preparing the amendment application for the Plum Creek PUD master plan.

(2) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks, watercourses, and location and size of existing 100-year floodplains.

(3) The location, height, and intended use of existing and proposed land uses on the site, and the approximate location of existing buildings on abutting sites within 50 feet.

(4) The number of existing and proposed on-street and off-street parking and loading spaces, and a calculation of applicable minimum requirements.

(5) Areas with an average slope greater than 15 percent.

(6) The relationship of the site and the proposed use to surrounding uses, including pedestrian and vehicular circulation, current use of nearby parcels, and any proposed off-site improvements to be made.

(F) Any applicable fee established by the city council in Ordinance No. 293, as amended.

(G) The dwelling intensity and lot sizes of any residential areas being amended; and the lot sizes and locations of commercial and industrial uses within the amended Plum Creek PUD master plan, which may be mixed uses or a combination of uses if and as permitted within the regulations for such district.

(H) Areas proposed to be used for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.

(I) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the amended Plum Creek PUD and any of its common open space.

(J) A representation of the general use character of land adjacent to the amended Plum Creek PUD and within 200 feet.

(K) Identify intended uses of land within the boundary of the amended Plum Creek PUD to a depth of 100 horizontal feet.

(L) An analysis of traffic patterns, street areas, drainage, utilities, and maintenance of public spaces. Exact building locations need not be shown on the amended Plum Creek PUD master plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.

(M) Development designed and intended to be constructed in phases or stages shall be identified by the applicant by plans that clearly identify the particular phases or stages of the proposed development. The applicant shall include the proposed dates for the amended phased development.

(N) If the amendment includes area or land previously subdivided, then in such event the proposed use of each lot shall be shown on such plat.

Sec. 4. - Additional development and amendment guidelines for Plum Creek PUD.

(A) *General development requirements.* The following requirements of this subsection apply to development of any use within the Plum Creek PUD district.

(1) Environmental features: The natural topography, soils, environmental features, waterways and vegetation should be conserved and used where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities. To enhance the living and working environment, buffer zones, greenbelt parks and open space areas should be provided within each phase of the Plum Creek PUD where practical.

(2) Street facilities: All streets shall provide free movement for safety and efficient use within the development. Local streets shall provide access within the PUD in a manner that discourages through traffic and provides for convenient accessibility to parking areas serving each use. Collector streets shall be designed and located so that future urban development will not require conversion of the collector street to an arterial street.

(3) Non-vehicular facilities: Bicycle, vehicular and pedestrian passageways shall be provided where appropriate. A system of walkways and bicycle paths connecting buildings, common open spaces, recreation areas, community facilities, and parking areas should be provided and appropriately lighted for night use, where practical.

(4) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; home occupations; and greenbelt, certain open space, and recreational areas shall be allowable uses in each PUD district. An appropriate site should contain adequate space for required off-street parking and buffering.

(B) *General regulations.* Within the Plum Creek PUD, the applicable regulations for each PUD district shall be described in the corresponding PUD district list of uses and site development regulations. A PUD district list of uses may also include any other lawful land use as determined by the city council.

(C) *Substantial amendment to Plum Creek PUD.* A substantial amendment to the Plum Creek PUD master plan shall be effective only if approved by the planning commission and the city council. An application for a substantial amendment to the adopted Plum Creek PUD master plan shall be made to the planning commission and the city council for consideration. For purposes of this subsection, the following are substantial amendments to the adopted Plum Creek PUD master plan:

(1) Adding land area to, or otherwise including more land, in the Plum Creek PUD;

(2) Including a more intense land use not previously permitted in the Plum Creek PUD, or including a more intense use permitted in the Plum Creek PUD in an area for which such use is not shown on the Plum Creek PUD master plan;

(3) Amending any site development regulation established by the adopted Plum Creek PUD master plan;

(4) Altering a land use adjacent to a platted single-family residential tract to a more intense land use than was previously approved;

(5) Amending any condition of approval of or approved variance to the Plum Creek PUD;

(6) Increasing the land use intensity within any phase of the Plum Creek PUD without a corresponding and equivalent decrease in some other portion of the Plum Creek PUD; or

(7) Providing for an incompatible use to abut any other planned use, except as set forth on any zoning map or plat applicable to the Plum Creek PUD and approved by the city council.

If the city engineer determines a proposed amendment to the adopted Plum Creek PUD master plan is not a substantial amendment, the city engineer may approve the amendment within 30 days of its submittal without planning commission or city council action; provided that a subdivision plat for such area has been approved by the commission and city council and such proposed amendment is not inconsistent with the approved master plan, or such approved plat or plats and is a "plat amendment" pursuant to section 9(c) of the Plum Creek PUD subdivision ordinance. An application to amend the adopted Plum Creek PUD master plan pursuant to this subsection shall include all applicable requirements established by article II, part C.

(D) *Administrative site plan review process.* The applicant shall submit a proposed site plan for the proposed development of any property within and in compliance with the requirements of any PUD district, except the MXD PUD district, to the city engineer for his review and approval.

(1) The proposed site plan shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size, or suitable equal approved by the city engineer.

(2) The site plan shall include the following information:

(a) Date, scale, north point, title, name of person preparing the plan;

(b) Location of existing boundary lines and dimensions of the tract;

(c) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;

(d) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and

(e) Clear designation of area to be reserved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

(3) In reviewing the proposal site plan, the city engineer shall consider the following factors:

(a) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;

(b) Safety from fire hazard and measures for fire control;

(c) Protection of adjacent property from flood or water damage;

(d) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;

(e) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;

(f) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;

(g) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;

(h) Compliance with permitted uses in the PUD district, the proposed uses and their compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located; and

(i) Such other measures as will secure and protect the public health, safety, morals and general welfare.

The city engineer shall approve the proposed site plan within 30 days of submittal if it complies with this ordinance, all PUD district requirements and the subdivision plat approved by the commission and city council. The applicant may appeal the decision of the city engineer to the planning commission within ten days of his determination. The planning commission shall review and consider the applicant's appeal within 30 days of the filing of the appeal. The applicant may, within ten days of the commission's determination, appeal the commission's decision to the city council. The city council shall review and consider the applicant's appeal within 30 days of the filing of the appeal.

(E) *MXD site plan review process.* The applicant shall submit a proposed site plan for an MXD PUD district to the planning commission and to the city council for their review and approval. Except for "R-1" and "R-2" development within a MXD use district which shall be submitted and reviewed administratively.

(1) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks and watercourses.

(2) The location, height, and intended use of existing and proposed land uses and the ratios thereof on the site, and the approximate location of existing buildings on abutting sites within 50 feet.

(3) The number of proposed off-street and on-street parking and loading spaces, and a calculation of applicable minimum requirements for parking and loading spaces.

(4) The relationship of the site and the proposed use to surrounding areas including pedestrian and vehicular circulation.

(5) The dwelling intensity of any residential areas, and the lot sizes and locations of any other uses within the MXD PUD district.

(6) A representation of the general use and character of land adjacent to the MXD PUD district within 200 feet.

(7) Areas proposed to be used, conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.

(8) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the MXD PUD district and any of its common open space.

(9) Identify intended uses of all land within the MXD PUD district.

(10) A general description of the proposed development within the MXD PUD district and an analysis of traffic patterns, street areas, drainages, utilities, and maintenance of public spaces. Exact building locations need not be shown on the site plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.

The planning commission and the city council shall review the proposed site plan and approve it if it complies with all the site development regulations set forth in this ordinance for an MXD PUD district.

(Ord. No. 687, § 1(Exh. A), 1-17-2012)

ARTICLE II. - ZONING DISTRICTS AND BOUNDARIES

PART B

Sec. 1. - Establishment of districts and boundaries.

(A) The following PUD districts are established for use, directly or by reference, within the Plum Creek PUD, as appropriate. The City of Kyle, Texas hereby establishes the following PUD districts for the purpose of regulating and restricting the height and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and which shall be known as:

(1) "OS" open space PUD district

(2) "R-1" residential PUD district

(3) "R-2" residential PUD district

(4) "R-3" multi-family residential PUD district

(5) "NC" neighborhood commercial PUD district

(6) "C" commercial PUD district

(7) "MXD" mixed use development PUD district

(8) "EMP" employment PUD district

(9) "LI" light industrial PUD district

(B) The boundaries of any PUD districts described above, if established within the boundaries of the Plum Creek PUD shall be shown on a map designated as the Plum Creek PUD official zoning map, of the City of Kyle, Texas.

(1) Said district map and all notations, references, and other information shown thereon shall be adopted by ordinance. Said map shall, on its face, be identified and verified in the following manner: It shall bear the title "Plum Creek PUD Official Zoning Map, City of Kyle, Texas;" it shall bear the date of passage of the Plum Creek PUD zoning ordinance adopting same; it shall bear the names of the city council and all members of the zoning commission; and it shall be attested by the signatures of the mayor and the city secretary. The original of said map, properly attested, shall be kept on file in the office of the city secretary, and a replica thereof shall be produced upon paper in such reduced scale as will permit such replica copy being attached to the ordinance immediately following transcription of the ordinance establishing such district.

(2) Approved zoning changes shall be entered on the Plum Creek PUD official zoning map by the city secretary and each change shall be identified on the map with the date and number of the ordinance making the change.

(3) No change of any nature shall be made on the Plum Creek PUD official zoning map, or matter shown thereon, except in conformity with the procedures set forth in this ordinance. Any unauthorized change by any person or persons shall be considered a violation of this ordinance and punishable under Ordinance No. 301.

(4) This ordinance, which shall be located in the office of the city secretary, shall be the final authority as to the current zoning status of land, buildings and other structures in the Plum Creek PUD of the city. The Plum Creek PUD zoning ordinance and Plum Creek PUD official zoning map shall be available to the public at all hours when the city office is open to the public.

(5) Replacement of Plum Creek PUD official zoning map. In the event that the Plum Creek PUD official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and/or number of changes and additions, the city council may, by resolution, adopt a new Plum Creek PUD official zoning map, which shall supersede the prior official Plum Creek PUD zoning map. The new official Plum Creek PUD zoning map may correct drafting or other omissions in the prior official Plum Creek PUD zoning map, but no such corrections shall have the effect of amending the original Plum Creek PUD official zoning map or any subsequent amendment thereof. The new Plum Creek PUD official zoning map shall be identified by the city secretary, and shall bear the seal of the city and date under the following words:

"This is to certify that this official Plum Creek PUD zoning map supersedes and replaces the Plum Creek PUD official zoning map adopted (date of adoption of map being replaced) as part of ordinance of the city."

(6) The following shall be appended at the end of the official map:

ADOPTED BY THE CITY COUNCIL of the City of Kyle, Texas by Ordinance No. _____passed finally and approved on _____ 19[20]_____.

_____ _____

City Secretary Mayor

(C) The districts and district boundaries shown on the Plum Creek PUD official zoning map may only be amended in the manner provided by Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.], and such process shall be applicable to all MXD districts.

Sec. 2. - Interpretation of district boundaries.

(A) Where uncertainty exists with respect to the boundaries of any of the aforesaid PUD districts as shown on the Plum Creek PUD official zoning map, the following rules shall apply in the determination of the boundaries of any district:

(1) Whenever any street, alley, or other public way is lawfully vacated by the city council of the city, the PUD district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacated area and thereafter all land included in said vacated area shall be subject to all applicable regulations of the extended PUD districts.

(2) Where PUD district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or highway right-of-way lines shall be construed to extend to said boundaries.

(3) Where PUD district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

(4) Boundaries indicated as approximately following city limits shall be construed as following such city limits lines as they existed on the date such map boundaries were adopted.

(5) Boundaries indicated as following shorelines shall be construed to follow such shorelines. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed as following such centerlines as existed as of the date of the map approval.

(6) Boundaries indicated as following railroad lines shall be construed to be midway between the rails of the main line.

(7) Where PUD district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets, or the centerlines of right-of-way lines of highways, such PUD district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Plum Creek PUD official zoning map. If no distance is given, such dimension shall be determined by the use of the scale on said Plum Creek PUD zoning map.

(8) On property where the above methods cannot be applied, the PUD district boundary lines on the Plum Creek PUD zoning map shall be determined by use of the scale appearing on the map.

(9) Where the streets or alleys on the ground differ from the streets or alleys as shown on the Plum Creek PUD district map, the streets or alleys on the ground shall control.

(10) Where physical or cultural features existing on the ground are at variance with those shown on the Plum Creek PUD official zoning map, or in other circumstances not covered by (1) through (9) above, the board of adjustment shall interpret the PUD district boundaries.

Sec. 3. - Compliance with the regulations.

Except as hereinafter specifically provided or otherwise authorized in this ordinance:

(A) Any use of the land not specifically authorized by the terms of this ordinance is prohibited, unless otherwise approved by the city council.

(B) No building shall be erected, converted, enlarged, reconstructed, moved into, structurally altered, or used, except for a use permitted in the PUD district in which such building is located and as set forth on the approved site plan if applicable, unless otherwise approved by the city council.

(C) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered to exceed the height limit herein established for the PUD district in which such building is located, or is proposed to be located.

(D) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered except in conformity with the site development and performance standards of the PUD district in which such building is located, or is proposed to be located, unless otherwise approved by the city council in a PUD district.

(E) The minimum yards, parking spaces and open spaces, including lot areas required by this ordinance for each and every building existing at the time of passage of this ordinance, or for any building hereafter erected, shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this ordinance for the district in which such lot is located, unless otherwise approved by the city council.

(F) Every building hereafter erected or structurally altered shall be on a lot as herein defined, and in no case shall there be more than one main building on one lot except as otherwise provided in this ordinance.

(G) No person shall erect, excavate, construct, or proceed or continue with the erection or construction of any building or structure or add to, enlarge, move, improve, alter, repair, convert, or demolish any building or structure or cause the same to be done in any area of the city except as permitted by city ordinance or approved by the city council.

(H) No building or structure shall be erected, installed or moved on to or used which was previously built, erected or installed at a different location, except as permitted by ordinances of this city.

(I) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; greenbelt, certain open space and recreational areas; and parking lots associated with all of these uses shall be allowable uses in each PUD district set forth in this ordinance. An appropriate site should contain adequate space for required off-street parking and buffering.

ARTICLE II. - PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS

PART C

Sec. 1. - PUD district regulations and performance standards.

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

(a) Churches;

(b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;

(c) Schools and educational institutions;

(d) Fire stations;

(e) Public utilities;

(f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;

(g) Greenbelt and recreational areas; and

(h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

Sec. 2. - "OS" open space PUD district.

(A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density, expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

(B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:

(1) Cemeteries (with conditional use permit issued by the city council);

(2) Conservation areas;

(3) Golf courses;

(4) Outdoor recreational and athletic facilities;

(5) Outdoor swimming pools;

(6) Parks, playgrounds and playfields;

(7) Wildlife sanctuaries;

(8) Outdoor performance stages and amphitheaters;

(9) Streams, lakes, impounded waterways, or their drainageways; and

(10) Wetlands.

(C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:

(1) Club houses and community centers.

(2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:

(a) Retail sales and services operated as part of a golf course, recreational or athletic facility.

(b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.

(c) Food and beverage sales, including alcoholic beverages.

(d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.

(e) Caretaker residence.

(f) Maintenance buildings required to house equipment and material to maintain the site.

(D) *Site development regulations.* Use regulations in the "OS" open space PUD district.

(1) Maximum height of buildings: 35 feet.

(2) Density - maximum floor area shall not exceed 0.1.

(3) Lot size - minimum lot area for any building: 3,500 square feet.

(4) Lot width - minimum lot width: 35 feet.

(5) Front yard - minimum required building setback: 15 feet.

(6) Side yard - minimum required building setback: 10 feet.

(7) Rear yard - minimum required building setback: 10 feet.

(8) Garages shall either be attached or detached and accessible from a public or private street or alley.

Sec. 3. - "R-1" residential PUD district.

(A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.

(B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:

(1) The following uses that are permitted uses in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Single family dwellings for residential use.

(3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.

(4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.

(5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.

(6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:

(a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.

(b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.

(7) Residential accessory dwelling units, subject to the following site development requirements:

(a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:

(i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.

(ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.

(iii) No more than one accessory dwelling unit per lot is allowed.

(iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.

(v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.

(vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:

(A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.

(B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.

(C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.

(D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.

(E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.

(F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.

(C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:

(1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.

(2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.

(3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.

(4) *Maximum height.* No building shall exceed 35 feet in height.

(5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

(6) *Minimum setbacks.*

(a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.

(b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

(c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.

(d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.

(7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

SCHEDULE A

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

SCHEDULE B

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

Sec. 4. - "R-2" residential PUD district.

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

(i) Wetlands;

(ii) Conservation areas;

(iii) Golf courses;

(iv) Outdoor recreational and athletic facilities;

(v) Outdoor swimming pools;

(vi) Parks, playgrounds and playfields;

(vii) Wildlife sanctuaries;

(viii) Streams, lakes, impounded waterways, or their drainageways; and

(b) Any uses permitted in "R-1" residential PUD district.

(c) Duplexes.

(d) Medium density single-family detached residential.

(e) Single family attached residential.

(g)[f] Courtyard.

(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.

(C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.

(3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:

(a) Alternative No. 1:

(i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.

(ii) Minimum lot width: 50 feet along the front property line.

(iii) Maximum dwelling units per lot: Two dwelling units.

(iv) Maximum height. No building shall exceed 35 feet.

(v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

or,

(b) Alternative No. 2:

(i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.

(ii) Minimum lot width: 60 feet along the front property line.

(iii) Maximum dwelling units per lot: Two dwelling units.

(iv) Maximum height. No building shall exceed 35 feet.

(v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.

Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).

(c) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:

(i) Garages shall be either attached or detached and accessible from a public or private street, or alley.

(ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit.

Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.

(4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:

(a) Minimum lot size: 3,600 square feet.

(b) Minimum lot width: 35 feet.

(c) Maximum dwelling units per lot: No more than one dwelling unit per lot.

(d) Maximum height. No building shall exceed 35 feet.

(e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.

(f) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than eight feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.

(ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than five feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(g) Garages shall be either attached or detached and accessible from a public or private street, or alley.

(5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.

(a) Minimum lot size: 2,500 square feet.

(b) Minimum lot width: 25 feet.

(c) Maximum dwelling units per lot: No more than one dwelling unit per lot.

(d) Maximum height: 35 feet.

(e) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. No setback required.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(f) Garages shall either be attached or detached and accessible from a public or private street or alley.

(6) The site development regulations set forth below shall be exclusively applicable to courtyard residential.

(a) Minimum lot size: 2,000 sq. ft.

(b) Minimum lot width: None.

(c) Maximum dwelling units per lot: One principle dwelling unit and one accessory dwelling unit.

(d) Maximum height: 35 feet.

(e) Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.

(f) Minimum setbacks:

(i) Front yard: There shall be a front yard setback having the depth of not less than four feet from the courtyard walk to the front line of the building.

(ii) Side yard: There shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than eight feet from the property at public or private streets to the side line of the building.

(iii) Rear yard: There shall be no rear yard setback required

(g) Garages and carports: May either be attached or detached and accessible from private street or alley.

(h) Each courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).

(i) Each courtyard shall have a gathering place with a minimum of four chairs or two benches.

(j) The courtyard sidewalk(s) shall be the following minimum width for at least 70 percent of the length:

(k)[i] Single sidewalk: Five feet.

(l)[ii] Double sidewalk: Four feet to six [feet].

(m)[k.] Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of five feet and a minimum length of seven feet.

(n)[l.] Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24 feet.

(o)[m.] Minimum separation of dwelling units at street: 16 feet.

(p)[n.] Minimum separation of dwelling units at rear of courtyard: Ten feet.

(Ord. No. 687, § 1(Exh. A), 1-17-2012)

Sec. 5. - "R-3" multi-family residential PUD district.

(A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.

(B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses:

(a) Single family dwelling for residential use, as described in article II, part C, section 3 of this ordinance.

(b) Residential accessory dwelling units.

(c) Apartment buildings.

(d) Convalescent and hospice homes, assisted living, and retirement housing.

(e) Condominiums.

(C) *Site development regulations.* A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.

(a) Minimum lot size: 6,000 square feet.

(b) Minimum lot width: 50 feet.

(c) Maximum dwelling units per lot: 36 units per acre.

(d) Maximum height: 60 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-2" development within the "R-3" site which limits maximum building height to 40 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.

(e) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(f) Garages shall either be attached or detached and accessible from a public or private street, or alley.

(4) The site development regulations set forth below shall be exclusively applicable to condominium residential.

(a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

(Ord. No. 690, § 1(Exh. A), 2-21-2012; Ord. No. 787, § 1(Exh. A), 3-18-2014)

Sec. 6. - "NC" neighborhood commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.

(B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in "R-1" residential PUD district, except the following:

(a) Single family dwelling for residential use.

(b) Residential accessory dwelling units.

(3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.

(4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.

(5) Grocery stores or specialty food store.

(6) Barber and/or beauty shop.

(7) Daycare services and child development centers.

(8) Clothes cleaning agency.

(9) Laundromat.

(10) Video rental store.

(11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.

(12) Pharmacy.

(13) Electronic service center providing photocopying, faxing, and computer service.

(14) Computer or communications network access.

(15) Mail box rental and package shipping/receiving store.

(16) Accessory buildings customarily appurtenant to a permitted use.

(17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.

(18) Neighborhood automobile service stations.

(19) Bed and breakfast establishment, subject to the following requirements:

(a) A maximum of four guest bedrooms shall be provided.

(b) Paying guests shall not stay more than seven consecutive days.

(c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.

(d) Only one sign is permitted, and it shall be non-illuminated, no greater that two square feet, and affixed flush with the wall of the dwelling.

(e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.

(f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.

(20) Rooming and boarding houses.

(C) *Site development regulations.* A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.

(3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.

(5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.

(a) Minimum lot size: 5,000 square feet.

(b) Minimum lot width: 50 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 50 feet in height. A 25 minimum foot compatibility setback shall be required adjacent to a "R-1" or "R-2" development within the neighborhood commercial (NC) site which limits maximum building height to 35 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.

(e) Minimum setbacks:

(i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.

(ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.

(iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.

(D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.

(E) *Additional site development requirements.*

(1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.

(2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

(3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.

(4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.

(5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.

(6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.

(7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

(Ord. No. 690, § 1(Exh. A), 2-21-2012; Ord. No. 787, § 1(Exh. A), 3-18-2014; Ord. No. 788, § 1(Exh. A), 3-18-2014)

Sec. 7. - "C" commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.

(B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) The following uses that are uses permitted in the "R-1" residential PUD district:

(a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.

(b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.

(c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.

(3) Antique shops.

(4) Art gallery.

(5) Auction sales.

(6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.

(7) Bakeries.

(8) Banks and savings and loan institutions.

(9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.

(10) Billiard and pool rooms.

(11) Books or stationery stores.

(12) Bowling alleys.

(13) Business, music, dance or commercial schools.

(14) Cafes, cafeterias, and restaurants.

(15) Camera shops and photographic supplies.

(16) Carpet and rug cleaners.

(17) Catering establishments.

(18) Cleaning and dry cleaning establishments.

(19) Clinics.

(20) Clothing stores.

(21) Craft and hobby shop, but without outside garage.

(22) Dance halls.

(23) Department, furniture, and home appliance stores.

(24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.

(25) Dry cleaners.

(26) Electrical appliance shops and repairs.

(27) Employment agencies.

(28) Florist shop, nursery, or greenhouses.

(29) Furniture, appliance stores, (sales and service).

(30) Gasoline service stations.

(31) Grocery stores.

(32) Hardware, paint, and wallpaper stores.

(33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.

(34) Hotels.

(35) Household and office furniture, furnishings, and appliance stores.

(36) Ice cream or ice sales.

(37) Laundries, launderettes and Laundromats.

(38) Jewelry and optical goods stores.

(39) Meat markets.

(40) Mortuaries.

(41) Nursery or horticulture businesses.

(42) Painting and decorating shops.

(43) Pet shops or animal hospitals when conducted wholly within the enclosed building.

(44) Photographers, or artists' studios.

(45) Plumbing, heating, and roofing supply and workshops.

(46) Printing shops.

(47) Offices.

(48) Radio and television stations (no towers).

(49) Radio, television or electronic sales and service.

(50) Recreation establishments.

(51) Restaurants.

(52) Retail stores and services.

(53) Shoe sales and repair shops.

(54) Sporting goods, novelty, or toy shops.

(55) Tailor and dressmaking shops.

(56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.

(57) Telegraph and telephone service stations.

(58) Temporary building incidental only to construction of a permitted use.

(59) Theater, indoor.

(60) Tire shop (no vulcanizing or retreading).

(61) Variety stores.

(C) *Site development regulations.* A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.

(a) Minimum lot size: 4,000 square feet.

(b) Minimum lot width: 35 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3½ stories or 50 feet.

(e) Minimum setbacks.

(i) Front yard: none.

(ii) Side yard: none.

(iii) Rear yard: none.

(f) Maximum floor area ratio: 1.5 FAR of the lot area.

(g) Lighting. Parking lot lights, security lights, and other lights shall be designed to direct lighting down onto the site and away from adjacent residential property. No exposed lighting sources shall be visible from adjacent properties with use categories of R-1 or R-2.

(Ord. No. 787, § 1(Exh. A), 3-18-2014; Ord. No. 789, § 1(Exh. A), 3-18-2014)

Sec. 8. - "MXD" mixed use development PUD district.

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

(1) Provide a variety of employment opportunities and housing types;

(2) Foster pedestrian and other non-motor vehicle activity;

(3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and

(4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:

(a) Single family dwelling for residential use.

(b) Residential accessory dwelling units.

(3) Any use permitted in the "R-3" multi-family residential PUD district.

(4) Any use permitted in the "NC" neighborhood commercial areas.

(5) Any use permitted in the "C" commercial PUD district.

(C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:

(1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.

(2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.

(3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.

(4) Hotel or similar lodging facilities.

(5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.

(6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.

(7) Offices.

(8) Restaurants, delicatessens, cafes, and similar food service establishments.

(9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.

(D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements. A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.

(4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.

(5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

(6) The following site development regulations shall be applicable to nonresidential development within the MXD area:

(a) Minimum lot size: 4,000 square feet.

(b) Minimum lot width: 35 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed five stories or 65 feet. A 25-foot minimum compatibility setback shall be required adjacent to a "R-1" or "R-2" development within the commercial site which limits maximum building height to three and one-half stories or 50 feet. Any development over three stories shall install an elevator to provide service to stories above three stories.

(e) Minimum setbacks:

(i) Front yard: none.

(ii) Side yard: none.

(iii) Rear yard: none.

(f) Maximum floor area ratio: 1.5 FAR of the lot area.

(7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.

(8) Additional site development requirements.

(a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.

(b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.

(c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:

(i) Include street trees and parking area trees which are in scale with the development.

(ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.

(d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.

(e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.

(f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(9) Operating hours for "MXD" commercial uses shall be limited to the following when the MXD property shares a common property line with a R-1 or R-2 PUD designated property: Sunday—Thursday 6:00 a.m. to 11:00 p.m. and Friday and Saturday 6:00 a.m. to 1:00 a.m. (except civic structures, medical use facilities, and pharmacies).

(Ord. No. 490, § 2, 2-20-2007; Ord. No. 690, § 1(Exh. A), 2-21-2012; Ord. No. 786, § 1(Exh. A), 3-18-2014; Ord. No. 787, § 1(Exh. A), 3-18-2014; Ord. No. 788, § 1(Exh. A), 3-18-2014)

Sec. 9. - "EMP" employment PUD district

(A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.

(B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in the "C" commercial PUD district;

(3) Manufacture, assembly, and packaging of products from previously prepared material such as cloth, plastic, paper, leather, and precious or semi-precious metal or stone;

(4) Manufacture, assembly, and processing of food and beverages, excluding meat packing plants and similar processes that place a significant demand on wastewater or water treatment;

(5) Manufacture, assembly, and testing of communication equipment, medical instruments and apparatus, optics, photographic equipment and supplies, timing equipment, musical instrument and related equipment;

(6) Research, engineering and development facilities or laboratories;

(7) Motion picture or video production facilities and sound stages;

(8) Printing, publishing, and book binding;

(9) Warehouse, storage, and distribution center, provided development does not exceed a maximum of 15,000 square feet of building area;

(10) Instrument and component manufacturing;

(11) Apparel manufacturing;

(12) Electric and electronic assembly;

(13) Greenhouses and wholesale growers;

(14) Office equipment and supplies manufacturing;

(15) Warehouses;

(16) Offices;

(17) Data centers.

(C) *Site development regulations.* A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

(3) The following regulations shall be applicable to the "EMP" employment district:

(a) Minimum lot size: 5,750 square feet.

(b) Minimum lot width: 50 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 75 feet.

(e) Maximum sound levels to be 70 dBA measured at the property line if adjacent to commercial and 65 dBA measured at the property line if adjacent to R-1, R-2, or R-3 property.

(f) Minimum setbacks:

(i) Front yard: None.

(ii) Side yard: None.

(iii) Rear yard: None.

(g) Maximum floor area ratio: 1.5 FAR of the lot area.

(h) Paved Sidewalks, driveways and parking areas are required.

(i) Screening of loading and storage facilities is required.

(Ord. No. 787, § 1(Exh. A), 3-18-2014; Ord. No. 832, §§ 3, 4, 1-6-2015)

Sec. 10. - "LI" Light industrial PUD district

(A) *Purpose.* This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.

(B) *Permitted uses.* The following uses shall be permitted uses in the "LI" light industrial PUD district:

(1) Any use permitted in the "EMP" employment PUD district;

(2) Agricultural implement sales and services;

(3) Air conditioning and heating sales and services;

(4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;

(5) Artificial limb manufacturers;

(6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;

(7) Beverage bottling and distributing stations;

(8) Blacksmith shops;

(9) Book binding shops;

(10) Box manufacturers;

(11) Broom manufacturers;

(12) Bus lines shops and garages;

(13) Car wash;

(14) Canvas goods fabrication;

(15) Crating express storage;

(16) Computer and computer parts manufacturers;

(17) Hatcheries;

(18) Clothing and dress manufacturers;

(19) Craft and hobby shop with outside garage;

(20) Creameries;

(21) Drapery and bedding manufacturers;

(22) Expressing, baggage, and transfer delivery services;

(23) Farm implement sales or repair;

(24) Food processing and dehydrating operations;

(25) Frozen food lockers;

(26) Furniture manufacturers and upholsterers;

(27) Garages;

(28) Ice cream and ice manufacturers and sales;

(29) Instrument and electronic component manufacturing;

(30) Lumber and building sales and storage;

(31) Machine shops;

(32) Machine and metal products shops;

(33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;

(34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;

(35) Public utility substations and distributing centers, regulations centers, and underground holder stations;

(36) Rail-served industries consistent with uses indicated above;

(37) Sheet metal fabrication shop;

(38) Sign shops;

(39) Stone, marble, and granite grinding and cutting operations;

(40) Storage and warehouses;

(41) Storage of household goods;

(42) Taxi service stations;

(43) Temporary building incidental only to construction of a permitted use;

(44) Tire shops (retreading only);

(45) Tool and die shops;

(46) Warehouses; and

(47) Welding shops.

(C) *Site development regulations.* A letter of approval from the architectural review committee shall be submitted with an application for a site plan.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

(3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.

(4) The following regulations shall be applicable to the "LI" light industrial PUD district:

(a) Minimum lot size: 5,750 square feet.

(b) Minimum lot width: 50 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.

(e) Minimum setbacks.

(i) Front yard: none.

(ii) Side yard: none.

(iii) Rear yard: none.

(f) Maximum floor area ratio: 1.5 FAR of the lot area.

(Ord. No. 787, § 1(Exh. A), 3-18-2014)

ARTICLE II. - ADDITIONAL USE REGULATIONS

PART D

Sec. 1. - Additional use, height and area regulations and exceptions applicable to PUD districts unless otherwise approved by the city council.

(A) *Accessory buildings.* No accessory building shall be constructed upon a lot until the construction of the main use building has been actually commenced. No accessory building shall be used unless the main use building on the lot is also being used.

(B) *Permits.* No building shall be erected, enlarged, moved onto a tract of land, structurally altered, or maintained unless and until there has been issued therefor a building permit in compliance with the applicable building ordinance of the city.

(C) *Visibility at intersections in all districts.* On a corner lot in any PUD district, no improvements shall be erected, placed, planted, or allowed to grow in such a manner as to impair or obstruct the view, from any of the intersecting streets, of such intersection within a triangle defined by the property lines and

a line joining two points located 20 feet back from the property lines intersection; except that fences, walls, and hedges may be permitted provided that such fences, walls and/or hedges do not impair vision from two feet to seven feet above the curbline elevation.

(D) *Minimum building plot.* No building plot shall have less stringent standards or dimensions than those prescribed for the respective PUD district in which such lot is located.

(E) *Erection of more than one principle structure on a lot.* More than one structure housing a permitted principal use may be erected on a single lot or building lot only as specifically permitted by this ordinance, and yard and other requirements of this ordinance must be met for each structure as set forth for the PUD district in which such lot is located and the applicable site development regulations.

(F) *Exceptions to height regulations.* The height limitations set forth in the ordinance do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human consumption. A maximum height of 80 feet is allowed for all civic structures not within 150 feet of a single-family residence. Civic is defined as a not-for-profit organization dedicated to arts, culture, education, religion, recreation, government, transit, and municipal parking, or for use approved by the city council.

(G) *Structures to have access.* Unless otherwise approved by the city council, every building hereafter erected or moved shall be on a lot or building plot with direct access on a public street or alley, or with access to an approved private street. All structures shall be so located on lots or building plots as to provide safe and convenient access for servicing, fire protection, and the required on-site parking.

(H) *Required yards.* Yards as required in this ordinance are open spaces on the lot or building plot on which a building is situated and which are open and unobstructed to the sky by any structure except as herein provided in this subsection 1(H). Notwithstanding any other provision of this ordinance: (i) normal yard structures may be located in a yard, including, for example, fences or walls, gateways, sidewalks, driveways, patios, flower beds, planters, water hydrants and irrigation structures, eaves, cornices, window sills, bay windows, architectural details, utility meters and structures, electrical boxes, heating and cooling equipment, flagpoles, lighting structures, swing sets and other play equipment, fountains, swimming pools, mail boxes, signs, moveable structures and similar items, and (ii) where specifically permitted by this ordinance on the rear half of the lot, accessory dwelling buildings, garage space and storage space may be located in the rear yard; provided that no building or structure shall be located within the area of any lot between a property line of such lot and the respective rear yard or side yard set back line.

(I) *Rear yard required.* A yard which extends across the rear of the lot or building plot between the side property lines and having a minimum depth measured from the rear property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.

(J) *Side yard required.* A yard located on a lot or building plot which extends from the required rear yard to the required front yard having minimum width measured from the side property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.

(K) *Major recreational equipment.* For the purpose of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No such equipment shall be used for living, home occupation, or household purposes when parked or stored on a residential lot, or in any location not approved for such use.

(L) *Screening fences required.* Where there is a common side or rear lot line or lot lines between business, commercial or industrial land and developed residential areas, the owner of said business, commercial or industrial land shall construct a fence to screen residential lots from adverse influences as part of the normal construction of buildings dedicated to said nonresidential usage. Where there is a common side or rear lot line or lot lines between multifamily land and developed single-family residential land, the owner of the apartment land shall erect a fence that will properly screen adjacent residential land

from adverse influences such as noise, vehicular lights, trespass, and other adverse influence as part of the normal construction of the apartment project. Such screening fences may be made of any material compatible with the surrounding area, but shall form a solid continuous screen between the residential and nonresidential land uses. In the case of rear lot lines such screening fence shall be continued from one side lot line along the rear lot line to the other side lot line. In the case of side lot lines such screening fence shall be continued from the rear lot line along the side lot line to the front setback line but no farther than a point 15 feet from the street right-of-way line. Each screen fence shall be maintained in good condition by the owner of said business, commercial or industrial project, for as long a time period as may be needed to protect adjacent residential land uses during the construction of said business, commercial, industrial or multifamily area. In the event that a permanent screen fence is erected, it shall be maintained by the property owner who constructs the fence.

(M) *Commercial use areas.* Site plans of all commercial and mixed use complexes and site plans of other large scale projects which would cause a considerable impact on the city's facilities shall be reviewed and approved by the city technical staff prior to the issuance of a building permit by the director of public works. Such review under this subsection shall be restricted to the review of such projects for compliance with this ordinance and the Plum Creek PUD subdivision ordinance and the impact of such projects on: the neighboring land and environment, the adequacy of the water and sewer facilities installed or to be installed to serve the site, flood control and drainage, traffic generation, proposed circulation patterns and implications to safety in the project area and the resultant impact of generation and circulation upon adjacent such traffic street systems. The building official or the developer of the project may refer the site plans to the city council prior to the issuance of a building permit for final resolution. No building permit application showing compliance with the applicable ordinances and regulations will be delayed more than 30 days pending resolution of such building permit request unless the building permit, when and if issued, shall require construction according to the approved site plan, construction plans and specifications.

(N) *Environmental regulations.* The following regulations are to control contamination of air, water, or the environment, and to safeguard the health, safety and welfare of the people.

(1) No machine, process or procedure shall be employed on any property within the Plum Creek planned unit development which result in, or if:

(a) Emission of smoke, dust, noxious, toxic or lethal gases are detectable beyond the perimeter of the property; materials are stored or accumulated in such a way that such materials may be carried by rainwater in natural drainage channels beyond the limits of the property; or materials which have discernible amounts of noxious, toxic, radioactive, oil or grease, wood or cellulose fibers, hair, feathers or plastic, or that have a pH factor above ten or below five, are stored on the property in a manner not authorized by law or to pose a nuisance or hazard to neighboring property or the public;

(b) Vibration is discernible beyond the property line; or

(c) Noise above the ambient noise level is discernible beyond the property line.

(2) Drainage into the sanitary sewerage system shall conform to the city's requirements.

(3) No stormwater drain, roof drain, or outside area drain shall empty into a sanitary sewer.

(4) Flood plain. No dwelling, commercial or industrial building shall be permitted in the "intermediate flood plain" channel, as determined by the city. Buildings in the area between the delineated "intermediate flood plain" and the "standard flood plain" will be permitted only after such land is built up to an elevation of one foot above the "standard flood plain" elevation, and such land as so built up, when verified by the city engineer, will change the "standard flood plain" delineation accordingly.

(O) *Temporary building and equipment.* Temporary buildings and equipment for uses incidental to construction work on premises are allowed in any zone but shall be removed upon the completion or abandonment of construction work.

(P) *Sewage disposal systems.* Sewage disposal systems shall be in accordance with all applicable state, county and city codes and regulations.

(Ord. No. 704, § 2(Exh. A), 8-21-2012)

Sec. 2. - Parking regulations applicable to PUD districts unless otherwise approved by the city council.

(A) *Parking and storage of certain vehicles.* Automotive vehicles or trailers not bearing current license plates and state motor vehicle inspection stickers, excluding racing cars, antique cars, and cars belonging to members of armed forces who are on active duty, shall be parked or stored on any residential area only in completely enclosed buildings. No vehicle, trailer or major recreational equipment shall be parked or stored on any lot except that it shall be enclosed in a building or parked on a driveway or a concrete, paved or stone pad installed for such purpose and subject to the requirements herein.

(B) *Parking regulations.* Where any structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this ordinance, designated on-street and off-street parking spaces shall be provided in a number not less than as provided in schedule C set forth hereinafter.

(C) *[Non-residential handicap parking.]* Non-residential handicap parking requirements are a minimum of one space for under 50 parking spaces, then one additional space for over 50 parking spaces up to 100 spaces, and then one space per 100 spaces up to 500. Over 500 it is one percent of total parking spaces. Dimensional requirements are 12-foot width and 18-foot depth per handicap space.

(D) *Handicapped parking.* The number, location, and design of handicapped parking spaces shall be as required by the building ordinance.

(E) *Commercial use parking.* The motor vehicle parking areas shall be located and designed to facilitate safe and convenient pedestrian and bicycle movement to and from public sidewalks, streets, or transit stops. Ways to achieve this standard may include, but are not limited to:

(1) Location and orientation of buildings closer to the street to minimize pedestrian and bicycle travel through a parking area;

(2) Providing one or more raised walkways through the parking areas;

(3) Providing one or more raised walkways protected by landscaping and parking bumpers, with area across vehicle aisles delineated by non-asphaltic material in a different color or texture than the parking areas;

(4) Connecting on-site pedestrian walkways and bikeways to other existing pedestrian and bicycle circulation systems that serve adjacent commercial uses or residential areas.

(F) *Maximum parking.* The maximum number of parking spaces for a commercial use area shall not exceed 150 percent of the required parking.

(G) *Reduction in required parking.* The total number of required motor vehicle parking spaces for a nonresidential use may be reduced by five percent for each of the activities listed below provided by the owners or operators, up to a maximum ten percent reduction in the total number of motor vehicle spaces.

(1) Participate in an area wide carpool/vanpool ride matching program for employees; designating at least ten percent of the employee motor vehicle parking spaces as carpool/vanpool parking and placing such spaces closer to the building than other employee parking;

(2) Providing showers and lockers for employees who commute by bicycle;

(3) Providing covered, secured bicycle parking racks or facilities;

(4) Providing a transit facility that is approved by the local transit authority, and related amenities. Related amenities include, but are not limited to, a public plaza, pedestrian sitting areas, and additional landscaping.

(H) *Development and maintenance standards for off-street and on-street parking areas.* Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

(1) An off-street parking area for more than five vehicles shall be effectively screened by a sight-obscuring fence, hedge or planting, on each side which adjoins a residential use or property situated in a residential area or the premises of any school or like institution.

(2) Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.

(3) Access aisles shall be of sufficient width for vehicular turning and maneuvering.

(I) *[Off-street and on-street parking.]* Off-street and on-street parking for all uses not within the categories above shall be adequate to meet the anticipated needs and shall be determined by the city council using standards outlined for special exception and with a view towards providing adequate parking and carrying out the general scheme of the parking requirements herein set out.

(J) *[Special exception.]* The city council may grant a special exception to allow two or more uses to share parking spaces upon a showing that the particular uses in question will require parking at different times. Any spaces the council allows to be shared count toward the number of spaces each use must provide.

Schedule C	
Use	Number of Parking Spaces
Residential dwelling designed and used as single-family and two family residences and up	Two spaces for one bedroom and one-half for each additional bedroom
Efficiency	One space for each efficiency
Multifamily dwelling	1.5 spaces for one bedroom and 0.5 for each additional bedroom
Warehouses, manufacturing plants and other similar commercial establishments not catering to the general public	One space per 1,000 feet of gross floor area
Hotels, motels and similar transient accommodations	One space per bedroom and 1 space for each two employees, 1.1 spaces per bedroom, whichever is greater
Rest homes, hospitals, nursing homes, convalescent homes, sanitariums and similar uses	One space for each two employees, and 1 space for each four patients beds

Bars, cafes, restaurants, taverns, night clubs and similar uses	One spaces for every four seats provided for customers services, 1 space for each 100 feet of gross floor area whichever is greater
Banks, offices, financial lending institutions, gasoline stations, personal service shops, retail establishments, shopping centers and similar uses catering to the general public	Three and a half spaces for each 1,000 feet of gross floor area

(Ord. No. 541, § 1, 3-6-2008)

Sec. 3. - Conditional use permits.

Any use not specifically enumerated in this ordinance may be allowed in any PUD district by conditional use permit under the following procedures:

(A) *Application.* Application for a conditional use permit shall be filed with the city secretary and shall be accompanied by:

(1) A site plan showing the intended development of the property for which such conditional use permit is being requested;

(2) Payment of a fee equal to that as may be required for rezoning of the subject property under regulations then current; and

(3) A detailed written description of the proposed use, which written description shall include all relevant factors, including, but not limited to, utility requirements, projected employment, and nature of the proposed activity and products.

(B) *Public hearing before planning and zoning commission.*

(1) Within a reasonable time from such filing, the planning and zoning commission shall, after giving written notice in the same manner required for a planning and zoning commission hearing under section 211.006 through section 211.007, Local Government Code [V.T.C.A., Local Government Code §§ 211.006—211.007], hold a public hearing and forward a recommendation to the city council as to whether the conditional use permit should be granted or denied; and

(2) The planning and zoning commission, at its hearing on a conditional use permit, shall consider the application, the accompanying site plan and the written description, and may recommend approval or denial of the request, or recommend approval with such conditions as it may deem necessary to secure and protect the public health, safety, morals, and general welfare.

(C) *Public hearing before city council.* Upon receipt of a recommendation from the planning and zoning commission regarding a conditional use permit application, the city council shall, after giving written notice in the same manner required for a city council hearing for a zoning change under sections 211.006 and 211.007, Local Government Code, [V.T.C.A., Local Government Code §§ 211.006 and 211.007] hold a public hearing and grant or deny the application for such conditional use permit, or it may grant said special conditional use permit subject to such conditions as it may deem necessary to secure and protect the public health, safety, morals, and

general welfare and to be compatible with, and/or similar to, the uses permitted in the PUD district in which the site is located.

(D) *Site plan.* The site plan accompanying the application for a conditional use permit shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size. The site plan shall give the following information:

(1) Date, scale, north point, title, name of person preparing the plan;

(2) Location of existing boundary lines and dimensions of the tract;

(3) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;

(4) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and

(5) Clear designation of area to be improved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

(E) *Factors to be considered.* In considering an application for conditional use permit, the planning and zoning commission and the city council, shall take the following factors into account:

(1) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;

(2) Safety from fire hazard and measures for fire control;

(3) Protection of adjacent property from flood or water damage;

(4) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;

(5) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;

(6) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;

(7) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;

(8) Compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located;

(9) The adequacy and availability of utility services for such proposed use; and

(10) Such other measures as will secure and protect the public health, safety, morals and general welfare.

(D) A PUD district shall comply with all statutory requirements and such other requirements as may be reasonably determined by the city council.

Sec. 4. - Non-conforming uses.

(A) *Use non-conforming on adoption of this ordinance.* The lawful use of land or buildings existing upon the effective date of this ordinance, although such use does not conform to the provisions hereof, shall be deemed a nonconforming use. Only nonconforming uses in existence on the effective date of this ordinance shall be subject to the terms and provisions of this subsection A.

(1) Such uses may be extended throughout such portions of the building as are arranged or designed for such use, provided no structural alterations, except those required by law or ordinance, are made therein. A nonconforming use of a building may be changed to a more restricted and limiting

nonconforming use; provided such change is properly documented with the city. If such nonconforming use of building is voluntarily removed, the future use of such premises shall be in conformity with the provisions of this ordinance.

(2) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs or alterations to the building, or for offering the property for sale or lease, even if the premises are not so used for a period of longer than 270 days.

(3) A nonconforming use if changed to a conforming use or a more restricted nonconforming use, may not thereafter be changed back to a less restricted use than to which it was changed.

(4) The board of adjustment may issue a special use exception to extend the time when a nonconforming use may be allowed to continue, and may also allow it to be re-built, expanded or altered, upon a showing that the exception is necessary to allow a reasonable return on the investment in the affected property.

(B) *No new non-conforming use.* No building or structure shall be constructed or installed, and no use of property shall begin, within the Plum Creek planned unit development after the effective date of this ordinance, except that such building, structure and use shall be in conformity with this ordinance.

(C) *Uses becoming non-conforming on amendment.* If, by reason of amendment to this ordinance, the use of any property or building that began after the date of and in compliance with this ordinance, is hereafter transferred to a more restricted district by a change in the district boundaries, or the regulations and restrictions in any district are made more restrictive, the following provisions of this ordinance relating to the nonconforming use of buildings or premises shall apply to such building or premises first occupied or used after the effective date of this ordinance:

(1) Repairs and alterations may be made to such nonconforming building, provided that no structural alterations or extensions shall be made except those required by law or ordinance, unless the building is to be changed to a conforming use.

(2) Such nonconforming use shall not be extended or rebuilt in case of obsolescence or total destruction by fire or other cause. (i) In the case of partial destruction by fire or other causes not exceeding 50 percent of its value, the building permit authority shall issue a permit for reconstruction. (ii) If destruction is greater than 50 percent of its value, a building permit may be issued only to reconstruct the building for a use as a conforming use.

(3) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs pursuant to (C)(2)(i) herein.

ARTICLE III. - ENFORCEMENT AND ADMINISTRATION

Sec. 1. - Enforcement and administration—Administrative official.

(A) Except as otherwise provided in this ordinance or as approved by the city council, the permit issuing authority designated in the building ordinance shall administer and enforce this ordinance, including the receiving of applications, the inspection of premises and the issuing of building permits and no permit or certificate of occupancy shall be issued by him except where the provisions of this ordinance have been complied with.

(B) The permit authority or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

(C) Whenever any construction work is being done contrary to the provisions of this ordinance or the building ordinance, the permit authority shall serve notice in writing upon the owner or the contractor doing or causing such work to be done, or the agent of either, ordering such person to show cause why the work should not be ordered stopped. Any such person served with notice shall, within five days after service, show cause to the building inspector why such stop work order should not issue, and if such person shall fail to show good cause, then the building inspector may order the work stopped by notice in writing served upon such person, or agent, and any such person and all persons in privity with him shall forthwith stop and cause to be stopped such work until authorized by the building inspector to proceed with such work. Any stop work order shall be posted upon the work being done in violation of this ordinance. Provided, however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the building inspector, the work being done contrary to the provisions of this ordinance could cause imminent peril to life or property.

(D) Whenever any building or portion thereof is being used or occupied contrary to the provisions of this ordinance, the permit authority shall serve notice in writing upon any person using or causing such use or occupancy, or the agent of any such person, ordering such person to show cause why such use or occupancy should not be ordered discontinued. Any such person served with notice shall proceed within five days to show cause to the permit authority, why such order should not issue and if such person shall fail to show good cause, then the permit authority may order such use or occupancy discontinued by notice in writing served upon such person, or agent and such person shall vacate or cause to be vacated such building or portion thereof within ten days after receipt of such notice or make the building or portion thereof comply with the requirements of this ordinance. Any discontinuance order shall be posted upon the building or portion thereof being used or occupied in violation of this ordinance. Provided however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the permit authority, the use or occupancy which is contrary to the provisions of this ordinance could cause imminent peril to life or property.

(E) Preserving rights in pending litigation and violations under existing ordinances. By the passage of this ordinance, no presently illegal use shall be deemed to have been legalized. Uses not permitted by this ordinance shall be nonconforming uses when so recognized, or illegal uses, as the case may be. It is further the intent and declared purpose of this ordinance that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, shall be discharged or affected by the adoption of this ordinance, but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending be proceeded with in all respects as if such prior ordinance has not been repealed.

(F) This ordinance shall not be applicable to any area of the City of Kyle that is not located within the Plum Creek Planned Unit Development.

(G) Completion of authorized buildings. Nothing in these regulations nor in any amendments hereto which change district boundaries shall require any change in the plans, construction or designated use of a building which shall be completed in its entirety within two years from the date of the passage of this ordinance, provided such building was authorized by building permit issued before the passage of this ordinance, and construction of such building shall be started within 90 days of the passage of this ordinance.

Sec. 2. - Certificate of occupancy.

(A) No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the permit authority stating that the building or proposed use thereof complies with the provisions of this ordinance.

(B) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the building inspector.

(C) Application for a certificate of occupancy shall be made with the application for a building permit or may be directly applied for where no building permit is necessary and shall be issued or refused in writing within ten days after the permit authority has been notified in writing that the building or premises is ready for occupancy. The permit authority shall maintain a record of all certificates and

copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

(D) No permit for excavation for, or the erection or alteration of, or repairs to, any building shall be issued until an application has been made for a building permit.

(E) No permanent water, electrical or gas utility connections shall be made to the lot or tract, or any building or structure until and after a building permit has been issued by the building inspector.

Sec. 3. - Procedure for changing zoning classification of a particular parcel.

(A) A request to change the zoning classification of a particular parcel of land may be initiated by the owner of such parcel, the planning and zoning commission or the city council.

(B) Application by property owner. A property owner may file an application with the city secretary requesting the city council to consider changing the zoning classification of his or her property. Such application shall be accompanied by a fee set by the city council and shall contain the following information:

(1) Legal description and address of the parcel affected;

(2) Present zoning classification of the parcel and of all contiguous parcels around it;

(3) Present use of the parcel and of all contiguous parcels around it;

(4) Type and location of any structures on applicant's parcel and on adjoining land;

(5) A traffic impact analysis shall be submitted where development is proposed which would generate 1,000 or more trips per day. Submission shall occur simultaneously with the applications for zoning, special use permits or building permit site plan approval; and any other relevant information requested by the planning and zoning commission. The planning and zoning commission shall review each application for a zoning change and prepare a brief report on whether the requested change conforms to the classification specified in the land use map of the Plum Creek PUD and the comprehensive plan of the city for such parcel. Where an application for a zoning change is made by the owner, the owner shall provide appropriate evidence of any significant and unanticipated changes that have occurred in the area affected which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. If the requested change does not conform to the Plum Creek PUD master plan, the commission's report may indicate whether any significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. The report shall also indicate whether the requested zoning classification is the most appropriate classification for the area affected.

(C) Resolution from planning and zoning commission. The planning and zoning commission, by resolution directed to the city council, may request a change in the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. No site plan shall be necessary for such a zoning classification application.

(D) The city council, by motion, may initiate a proposal to change the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. Such action by the city council will be initiated by requesting the recommendation of the planning and zoning commission. No site plan shall be necessary for such a zoning classification application.

Sec. 4. - Issuance of permits and suspending of plans pending approval of site plan.

No application for site plan approval shall be accepted for filing nor be processed, and no building, site clearance, or grading permit shall be issued for any work other than in connection with a single-family residential use, on land which is being considered for a change in zoning classification on the request of the owner. Except when waived by the city council, no such approval or permit shall be issued during any period, not to exceed 60 days in duration, for any land for which a zoning change is being considered at the request of the city council or the commission. The 60 day period shall begin on the date the city secretary submits the proposed zoning change to the planning and zoning commission for a report and recommendation.

Sec. 5. - Joint hearing on multiple applications.

Applications for permits, change of zoning classification, site plan and subdivision approvals which involve the same development and contiguous land may be considered together, before either the planning and zoning commission, the city council, or both, at a single hearing, rather than at a separate hearing for each related application. The mayor of the city, with city council approval or ratification, shall make the determination of whether to have a joint hearing.

Sec. 6. - Use permits.

(A) *Purpose.* A use permit is a document authorizing the existence of a nonconforming use, a conditional use, or a variance as these terms are herein defined. The issuance of a use permit may be prerequisite to the issuance of a building permit or certificate of occupancy but shall not alleviate the requirement of such. A use permit may have a specified time limitation attached and may impose conditions other than those which are specifically set forth in this ordinance.

(B) *Approval—Responsibility.*

(1) The building official shall issue use permits for all nonconforming uses in existence at the time of enactment of this ordinance and the building official may rescind a use permit for a nonconforming use upon cessation of the use of the building or land as set out in article II.D.4.

(2) The commission shall have the responsibility for the consideration of use permits for conditional uses.

(3) The board of adjustment may issue use permits for variances and may direct the issuance or revocation of nonconforming use permits on appeal, from a decision of the building official, as otherwise authorized by law.

(4) The commission may impose additional reasonable restrictions or conditions to carry out the spirit and intent of this ordinance and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, suitable landscaping and additional improvements such as fencing, curbing and sidewalks.

(C) *Issue procedure.*

(1) *Non-conforming uses.* With respect to nonconforming uses in any district at the time of enactment of this ordinance, it shall be the duty of the building official to investigate and document the existing use, the size and type of structure or land use, and to issue a use permit in accordance with the conditions of this ordinance. No application or filing fee is required; provided that nonconforming uses shall not be presumed and a subsequently claimed nonconforming use which is not known to the building official on the effective date of this ordinance, or for which no written request for a use permit is made by the landowner within 60 days after the effective date of this ordinance, will be conclusively deemed not to have existed on the effective date of this ordinance.

(2) *Conditional use.* A conditional use permit may be applied for and issued after an application has been filed, notices given and the holding of public hearings as set forth in article II.D.3.

(D) *Procedure for application for a use permit.*

(1) Applications for use permits shall be made on a form provided by the building official accompanied by all required fees filed with the building official. Such application must be accompanied by a site plan showing the proposed use of the land and buildings and must show the surrounding land uses in such detail as necessary to clarify the claims made in the application. The building official shall forward such information regarding conditional use permit applications to the commission with his recommendation. No such conditional use permit shall be final until approved by the city council after public hearing.

(2) Applications for conditional use permits shall be considered and acted upon, approved or denied, in compliance with this ordinance and Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.].

(3) Applications for a use permit documenting a legally existing nonconforming use shall be made on a prescribed form, accompanied by all required fees, filed with the building official.

(4) Applications for a variance use permit, or appeal of the grant or denial of a use permit by the building official (acting under [D](3) above) shall be addressed to the board of adjustment and made on the required form, accompanied by all required fees. Such applications shall be filed with the building official and the notices shall be given and the procedures followed as otherwise prescribed by law.

(E) *Appeal.* Any person or persons, jointly or severally aggrieved by a decision of the building official, commission, or the board of adjustment with respect to any matter that is not a variance or special exception to this ordinance and subject to the board's sole jurisdiction pursuant to § 211.008 et. seq., Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.008 et seq.], may present to the city council a petition, duly verified, setting forth that such decision is unjust, in whole or in part, specifying the ground of injustice. Such petition shall be presented to the city council within ten days after the final decision of the commission, and not thereafter.

(F) *Recording.* One copy of an approved use permit shall be delivered to the owner of the property, one copy shall be filed in the office of the building official.

(G) *Development.* Following the issuance of a use permit the building official shall make inspections to determine that, if the development is undertaken, such development is completed in compliance with said permit. However, if a use permit has not been used within six months after the date granted, the permit is automatically canceled which fact shall be noted over the signature of the building official on the file copies of the permit and the owner shall be so notified in writing.

Sec. 7. - Sign regulations.

(A) *General.* All signs shall conform to the requirement of the building code and this section 7 unless otherwise approved by the Plum Creek Architectural Review Committee (PCARC). Proof of PCARC approval is required with application for city permit. For detailed information on the classifications shown in quotation marks, refer to the building code.

(B) *Existing signs.* All existing signs in use within the Plum Creek PUD on the effective date of the ordinance from which this section derives shall carry the "identification of signs" as required in the building code and are approved.

(C) *Temporary signs.* A temporary sign pertaining to lease, rental or sale of premises or structure located thereon is permitted in all districts when located on such premises or structure. Such signs shall not be lighted, and shall not exceed 64 square feet in area. No permit is required.

(D) *Plum Creek monument/development signs.* "Ground signs," announcing or describing the Plum Creek Development, may be lighted. A sign with the proper name of a legally recorded subdivision may be permanently erected and does not require a city permit.

(E) Signs having flashing or moving parts, or "spectacular signs" are not permitted.

(F) *Special district sign requirements.*

(1) *Residential PUD districts.* A person having a legal home occupation may display a nameplate on the face of the building or porch. The nameplate may contain only the name and the occupation of the resident. It shall be attached directly to the building or porch and shall not be illuminated in any way. No permit is required.

(2) *Neighborhood commercial PUD districts.* Signs when attached to buildings shall advertise only services or products which are offered within the building to which the sign is attached, and such signs shall not extend above the roofline of such buildings or more than one foot from the face of the building. No flashing or moving signs are permitted and no "spectacular signs" are permitted. No detached signs or billboards are permitted. See building code for permit requirements.

(3) *Other PUD districts.* No sign shall have flashing lights or moving parts if within 50 feet of a public street. "Spectacular signs" are not permitted. No sign or any part thereof shall be located within five feet of any public easement without approval by PCARC or city council. No more than one attached sign per user shall be allowed on any one building lot.

(4) *PUD districts.* Temporary signs, not to exceed 120 square feet, are permitted in a PUD district.

(5) *[Deed restrictions.]* Any and all signs which are allowed or prohibited shall be agreed to between the PUD developer and the city, and said requirements shall be included as deed restrictions within each subdivision.

(G) *Billboards.* No billboards or signs shall be erected advertising products or services not available on the site.

(H) *Street number.* A street address number, as designated by the building official, is required for all residences and establishments it must be readable from the street and may be on the building or in the yard and include the name of the occupant. No permit is required.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-1. - Purpose and goals.

(A) The purpose of this section is to provide uniform sign standards that perform the following:

(1) Promote a positive image of the city and uniform signage program within the Plum Creek PUD boundaries;

(2) Protect an important aspect of the economic base;

(3) Reduce the confusion and hazards that result from excessive and prolific use of sign displays;

(4) Ensure that no hazard is created due to collapse wind, fire, collision, decay or abandonment, that no obstruction is created to fire fighting and police surveillance, and no traffic hazard is created by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs;

(5) Promote efficient transfer of information in sign message by providing that businesses and services may identify themselves: customers and other persons may locate a business or service, and persons exposed to signs are not overwhelmed by the number of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose; and

(6) Protect the public welfare and enhance the appearance an economic value of the landscape by providing signs that do not interfere with scenic views; do not create a nuisance to persons using the public rights-of-way; do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height, or movement; are not detrimental to land or property value; and contribute to the special character of particular areas or districts within the city, helping the observer to understand the city and orient oneself within it.

(7) Signage should be compatible with the proposed architectural style and be scaled appropriately. Signage height and size should consider sight distance from adjacent streets and visibility within the community. The design and location of signage must be approved by the PCARC or assigns.

(B) By recognizing this purpose this section shall serve to strengthen the economic stability of business, cultural, and residential areas in the city; recognizing that visual clutter leads to decline in the community's appearance, in property values, and in the effectiveness of the signs.

(C) The goals of this section are to preserve the integrity of our community, promote pride in our neighborhoods promote safe egress/ingress on public roadways, and encourage the effectiveness of signs.

(D) In the event of conflicts, actual or perceived in the terms or requirements of this section, the PCARC or assigns shall issue final determination.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-2. - First Amendment rights.

This section shall not be construed, applied, interpreted, nor enforced in a manner to violate the First Amendment rights of any person, and the building official shall seek the advice and recommendation of the city attorney prior to taking any action to enforce any provision of this ordinance with respect to any noncommercial sign or speech by any person.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-3. - Enforcement.

(A) *Authority.* The building official and the code enforcement officer is hereby authorized and directed to enforce all the provisions of this chapter. For such purposes the building official has the powers of a code enforcement officer.

(B) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition which violates the provisions of this chapter, the building official may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this chapter. If such building or premises is occupied, the building official shall first present proper credentials and request entry; and if such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-4. - Definitions.

As used in this chapter, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless context clearly indicates otherwise:

Actively being built. The project or subdivision has continuous construction efforts underway to complete the project.

Activities and events sign. An enclosed, marquee-type sign to provide public buildings, churches (limited to places of worship only), and neighborhood associations, herein referred to as "the entity(ies)" the opportunity to post notices of meetings, activities, and other notices of interest to the entity or group it serves. The purpose of this sign is to facilitate communication within the community served by the public

buildings and the churches, and within the larger neighborhoods of 50 homes or more represented by their neighborhood association.

Arcade signs. Is a panel erected parallel to a building façde and within the opening of an arcade. Arcade signs must be supported their entire length by metal brackets, grillage or supports. An arcade sign may be non-illuminated or internally illuminated. An arcade sign may include neon tubing when forming a border for the subject matter or when forming letters, logos, or pictorial designs. The bottom edge of an arcade sign must be at least nine feet above the finished grade. The location of an arcade sign must be centered on the arcade entrance. The signage panel must be made of wood, sign foam, made to look like wood or metal. The support for the sign must be decorative and made of metal. Sign lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows and pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo illumination effect or glow through their front faces. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of the arcade sign cannot exceed four feet.

Awning Sign. A sign that is applied to, attached to or painted on an awning, which is intended for protection of weather or as a decorative embellishment. Awnings project from a wall or roof of a structure and are located over a door or window. Awnings must be professionally constructed and cannot be made of vinyl. All internal support structures must be made of metal. Awnings are allowed to project over a sidewalk to a maximum of eight feet and must have a minimum clearance of nine feet. Awnings may have lettering and graphics on the front or side vertical panels only except that awnings located over the primary entrance of a building may have one store logo or the store name applied within a 16 square foot area on the sloped portion of the awning. Awnings may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes, in no case can the supporting structure of an awning sign extend into or over the street curb. Awnings must end a minimum of three feet from the curb edge. In instances where an awning encroaches into areas where street lights, trees or other obstacles in the streetscape conflict, the awning must be reduced in size (overhang) so as to eliminate the conflict. Awning support structures must be designed to meet local wind loads. Portions of the awning can be internally illuminated, provided hat the entire awning can be internally illuminated. Awnings that do not include lettering or graphics are not considered signs.

Banner. A sign made of fabric or any nonrigid material.

Bay windows. A sign erected parallel to the façde of any building to which it is attached and supported throughout its entire length at its base by the top edge of a bay window. A bay window sign may have no-illuminated or internally illuminated lettering and graphics. Neon is permitted. Lettering and graphics may be raised up on pins to prevent the graphics from being obscured by the window trip from the sidewalk. Signage lettering and graphics must be made of wood, sign foam that simulates wood or metal. Faces of internally illuminated graphics may be made of acrylic, lexan or similar material. Signage lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow through the front faces. Exposed raceways, conduits and transformers are prohibited. The length of the bay window sign cannot exceed the width of the bay window. The height of the sign cannot exceed four feet and the depth of the sign cannot exceed 12 inches.

Berm (monument) sign. A sign where the frame of the sign face is set at grade with the ground as a monument or in an earthen berm. There is no clearance between the ground and the sign face.

Billboard. A sign advertising products not made, sold, used or served on the premises displaying such sign, or a sign having a height greater than 12 feet and a surface area greater than four hundred square feet.

Building identification. Identifies commercial buildings at a scale appropriate to both vehicular and pedestrian traffic; in any case, the size of a building identification sign shall only contain the building name and street address. The street address may be applied to a canopy, awning or directly to a building. The building identification sign must be constructed as a single-sided, no-illuminated painted metal sign attached directly to the building. The color of the sign must be compatible to the building and must be

approved by PCARC. This sign may be indirectly lot. Each building is allowed one building identification sign per face of building.

Building official. Any officer or employee, or person, designated by the city manager to perform the duties set forth in this ordinance to be performed by the building official.

"Burma Shave" signs. A sign intended to provide information and direction to potential home buyers within a recorded subdivision in which new homes are actively being built.

Canopy. A sign that is applied to, attached to or painted on an architectural canopy. The canopy must be intended for protection from the weather or used as an architectural embellishment and project from a wall over a door window. Canopies may be made out of wood, metal or glass, but all support structures must be made of metal. Canopies are allowed to project over a sidewalk to a maximum of six feet and must have a minimum clearance of nine feet. Canopies may have side panels, and may have a panel enclosing the underside of the canopy. Canopies may have lettering and graphics on or above the front or side vertical panels. Canopies may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front faces. The use of neon is permitted. No exposed raceways, conduits or transformers are permitted. In no case can the supporting structure of a canopy extend into or over the street curb. Canopies must end a minimum of three feet from the curb edge. In instances where canopies encroach into areas where street lights, trees or other obstacles in the streetscape conflict, the canopy must be reduced in size (overhang) so as to eliminate the conflict. Canopy support structures must be designed to meet local wind loads. Canopies that do not include lettering or graphics are not considered signs.

Changeable electronic variable message sign. A sign which permits alteration of the sign's message or images by electronic means. This includes a sign using light-emitting diodes (LEDs) or other means of digital display to resent a message or images.

Clearance (of a sign). The smallest vertical distance between the grade of the adjacent street curb and the lowest point of any sign, including framework and embellishments, but excluding sign supports.

Commercial. Locations where the principle use of the property is not classified as residential or multifamily.

Construction trade sign. A sign that identifies the architect, engineer, financial institution, builder, or other building trades contractor involved in a construction project at the site where the sign is located.

Curbline. An imaginary line drawn along the outermost part of back of the curb and gutter on either side of a public street, or, if there is no curb and gutter, along the outermost portion of the paved roadway, or if there is no paved roadway, along the edge of the traveled portion of the roadway.

Directional signs, traffic. An on-premises sign giving directions, instructions, or facility information and which may contain the name or logo of an establishment and no advertising copy, e.g., parking or exit and entrance signs.

Electrical sign. A sign containing electrical wiring, connections, or fixtures, or utilizing electric current, but not including a sign illuminated by an exterior light source.

Electronic message sign. A sign that includes provisions for programmable electronic message changes.

Facade. All building wall elevations, including any vertical extension of the building wall (parapet), but not including any part of the building roof.

Face or *surface.* The surface of the sign upon, against, or through which the message is displayed or illustrated on the sign. Flashing signs are not permitted.

Flashing. To light intermittently. To change colors intermittently in order to achieve a flashing, fluttering, scrolling, undulating, or rolling affect (i.e. LED displays). Scrolling of text in a single color is not considered to be flashing.

Freestanding sign. A sign that is not attached to a building but is permanently attached to the ground.

Frontage. A boundary line separating the public right-of-way from the lot.

Future development signs (temporary construction, real estate, or development sign). A freestanding or wall sign advertising the construction, remodeling, development, sale, or lease of a building or the land on which the sign is located.

Government sign. A sign installed, maintained, or used:

(1) By a city, county, state or the federal government, required or specifically authorized for the public purpose pursuant to regulations promulgated by the state or federal government;

(2) By the City of Kyle.

Gross surface area. The entire area within a single continuous perimeter enclosing the extreme limits of each sign. A sign having two surfaces shall be considered a single sign if both the surfaces are located back to back. In the event two or more signs share a single structure, i.e., directory signs, or signs on v-shaped structures, each sign or panel shall be considered separately for square footage purposes, provided that the combined area of such signs cannot exceed the total square footage allowed on a single sign.

Height (of a sign). The vertical distance between the finished grade before the sign or grade of the adjacent street curb, whichever is greater, measured to the highest point of the sign.

Human sign. A sign held by or attached to a human for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity. A person dressed in a costume for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity shall constitute a human sign. Human signs do not include T-shirts, hats, or other similar clothing.

Incidental sign. A small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises (e.g. a credit card sign or a sign indicating hours of business).

Inflatable sign. Any balloon or other device which is inflated by air or other gas and displayed outdoors. Inflatable structures primarily designed for recreational use shall not be considered to be a sign as, for example: slides, swimming pools or space walks.

Information signs. Includes bulletin boards, changeable copy directories, or signs relating solely to publicly owned institutions (city, county, state, school district) intended for use by the institution on which the sign is located.

Intersection. A place where two roads meet or form a junction. For purposes of this ordinance, sign setback distance is measured from the intersections of the curblines of two streets.

Kiosk sign or *kiosk.* A free-standing sign structure located in or adjacent to public right-of-way authorized by written agreement approved by the city council that features a City of Kyle identification panel at the top of each structure, and displays directional information to new homes, independent school district facilities, and municipal or community events or facilities.

Lamppost banners. A fabric banner applied to lampposts with standard banner arms. The lamppost banners must be made of canvas, vinyl or other suitable banner fabric. Lamppost banners must be double-sided with similar imagery on both faces. Lamppost banners must include pictorial elements. The maximum size for lamppost banners is two feet, six inches wide by five feet tall. No more than two lamppost banners may be erected on a single lamppost. The minimum clearance from the pavement to the lower banner arm is nine feet and the lamppost banner and banner arm cannot extend over the street pavement. Lamppost Banners are limited to holiday messages, community events or festivals. No retail advertising shall be permitted on lamppost banners.

Marquee. A permanent roof-like structure or awning or rigid materials attached from, supported by, and extending from the facade of a building, including a false "mansard roof."

Memorial signs or tablets. Includes freestanding historical markers in accordance with state historical standards, and/or cornerstones with names and dates of construction of a building when cut into a building surface or inlaid upon it to become part of the building.

Menu boards. Freestanding or wall signs used for the purpose of informing patrons of food, which may be purchased on the premises.

Model homes sign. A temporary real estate sign placed in front of a group of model homes that is removed from the premises upon sale of the last model.

Monument sign: Are define by details located in section 7-16.

Multifamily. Locations that contain three or more attached units designed for residential use including town homes and condominiums.

Multitenant center sign. A sign advertising two or more retail, wholesale, business, industrial, or professional uses (not necessarily under single ownership) utilizing common facilities including off-street parking, access, or landscaping.

Multitenant center identification sign. The portion of the sign that identifies the general name of the center or development as a whole. The sign shall include only the name and address of the development.

Nameplates. Nonelectrical, on-premises signs that communicate only the name of the occupant of the address of the premises.

Nonconforming sign. A sign that was lawfully installed at its current location prior to the adoption or amendment of the ordinance from which this section derives, but that does not comply with the present requirements of this section.

Off-premises sign. A sign referring to goods products or services provided at a location other than that which the sign occupies.

On-premises sign. A sign identifying or advertising the business, person, activity, goods, products, or services located on the site where the sign is installed, or that directs persons to a location on that site.

Office tenant identification sign. Each building that houses offices is allowed one primary tenant identification sign. The office tenant identification sign identifies the commercial tenants at the entrance to the building. Office tenant signs are encouraged to be attached to the face of the building. Where the sign is freestanding, it must be located parallel and as close as possible to the building facade, and provide a minimum four-foot clear area on the sidewalk to prevent obstruction of pedestrian circulation. The office tenant identification sign is a single-sided, internally illuminated or nonilluminated painted metal sign with changeable panels. The address of the building may also be included in the face of this sign. The maximum size for the office tenant identification sign is 64 feet.

Parapet. The extension of a false front or wall above a roofline.

Point-of-sale sign. A sign advertising a retail item accompanying its display (e.g., an advertisement on a product dispenser).

Political sign. A sign advertising a political candidate or party for elective office or that advertises primarily a political message.

Portable signs. Signs not permanently attached to the ground or other permanent structure, or a sign designed to be transported by wheels including, but not limited to signs which are mounted on skids, trailers, wheels; signs converted to A- or A-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising.

Primary beneficiary. Any person who benefits from the installation, placement, construction, or alteration of a sign, including the owner or tenant of the property upon which the sign is located and the owner or operator of the business, product, service, or activity that is the subject of the sign.

Primary tenant. The primary tenant sign is a wall sign used to identify the primary tenant in a multistory building. The size of the sign is appropriate to be visible from vehicular or pedestrian traffic. The maximum size for each primary tenant sign is 200 square feet and may not be placed on a wall below the third story. Each building may be allowed one primary tenant sign.

Private traffic-control signs. Small traffic directional signs indicating interior circulation of parking areas on site, warn of obstacles or overhead clearance, or designate permissible parking.

Project directory sign. Project directory signs contain a map of listing of key destinations within the mixed use districts of Plum Creek. The project directory sign is scaled to pedestrian use. A project directory sign may be single or double-sided and may be internally illuminated. The maximum size for a project directory sign is 12 square feet. Project directory signs may be placed on the sidewalk provided a four foot clear area is provided for pedestrians. No retail advertising is allowed on project directory signs.

Projecting signs. A sign used to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached.

Pylon signs. Freestanding signs that are supported by a structure extending from and permanently attached to the ground by a foundation or footing, with a clearance between the ground and the sign face. Pylon signs are not considered monument signs.

Real estate signs. Temporary signs advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Rear of building signs. Rear of building signs are signs that do not face a public street and are used to identify tenants in a building. One rear of building sign per tenant is allowed on the rear face of the building if there is a public entrance to the building from the rear of the building. Rear of building signs, may be wall signs or window signs and may be made of the same materials that are permitted for these signs. Rear of building signs cannot exceed 24 square feet in area. Rear of building signs can only identify tenants who are actually in the building to which the sign is attached.

Residential. Locations where the principal use of the property is for one and two-family dwelling units.

Roof sign. Any sign installed over or on the roof of a building.

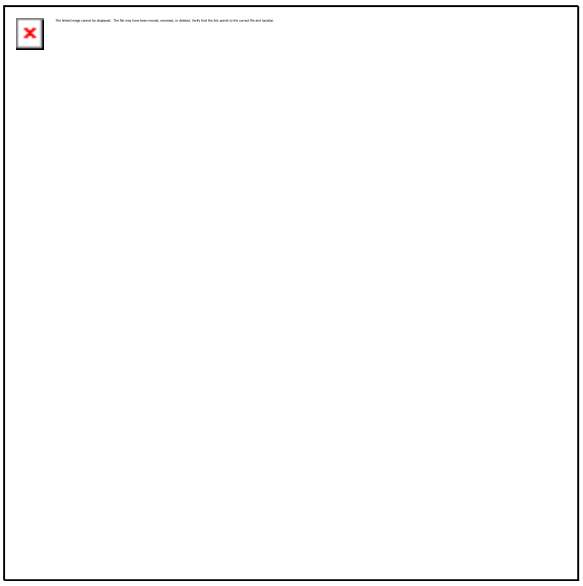
Sandwich board signs. A sign constructed in such a manner as to form an "A" or tent-like shape. The sign can be hinged or not hinged at the top and each angular face help at an appropriate distance by a supporting member. Sandwich board signs are the only portable signs allowed in Plum Creek. Sandwich board signs may be placed on the sidewalk in front of a retail or restaurant premises during business hours only. Sandwich board signs must be located at least three feet from the curb of any adjacent street. Should a sandwich board sign be placed on or adjacent to a sidewalk, an unobstructed pedestrian clearance of at least four feet from the curb of any adjacent to the sign. A maximum of one sandwich board sign may be placed per business or tenant within storefront limits of the business the sign advertises. Sandwich board signs cannot be closer than 20 feet to another sandwich board sign. Dry-erase boards are prohibited on sandwich board signs. The maximum size of a sandwich board sign is 12 square feet per side. The maximum height of a sandwich board sign is four feet.

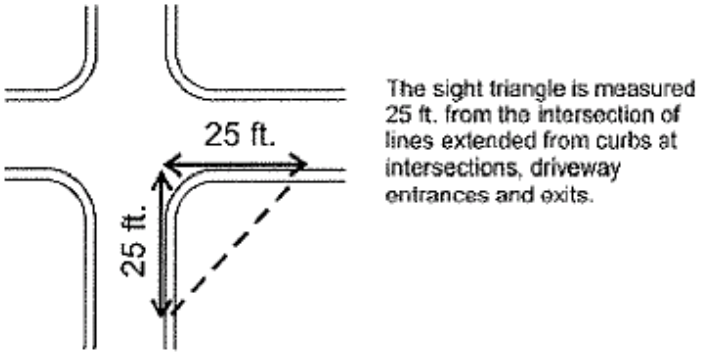
Sign. Any surface, display, design, light device, painting, drawing, message, plaque, poster, billboard or other device visible from the public right-of-way on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected, outlined or attached in any manner whatsoever that are intended or used to advertise, inform, or attract the attention of persons both on and not on that premises, excluding those lights and landscape features which display words or symbols as holiday decorations. The term "sign" also includes the supporting structure of the sign.

Sign area. Includes all lettering, wording, logos, design, symbols, framing, roofing, and cabinets, or modules, calculated according to the provisions established in this section.

Sign panel. An individual sign placard displaying directional information on a sign kiosk.

Sight triangle. The area of vehicle visibility at all street intersections, which shall be clear of all obstructions that may present a hazard to traffic. The visual triangle for a street shall be described as a 45-degree triangle where the right angle sides measure at the very minimum 25 feet. The visibility triangle shall be measured from a point at which the projected curb lines intersect.





Small blade signs. A sign is attached to and projects out from a building face or wall more than 12 inches and are generally set at a right angle to the building. Small blade signs may project over the sidewalk, but must be set back at least three feet from the back of curb and have at least nine feet of clearance from grade. Support structures for small blade signs must be decorative in nature and made of metal. Supports must be engineered to support local wind loads. The sign panel, lettering and graphics can be made of wood, synthetic wood or metal. A small blade sign's background panel may be internally illuminated or made of acrylic, Plexiglas or similar plastic sheeting. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited. Indirect lighting must be attached to the building or sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. The size of a small blade sign cannot exceed 12 square feet in area. The support structure is not included when calculating area. Small blade signs must be double sided and depth of the sign cannot exceed eight inches. Only one face of the sign will be used to calculate size.

Subdivision. For purposes of this section, the subdivision in its entirety, not a phase, section, village, unit, or product line.

Subdivision development entrance signs. Defined as:

(1) Primary entrance signs;

(2) Secondary entrance signs; and

(3) Tertiary entrance signs;

and are used to define various entries of the subdivision.

Temporary Banner. Signs advertising "Going Out of Business" events are prohibited. Temporary banner signs must be professionally constructed and may not be attached directly to windows with tape of adhesive.

Temporary sign. Any sign that is used temporarily and is not permanently mounted (i.e. on stakes or posts), and is constructed of cardboard, foam board, cloth, canvas, fabric, plywood, or similar lightweight material. A portable sign is not a temporary sign.

Temporary wall signs. An on-premises wall sign of a nonpermanent nature advertising a special event, sale, product, or service.

Valet parking identification A series of signs used to identify a valet parking station. Each station is allowed three components: 1) valet station with umbrella or awning; 2) a sandwich board sign; and 3) cones. Valet parking identification or valet parking operations shall not occur in the public right-of-way, except that a sandwich board sign complying with the limitations set forth for signage, maximum signage allowances; sandwich board signs of these development standards may be allowed in the sidewalk, provided that at least four feet of clearance is maintained for pedestrians.

Vertical projecting signs. A sign that is attached to and projecting out from a building face or wall more than 12 inches, generally set at a right angle to the building. A vertical projecting sign may overhang the sidewalk but must be located a minimum of three feet from the back of curb. At least nine feet of clearance must be provided between the bottom of the sign and the sidewalk. Vertical projecting signs can extend above a tenant's lease space with approval of the owner of the building. The support structure from which the projecting sign panel is suspended must be decorative in nature and made of wood, synthetic wood or metal. Signage lighting must be affixed to the building or to the sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. A vertical projecting sign's background panel may be internally illuminated and made out of acrylic, Plexiglas or similar sheeting. Individual letters or graphics may be internally illuminated and glow with either a halo-illumination effect, or glow through their front face. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of a vertical projecting sign cannot exceed 75 percent of the overall wall length of the wall on which it is erected or a maximum of 25 feet, whichever is less. Vertical projecting signs must be double-sided. The depth of the sign panel may not exceed 15 inches, including the depth of the applied letters or graphics. The size of a vertical projecting sign cannot exceed 150 square feet in area. Only one face of the sign will be used to calculate size, graphics may be internally illuminated and glow either with a halo-illumlnation effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited.

Wall sign. A sign attached to the façde of a building or a canopy. Wall signs include signs on or affixed to walls, windows, awnings, or other parts of the exterior of a building or canopy.

Window or door surface signs. Signs installed on or in a window or door.

Window signs. A sign that is visible from a public street or sidewalk and that is posted, attached, painted or affixed in or on a window, or a sign that is located within three feet of a window. Window signs must be located on the inside of the window. The area of the window sign cannot exceed 25 percent of the square footage of the window in which the sign is located. Only one window sign is allowed per window. Window signs may be located on the upper floors of a building. Hours of operation, not to exceed two square feet per window, shall not be counted in the square footage allowance of a window sign. When the address of the business is displayed as a window sign, the address shall not be counted in the square footage allowance.

Work of art. Sculpture, fountain, or similar object, and containing no reference to or image of a business or its logo, is not considered as a sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-5. - Applicability.

(A) All land within the city and its extraterritorial jurisdiction (ETJ) is subject to compliance with this section.

(B) The sections, provisions, and regulations set forth in this section 7 shall apply to the control, use, installation, regulation, licensing and permitting of signs within the Plum Creek PUD.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-6. - Permit required.

(A) *Permit required.* It shall be unlawful for any person to erect, construct, enlarge, move or convert any sign within the Plum Creek PUD without first obtaining a PCARC approval and a city sign permit and paying a permit fee unless specifically provided otherwise in this chapter. A change of business requires a new sign permit.

(B) *Compliance required.* No person may install a sign or structurally alter an existing sign except in conformity with this ordinance and other applicable federal, state, and local regulations, Including, but not limited to, the building code, electrical code, and other applicable ordinances of the city. In the event of a conflict between this chapter and other laws, the most restrictive standards applies.

(C) *Permit not required.* Permits shall not be required for the following signs, provided, however, that such signs shall otherwise comply with all applicable sections of this chapter.

(1) On-site real estate "for sale" signs, or for a model home sign and future development signs that is approved by the PCARC.

(2) Political signs located on private property with the consent of the property owner that do not exceed 36 square feet in area, are not more than eight feet in height are not illuminated, and do not have any moving elements.

(3) Government signs, including traffic signs, private traffic-control signs, regulation address numerals, and memorial signs.

(4) Construction trade signs.

(5) Garage sale signs.

(6) No sign permit is required for a change of copy on any sign, or for the repainting, cleaning and other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified.

(D) *Primary beneficiary.* The primary beneficiary of any sign installed, moved, structurally altered, structurally repaired, maintained, or used in violation of this section shall be deemed responsible for the violation of this section.

(E) *Building official authority.* The building official shall enforce and implement the terms of this chapter, including without limitation:

(1) Issuing permits and collecting the fees required by this chapter;

(2) Conducting appropriate inspections to insure compliance with this chapter;

(3) Instituting legal proceedings, including suits for injunctive relief when necessary, to insure compliance with this chapter; and

(4) Investigating complaints of alleged violations of this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-7. - Application for permit.

(A) An application for a sign permit must be accompanied by the permit fee and shall include such information as is necessary to assure compliance with all appropriate laws and regulations of the city, including:

(1) The name and address of the owner of the sign.

(2) The name and address of the owner, and if different from the owner, the person in possession of the premises where the sign is located or to be located.

(3) Clear and legible drawings with description definitely showing location of the sign which is the subject of the permit and all existing signs whose construction requires permits, when such signs are on the same premises.

(4) Scale drawings showing the site plan location, dimensions, construction supports, sizes, foundation, electrical wiring, and components, materials of the sign and method of attachment and character of structure members to which attachment is to be made. The design, quality, materials and loading shall conform to the requirements of the building code. Projection, wall and temporary signs not over six square feet in area, constructed of metal or other noncombustible material, attached securely to a building or structure and not projecting more than 18 inches beyond the building wall, structure, building line or property line, shall not require an engineer certification as to its soundness. Wind pressure and dead loads shall be shown where deemed appropriate, and the building official may require structural drawings designed and sealed by a civil engineer registered by the State of Texas when it cannot otherwise be determined that the sign will be structurally sound if building official, engineering data certified by a licensed structural engineer shall be supplied on any submitted plans.

(5) Any electrical permit required and issued for said sign if required.

(6) For free-standing signs, documentation demonstrating that the applicant holds general liability insurance in the amount of one million dollars. No license or permit for the installation, erection and maintenance of a freestanding sign shall be issued to any person, firm or corporation until such person, firm or corporation has filed with the building official a certificate of insurance verifying general liability insurance in the amount of $1,000,000.

(7) A surety bond in the sum of $5,000.00 for the installation and erection of the sign payable to the city and providing for the indemnification of the city and any and all damages or liability which may accrue against the city for a period of one year after installation, erection, demolition, repair, removal, or defects in or collapse of any sign.

(8) The permit fee.

(9) Written PCARC approval.

(B) Fees for sign permits shall be as specified in appendix A, and calculations of the square footage shall include decorative trim and borders, but exclude supports, except when otherwise specified in this chapter.

(C) Expiration of sign permits:

(1) A sign permit shall expire and become void unless a request for final inspection of the sign is made no later than 180 days after the date the permit is issued.

(2) A single extension 90-day extension of the permit may be granted by the building official if requested before the expiration of the permit. Final inspection must be requested before the end of the extension period or the permit becomes void.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-8. - Calculation of sign area.

(A) *Sign area measurement.* Sign area for all sign types is measured as follows:

(1) Sign copy mounted, affixed, or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy, is measured as that area contained

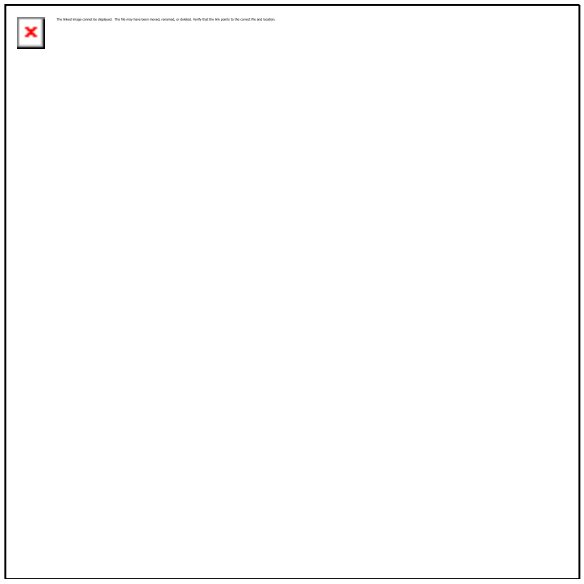
within the sum of the smallest rectangle(s) that will enclose both the sign copy and the background.

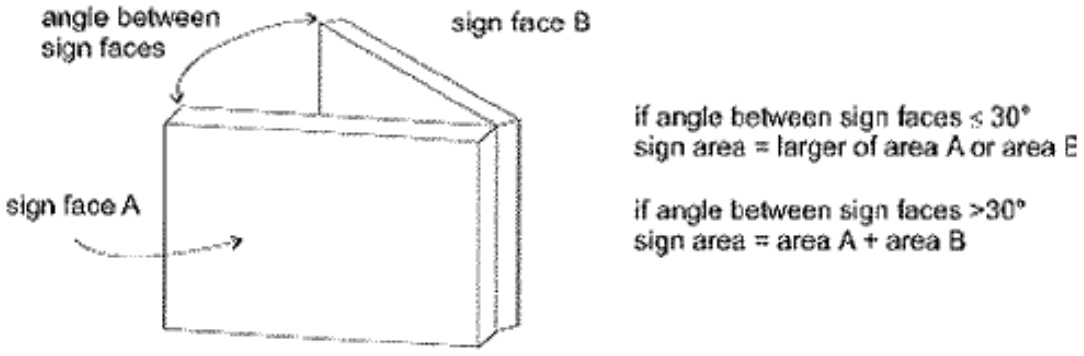
(2) Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or surface of another structure that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy, is measured as a sum of the smallest rectangle(s) that will enclose each word and each graphic in the total sign.

(3) Sign copy mounted, affixed, or painted on an illuminated surface or illuminated element of a building or structure, is measured as the entire illuminated surface or illuminated element which contains sign copy. Such elements may include, but are not limited to lit canopy fascia signs, cabinet signs, and/or interior lit awnings. Support structures and frames of a freestanding sign shall count toward the sign area.

(4) Multiface signs are measured as follows:

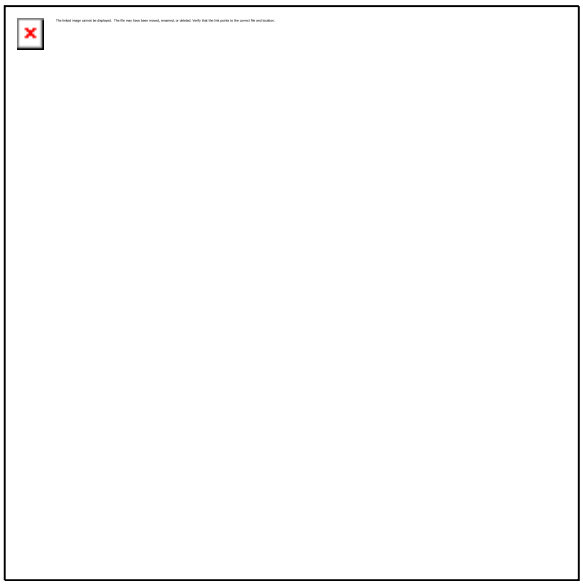
a. *Two-face signs.* If the interior angle between the two sign faces is 30 degrees or less, the sign area is of one sign face only. If the angle between the two sign faces is greater than 30 degrees, the sign area is the sum of the areas of the two sign faces.

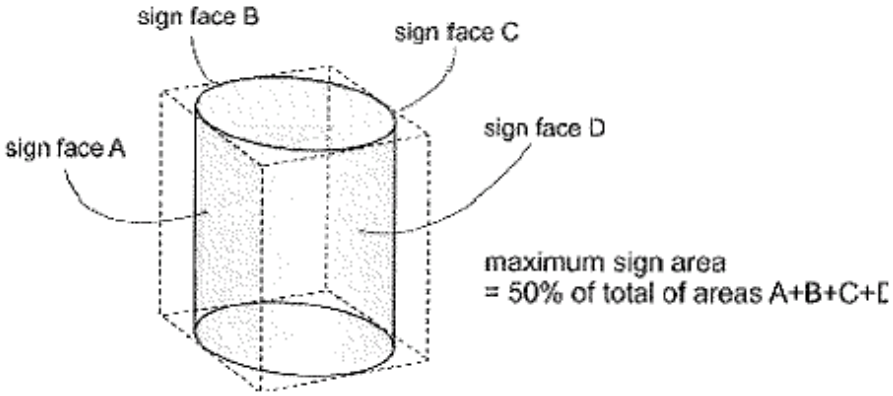




b. *Three or four face signs.* The sign area is 50 percent of the sum of the areas of all sign faces.

(5) Spherical, free-form, sculptural, or other nonplanar sign area is 50 percent of the sum of the areas using only the four vertical sides of the smallest four-sided polyhedron that will encompass the sign structure. Signs with greater than four faces are prohibited.





(6) Freestanding sign area is the entire advertising area of a sign, including framing, trim or molding and the supporting frame for monument signs and including the air space between the supporting structures for freestanding signs.

(B) *Sign height measurement.* Sign height is measured as follows:

(1) *Freestanding signs.* The height of a freestanding sign shall be computed as the distance from the base of the sign at finished grade to the top of the highest attached component of the sign. The height of any monument sign base or other structure erected to support or adorn the sign is measured as part of the sign height. If a sign is located on a mound, berm, or other raised area for the sole purpose of increasing the height of the sign, the height of the mound, berm, or other raised area shall be included in the height of the sign.

(2) *Building mounted signs.* The height of wall, fascia, mansard, parapet or other building mounted signs is the vertical distance measured from the base of the wall on which the sign is located to the top of the sign or sign structure.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-9. - Prohibited signs.

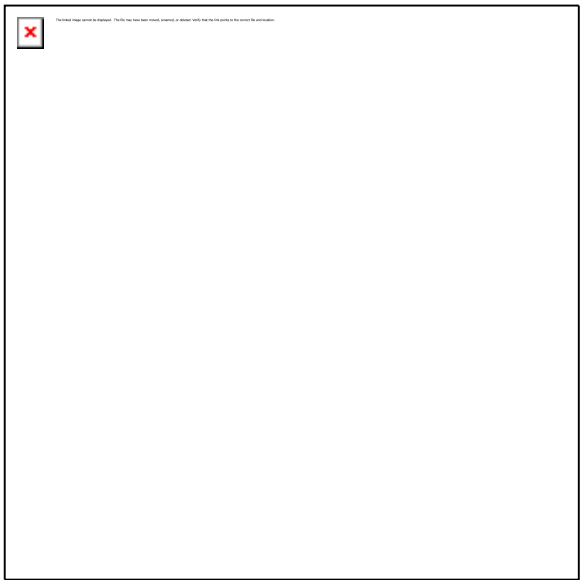
The following signs are prohibited from installation, construction, repair, alteration, location or relocation within the city, except as otherwise permitted in this section.

(1) Signs with flashing lights, revolving beacon lights, fluttering, undulating, swinging, or otherwise moving parts. For purposes of this section, an electronically controlled changeable-copy sign is not considered a flashing sign unless it directly falls under the definition of 'flashing' as defined in this section.

(2) Billboards.

(3) Off-premises signs, except for kiosks and any other sign specifically authorized in this ordinance that are compliant with this section.

(4) Portable signs.



(5) Temporary signs except as specified in section 29-20.

(6) Signs placed on a vehicle or trailer that is parked or located for the primary purpose of displaying a sign shall be permitted.

(7) Roof signs.

(8) Signs painted on fences or roofs.

(9) Pylon signs, except as specifically provided for section 29-17.

(10) Inflatable signs larger than eight feet in any dimension.

(11) Light emitting diode (LED) displays or signs, with the limited exception of LED message boards and static LED fuel price signs that comply with section 29-16 and section 29-17. Such signs, where authorized, shall fully comply with the requirements of this chapter. Electronic message signs are allowed only as part of the monument sign and can have a display size no larger than 12 inches by 72 inches. Messages shall be programmed to remain static for a period of not less than 60 seconds. Messages shall not be programmed to flash.

(12) Changeable electronic variable message signs except as specifically provided in this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-10. - Signs exempt from these regulations.

The following types of signs shall be exempt from the permitting provisions of this section. However, regulations regarding sign location in a public right-of-way or public access easement shall apply. It is further specifically provided that the building official may, based upon the size, materials used in construction and other relevant factors, require the owner of any sign to show evidence of structural soundness and compliance with the safety requirements of this section.

(1) Any sign erected by or under the authority of the city on property owned by the city.

(2) Street identification signs, public notices, and warning signs installed by any city, county, state or federal agency.

(3) Historical markers placed by a city, county, state or national historical preservation organization.

(4) Official vehicle inspection station signs, holiday lights and decorations, or works of art.

(5) Signs located on-premises or inside a building and which are not displayed so as to be legible from a public street, including, but not limited to, such signs as credit card decals, hours of operation signs, emergency contact information, and barber poles.

(6) On-site traffic control signs on commercial properties, such as stop, yield, and similar traffic control signs containing no commercial message.

(7) "No parking" or "towing" signs authorized by city ordinance.

(8) "No dumping allowed" signs posted to deter illegal dumping not exceeding four square feet.

(9) Underground utility warning signs not exceeding one square foot in size and similar safety signs.

(10) Signs on railway property, which references the operation of such railway.

(11) Security warning, neighborhood watch or crime watch signs under two square feet.

(12) Flags, emblems and insignia of any governmental body, including the official flag of a nation or of a state is not a sign subject to this chapter. Notwithstanding the preceding sentence, a national or state flag shall not be installed, maintained, or used in a manner that would make that flag a hazardous sign if it were a commercial flag.

(13) Corporate flags displayed on a freestanding pole, which do not exceed 35 feet in height. The flag shall not exceed 32 square feet in area. The flagpole shall be setback a minimum of 20 feet from the front property line and eight feet from the side property line.

(14) Hand held signs or signs, symbols or displays on persons or animals, except for signs that qualify as human signs.

(15) Signs located on mall boxes, newspaper vending machines and curbside residential newspaper holders which identify the owner and address of the premises or the name of the newspaper sold or subscribed to; provided that such devices are not placed so as to interfere with the safe movement of pedestrians or vehicular traffic.

(16) Signs located on outdoor machines, devices, or equipment which display the trademark, trade name, manufacturer, cost of operating or service instructions or similar information, but do not advertise the business where located. This exemption includes, but is not limited to signs on coin-operated vending machines, fuel dispensing pumps, telephone facilities, automatic teller machines, automatic vacuum cleaners, amusement rides and similar machines, devices or equipment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-11. - Sign categories.

For purposes of this section, property within the city's sign ordinance jurisdiction is classified into a sign category. Those properties within the city's limits are classified based upon their zoning district classification. Those properties located within the ETJ shall be classified into a sign category by the building official based upon the existing or proposed use and the zoning district most closely associated with that use. Classification into a sign category is for the purposes of signage only and does not establish vested use rights towards the assignment of zoning should the property be annexed into the city limits. In overlapping areas, the most restrictive sign regulations will apply.

(1) Single-family residential sign category includes any residential site in an agricultural (A), manufactured housing (M-1, M-2, M-3), or any single-family (SF, R-1A) townhouse (R-1-T) zoning districts or equivalent land use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(2) Multifamily residential sign category includes any site in a multifamily (R-2, R-1-C, R-3-1, R-3-2, R-3-3) zoning districts or equivalent use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(3) Commercial sign category includes any site in retail services (RS), warehouse (W), construction manufacturing (CM), entertainment (E), and transportation utilities (TU) zoning districts or equivalent use in the ETJ and the permitted nonresidential uses identified in the city's residential and multifamily zoning districts.

(4) Central business district sign category includes any site that is located within the boundaries of the central business district (CBD) zoning district.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-12. - General provisions.

(A) *Uniform signs in multi-tenant/multi-business developments.* Wall signs displayed by two or more businesses using common parking facilities shall be uniform in construction (i.e. cabinets, channel letters, plaques) and lighting (i.e. direct, indirect).

(B) *Street address.* All freestanding signs, either berm or monument signs, shall include the street address. The street address shall not be included in the calculation of the sign area, except in such case that the street address is also the name of the center, business, or development, or in such case that the street address exceeds six square feet in size.

(C) *Setback.* A minimum setback of at least five feet from any property line is required for all signs. A sign installed in compliance with this ordinance is not required to meet building setback requirements established in a separate city ordinance; however, no sign or sign support, other than a wall sign, may be installed less than 12 feet from the public right-of-way unless it is:

(1) Less 30 inches in height above street pavement grade;

(2) Has a clearance of more than nine feet above pavement grade, provided that the sign shall have a clearance of more than 12 feet when located over a driveway;

(3) Does not extend into or over the public right-of-way unless specifically authorized under this chapter.

(D) *Visibility.* Signs shall not be constructed or installed in a manner that would interfere with visibility, create a traffic hazard, or be confused with any traffic control sign or signal.

(E) *Structural integrity.* Any sign as defined in this section, shall be designed and constructed to withstand wind pressures and receive dead loads as required in the building code adopted by the city. Any sign, other than a wall sign, shall be designed, installed, and maintained so that it will withstand a horizontal pressure of 30 pounds per square foot of exposed surface.

(F) *Maximum height.* No sign shall exceed the maximum height provided for in this chapter. In determining the maximum height of a sign, no sign shall be located on a mound where the surrounding grade has been altered by more than 18 inches for purposes of artificially increasing the overall height of a sign above that allowed by the height regulations in this chapter.

(G) *Historic district.* Signs on premises within a historic district designated by the city shall be subject to the issuance of a certificate of appropriateness by the state or local historic preservation commission.

(H) *Public utility facilities.* New signs and signs being structurally altered shall maintain clearance from public utility facilities, shall not substantially interfere with drainage, and shall not be located in a utility or drainage easement. The minimum clearance from electrical tines shall be as follows: for service lines, except those serving a sign, five feet horizontal and six feet vertical clearance; for distribution lines, 7½ feet horizontal and eight feet vertical clearance.

(I) *Parking, driveways, sidewalks.* Only signs required in the interest of public safety may occupy a required off street parking or loading space or obstruct any driveway or sidewalk, except as specifically authorized herein.

(J) *Public property.*

(1) No sign shall be located on or project over public property or a street right-of-way except governmental signs and temporary banner signs that comply with the approval by the city council of a license agreement. No portion of a freestanding sign shall be permitted to extend into the public right-of-way.

(2) No person shall, either directly or indirectly, cause or authorize a sign to be installed, used, or maintained on any utility pole, traffic signal pole, traffic signal controller box, tree, public bench, street light, or any other structure located on or over any public property or public right-of-way, located within the city's planning jurisdiction, except as authorized by this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-13. - Illumination.

(A) *Lighting.* Sign lighting shall be installed to protect the driver of a vehicle from dangerous glare and to maintain visual clearance of all official traffic signs, signals and devices.

(B) *Glare.* Signs shall be designed, located, shielded, and directed to prevent the casting of glare or direct light from artificial illumination, upon adjacent public right-of-way and surrounding property.

(C) *Bare bulb illumination.* Bare bulb illumination is prohibited within 150 feet of any premises containing a residential use, and in other cases is limited to 25-watt bulbs at night and 33-watt bulbs during daylight hours.

(D) *Brightness limitations.* The lighting intensity of a sign, whether resulting from internal illumination or external illumination, shall not exceed 75 foot candles when measured with a standard light meter perpendicular to the face of the sign from a distance equal to the most narrow dimension of the sign.

(E) *Electrical permit.* All signs in which electrical wiring and connections are to be used shall be subject to the applicable provisions of the city's electrical codes.

(F) *Central business sign category.* In the central business sign category, neon or phosphorescent lighting shall not exceed ten percent of the total signage allowed and may only be located in a window.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-14. - Sign regulations relating to single-family residential sign category.

(A) *General.* No sign other than a temporary event directional sign (such as a garage sale sign, event sign, or a real estate sign) or a political sign that comply with subsection 29-6(c)(2) shall be erected on property used for single family or duplex dwellings.

(B) *Burma shave signs.*

(1) Not more than eight on-site subdivision burma shave signs may be permitted for each recorded subdivision not to exceed six per entry into the primary entrance of the subdivision.

(2) A burma shave sign shall not exceed 16 square feet of total sign area on one side and both sides of the sign may contain signage. The sign shall not exceed six feet in height and be located out of the right-of-way in a manner that does not obstruct the visibility of vehicle ingress/egress from surrounding streets and/or properties. For burma shave signs along roads bearing speed limits of 40 MPH or more or having setback at or greater than 25-foot setback, signs shall not exceed 64 square feet.

(C) *Model home signs.* Model home signs are limited to a 32 square foot sign face, a height of eight feet, and to one sign for each cluster of model homes. A nameplate sign that identifies the individual product name is exempt under this subsection if it does not exceed three square feet in sign area. Signs shall be placed by permit only, and no fee shall be required.

(D) *Subdivision development entrance sign.* A subdivision development entrance sign is a sign authorized for each major project entry into a legal recorded, multi-lot, multi-sectioned, master-planned subdivision, and contains only the name of the subdivision with no other information. Subdivision entrance signs must be berm or monument signs constructed of stone, brick or other maintenance free material. The design and construction must be compatible with surrounding development. Signage may appear on both sides of the entrance roadway within the recorded or master-planned subdivision and will be soldered as one sign. Lighting shall be ground lights or lights attached to the top of the sign focused downward directly on the sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-15. - Sign regulations relating to multifamily residential sign category.

(A) Signs in multifamily locations shall be limited to signs allowed in this section and in all applicable restrictions of this section as well as other requirements of this Code, and any other applicable law.

(B) Except as provided in this subsection, a single freestanding sign is permitted only as berm or monument signs on the same lot as the development to identify the development and its entrance. Signs must be constructed of stone, brick or other maintenance free material.

(1) Lighting shall be ground lights or lights attached to the bottom of the sign focused upward directly on the sign.

(2) The maximum size of the sign shall be 0.09 square feet per linear foot of frontage, up to a maximum size of 24 square feet. A minimum size of 12 square feet is allowed for a berm sign.

(3) The maximum height of the sign shall be eight feet.

(4) In the event the development has a second entrance from a public street, a second entrance sign may be constructed, at one-half the size of the one main entry sign.

(C) Wall signs are permitted at a size to be calculated as one-half square foot per linear foot of frontage, not to exceed a total of 35 square feet.

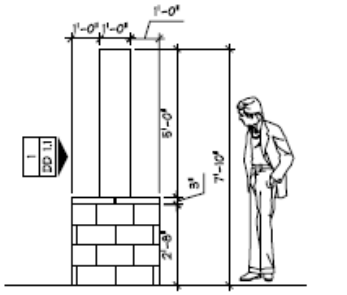
(D) Window or door surface signs are allowed .The total sign area of all window and door signs shall be included in calculating the maximum wall sign area authorized at a particular location.

(E) No LED displays, signs, or message boards are permitted in the multifamily residential sign category.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

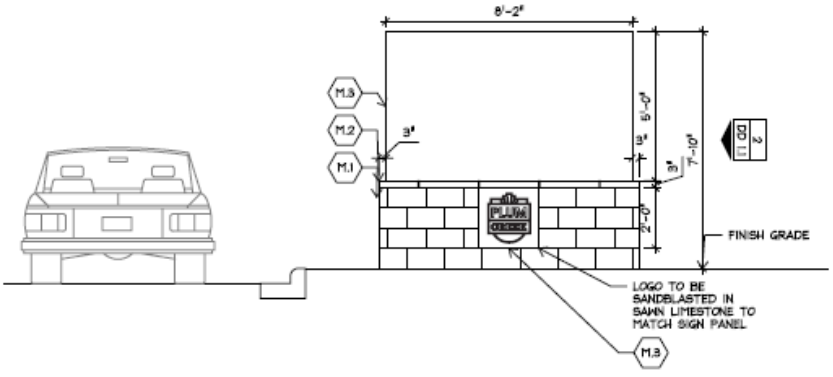
Sec. 7-16. - Attached sign regulations.

MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	**DESCRIPTION /MODEL NUMBER**	**COLOR**	**FINISH**	**CONTACT**	**REMARKS**
M.1	LIMESTONE VENEER USE ½" MORTAR JOINTS	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-8792	- 3" THICK SIZED: 14½" LENGTH X 7½" WIDTH. CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO MOCK UP.
M.2	LIMESTONE CAP	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-8792	- CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
M.3	LIMESTONE SIGN PANEL/LIMESTONE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-8792	- ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.

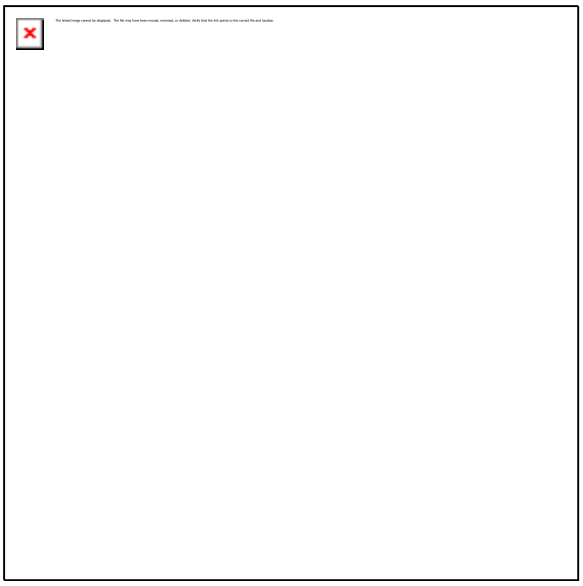


2 SINGLE TENANT SIGNAGE
SIDE ELEVATION

Example of Sandblasted Sign

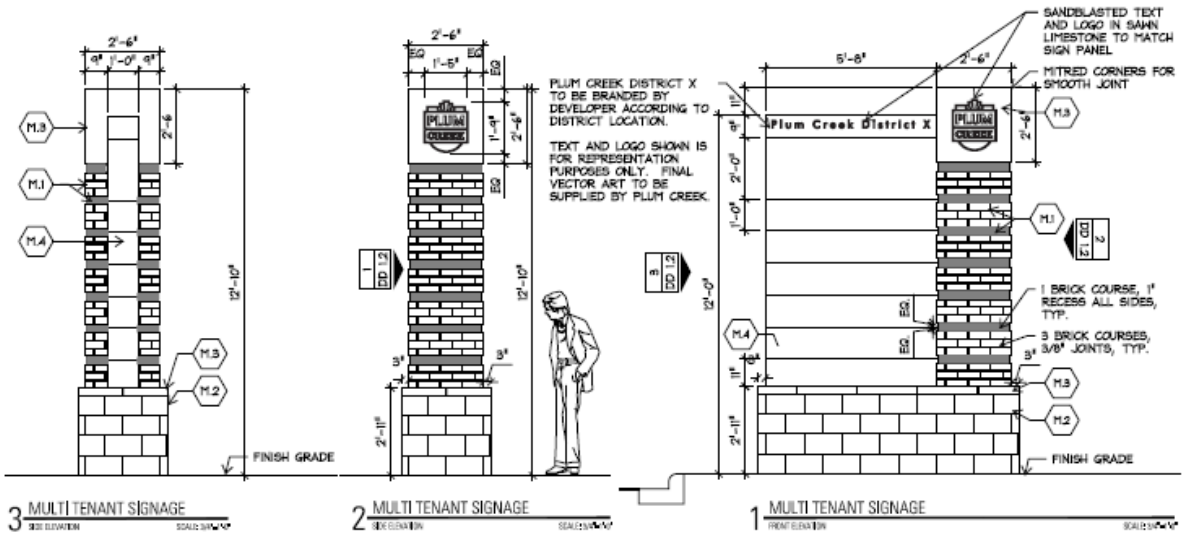


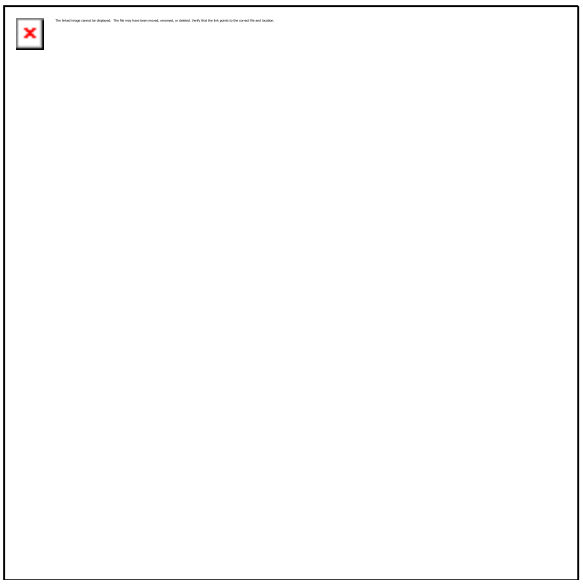
1 SINGLE TENANT SIGNAGE
FRONT ELEVATION



MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	**DESCRIPTION /MODEL NUMBER**	**COLOR**	**FINISH**	**CONTACT**	**REMARKS**
M.1	FACE BRICK MFG: SIOUX CITY BRICK PRODUCT: WILLIAMSBURG - STRATFORD SIZE: BUILDERS SPECIAL	MATCH EXISTING PLUM CREEK MASONRY	MATCH EXISTING PLUM CREEK MASONRY	COMPANY: ELDGIN-BUTLER BRICK CO. PHONE: (512) 295-3356	- CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO MOCK UP.

M.2	LIMESTONE VENEER USE ½" MORTAR JOINTS	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6792	- 3" THICK SIZE: 48½" LENGTH X 7½" WIDTH. CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO MOCK UP.
M.3	LIMESTONE SIGN PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6792	- CONTRACTOR TO PROVIDE SAMPLE FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
M.4	LIMESTONE SIGN PANEL/LIMESTONE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6792	- ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



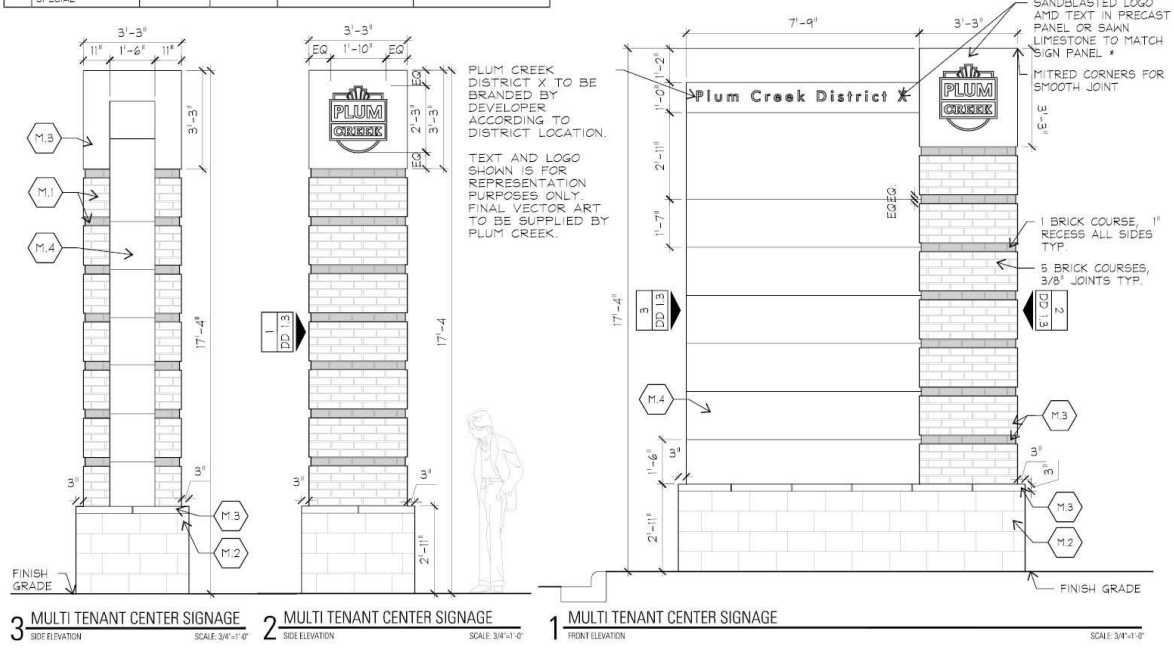


MATERIALS SCHEDULE

MASONRY

CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.

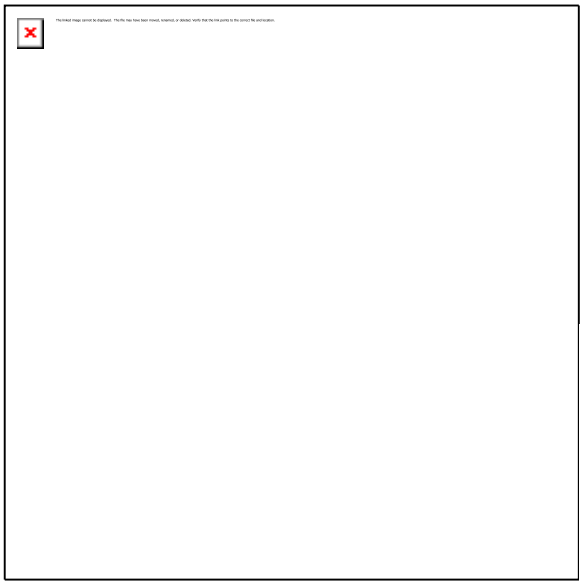
KEY	DESCRIPTION /MODEL NUMBER	COLOR	FINISH	CONTACT	REMARKS
M1	FACE BRICK MFG: SIOUX CITY BRICK PRODUCT: WILLIAMSBURG - STRATFORD SIZE: BUILDERS SPECIAL	MATCH EXISTING PLUM CREEK MASONRY	MATCH EXISTING PLUM CREEK MASONRY	COMPANY: ELEGIN-BUTLER BRICK CO. PHONE: (512) 285-3356	- CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO MOCK UP.
M2	LIMESTONE VENEER USE ½" MORTAR JOINTS	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-5792	- 3" THICK SIZE: 14¾" LENGTH X 7¾" WIDTH. CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO MOCK UP.
M3	LIMESTONE SIGN PANEL/LIMESTONE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-5792	- ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



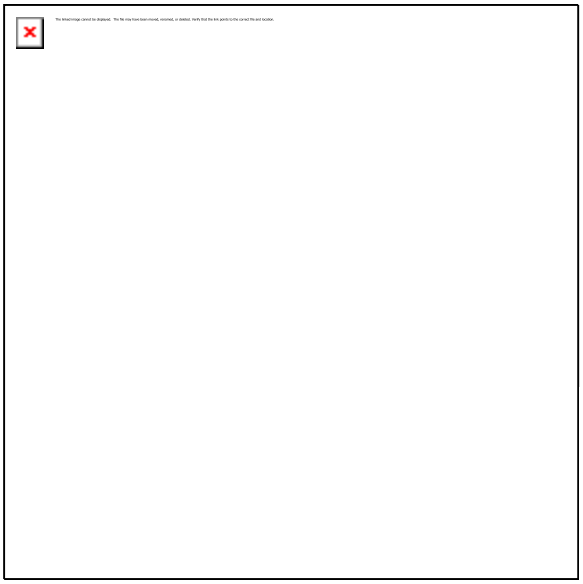
(A) *Awning signs.* The purpose of an awning sign is to provide an advertising message on the face of an awning. Awing signs shall only be allowed within commercial districts, industrial districts, the central business district.

(1) An awning may extend across the entire width of a building or tenant space. An awning may extend above the apparent roof line of the building, provided the awning extends across 75 percent of the entire width of the building facade to which it is attached. An awning shall not exceed six feet in height.

(2) The sign area on an awning shall not exceed 20 percent of the area of the awning and shall extend for no more than 50 percent of the length of the awning. A permit shall be required for an awning sign. Awning signs may be illuminated.



(B) *Canopy signs.* A canopy sign shall be no greater in size than 20 percent of the face of the canopy of which it is a part or to which it is attached and shall not extend beyond the face of the canopy either vertically or horizontally. An illuminated strip may be incorporated into the canopy. Canopy signs shall only be allowed within commercial districts, industrial districts, and the central business district.



Canopy Signs

(C) *Projecting signs.* The purpose of a projecting sign is to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached.

Projecting signs shall be allowed within commercial districts, industrial districts and within the central business district.

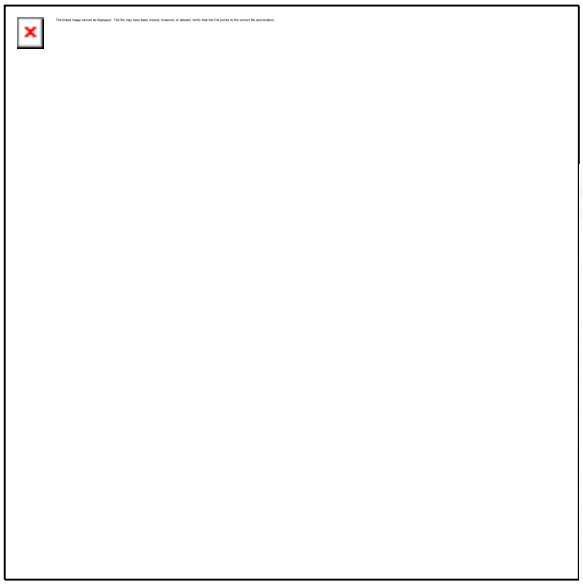
(1) *Number of signs:* One projecting sign shall be allowed for each single tenant building or for each tenant in a multi-occupancy structure. However, no tenant storefront shall have a projecting sign in combination with a wall sign on the same building elevation.

(2) *Maximum area:* A projecting sign shall not exceed 20 square feet. The plane of the message area shall not exceed 18 inches from the plane of the message area on the opposite side of the sign.

(3) *Horizontal projection:* A projecting sign shall not project more than four feet from any wall facing and shall not be closer than two feet from a curb line. A projecting sign shall not extend above the apparent roof line of the building.

(4) *Clearance:* Every projecting sign shall be a minimum of eight feet above the grade over a walking area or 14 feet over a vehicular maneuvering area. Projection signs shall not project over any property line or right-of-way line unless with an approved license agreement.

(5) A projecting sign may be illuminated.



(D) *Light mounted banner signs.* Light mounted banner signs shall only be permitted In the central business district for the advertising of permitted community events, seasonal and historic themes, or other such civic purposes; on collector level and higher classification within a residential subdivision; within master planned commercial subdivision. Such banners are limited to subdivision identification, or seasonal decorations and works of art by local artists. Such banners must be approved by the appropriate electric utility company in addition to receiving a permit from the city manager's office. No permit shall be approved for a period exceeding 30 calendar days. Light mounted banner signs shall comply with the following regulations:

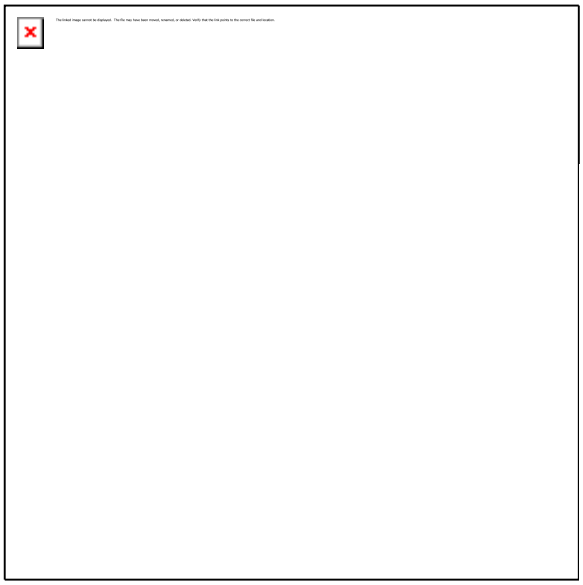
(1) Banners shall be limited to not more than one banner on any light pole.

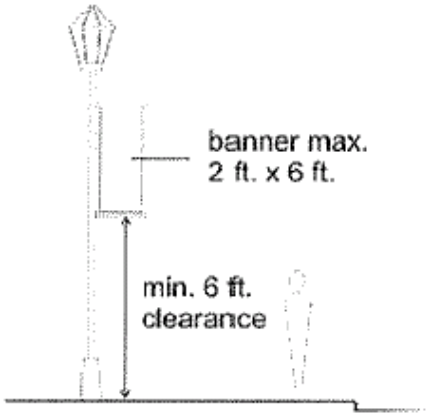
(2) Banners shall be limited to no more than two feet by six feet in exterior dimension and 12 square feet in area per banner.

(3) A minimum height of six feet as measured from adjacent grade to the bottom of the banner shall apply.

(4) Banners shall be maintained in good repair. Should they become excessively faded, tattered or torn, they shall be replaced or removed.

(5) Banners shall not be illuminated, except for indirect lighting associated with the main lamp of the light pole to which it is mounted.



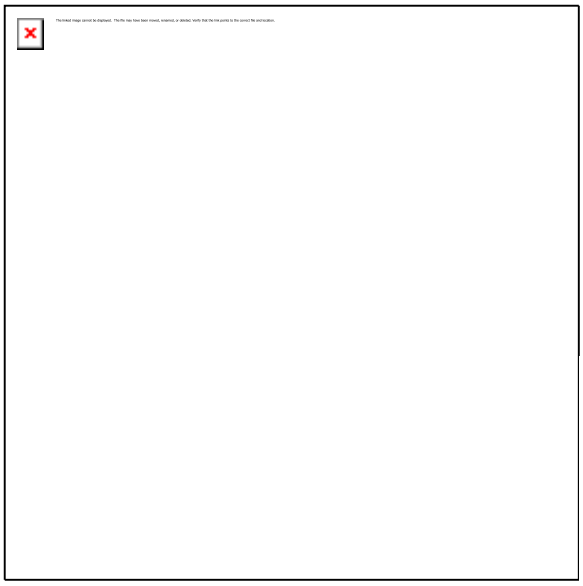


(Ord. No. 653, § 3(Attach.), 4-19-2011)

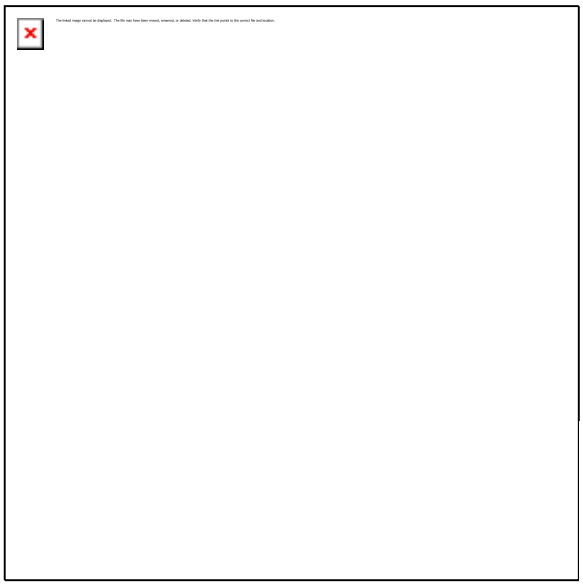
Sec. 7-17. - Temporary sign regulations.

(A) *Construction trades signs.* The purpose of a construction trades sign is to denote the architect, engineer, financial institution or building trades contractor involved in a construction project. Construction trades signs shall be categorized as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a construction trades sign for commercial locations shall not exceed 64 square feet and shall not exceed ten feet in height.



(2) The maximum area, height, spacing and setbacks of a construction trades sign for residential locations shall not exceed eight square feet and shall not exceed four feet in height.



(3) Construction trades signs shall not be erected until a building permit has been submitted for building construction and shall be removed up on completion of the construction project or occupancy of the structure, whichever is applicable.

(4) No permit or fee shall be required for a construction trades sign.

(5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

(6) A construction trade sign shall not be illuminated.

(b) *Future development signs.* Future development signs shall be regulated as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a future development sign shall not exceed 64 square feet and shall not exceed ten feet in height.

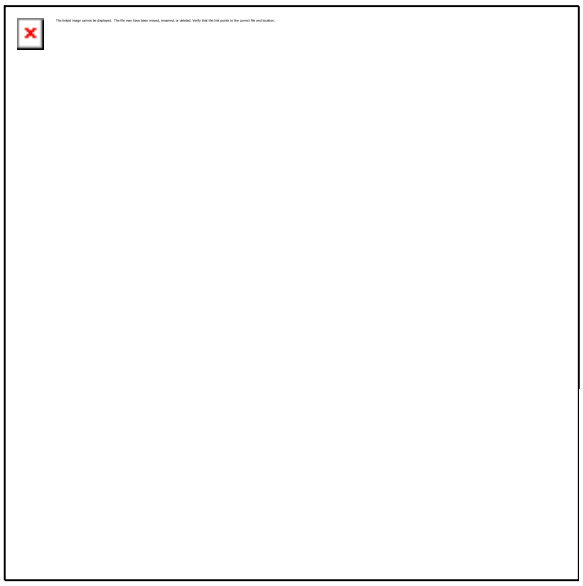
(2) A permit shall be required for a future development sign.

(3) A future development sign shall not be illuminated.

(4) A future development sign shall be removed when the project is 90 percent complete or within three years from start of construction, whichever is less. For the purpose of this provision, a subdivision shall be deemed 90 percent complete when 90 percent of the lots within the subdivision are sold.

(5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

(6) One sign shall be permitted per lot; except that one sign per major access to the development shall be authorized if a lot is used together with one or more contiguous lots for a single use or a unified development (for example, a shopping center).



Development Sign

(C) *Garage sale signs.* The purpose of a garage sale sign is to announce the sale of household possessions.

(1) Garage sale signs shall not exceed four square feet. Signs shall be allowed for a maximum of 72 consecutive hours no more than two times per calendar year.

(2) Single-family residential on-premises: One garage sale sign per street frontage shall be allowed, but only on the premises where the garage sale is being conducted and where there is an existing residential use.

(3) Neighborhood-wide garage sales: Two garage sale signs per subdivision entrance shall be allowed for a neighborhood-wide garage sale sponsored by a homeowner's association (HOA). The garage sale sign may be off premises from where the actual garage sale is conducted, but the sign shall be located on property, including a street right-of-way, that is within the limits of the homeowner's association. The HOA must be registered with the city.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Signs shall not be placed anywhere in the center median of a public or private street.

(5) No permit or fee shall be required for any garage sale sign.

(D) *Real estate signs (commercial, including subfamily).* The purpose of a commercial real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A commercial real estate sign shall not be illuminated.

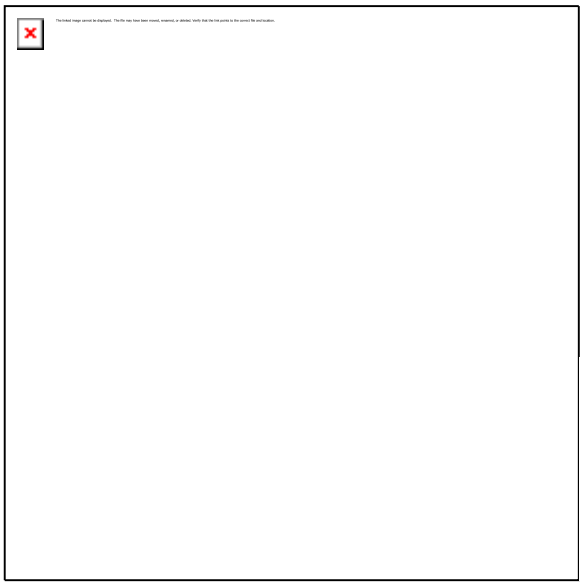
(2) The maximum area and height of a commercial real estate sign shall not exceed 64 square feet and shall not exceed ten feet in height.

(3) Commercial real estate signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) No more than one sign per 300 linear feet of street frontage may be placed on such property.

(5) Signs shall be placed at least twenty-five feet from an intersection and a minimum of ten feet from the curbline.

(6) No permit or permit fee shall be required for a commercial real estate sign.



(E) *Real estate signs (residential).* The purpose of a residential real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

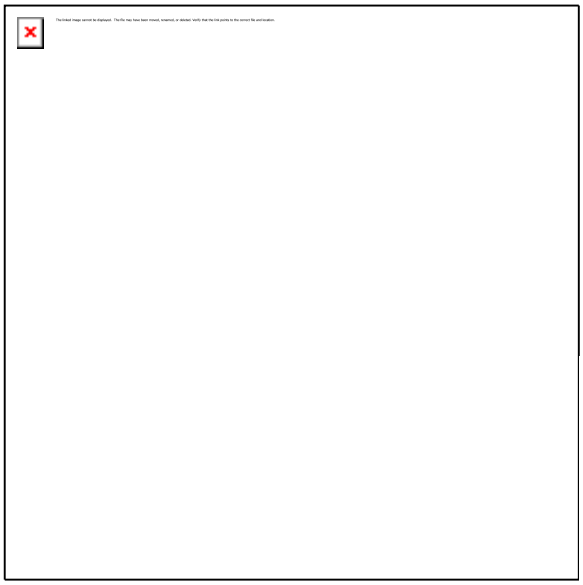
(1) A residential real estate sign shall not be illuminated.

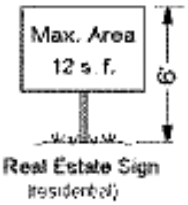
(2) The maximum area and height of a residential real estate sign shall not exceed 12 square feet and shall not exceed six feet in height.

(3) All signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

(5) No permit of permit fee shall be required for a residential real estate sign.

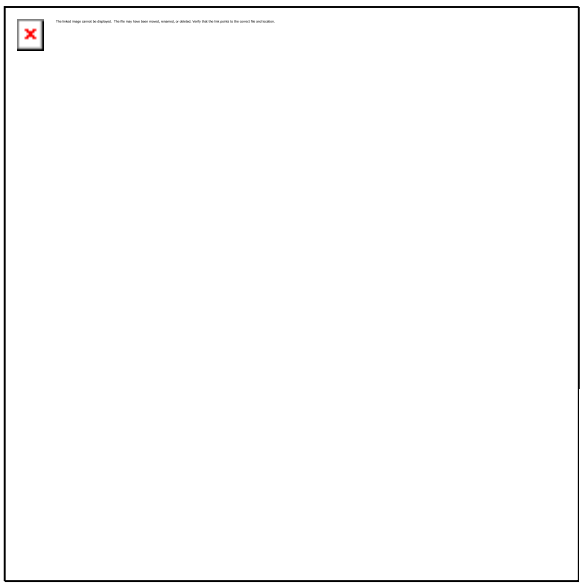


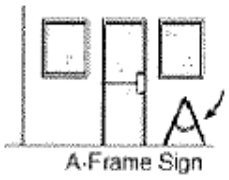


(F) *A-frame signs.* The purpose of an A-frame sign is to provide temporary advertising during business hours of a commercial occupancy.

(1) Maximum height and area shall conform to the following table:

Maximum Height and Areas of A-Frame Signs		
	Max. Area	Max. Height
Located on a sidewalk	8 s.f.	4 feet
Located in a yard	24 s.f.	8 feet





(2) Time duration: Only displayed during business hours.

(3) Placement: Only allowed on private property, but may be located on a public sidewalk, provided a width of four feet snail remain tree from intrusion.

(G) *Miscellaneous temporary sign regulations.*

(1) Temporary signs advertising the opening or relocation of a business shall only be permitted for a maximum period of 30 days before and 60 days after such opening or relocation. Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.

(2) Except as specifically provided otherwise in this chapter, banners shall not exceed 32 square feet, must be attached and parallel to a wall of the structure, and shall only be permitted for a period not to exceed 30 calendar days and with a period of not less than 30 days between displays.

(3) Human signs shall be allowed on private property and the untraveled public rights of way provided that no human sign, as defined by this section, shall be displayed within five feet of a vehicular traffic lane.

(4) Except as specifically provided otherwise herein, temporary signs shall not exceed four square feet in size and shall be allowed for a maximum of 14 calendar days per event. Temporary signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Temporary signs shall not be placed anywhere in the center median of a public or private street.

(5) Open house signs do not require a permit, shall not exceed four square feet, and shall be allowed for a maximum of four hours the day of the open house. Open house signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Open house signs shall not be placed anywhere in the center median of a public or private street.

(6) Use of temporary decorations as signs, otherwise referred to as decorative festoons, meaning tinsel, strings of ribbon, small commercial flags, or streamers may be used as temporary enhancement of signage in a commercial sign category, providing these devices have no glare, no moving parts, are maintained, and comply with all codes and policy guidelines governing their safe use. No lettering is permitted on these items. Temporary decorations may be used for a period not to exceed 30 calendar days with a period not less than 30 days between displays.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-18. - Flagpoles and commercial flags.

One flagpole is allowed per development at a maximum height of 50 feet. Commercial flags are allowed in multifamily and/or commercial developments. No text or logo is permitted on such flags as such would constitute a sign. The national or state flag and the flagpoles for the express purpose of displaying the national or state flag are exempt from this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-19. - Advertising searchlight.

(A) For purposes of this section, an "advertising searchlight" means a searchlight used to direct beams of light upward for advertising purposes.

(B) Use of an advertising searchlight at any location is authorized upon issuance of a permit by the building official.

(C) The permit shall be effective for a maximum period of five days per calendar year to any business or group.

(D) An advertising searchlight shall not be operated between the hours of 1:00 a.m. and 6:00 p.m.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-20. - Kiosk signs.

(A) Kiosk signs are intended to provide a uniform, coordinated method of providing homebuilders and developers a means of utilizing directional signs, while minimizing the negative impacts of weekend homebuilder's signs on the appearance of the city Kiosk signs are also intended to provide service to the public on the directions to municipal facilities and parks, community events, and school district facilities.

(B) The city council may, by duly executed license agreement, grant the exclusive right to design, erect and maintain kiosk signs within the city limits and extraterritorial jurisdiction of Kyle.

(C) Kiosk signs shall be designed and constructed in accordance to the specifications contained in the aforementioned license agreement.

(D) Prior to erecting any kiosk sign, the licensee shall submit a sign location map to the building official for approval.

(E) Kiosk sign installation shall include break-away design features as required for traffic signs in the street right-of-way.

(F) Advertisement of price information shall be prohibited on kiosk signs.

(G) No additional or extraneous signs, pennants, flags or other devices for visual attention or other appurtenances shall be attached to kiosk signs.

(H) Kiosk signs shall not be illuminated.

(I) Individual sign panels on kiosks shall have a uniform design and color.

(J) Kiosk signs shall not interfere with the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of motorists, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with the visibility triangle requirements contained in the Subdivision Regulations or other visibility easements provided by code or subdivision plat.

(K) Kiosk sign may be located on private property, or other state-maintained roadways, provided written permission is obtained from the property owner.

(L) Kiosk sign panels shall be available to all developers and homebuilders operating within the city on a first-come, first-served basis. Developers and homebuilders operating November 18, 2008 within the city limits shall have first priority to lease sign panels in the event extra panel space is available, residential developments, located outside the city limits may also lease panels.

(M) In accordance to the specifications contained in the aforementioned license agreement, a percentage of the kiosk sign panels shall be reserved for the city to use as directional signage to municipal or community facilities or locations or community events.

(N) No kiosk sign shall be placed, located, or installed on city-owned property or public right-of-way without a license agreement duly approved by the city council.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-21. - Other sign regulations.

(A) *Activities and events sign.* An activities and events sign is a changeable copy directory allowed solely to public buildings, church buildings (places of worship only), and neighborhood associations, intended for use only by the entity where the sign is located. A maximum of one information sign shall be allowed for each neighborhood group, church, or public development complex, and it is not considered a freestanding sign in this section. Activities and events signs shall comply with the following criteria:

(1) The sign shall be constructed of a non-oxidizing metal (e.g. aluminum, stainless steel) cabinet set on a pole or on the ground as a monument, with a clear, acrylic panel inset and a locking door. The door of the sign shall remain locked except while the message is being posted.

(2) The maximum size of the cabinet shall be 12 square feet, and maximum height shall be five feet above grade.

(3) Only changeable letters shall be used and letters shall be no larger than four inches and no less than two inches in height.

(4) Such sign may have direct lighting that is placed inside the cabinet (portrait lighting); however, no backlighting or external direct lighting is permitted.

(5) Such sign shall be located at or near the entrance of the public building or church; for a neighborhood sign, such sign shall be located within the subdivision at a commonly traveled location, for example, near the neighborhood park or amenity center, the main mail station, or the main entrance to the neighborhood. Such a sign shall not be required to meet building setback requirements or setback requirements established in section 29-12 provided that it does not obscure the travel path or visibility of drivers, bicyclists, or pedestrians, as determined by the planning department. Such sign shall be located on property maintained by the neighborhood association or with a written agreement between the property owner and the neighborhood

association. Such sign shall not be placed closer than 150 feet from the intersection of a collector street and a major or minor arterial street, as defined in the city roadway plan. Such signs shall be maintained by the neighborhood association in a "like-new" condition at all times.

(B) *Government sign.* Government sign(s) are permitted in all categories, subject to all laws and regulations that apply.

(C) *Memorial sign.* Memorial sign(s) may be installed in accordance with state historical standards, or as building cornerstones not to exceed eight square feet.

(D) *Private traffic-control signs.* Private traffic control signs are not allowed for single-family residential or duplex uses, but are otherwise permitted. Signs shall not exceed four square feet in size, and may contain directions and the name or logo of the same site user.

(E) *Window signs.* Window signs may be placed so as not to obscure more than 25 percent of the visible window area. Where multiple windows exist, fronting on the single elevation, the 75 percent visibility shall be maintained for the total window area on said elevation.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-22. - Nonconforming signs.

(A) By the passage of the ordinance from which this section derives and its amendments, no presently illegal sign shall be deemed to have been legalized unless such sign complies with all current standards under the terms of this ordinance and all other ordinances of the city. Any sign which does not conform to all provisions of this section but which existed on the effective date of this section and was lawfully constructed or installed shall be considered as a nonconforming sign. All nonconforming signs shall be permitted in the same manner as any other legally existing sign or proposed sign, provided that no sign that was constructed or installed in violation of any state or local law. or that was originally constructed or installed without a permit that was then required at such time, shall be or qualify as a nonconforming sign.

(B) A nonconforming sign shall be allowed to be continued and maintained at its existing location subject to the limitations of this section.

(C) No nonconforming sign may be enlarged or altered in a way which would increase its nonconformity: provided that the sign face may be changed in compliance with this chapter.

(D) A nonconforming sign shall be removed immediately if any of the following applies:

(1) The nonconforming sign is abandoned as defined in this subsection. Whenever any nonconforming sign no longer advertises a bona fide business or a business which has moved away or closed, a product sold, or service rendered, such sign shall be removed within 60 days. If the nonconforming sign is a wall sign, the wall sign shall be removed or painted over with a color that resembles or matches the rest of the wall of the building if the owner of, or person responsible for the sign, or if the tenant closing a business, fails to remove the abandoned sign or paint over the wall sign, the owner of the premises shall be held responsible and the work shall be done within 30 days following written notice to do so by the building official.

(2) The building official or his/her designee determines the sign to be obsolete or substandard under any applicable ordinances of the city to the extent that the sign becomes a hazard or dangerous.

(3) A nonconforming sign, or a substantial part of it is destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(E) Reconstruction, repair, or replacement of a nonconforming sign shall be completed no later than 90 days following the date of the damage. For purposes of this subsection, a sign, or a substantial part of a sign, is considered destroyed if the cost of repairing the sign is more than 50 percent of the cost of installing a new sign of the same type at the same location.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-23. - Hazardous signs.

Except as otherwise provided by aw or this chapter, no person may install, maintain, or use a sign that:

(1) Obstructs a fire escape, required exit, window, or door used as a means of escape.

(2) Interferes with a ventilation opening, except that a sign may cover a transom window if otherwise in compliance with the building code and fire code.

(3) Substantially obstructs the lighting of public right-of-way or other public property, or interferes with a public utility or traffic control device.

(4) Contains or utilizes a supporting device placed on public right-of-way or other public area within the city limits and the extraterritorial jurisdiction of the city, unless the use of the public rights of way or other public area has been approved by the city and a right-of-way joint use agreement has been filed.

(5) Is illuminated in such a way as to create a hazard to pedestrian, bicycle, or vehicular traffic.

(6) Creates a traffic hazard for pedestrians, bicyclists, or motorists, by restricting visibility at a curb cut or adjoining public street.

(7) Has less than nine feet of clearance above street pavement grade or has less than 12 feet of clearance above a driveway, and/or is located outside the public right-of-way and within the visibility triangle at an intersection that results in impaired sight distance of users of the intersection.

(8) Violates a requirement of the electrical code.

(9) Is determined by the building inspector to be dangerous.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-24. - Abatement of sign violations and removal of unsafe signs.

(A) Any sign that is structurally unsafe or that constitutes a hazard to the health, safety, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster damage, abandonment or other cause is hereby declared to be a public nuisance and shall be abated by demolition or removal.

(B) Should the building official or the code enforcement officer determine that any sign is not properly maintained, is unsafe or insecure or has otherwise been constructed, erected or maintained in violation of the provisions of this section, he shall take action as follows.

(1) Except as provided in the following paragraphs (2) and (3), the building official shall give the sign or property owner written notice to repair, remove or obtain a permit for such sign as applicable within ten days after such notice. If the sign or property owner fails to remove, repair, or obtain a permit for such sign so as to comply with all applicable standards and regulations, the building official shall cause the sign to be either removed or repaired and such cost shall be charged to and paid by the property owner if such demolition or repair expenses are not paid by the property owner within 30 days of such billing, then such expenses shall constitute a valid lien against the property. Such notice shall also provide the sign or property owner an opportunity to bring the sign into compliance or to request a hearing before the sign control board to determine whether the sign should be repaired or removed. Such appeal must be filed in writing with the city secretary within ten days of the notice. After consideration of all facts, the sign control board shall rule upon the appeal.

(2) The building official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

(3) Any sign located in public right-of-way may be immediately removed by the building official without notice to the owner.

(C) In addition to the above, the building official or the code enforcement officer may issue citations without giving prior notice of violation or pursue any other administrative or legal remedy in order to abate any sign which is in violation of this chapter or any other law.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-25. - Repairs and maintenance.

All signs in the city and its ETJ shall be properly maintained in good and safe structural condition, shall be painted on all exterior parts, unless coated or made of rust resistant material, and shall be maintained in good condition and appearance at all times. Any owner or primary beneficiary falling to maintain, repair, or remove any such sign after due notices has been given shall upon conviction be guilty of a misdemeanor. The building official shall have the authority to order the painting, repair, or removal of a sign and accompanying landscaping which do not comply with this ordinance or the building codes or that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-26. - Appeals; exceptions to sign regulations.

(A) *Board of adjustment is established as sign control board; composition.* The board of adjustment is hereby established to serve in a dual capacity as the sign control board ("SCB").

(B) *Powers; duties of the SCB.* The city council authorizes the board of adjustment in its capacity as the SCB to sit as a board of appeals and to exercise the powers set forth in this chapter.

(C) *Appeals.* Appeals to the SCB may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the building official. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the building official and with the SCB a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the SCB all the papers constituting the record upon which the action appealed from was taken.

(D) *Appeal stays proceeding.* An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the SCB after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the SCB or by a court of record on application or notice to the building official and on due cause shown.

(E) *Hearing.* The SCB shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent.

(F) *SCB powers.*

(1) The SCB shall have the following powers:

a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official in the enforcement of this section.

b. To hear and decide special exceptions to the terms of this section upon which the SCB is required to pass.

c. To authorize, upon appeal in specific cases, such exception from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this section will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the SCB may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building official from whose action the appeal is taken.

(G) *Limitations on the authority of the SCB.*

(1) The SCB may not grant an exception authorizing a sign where it is not otherwise allowed by this charter.

(2) The SCB shall have no power to grant an amendment to the sign ordinance. In the event that a request for an amendment is pending before the city council, the board shall neither hear nor grant any exceptions with respect to the subject property until final disposition of the sign ordinance amendment.

(3) The SCB shall not grant a request for any exception to any parcel of property or portion thereof upon which a zoning application, site plan, preliminary plan, or final plat, where required, has not been finally acted upon.

(H) *Exceptions.*

(1) The SCB may grant an exception from a requirement of the sign ordinance, if it makes written findings that:

a. The requirement does not allow for a reasonable use of the property;

b. The hardship for which the exception is requested is owing to a special condition inherent in the property itself, such as restricted area, shape, topography or physical features;

c. The special condition is unique to this property and is not generally characteristic of other parcels of land in the area; and

d. The development under the exception does not:

1. Alter the character of the area adjacent to the property;

2. Impair the use of adjacent property that is developed in compliance with the city requirements; or

3. Impair the purposes of the regulations of the sign ordinance.

(2) An exception may not be granted to relieve a self-created or personal hardship, nor for financial reasons only.

(3) The applicant bears the burden of proof in establishing the facts justifying an exception.

(I) *Vote required.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building officials, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in this chapter.

(J) *Time limitation on order permitting erection of sign.* No order of the SCB permitting the erection or alteration of a sign shall be valid for a period longer than six months, unless a sign permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(K) *Appeals from action of the SCB.* Any person or persons, jointly or severally, aggrieved by any decision of the SCB, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to the city secretary, on behalf of the city council, a petition, duly verified, appealing the decision of the SCB. Such petition shall be presented to the city secretary within ten days after the meeting date of the decision by the SCB.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-27. - Penalty.

(A) Any individual, association, corporation or legal entity violating any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by the assessment of a fine not exceeding $2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) The primary beneficiary of any sign installed in violation of this section shall be presumed to have authorized or caused, either directly or indirectly, the installation, use, or maintenance of the sign in violation of this section.

(C) Whenever any construction, installation, alteration, or repair of a sign is being done contrary to the provisions of this section, another controlling ordinance or statute governing the sign, the building official may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the city shall post a stop work order on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the building official. The building official or code enforcement authority may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the sign.

(D) The city and/or the city manager shall enforce this section by appropriate administrative action including but not limited to, the rejection of plans, maps, plats and specifications not found to be in compliance with this section and good engineering practices, and the issuance of stop work orders.

(E) Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this ordinance, or to obtain declaratory judgment, and to seek and recover court costs and attorney fees, and/or recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 8. - Board of adjustment.

(A) *Creation of the board of adjustment.* The city council shall provide for the appointment of a board of adjustment and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas. The board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Plum Creek PUD zoning ordinance consistent with state law and in harmony with its general purpose and intent and in accordance with general and specific rules herein contained.

(B) *Powers and duties.* The board of adjustment shall have the following powers:

(1) To hear and decide appeals from certain decisions of the building official where it is alleged there is error in any order, requirement, decision, interpretation, or determination made by the building official in the enforcement of this ordinance;

(2) To interpret the intent of the Plum Creek PUD official zoning map where uncertainty exists because of the physical features on the ground varying from those on the official zoning map and none of the rules set forth in this ordinance apply.

(3) To authorize, upon appeal variances of the yard, lot width, lot depth, signs, minimum setback, off-street parking or off-street loading regulations from the terms of this ordinance, if not contrary to the public interest, where owing to unique and special conditions of the land not normally found in a PUD district a strict enforcement of the provisions of the ordinance by the building official would result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

(C) *Organization of the board.* The board of adjustment shall be established and appointed as provided in Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.] and the ordinances of the city.

(D) *Appeals.*

(1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, commission or committee of the city affected by any decision of the building official made pursuant to this ordinance. Such appeal shall be made within 30 days by filing with the building official and with the board of adjustment a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

(2) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the board of adjustment after the notice of appeal shall have been filed with him that by the reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(3) The board of adjustment shall hear the appeal within 30 days or such extension as requested by the applicant, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(E) *Revision of appealed decisions.* In exercising the above mentioned powers such board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the power of the building official from whom the appeal is taken.

(F) *Votes necessary.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official, to decide in favor of the applicant on any variation in this ordinance.

(G) *Appeals from the board of adjustment.* Any person or persons or any taxpayer or any officer, department, board, commission or committee of the city, jointly or severally, aggrieved by any decision of the board of adjustment, may present to a court of record a petition, verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board.

Sec. 9. - Planning and zoning commission.

(A) *Creation of the planning and zoning commission.* The city council shall provide for the appointment of a planning and zoning commission and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas.

(B) *Responsibilities.* It shall be the responsibility of the planning and zoning commission to hear all applications for zoning changes and changes in the Plum Creek PUD zoning ordinance, as prescribed

by law and this ordinance, and to recommend action to the city council. The commission has no authority to approve variances from the requirements of this ordinance.

(C) *Organization of the commission.* The organization, membership and qualifications of the planning and zoning commission shall be as otherwise provided in the ordinances of the city.

(D) *Rules and regulations.* The commission shall develop and adopt rules in accordance with the provisions of state law and the ordinances of the city. Meetings of the commission shall be held at the call of the chairman and at such other times as the commission may determine. Except as authorized by Chapt. 551, Tex. Gov't. Code [V.T.C.A., Government Code § 551.001 et seq.], on the advice of the city attorney, all meetings of the commission will be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the city secretary and except as authorized pursuant to Chapter. 552, Tex. Loc. Gov't. Code [V.T.C.A., Government Code § 552.001 et seq.], shall be available as a public record.

(E) *Plum Creek PUD public hearing.* The planning and zoning commission shall conduct a joint public hearing with the city council to consider the original zoning application for approval of the Plum Creek PUD. Notice of the public hearing shall be given in the manner in which the notice is required to be given under state law. The decision of the planning commission on such original zoning application for the Plum Creek PUD shall be made to the city council as a recommendation to grant, with or without conditions, or to deny.

(F) *Report and recommendation from the planning and zoning commission.*

(1) No amendment to this ordinance or to the Plum Creek PUD master plan or to the zoning designation of any area within the Plum Creek PUD shall be enacted by the city council without first receiving a report and recommendation from the planning and zoning commission.

(2) The planning and zoning commission shall hold a public hearing on all proposed zoning classification changes to the Plum Creek PUD or the Plum Creek PUD master plan and proposed general amendments to this ordinance.

(3) Written notice to property owners. When the public hearing is to consider a proposed zoning classification change to the Plum Creek PUD or master plan, written notice of such hearing shall be given to the owners of all real property located within 200 feet of the property on which the change in classification is proposed. Notice shall be given before the tenth day before the date set for the hearing before the commission either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the address shown on the last approved city tax roll.

(4) The planning and zoning commission may recommend enactment of a proposed general amendment to this ordinance or a change of zoning classification to the Plum Creek PUD or master plan if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

(5) A change of zoning classification proposed by the owner of the parcel affected may be recommended for enactment, even though such proposed change does not conform to the Plum Creek PUD master plan, provided that the planning and zoning commission finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan and, provided further, that the planning and zoning commission finds that the requested zoning classification is in the most appropriate classification for the area affected.

Sec. 10. - Review and action of the city council.

(A) Hearing. The city council shall hold a public hearing on all proposed Plum Creek PUD or master plan zoning classification changes and general amendments to this ordinance before acting thereon.

(B) Notice.

(1) The city council shall not act upon an amendment of this ordinance or the zoning of any land included within the Plum Creek planned unit development prior to receiving the recommendation of the planning and zoning commission made after notice and public hearings as provided in section 9 [of this article].

(2) Before the city council shall consider a proposed zoning classification change to the Plum Creek PUD or master plan or a proposed general amendment to this ordinance, notice shall be published in an official newspaper or in a newspaper of general circulation in [the City of] Kyle before the 15th day before the date of the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered.

(C) The city council may enact a proposed general amendment or change of zoning classification by ordinance if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

(D) A change of zoning classification proposed by the owner of a parcel affected may be enacted, even though such proposed change does not conform to the Plum Creek PUD master plan, provided the city council finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the Plum Creek PUD master plan was adopted, which changed conditions make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan, and provided further, that the city council finds that the requested zoning classification is the most appropriate classification for the area affected.

(E) If a written protest is submitted against a proposed change of zoning classification signed by all the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots of land immediately adjoining the same and/or extending 200 feet therefrom, such proposed change of zoning classification shall not become effective except by the favorable vote of three-fourths of all the members of the city council, including the mayor. If the planning and zoning commission submits a negative report not recommending a general amendment to the zoning ordinance or a proposed change of a Plum Creek PUD zoning classification, such amendment or proposed change shall not be effective except by the favorable vote of three-fourths of the members of the city council, including the mayor.

(F) The city council may approve a site plan at such time as the zoning or zoning change is granted. All representations, whether oral or written, made by the applicant or his or her agent(s) on behalf of the zoning or zoning change becomes a condition(s) upon which the zoning change is granted. It shall be unlawful for the applicant to vary from any such representations unless the applicant first obtains the approval of the city council, except building lines may be moved ten feet with the written approval of the city administrator. The site plan shall be null and void unless the new owner certifies in writing that he will comply with the approved site plan and permit requirements; and such site improvements as constructed complies with such approved site plan.

(G) The city may initiate re-zoning procedures if the project is abandoned, vacated, sold or otherwise disposed of except:

(1) As provided elsewhere in city ordinances; or

(2) Unless the new owner agrees to develop the project in accordance with the original approved site plan.

Sec. 11. - Fees.

The applicant for any permit set forth in this ordinance shall pay the fees indicated for such permit as set forth in the fee schedule ordinance (Ordinance No. 293) promulgated by the city council, as amended.

Sec. 12. - Amendments to ordinance.

(A) *Statement of intent.* For the purpose of establishing and maintaining sound, stable and desirable development within the territorial limits of the city, this ordinance may be amended from time to time

to correct errors in the ordinance, or because of changed or changing conditions in a particular area or in the city generally, or to rezone an area, extend the boundary of an existing zoning district or to change the regulations and restrictions thereof, all in accordance with the city's comprehensive plan.

(B) *Amendment limitation.* Subject to the limitations of the foregoing statement of intent, or amendment to this ordinance may be initiated by:

(1) The city council on its own motion;

(2) The planning and zoning commission; or

(3) Written request made by the owner(s) of land within the Plum Creek PUD.

(C) *Responsibility for change.* The city council has sole responsibility for changes in the Plum Creek PUD official zoning map and changes in the Plum Creek PUD zoning ordinance.

(D) *Referral of amendment petition to commission.* The council, upon receipt of an application to amend the ordinance, which has been examined and approved as to form by the city secretary, shall refer the request to the same planning and zoning commission for study, hearing, and report. The council may not enact the proposed amendment until the commission makes its report to the city council.

(E) *Action by the commission.* The commission shall cause a study to be made, give public notice, hold a public hearing and recommend to the city council such action as the commission deems proper.

(F) *Action by the council.* The city council shall give public notice and hold a public hearing before taking final action on a request to amend this ordinance, or on any proposed amendment initiated by the commission or the city council.

(G) *Public hearing and notice.* Notice shall be given and hearings held in the same manner as provided in article III, section 9 of this ordinance for planning commission hearings and article III, section 10 of this ordinance for city council hearings for zoning changes.

(H) *Protest to proposed amendments.* A written protest duly signed by the owners of 20 percent or more of the area of lots or of the lots or land immediately adjoining the same and extending 200 feet therefrom shall not become effective except by the favorable vote of three-fourths of all members of the council.

(I) *Comprehensive review of ordinance.* The commission shall from time to time, at intervals of not more than three years, examine the provisions of this ordinance and the location of the Plum Creek PUD zoning district boundary lines and shall submit a report to the city council recommending changes and amendments if any, which are deemed desirable in the interest of the public health, safety and general welfare.

Sec. 13. - Interpretation, purpose and conflict.

The requirements established by the provisions of this ordinance shall be the minimum standards and requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare, it being intended to lessen congestion of streets, to secure safety from fire, panic and other dangers; to provide adequate light and air, to prevent overcrowding of land, to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water and sewage, schools, parks, and other public requirements. It is not intended by this ordinance to interfere with or abrogate or annul any ordinance, rules, regulations, or permits previously adopted or issued and not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises and likewise not in conflict with this ordinance.

Sec. 14. - Repeal of conflicting ordinances or orders.

Ordinances and all orders, ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

Sec. 15. - Severability clause.

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Sec. 16. - Effective date.

This ordinance shall be effective on the date of adoption by the city council as shown herein below.

Sec. 17. - Open meetings.

That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act. Chap. 551, Loc. Gov't Code [V.T.C.A., Government Code § 551.001 et seq.].

Approved and adopted this the 22nd day of July, 1997.

Appendix A - FEE SCHEDULE

Code Section	Department	Description	Amount
General Administration Fees			
	Admin.	Notary services and fees	
		Acknowledgements & proofs	$6.00
		Certified copies	6.00
		Oaths and affirmations	6.00
		All other notarial acts not listed	6.00
	Admin/General	Returned check fee (per check)	34.50
		Black & white copies (per side of 8 ½ x 11)	0.30
		Color copies (per side of 8 ½ x 11)	0.60
		Newspaper publication fee	172.50
		Electronic payment processing fee (per transaction)	2.50
Chapter 11. Businesses			
11-99(2)	Admin/General	Release of a sealed coin-operated machine	5.75
11-131(d)	Admin/General	Pool halls license (per table)	11.50
Art. VII - Taxicabs			
11-311(a)	Admin/General	Taxicabs - Operating permit (maximum of five years)	
		First year	57.50
		Additional years	28.75

		New permit or expansion of number of taxicabs (per year)	57.50
11-314	Admin/General	Taxicabs - Replacement permit	17.25
Art. IX - Commercial Towing and Wrecker Services			
11-389	Admin/General	Wrecker company - Annual inspection certificate application fee	250.00
50-29	Admin/General	Community impact fee (based on plat filing date and # of LUEs)	
		Schedule of water impact fees/LUE*	
		*See below table for LUE determination	
		From incorporation to 9-17-1984	0.00
		From 9-18-1984 to 4-14-1986	0.00
		From 4-15-1986 to 6-27-1990	1,500.00
		From 6-28-1990 to 2-17-1997	841.00
		From 2-18-1997 to 4-02-2001	1,320.00
		From 4-3-2001 to 3-03-2008	1,100.00
		From 3-4-2008 to present	2,115.00
	Admin/General	Schedule of sewer impact fees/LUE*	
		*See below table for LUE determination	
		From incorporation to 9-17-1984	0.00
		From 9-18-1984 to 4-14-1986	1,000.00
		From 4-15-1986 to 6-27-1990	1,500.00

		From 6-28-1990 to 2-17-1997	1,062.00
		From 2-18-1997 to 4-2-2001	1,132.00
		From 4-03-2001 to 3-03-2008	1,613.00
		From 3-4-2008 to present	2,216.00

LUE Determination Table				
Estimated Maximum Expected Flow Rate (gpm)	Displacement & Multi-jet SRII & PMM	Compound C702. Table 1.	Turbine C701. Table 2. OMNI C2 & WR*	Living Unit Equivalents (LUEs)
10	5/8″ × 3/4″			1
15	3/4″			1.5
25	1″			2.5
50	1.5″			5
80	2″	2″	1.5″	8
100			2″	10
160		3″		16
240			3″	24
250		4″		25
420			4″	42
500		6″		50

800		8″		80
920			6″	92
1600			8″ *	160
*The WR turbine meter is for 8" size only and does not have low flow accuracy capability.				

Code Section	Department	Description	Amount
Chapter 8. Building Regulations			
Art. IV - Building Permit Fees and Charges			
8-99	Bldg	Valuation of the addition does not exceed $500.00	No Fee
		Valuation of the work $500.00 or less, but one or more inspections are required because work includes structural alterations, mechanical system, etc.	$46.00
		Per required inspection	51.75
8-100	Bldg	Base permit fees	
		Single-family residential (in square feet)	
		900 or less	140.52
		901—1,200	238.89
		1,201—1,500	323.20
		1,501—2,000	407.50
		2,001—2,500	576.13

		2,501—3,000	829.13
		3,001+	913.36
		Per each additional 1,000 square feet or fraction	71.88
8-100	Bldg	Base permit fees	
		Commercial and multifamily (in square feet)	
		100 or less	134.40
		100—500	198.38
		1—1,000	245.99
		1,001—1,500	340.23
		1,501—2,000	429.49
		2,001—2,500	500.17
		2,501—3,000	555.96
		3,001—3,500	611.75
		3,501—4,000	667.54
		4,001—4,500	723.33
		4,501—5,000	779.11
		5,001—8,000	1,113.89
		8,001—11,000	1,696.61
		11,001—14,000	2,775.27
		14,001—17,000	3,110.03

		17,001—20,000	3,444.79
		20,001—25,000	4,250.68
		25,001—30,000	4,808.61
		30,001—35,000	5,364.82
		35,001+	5,364.82
		Per each additional 1,000 square feet or fraction	138.00
8-101	Bldg	Cost to review such plans	
		Residential percentage of base fee	25%
		Multifamily & Commercial percentage of base fee plus rate/hour for hours worked	25% plus $97.75/hour
8-102	Bldg	Inspection fees (multiplied by the minimum number of inspections required pursuant to codes)	
		Single-family dwelling	51.75
		Multi-family and commercial	63.25
		Inspection fee for testing of lead and no direct connection between public drinking water supply and a potential source contamination exists as required by TCEQ	51.75
		Reinspections	
		Single-family dwellings	57.50
		Multifamily and commercial	69.00
		For each inspection requested out of sequence	51.75
8-103	Bldg	Other building permit fees	

		Moving structures (plus police escort fee)	115.00
		Demolition permits	51.75
		For each required demolition inspection	51.75
		Manufactured or mobile home (if not installed by a registered retailer or installer)	51.75
		Per required inspection	51.75
		Swimming pools and spas (construction or installation)	115.00
		For each required pool/spa inspection	51.75
		Irrigation and backflow prevention assembly	57.50
		For each required inspection	46.00
		Certain structures with roof	57.50
		Per each required inspection	51.75
		(Construction of porches, patios, decks, carports, storage sheds, etc., under roof and not otherwise permitted)	
		Remodeling and alterations	46.00
		(Structural alterations, repairs, and remodeling on all structures, including shell buildings and mobile or manufactured homes, for which a permit is not otherwise required if less than 200 sq. ft.)	
		Single-family residential per required inspection	51.75
		Multifamily and commercial per required inspection	63.25
		Certificate of occupancy fee	

		(If vacant or unused for one year, an inspection will be performed to determine the requirements to bring the building or other structure into compliance with current city ordinances and life, safety and health codes for the intended occupancy)	
		Single-family residential	74.75
		Multifamily, commercial or industrial	86.25
		Required inspection time (per hour; one-hour minimum)	74.75
8-105	Bldg	Existing buildings and structures	
		Single-family	51.75
		Multifamily and commercial	86.25
8-106	Bldg	Construction in extraterritorial jurisdiction (ETJ)	
		Residential (minimum)	40.25
		Per inspection required	51.75
		Commercial plumbing	51.75
		Multifamily and commercial per inspection	63.25
	Bldg	Food/Beverage Establishment	
		(Food service, retail food, food processing plant or warehouse)—Permit valid from Oct 01 to Sept 30	
		Number of employees/fees	
		1 to 5	115.00
		6 to 19	172.50

		20 plus	287.50
	Bldg	Expired permit late fee	57.50
	Bldg	Plan Review fee	50% of permit fee
	Bldg	Fire protection inspections	
		Fire line underground	63.25
		Underground hydrostatic test	63.25
		Sprinkler pipe visual	172.50 minimum
		(less than or equal to 50 heads)—$0.60/head for ≤ 50	
		(more than 50 heads)—$57.50 for > 50	
	Bldg	Above ground hydrostatic test	63.25
	Bldg	Kitchen hood	63.25
	Bldg	Sprinkler final	63.25
	Bldg	Alarm system final—minimum	115.00
		(less than or equal to 20 devices)—$0.60/device for ≤20	
		(more than 20 devices)—$57.50 for > 20	
		Fire Final	63.25
	Bldg	Access Control Gates	63.25
	Bldg	Underground/aboveground storage tank	178.25
	Bldg	Plan Review ($50 minimum)	0.01/sq.ft.

	Bldg	Building administrative fees	57.50
Art. V - Mobile Homes, Manufactured Homes and Parks			
8-151	Bldg	Construction of a permanent residential and/or commercial structure in any mobile home park	189.75
		Plus per space amount	11.50
8-152	Bldg	Mobile home owner's inspection certificate for initial hookup	31.65
		Reinspection	19.00
		Mobile home park certificate of inspection	63.25
		Plus per space amount	1.15
		Reinspection	19.00
8-224	Bldg	Model home permit (for each application or resubmittal rejected application—to occupy)	63.25
11-168	Bldg	Itinerant merchant (Solicitor's Permit), itinerant vendor license (per quarter)	28.75
	Bldg	Mobile Food Vendor (Cold - per quarter)	43.15
		Mobile Food Vendor (Hot - per quarter)	50.30
	Bldg	Temp Food Vendor (Cold - per month)	17.25
		Temp Food Vendor (Hot - per month)	$20.15
Chapter 29. Signs			
	Bldg	Permit fee (based on gross surface area square footage)	
		Up to 40	28.75
		41 to 60	57.50

		61 to 120	115.00
		121 to 200	201.25
		201 and larger	373.75
	Bldg	Contractor Registration Fee (Annual)	11.50
29-17	Bldg	Off-premises digital display sign registration, per digital sign face (Annual)	2,000.00
Chapter 14. Courts			
14-60	Court	Copy charges (per page)	0.30
		Not readily available information (per page plus actual labor costs)	0.20
		Nonstandardized sheet size, postal charges	Actual costs
	Court	All other court fees are established in accordance to C.C.P (Court of Criminal Procedures) Chapter 102, Subchapter C, Article 102.071.	
Article V: Ord No: 358 Section 2-465. Library			
	Library	Printing and photocopying fees	
		Color printing (per page)	0.60
		Black/white printing (per page)	0.15
		Photocopying fee (per page if one-sided)	0.15
		Photocopying fee (per page if double-sided)	0.25
	Library	Overdue Books/DVDs/VHS Fees	
		Overdue Book (per day)	0.10
		Overdue DVD or VHS tape (per day)	0.30

	Library	Lost or damaged library item—Cost of item plus any overdue fees	
	Library	Fax fees	
		Incoming (per page)	0.30
		Outgoing	
		Up to 5 pages	2.30
		6—10 pages	4.60
		11—15 pages	6.90
		16—20 pages	9.20
		21—25 pages	11.50
		International Fax	
		Up to 5 pages	4.60
		6—10 pages	9.20
		11—15 pages	13.80
		16—20 pages	18.40
		21—25 pages	23.00
	Library	Inter-library lending fee (per book)	2.00
	Library	Burdine and Jack Johnson Wing Meeting Room	
		One event (up to 2 hours) per month	Free
		Subsequent hours, per hour	10.00
		Cleaning fee (required if food is served)	100.00

Chapter 26. Parks and Recreation			
26-146(a)(1)	PARD	Community rooms—Kyle resident (per hour)	32.50
		Community rooms—Kyle resident (per day)	152.50
	PARD	Community rooms—Non-Kyle resident (per hour)	62.50
		Community rooms—Non-Kyle resident (per day)	302.50
26-146(a)(3)	PARD	Gazebo-City Square Park—Kyle resident (per hour)	12.50
	PARD	Gazebo-City Square Park—Non-Kyle resident (per hour)	22.50
	PARD	Historic Kyle City Hall—Kyle resident (10% discount for KASZ members) (per hour)	102.50
		Historic Kyle City Hall—Kyle resident (10% Discount for KASZ Members) (per day)	502.50
	PARD	Historic Kyle City Hall—Non-Kyle resident (10% discount for KASZ members) (per hour)	202.50
		Historic Kyle City Hall—Non-Kyle resident (10% discount for KASZ members) (per day)	1,002.50
26-146(a)(4)	PARD	Sports field—Kyle resident	
		Without lights (per hour)	12.50
		With lights (per hour)	27.50
	PARD	Sports field—Non-Kyle resident	
		Without lights (per hour)	22.50
		With lights (per hour)	52.50

26-146(a)(5)	PARD	Concession sales—Kyle Resident (per hour)	12.50
	PARD	Concession sales—Non Kyle resident (per hour)	22.50
26-146(a)(6)	PARD	Covered pavilion—Kyle resident (per hour)	22.50
	PARD	Covered pavilion—Non-Kyle resident (per hour)	42.50
	PARD	Rental clean-up deposit (only $100 is refundable), plus add'l expenses incurred over deposit	102.50
26-146(a)(8)	PARD	Swimming pool	
		Open swim fees	
		Kyle residents	
		Ages 3 and under	Free
		Ages 4—12	1.00
		Ages 13—17	2.00
		Ages 18—54	3.00
		Ages 55 and above	1.00
		Non-Kyle residents (ages 4 and above)	4.00
		Season Pass	
		Kyle residents	
		Ages 3 and under	Free
		Ages 4—12	32.50

		Ages 13—17	42.50
		Ages 18—54	52.50
		Ages 55 and above	32.50
		Family of five (additional family member(s) must purchase pass in their age group)	152.50
		Non-Kyle residents	
		Ages 3 and under	Free
		Ages 4—12	62.50
		Ages 13—17	82.50
		Ages 18—54	102.50
		Ages 55 and above	62.50
		Family of five (additional family member must purchase pass in their age group)	302.50
	PARD	Punch Card	
		Kyle residents	
		Ages 4—12	12.50
		Ages 13—17	22.50
		Ages 18—54	32.50
		Ages 55 and above	12.50
		Non-Kyle residents	
		Ages 4—12	42.50

		Ages 13—17	42.50
		Ages 18—54	42.50
		Ages 55 and above	42.50
	PARD	Private rental of Kyle Pool, includes lifeguards (two-hour minimum; cost depends on number of guests/swimmers) Kyle resident or non-resident—$52.50—$227.50/hour	
	PARD	Swim lessons (Kyle resident and non-resident)	
		Group swim lessons (per session)	52.50
		Preschool swim lessons (per session)	47.50
		Private swim lessons (per session)	77.50
		Parent-tot swim lessons (per session)	52.50
26-146(b)	PARD	PARD programs	
	PARD	Polar bear swim (per person)	22.50
	PARD	Adult kickball (league play)—See sports league	
		Adult kickball (tournament)—See sports league	
	PARD	Sports leagues (per person)	32.50—92.50
	PARD	Hooked on fishing programs (per person)	22.50—52.50
	PARD	Safety training programs	7.50— 152.50
	PARD	Summer youth camps—Registration	27.50
		Summer youth camps—Per week, per child	117.50

	PARD	Family campout—$102.50/family of 4 plus $22.50 per each additional person	
	PARD	Recreation contract programs—Refer to contract for rates and commission	
	PARD	Kyle Fair & Music Festival	
		Booth spaces	Removed
		BBQ cook off	Removed
		Sponsorships (depends on donation amount)	Removed
		Poker Tournament	Removed
	PARD	Easter Egg-Stravaganza	Removed
		Booth Spaces	Removed
		Sponsorships (depends on donation amount)	Removed
	PARD	Market Days—Booth spaces (per month)	Removed
	PARD	Teen Nights	$6.50/person
	PARD	July 4 Fireworks—Sponsor fees (depends on donation amount)	$1—$10,000
	PARD	Movies in the Park—Sponsor fees (depends on donation amount)	$1—$10,000
	PARD	Halloween Carnival	
		Booth Spaces	Removed
		Sponsorships (depends on donation amount)	Removed
	PARD	Santa's Arrival & School Choirs	

		Booth Spaces	42.50—77.50
		Sponsorships (depends on donation amount)	$1—$10,000
	PARD	Texas Hunting and Fishing Licenses Rates Vary Set by State of Texas Please refer to http://www.tpwd.state.tx.us/business/licenses/public/recreational/ for the current amount being charged. The amount listed on the website does include a 5% sales commission to the city.	
Chapter 41. Subdivisions			
41-147(b)	PARD	Parkland dedication fee - Land (per LUE at final plat)	$600.00/LUE
		Parkland dedication fee - Improvements/Facilities (per LUE at final plat)	$600.00/LUE
Chapter 5. Animals			
5-156(d)	PD	Adoption of animals from shelter	86.25
5-184	PD	Failure of a dog or cat to wear a vaccination tag	23.00
5-185	PD	Annual animal license fee—Unneutered dog or cat	6.90
		Annual animal license fee—Neutered dog or cat	4.15
		Annual animal license fee—Other animals	4.15
5-213(a)	PD	Commercial animal enterprises and multiple animal ownership	
		Circus or zoo	575.00
		Commercial animal enterprise	115.00
		Multiple animal owner	57.50

		Guard dog	57.50
		Annual renewal fee for all	57.50
5-45.5	PD	Miniature livestock permit fee, per head	50.00
5-9 (all fees)	PD	Impoundment fee (per animal captured)	
		Unneutered dog or cat—First time	20.70
		Second time	34.50
		Third time	69.00
		Neutered dog or cat—First time	20.70
		Second time	34.50
		Third time	69.00
		Fowl or other small animal—First time	20.70
		Second time	34.50
		Third time	69.00
		Livestock—First time	57.50
		Second time	230.00
		Third time	402.50
		Zoological and/or circus animal—First time	115.00
		Second time	230.00
		Third time	575.00

		More than four violations by any pet or combination thereof owned by the same person in three years or less shall be a flat fee for each impoundment thereafter	575.00
	PD	Impoundment fee (per animal captured)	
		Owner/harbored animal surrender fees	
		Cats	28.75
		Dogs	28.75
		Litters dogs or cats	51.75
		Other small animals	11.50
		Large animals	N/A
11-282	PD	Commercial towing and wrecker service	
		Within city limits	57.50
		Outside city limits	57.50
		Per mile	1.15
		Dolly required tow	80.50
		Exceptional labor (per hour; one hour minimum)	28.75
		Does not include normal hook-up procedures or routine cleanup when it takes 30 minutes or less	
		Storage for first five days for storage fees (per day)	5.75
		After first five days (per day)	8.05
	PD	Separate charge for a trailer	

		Inside storage fees requested by the owner or operator of the vehicle (per day)	11.50
		If inside storage is requested by police department, the city shall pay the difference between the regular and inside storage fee	
		Waiting at the scene for permission to remove vehicle after first 30 minutes (per hour)	23.00
		Exceptional labor used to retrieve a vehicle from a river, creek, or any waterway	Actual costs
11-283	PD	Administration fee for each nonconsent or motor vehicle accident tow performed	5.75
11-285	PD	Vehicles released during hours other than normal business hours	23.00
23-241(b)	PD	Abandoned motor vehicles (garagekeepers report)	11.50
	PD	Crash report fee—Requested online (per report)	
		Total charge	6.00
		PoliceReports.us fee	2.50
		Net amount remitted to city	3.50
		Crash report fee—Requested at PD (per report)	6.00
		PD Certification of Crash Report (per report; in addition to crash report fee)	2.00
Subdivision Plats			
8-108	Plan	Concept or master plan (filing and review)—Base	632.50
		Concept or master plan (filing and review) - + per acre fee	17.25

		Deposit to apply to engineering fee	632.50
8-109	Plan	Short form subdivision plat—Base	379.50
		Short form subdivision plat - + per lot fee	5.75
		Deposit to apply to engineer review fee	948.75
8-110	Plan	Preliminary subdivision plat plan—Base	575.00
		Preliminary subdivision plat plan - + per lot fee	5.75
		Deposit to apply to engineer review fee	948.75
		Deposit to apply to engineer review fee - + per lot fee	28.75
8-111	Plan	Final subdivision plat plan—Base	632.50
		Final subdivision plat plan - + per acre fee	17.25
		Deposit to apply to engineer review fee	1,265.00
		Deposit to apply to engineer review fee - + per lot fee	23.00
8-112	Plan	Site development application—Base	747.50
		Site development application - + per acre fee	86.25
		Deposit to apply to engineer review fee	948.75
8-113	Plan	Engineer review fee (total amount billed to city, plus ten percent)	Varies
8-114	Plan	Plat vacation (plus all estimated county recording fees)	126.50
		Deposit to apply to engineer review fee	379.50
8-115	Plan	Subdivision replat—Amending plat—Base	379.50
		Subdivision replat—Amending plat - + per lot fee	5.75

		Deposit to apply to engineer review fee	379.50
8-116	Plan	Subdivision variance request (in advance for each variance requested)	158.15
		Deposit to apply to engineer review fee	379.90
8-117	Plan	Construction inspection (total amount deposited prior to start of construction)	
		For construction of all streets, water, wastewater, drainage and other infrastructure required to be constructed for the approval and final acceptance of any subdivision or section thereof shall be paid, together with all other applicable fees and charges	2% of estimated cost
8-118	Plan	Zoning change and variances—Base	189.75
		Zoning change and variances - + per acre fee	3.45
		Each applicant requested postponement of zoning request	63.25
		Zoning verification letter	57.50
Chapter 53. Zoning			
53-639	Plan	Recreational vehicle park district (annual park license)	
		First ten lots	115.00
		Per each additional lot	5.75
53-895	Plan	Application for conditional use permit	172.50
		Plus per acre	3.45
	Plan	Maps for sale (fees)	
		Tabloid size (11″ × 17″)	11.50

		Arch. C-Size (24″ × 36″)	28.75
		Custom (formula: $25.00 base + $25.00 per hr)	Variable price
Chapter 38. Streets, Sidewalks and Other Public Places			
38-139	PW	Construction permit (alteration in right-of-way)	287.50
		Plus any engineering fees incurred	
		Per month of duration of permit	57.50
38-140	PW	Excavation permit (alteration in right-of-way)	287.50
		Plus any engineering fees incurred	
		Per month of duration of permit	57.50
38-144	PW	Certificate of occupation per year and per linear foot (permanent structure in right-of-way)	1.00/linear foot
38-145	PW	Temporary obstruction or occupation of the right-of-way	115.00
38-153	PW	Appeal from permit revocation or other action	115.00
Chapter 50. Utilities			
50-20(a)	PW	Water and sewer system tap fees	
		Water tap	
		Inside city	172.50 + Cost
		Outside city	201.25 + Cost
		Sewer tap	
		Inside city	172.50 + Cost
		Outside city	201.25 + Cost

Art. V - Industrial Waste			
50-211(d)	PW	Tests for waste of abnormal strength	5.75
Utility Billing			
50-21	UB	Service connection fee	
		Water, sewer, and trash customers	57.50
		Wastewater customers only-service charge	28.75
		Emergency shut off fee	57.50
		After hours turn on fee	57.50
		Meter test (3rd party)	
		Residential meter	109.25
		Commercial meter	201.25
		Meter tampering fee	$575.00 + Possible Fine
		Late payment penalty	10% of outstanding balance
50-22	UB	Deposit for water, sewer and trash collection services	86.25
		Deposit for sewer and trash collection services only	57.50
		Fire hydrant deposit	1,150.00
		Delinquent billing fee (Disconnect/Reconnect)	
		Within corporate limits of the city	50.00

		Outside corporate limits of the city	69.00
		Additional deposit may be required (calculated)	
		Delinquent billing fee (disconnect list only)	34.50
		Transfer of service fee (within the city)	34.50
50-23	UB	Water minimum monthly charge—Inside city	
		Single-family residential	
		5/8-inch and ¾-inch	23.08
		1-inch	34.61
		1½-inch	57.67
		2-inch	115.35
		3-inch	184.55
		4-inch	369.10
		6-inch	576.72
		8-inch	1,153.43
		Multifamily residential	
		5/8- and ¾-inch	23.08
		1-inch	34.61
		1½-inch	57.67
		2-inch	115.35
		3-inch	184.55

		4-inch	369.10
		6-inch	576.72
		8-inch	1,153.43
		Commercial	
		5/8- and ¾-inch	23.08
		1-inch	34.61
		1½-inch	57.67
		2-inch	115.35
		3-inch	184.55
		4-inch	369.10
		6-inch	576.72
		8-inch	1,153.43
		Irrigation	
		5/8- and ¾-inch	23.08
		1-inch	34.61
		1½-inch	57.67
		2-inch	115.35
		3-inch	184.55
		4-inch	369.10
		6-inch	576.72

		8-inch	1,153.43
		Water minimum monthly charge—Outside city (1.2 times inside city)	
		Single-family residential	
		5/8- and ¾-inch	29.81
		1-inch	44.72
		1½-inch	74.54
		2-inch	149.06
		3-inch	238.49
		4-inch	476.98
		6-inch	745.29
		8-inch	1,490.58
		Multifamily residential	
		5/8- and ¾-inch	29.81
		1-inch	44.72
		1½-inch	74.54
		2-inch	149.06
		3-inch	238.49
		4-inch	476.98
		6-inch	745.29
		8-inch	1,490.58

		Commercial	
		5/8- and ¾-inch	29.81
		1-inch	44.72
		1½-inch	74.54
		2-inch	149.06
		3-inch	238.49
		4-inch	476.98
		6-inch	745.29
		8-inch	1,490.58
		Irrigation	
		5/8- and ¾-inch	29.81
		1-inch	44.72
		1½-inch	74.54
		2-inch	149.06
		3-inch	238.49
		4-inch	476.98
		6-inch	745.29
		8-inch	1,490.58
		Water volume rate monthly use (per 1,000 gallons)—Inside city limits	
		Single-family residential	

		0 to 4,000	3.06
		4,001 to 8,000	3.82
		8,001 to 12,000	4.59
		12,001 to 16,000	5.34
		16,001 to 20,000	6.11
		20,001 to 30,000	6.88
		30,001 to 50,000	7.64
		50,001 or more	9.17
		Multifamily residential	
		1 to 99,999,999	5.51
		Commercial	
		1 to 99,999,999	5.51
		Irrigation	
		1 to 99,999,999	6.44
		Construction	
		1 to 99,999,999	5.51
		Water volume rate monthly use (per 1,000 gallons)—Outside city limits	
		Single-family residential	
		0 to 4,000	3.96
		4,001 to 8,000	4.94

		8,001 to 12,000	5.92
		12,001 to 16,000	6.92
		16,001 to 20,000	7.90
		20,001 to 30,000	8.89
		30,001 to 50,000	9.87
		50,001 or more	11.84
		Multifamily residential	
		1 to 99,999,999	7.13
		Commercial	
		1 to 99,999,999	7.13
		Irrigation	
		1 to 99,999,999	8.32
		Construction	
		1 to 99,999,999	5.94
		Emergency interconnect wholesale water rate (per 1,000 gallons)	4.14
50-24	UB	Sewer minimum monthly charge	
		Inside city limits	
		Residential	13.63
		Nonresidential	13.63
		Commercial sewer only	13.63

		Flat rate customers	33.00
		Outside city limits	
		Residential	17.66
		Nonresidential	17.66
		Commercial sewer only	17.66
		Flat rate customers	42.77
		Sewer volume rate monthly use (per 1,000 gallons)	
		Inside city limits	
		Residential (based on winter water use average)	2.64
		Nonresidential (based on monthly water meter reading)	2.98
		Commercial sewer only	2.98
		Flat rate customers	N/A
		Outside city limits	
		Residential (based on winter water use average)	3.42
		Nonresidential (based on monthly water meter reading)	3.86
		Commercial sewer only	3.86
		Flat rate customers	N/A
50-25	UB	Solid waste collection and disposal monthly rates (Per TDS contract with the City of Kyle)	
		Full retail rate - 10/1/11—3/31/12	18.64
		Full retail rate - 4/1/12—3/31/13	19.53

		Refuse extra cart - 10/1/11—3/31/12	10.72
		Refuse extra Cart - 4/1/12—3/31/13	11.23
		Bag tag (per each extra 30 gallon bag or bundle) - 10/1/11—3/31/12	5.00
		Bag tag (per each extra 30 gallon bag or bundle) - 4/1/12—3/31/13	5.24
		Senior rate (10% discount) - 10/1/11—3/31/12	16.77
		Senior rate (10% discount) - 4/1/12—3/31/13	17.58
		Senior refuse extra cart - 10/1/11—3/31/12	9.65
		Senior refuse extra cart - 4/1/12—3/31/13	10.11
		Solid waste admin. fee (per month per account)	2.00

(Ord. No. 635, § 2(App. A), 9-21-2010; Ord. No. 660, § 2, 6-21-2011; Ord. No. 673, § 3(Exh. A), 9-13-2011; Ord. No. 753, § 2, 11-6-2013; Ord. No. 818, § 6, 8-19-2014; 829, § 2, 12-2-2014; Ord. No. 839, § 3(11-283), 3-3-2015; Ord. No. 846, § 2, 5-5-2015)

EXHIBIT C

(CONTINUED)

UNCODIFIED ORDINANCES

ORDINANCE NO. 893

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE CITY OF KYLE, TX CODE OF ORDINANCES; AMENDING CHAPTER 41, ARTICLE V. SEC. 41-141. UTILITY EASEMENTS, TO REQUIRE CERTAIN UTILITY CONSIDERATIONS FOR GATED COMMUNITIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City has grown substantially over the last decade primarily through the construction of entry level homes; and,

Whereas, the City desires to encourage additional housing products to be built within the city limits; and,

Whereas, the City desires that gated communities be added to the potential housing stock of the community; and,

Whereas, Gated communities can bring certain challenges to the provision of public services if not properly planned for; and,

Whereas, the City finds that roads within a gated community are not for the public good and therefore shall be privately maintained; and,

Whereas, the City has determined that utilities within the gated community may still meet the requirements of public health and safety in certain situations and therefore utility easements must be made superior to other claims upon the land to prohibit undue delay when needed repairs must be made where a public utility line crosses private right of way, private roads, or private drives.

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Amendment of Chapter 41, Article V, Section 41-141 Utility Easements. City of Kyle, Texas, Code of Ordinances is hereby amended insofar, and insofar only, as is herein set forth, and in no other respect whatsoever.

Adding Paragraph (f):

(f) *Private or Gated Communities*. Public utilities may be allowed within the confines of a Private or Gated Community upon the approval of the City Engineer, or his designee. This allowance applies only to a Private or Gated Community of single family homes. Multi-family projects that are Private or Gated shall have private utilities within the project and be served by a master-meter on the public side periphery of any fence or gate, in which there is proper access granted for access as determined by the City Engineer, or his designee.

If a Private or Gated Community is allowed to have public utilities then all utilities inside of the Private or Gated Community shall be placed within an easement of sufficient size, as accepted by the City Engineer, or his designee, and which easement shall have in addition to standard requirements, added the following characteristics:

(1) Shall be superior to any other easements or rights of way, whether private or public, such that future repairs to the utility shall not be impeded by failure of another entity to provide sufficient permission to proceed;

(2) Permission to utilize existing private drives or roadways to facilitate a repair, including but not limited to:

a. access;
b. the temporary storage or stockpile of material;
c. the ability to temporarily close access, entirely or in part, on a private drive or roadway;
d. removal of vehicle(s) that may be impeding a repair.

(3) Permission to cut or otherwise demolish portions of private drives or roadways needed to facilitate a repair, to include the waiver of any requirement to return the private drive or roadway affected to its original condition.

(4) City, at its sole cost and expense, shall be obligated to restore the surface of the soil of the easement that has been removed, relocated, altered as a result of City's use of the easement. City will not be obligated to restore or relocate any other improvements including, but not limited to, irrigation systems, walkways, driveways, access roads, parking areas, fences, landscaping items, and any movable structures such as benches, gazebos or other similar items, located in, upon, under or across the easement.

Section 3. Amendment of Ordinances. The City of Kyle, Texas Code of Ordinances is hereby amended to the extent of any conflict or inconsistency herewith only and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the city, the terms and provisions of this Ordinance shall govern.

Section 4. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading this 16th day of February, 2016.

FINALLY PASSED AND APPROVED on this 15th day of March, 2016.

ATTEST: **THE CITY OF KYLE, TEXAS**

Amelia Sanchez, City Secretary

R. Todd Webster, Mayor

ORDINANCE NO. 894

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS; AMENDING CHAPTER 41 ("SUBDIVISIONS"), ARTICLE V ("STANDARDS AND SPECIFICATIONS"), SEC. 41-137(P) ("PERIMETER STREETS"); AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 819 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; AMENDING THE TITLE OF THE SUB-SECTION; AMENDING SUBPARAGRAPHS (P)(1), (P)(2) AND (P)(3); ADDING SUBPARAGRAPH (P)(4), PROVIDING AN APPEALS PROCESS FOR APPLICANTS WHO CAN SHOW CAUSE FOR WAIVER; AMENDING SUB-PARAGRAPH (P1)(1) FOR CLARITY; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Kyle is charged with providing for the health, safety and welfare of the citizens of the City; and

WHEREAS, the City's regulatory mechanism for the subdivision of land in Article IV of Chapter 41 of the City Code currently has provisions for operations and maintenance fees for adjacent streets; and

WHEREAS, there is desire on the part of the City to more equitable assign financial responsibility for operations and maintenance of the city streets and infrastructure network; and

WHEREAS, in order to provide parity and consistency of regulation, and allow for the proper introduction of new land uses adjacent to existing streets and infrastructure, the Mayor and City Council desire to revise said Subdivision Regulations; and

WHEREAS, the regulation of that real property installed in and around duly dedicated city rights of ways is a reasonable and lawful police power of Texas home rule jurisdictions; and

WHEREAS, the Mayor and City Council have reviewed these recommended changes to the Kyle Subdivision Regulations and find that it furthers the City's intended policies and plans and will better serve as Subdivision Regulations for the future of the City's development; and

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

SECTION 1. Ordinance 819 amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the 1st day of March, 2016, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the 15th day of March, 2016, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this 15th day of March, 2016.

R. Todd Webster, Mayor

ATTEST:

Amelia Sanchez, City Secretary

EXHIBIT 'A'

Sec. 41-137. - Streets.

(p) ~~Perimeter Road~~ Adjacent Streets fee. The developer's obligations concerning ~~perimeter streets~~ adjacent lane miles of existing streets are as follows:

(1) Local, collector streets.

a. Dedicate land for one-half of the required right-of-way of an adjacent local and collector street; and

b. Pay the ~~improvements costs or build one-half of the required width of adjacent local and collector streets, including curbs, gutters and storm drainage~~ city operations and maintenance fee, as assigned in the associated fee schedule, and administered by the community development department and/or city engineer's office.

(2) Arterial and larger streets.

a. Dedicate a proportional share of the right-of-way for arterial and larger streets; and

b. Pay the ~~improvements costs for or build a proportional share of the required street width for arterial and larger streets, including curbs, gutters and storm drainage, not to exceed the amount that would be required for one-half of a collector street~~ city operations and maintenance fee, as assigned in the associated fee schedule, and administered by the community development department and/or city engineer's office.

(3) Designated, state or federal roadways.

a. Dedicate a proportional share of the right-of-way;

b. Pay the ~~improvements cost for, or build, a proportional share of the required street width as required by the Texas Department of Transportation, including curbs, gutters and storm drainage, not to exceed the amount that would be required for one-half of a collector street~~ city operations and maintenance fee, as assigned in the associated fee schedule, and administered by the community development department and/or city engineer's office;

c. Pay the improvements cost for, or build, improvements required by a traffic impact analysis for the development; and

d. Secure said obligations by a letter of credit, escrow account, or other means approved by city council.

(4) Fee Schedule table:

	A	B	C	D	E
		Trips per day	Cost multiplier	No. of DUs	GFA* ÷ 1,000
	Land Use Category				
1	Single Family Detached	9.52	$ 129.00		
2	Single Family Attached	5.81	$ 65.00		
3	Multi-family	6.65	$ 81.00		
4	Office	11.03	$ 112.00		
5	Retail	44.32	$ 34.00		
6	Shopping Center	42.7	$ 40.00		
7	Warehouse/Storage	3.56	$ 129.00		
8	Manufacturing	3.82	$ 118.00		
9	Industrial	6.97	$ 71.00		
10	Institutional	12.7	$ 51.00		

Table Notes: Residential uses (rows 1, 2, and 3) are computed by multiplying columns B, C, and D. Commercial uses (rows 4-10) are computed by multiplying columns B, C, and E. Mixed-use and multi-use projects will be assigned their fees cumulatively, based on the percentage of each land use on the subject parcel.

(5) Timing. Fees for Residential Use categories are payable at the time of final platting. Fees for Commercial Use categories are payable at the time of development/building permit, and shall similarly have a note affixed to the final plat.

(6) Perimeter Road fees can be appealed to the Mayor & City Council for alternative compliance. A Traffic Impact Analysis, prepared by a state-certified engineering entity, will be required to indicate how the plan for alternative compliance meets the intent of this fee.

(p1)Exception for homesteads.

(1) Financial obligations ~~to improve perimeter roads~~ related to operations and maintenance as set forth in this article may be waived or reduced by the city manager or designee for property owners subdividing their property for the sole purpose of creating a homestead under the following terms and conditions:

a. A property owner must be subdividing property for the sole purpose of creating a homestead on an area of land no larger than one acre;

b. The property being subdivided for homestead purposes cannot be subdivided into more than two tracts or parcels;

c. Only single-family homes as defined by the city's zoning ordinance (chapter 53, Code of Ordinances) may be allowed on the property subdivided to be used as a homestead; and

d. A waiver of the city manager or designee shall be in writing and filed with the city secretary, and the city council may be informed of all waivers.

(2) If a waiver is not granted by the city manager or designee, the property owner denied such waiver shall have the right to appeal the denial of waiver to the city council. A public hearing to determine whether a property owner should be granted a waiver shall be conducted before the city council. By majority vote, the city council may grant such waiver.

EXHIBIT D

DEVELOPMENT STANDARDS

EXHIBIT D

DEVELOPMENT STANDARDS

A. Applicability and Base Zoning

All aspects regarding the development of this Property shall comply with the City of Kyle Code of Ordinances in effect on May 3, 2016, except as established in this Exhibit, titled **Exhibit "D"**.

Base zoning districts have been selected for the various land use categories established this **Exhibit "D"** and illustrated on **Exhibit "B"**, Concept Plan. The districts are as follows:

1. Single Family Residential R-1-2
2. Multi-Family Residential R-3-3
3. Commercial/Mixed Use RS

This Development Agreement allows the flexibility to mix various residential and commercial land uses and define boundaries during the platting process. Each plat or site plan submitted to the City will identify the use at the time of submittal to the City. All development within the Property will comply with the modified development standards of **Exhibit "D"**. In the case that this Exhibit does not address a specific City requirement, the Kyle Code of Ordinances shall apply. In the event of a conflict between this Exhibit and the identified base zoning district as defined in the Code of Ordinance on May 3, 2016, this Exhibit shall control.

B. Allowable Uses

The uses allowed within the Project shall comply with the list of allowed and prohibited uses defined in the Code of Ordinances Chapter 53 for each base district outlined in Section A of this Exhibit, with the addition of the following uses and any other uses described in this Exhibit:

1. Single Family Residential R-1-2

    a. Uses defined in Code of Ordinances Sections 53-64 and 53-89
    b. Amenity Facilities
    c. Golf Course
    d. Private Parks
    e. School, College or University
    f. Civic Uses Including:
        - Emergency service station
        - Government offices
        - Postal office
        - Indoor religious assembly facilities
        - Library

g. Single Family Detached Condominium
h. Two Family (duplex)
i. Townhouse

2. Multi-Family Residential R-3-3

   a. Uses defined in Code of Ordinances Section 53-292.

3. Commercial/Mixed Use RS

   a. Uses defined in Code of Ordinances Section 53-1230 – Uses permitted in certain sections, Exhibit A. All land uses identifies as Primary Zoning, Secondary Zoning and Third Zoning as allowable within the RS district shall be allowed uses.

The purpose of the Mixed Use District is to accommodate mixed-use buildings with neighborhood-serving retail, service, and other uses on the ground floor and residential units above the nonresidential space. This district is designed to encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets. All lands identified as Commercial on **Exhibit "B"** may be developed with the allowable Mixed Use allowable uses outlined below.

In additional to vertically mixed development, mixed land use development may occur within the Mixed Use District. While such development will not be vertically integrated, development will be designed in a manner to enhance land use integration and encourage walkability.

Allowable uses may include:

a. Uses defined in Code of Ordinances Section 53-1230 – Uses permitted in certain sections, Exhibit "A". All land uses identifies as Primary Zoning, Secondary Zoning and Third Zoning as allowable within the RS district shall be allowed uses.
b. Single Family Detached
c. Single Family Condominium (detached and attached)
d. Single Family, Attached
e. Two Family
f. Townhouse
g. Multi-Family Residential
h. Multi-Family Residential above retail/office

Prohibited uses (referred to in the Development Agreement as "Excluded Uses") include:

- Boat Dealers

4. Open Space

Open Space areas have been identified on **Exhibit "B"** of this agreement. Allowable uses within Open Space areas include:

a. Cemeteries
b. Conservation Areas
c. Wildlife Sanctuaries
d. Golf Courses
e. Outdoor Recreational including but not limited to athletic fields, swimming pools and playground
f. Public and Private Parks

Open Space allowable uses shall be allowable uses within all Land Use districts.

C. Impervious Cover

For purposes of this Agreement, the term "Impervious Cover" means the total area of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete and buildings, but excluding the following:

1. Sidewalks in a public right-of-way or public easement
2. Multi-use trails open to the public or residents of a POA
3. Water quality controls
4. Detention basins
5. Unpaved drainage swales and conveyances
6. Ponds and fountains
7. Areas with gravel placed over pervious surfaces that are used only for landscaping or by pedestrians and are not constructed with compacted base
8. For porous pavers or pavement, 50 percent (50%) of the horizontal area covered by the porous pavers or pavement
9. For an uncovered wood deck that has drainage spaces between the deck boards and that is located over a pervious surface, 50 percent (50%) of the horizontal area of the deck
10. Any other area that under the Code, any City criteria manual interpreting same, or the then current policies of the City or a determination by the Planning Director is entitled to a full or partial exclusion.

The overall Project Impervious Cover (excluding commercial tracts) will be set at a maximum of thirty-nine percent (39%). The calculation of the impervious cover shall be measured as a whole based upon the entire property excluding the 168.7 acres of commercial and mixed use lands. For purposes of clarifying the preceding sentence, the impervious cover on an individual final plat may exceed the specified limit on impervious cover so long as the cumulative total of impervious cover on all final plats (excluding commercial tracts)

ultimately recorded on the Property does not exceed the specified limit on impervious cover. Table D.1, Residential Development Standards within the Project, establishes impervious cover limits on a per residential lot basis. Those maximum per residential lot limits will be used to create an impervious cover table for each submitted plat within the Property. The table shall also list the cumulative tabulation of the community impervious cover based upon the total gross acreage of the site excluding the commercial lands.

Commercial tracts will comply with the limits established in the Code of Ordinance. Said commercial tracts shall not count towards the overall community impervious cover limits.

D. Single Family Residential Lot Design Standards

1. The Project may include a variety of residential product types and sizes from detached single family homes to townhomes. Detailed design standards are included within this Exhibit, Table D.1, Single Family Residential Development Standards., based upon the type of residential product.

2. Residential lot widths shall be measured from the front setback building line as established within Table D.1, Single Family Residential Development Standards.

3. Building height shall be measured as the vertical distance from the front door threshold to the highest point of the roof.

4. For purposes of this Exhibit D, the term "Developable Acre" means the total land area not prohibited from residential improvements due to the following:

    a. Federal or state restriction
    b. Buffer yards as required by the Code
    c. Required stormwater treatment and containment facilities.

To ensure a variety and mix of residential product types within the Project, the following standards have been established:

Maximum Single Family Residential Units
The development of the Property will not exceed 6,177 single family residential units.

Single family Residential Product Type Requirements

1. Single Family Residential
    - The maximum number of narrow single family detached residential lots (Narrow Lots) allowed to be subdivided on the Property will be 1,519 units, twenty-five percent (25%) of the total number of the Single Family Detached residential lots shown on the total of all preliminary plans approved for the Property. Narrow Lots shall be defined as those lots with a width less than 65 ft. as measured in the Code. For purposes of clarifying the preceding sentence, there is no limit to the number of Narrow Lots that may be contained in an individual final plat so long as the cumulative total of Narrow Lots contained in all final plats ultimately recorded on the

Property do not exceed twenty-five percent (25%) of all single family detached lots shown on all of the approved preliminary plans for the Property.

- Single Family Estate Lots (Estate Lots) shall be those residential lots designed and platted at a minimum of one (1) acre in size.

2. Single Family Residential Alley Product
   - Maximum of 1,215 units (20% of total)

3. Single Family Residential Attached (Condominium and Townhome)
   - Maximum of 2,394 units (40% of total)

Single Family Residential development will comply with the development standards set forth in Table D.1, Single Family Residential Development Standards.

Table D.1 – Single Family Residential Development Standards

	RESIDENTIAL USES			
	DETACHED	**ALLEY**	**ATTACHED Townhome, Condominium**	**DETACHED Condominium**
Impervious Cover (maximum)	45% or 65% [1]	70%	75%	70%
Lot Width (minimum) [2]	45 ft.	35 ft.	22 ft.	--
Front Setback (minimum)	25 ft.	10 ft.	15/20 ft. [3]	20 ft. [4]
Side Setback (minimum)	5 ft. or 7.5 ft [7]	5 ft.	0 ft.[5]	5 ft.[5]
Corner Setback (minimum)	15 ft.	10 ft.	10 ft.	10 ft. [4]
Rear Setback (minimum)	10 ft.	5 ft.	15 ft. [6]	10 ft. [6]
Building Height (maximum)	35 ft.	35 ft.	35 ft.	35 ft.
Lot Area (minimum)	4,900 s.f.	3,500 s.f.	2,000 s.f.	5 acres
Maximum Development Density	4.7 units per Developable Acre	8 units per Developable Acre	10 units per Developable Acre	8 units per Developable Acre
Units per structure (max.)	--	--	Townhome: 8	--

[1] Single Family Detached Residential lots with a lot area greater than 15,000 square feet shall have a maximum Impervious Cover of 45%. Single Family Detached Residential lots with a lot area equal to or less than 15,000 square feet shall have a maximum Impervious Cover of 65%.
[2] See allowable percentage of narrow lots as defined in Section D of this Exhibit.
[3] The front setback shall be 20ft. for front loaded townhome/condominium product.
[4] Setback from private drives.
[5] Minimum 10 feet between buildings.
[6] Building to building separation.
[7] Single Family Detached Residential lots with a lot area greater than 15,000 square feet shall have a minimum side set back of 7.5 feet. Single Family Detached Residential lots with a lot area equal to or less than 15,000 square feet shall have a minimum side set back of 5 feet.

E. Multi-Family Residential Lot Design Standards

The Project will include Multi-Family Residential as identified on the **Exhibit "B"**. Detailed design standards are included within this Exhibit, Table E.1, Multi-Family Residential Development Standards.

Table E.1 – Multi-Family Residential Development Standards

Maximum Multi-Family Residential Units The development of the Property will not exceed 1,662 multi-family residential units.	
Front setback	25 ft.
Side setback	7 ft.
Corner setback	15 ft.
Rear setback	25 ft.
Minimum lot width	90 ft.
Minimum lot area	12,000 sq. ft. plus 1,500 sq. ft. for each residential unit
Building height limit	45 ft. three stories
Maximum building coverage	50%
Maximum impervious cover	70%
Maximum density (per Developable Acre)	20 dwelling units per Developable Acre

F. Vehicular Circulation

1. Block length shall not exceed 1,000 ft. The City approves block lengths that exceed the criteria when the block includes creeks, natural drainageways, open space and steep topography.

2. Cul-de-sac maximum length shall not exceed 800 ft. measured from center of turnaround to centerline of connecting road. A maximum 30 units shall be serviced from each cul-de-sac. The City approves cul-de-sac lengths that exceed the criteria for cul-de-sac lengths and serviced units stated above when the land serviced by the cul-de-sac is restricted by creeks, natural drainageways, steep topography and external property

boundaries. In such cases, the maximum number of units served shall not exceed fifty (50) units.

3. A rural lane roadway section may be used subdivisions of Estate Lots as defined in Section D.1 of this Exhibit. The roadway section shall be a roll curb with swale cross section. Curb and gutter will not be required.

4. Roadway Standards

Standard Category	Pavement Width	Right-Of-Way	Horizontal Curve
Major thoroughfare	66-70 ft.	100 – 120 ft.	1,000 ft.
Arterial street	44 – 48 ft.	80 ft.	750 ft.
Collector street	38 ft.	60 ft.	350 ft.
Local street	30 ft.	50 ft.	250 ft.
Residential lane	28 ft.	50 ft.	180 ft.
Rural lane	28 ft.	60 ft.	180 ft.

5. Alleys shall be used in the design and development of alley loaded residential subdivisions. Alleys shall be designed for one way traffic and meet the following alley design roadway standards:

Design Speed	5 MPH (miles per hour)
Right-of-Way width	20 ft.
Pavement width	12 ft.
Intersection curb radius	15 ft.
Permitted alley parking	none

6. SECTION 41-136(C) - Lot depth to average lot width ratio shall be waived.

7. SECTION 41-137(D) - Offset intersection spacing along collector, local and residential lane streets shall be a minimum of 125 ft. measured from roadway centerline to roadway centerline. Such intersections along arterials shall be 180 ft. Offset intersections along major thoroughfares shall be reviewed and approved by the City on a case by case basis.

8. Flag lots are approved by the City. Flag lots shall be a minimum of 20 ft. wide measured at the right-of-way, substantially perpendicular to the right-of-way.

G. Temporary Construction Haul Roads

The Owner may construct temporary construction haul roads as reasonably possible to reduce heavy construction traffic on improved roadways. In situations where reasonable haul road options are not possible, the Applicant shall work with the City to identify alternatives for reducing construction traffic impact to existing residential neighborhoods.

H. Construction Field Offices

A development and construction field office is permitted within the Project. The Owner will prepare and submit applicable City applications for said facility. Once approval is secured, the Applicant will receive a 24 month term permit with unlimited renewals.

I. Residential Sales Centers

The Owner is allowed to construction Sales Centers within the Project. Each Sales Center may include a sales building, model homes (not to exceed 10) operational models at the same time) and associated parking facility. The Sales Center will be accessible from a paved, improved street. A Temporary Use Permit will be submitted to the City for said facility. Once approved, the Sales Center Permit shall remain in place until the final residential building permit application has been submitted to the City for said subdivision within the Project. At such time, the Owner will have six (6) months to convert the models and other facilities to their permanent permitted uses.

EXHIBIT E

OWNER REQUIRED INFRASTRUCTURE

Exhibit E

Owner Required Infrastructure

One approximately 2,200 feet long high pressure 12" water line extending from the intersection of Center St and Cypress to the boundary of the Property, at a location selected by Owner, and a Pressure Reducing Station (PRV) to bring the internal water system into the same pressure plane once the Roland Lane water line is extended into the property.

One approximately 4,300 feet long 12" water line extending from the water tower on Roland Lane to the boundary of the Property at Old Stage Coach as depicted on Exhibit E-1.

One approximately 12,000 feet long 4" sewer force main from the most southern tract on Old Stagecoach to Roland Lane as depicted on Exhibit E-1.

One approximately 6,200 feet long 8" gravity sewer main from end of the new force main on Roland Lane to the city's Southside Lift Station as depicted on Exhibit E-1.

A 2 million gallon per day capacity lift station located at the general location depicted on Exhibit E-1

Upgrades to the Southside Lift Station will be required to increase capacity since this area was not included in the sizing of the lift station. Upgrades will require additional pumps, and wet well capacity. [additional details forthcoming]

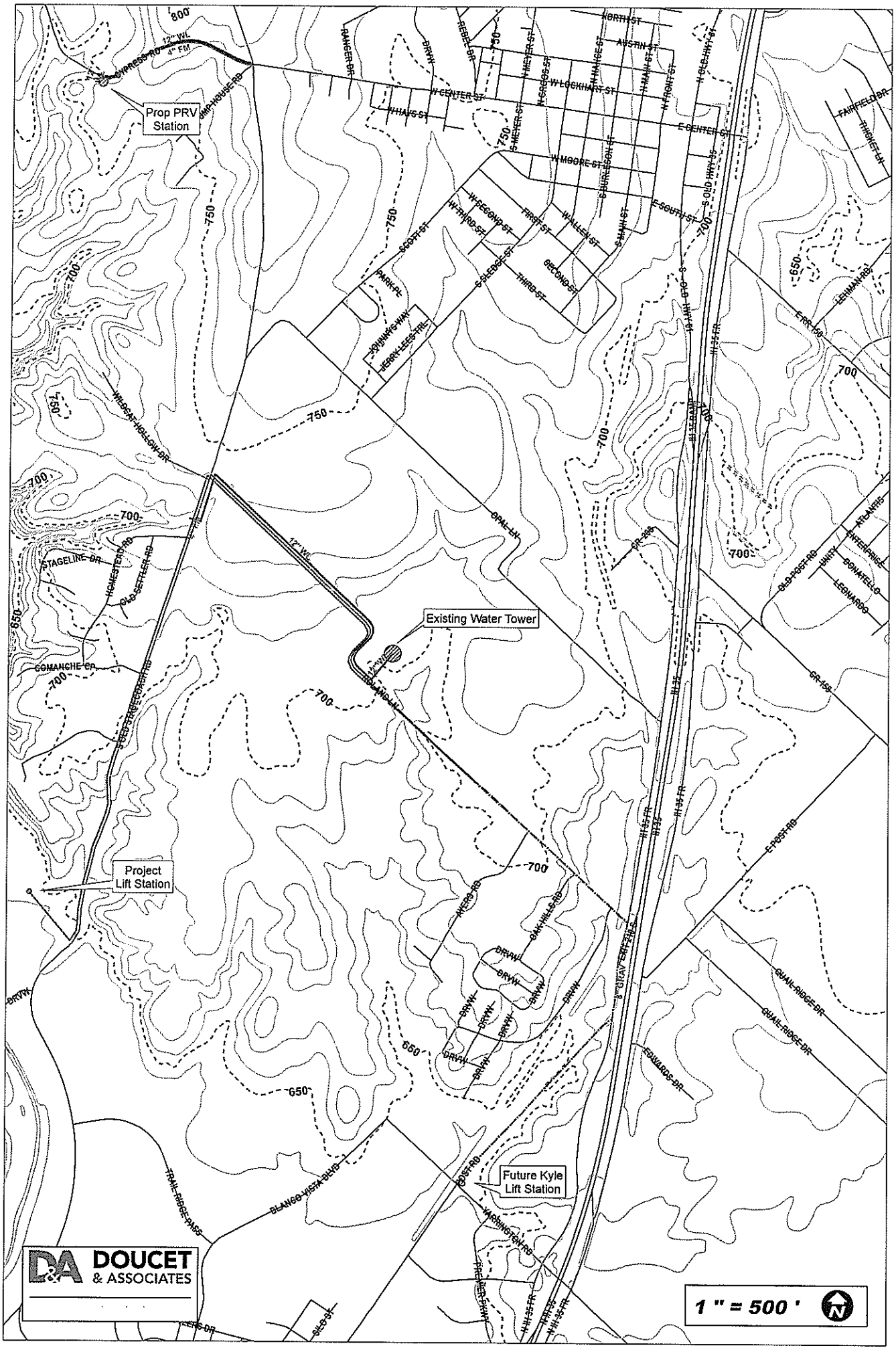

Prop PRV Station
Existing Water Tower
Project Lift Station
Future Kyle Lift Station
12" WL
4" FM
8" GRAV SAN SWR
DRWY
1" = 500'
DOUCET & ASSOCIATES

EXHIBIT F

PID REQUIREMENTS

CITY OF KYLE, TEXAS

Public Improvement District Policy

OVERVIEW

Public Improvement Districts ("PIDs"), per the Texas Local Government Code Chapter 372 ("the Code"), provide the City of Kyle ("the City") an economic development tool that permits the financing of qualified public improvement costs that confers a special benefit on a definable part of the City, including both its corporate limits and its extra-territorial jurisdiction. A PID can finance capital costs and fund supplemental services to meet community needs which could not otherwise be constructed or provided. The costs of the capital improvements and/or supplemental services are paid entirely by property owners within the Public Improvement District ("PID") who receive special benefits from the capital improvements or services. **A PID may only be used to pay for public improvements, all other expenditures not related to public improvements may not be reimbursed.**

A PID is a defined area of properties, whose owners have petitioned the City to form a PID. The City Council establishes a PID by adoption of a resolution after a public hearing. The public hearing is publicized per the Code and written notification of the hearing is mailed to all property owners in the proposed PID. By petition, the owners pledge to pay an assessment in order to receive enhanced services and/or improvements within the District. The PID must demonstrate that it confers a benefit, not only to the properties within the District, but also to the "public" which includes the City.

The purpose of this PID policy is to outline the issues to be addressed before the City Council can support the establishment of a PID. The PID policy outlines such things as petition requirements, qualified costs, financing criteria, information disclosures to property owners, and the determination of annual plans of services, budgets and assessments.

GENERAL

1. A PID may be created and utilized to construct qualified public improvements and/or reimburse a developer's actual and documented costs above and beyond the costs for standard infrastructure required to serve the development. Such incremental costs shall be associated with the construction of qualified public improvements.
2. PIDs must be self-sufficient and not require the City to incur any costs associated with the formation of the PID, bond issuance costs, PID administration or the construction of PID improvements.
3. PID petition signatures should reflect that a reasonable attempt was made to obtain the full support of the PID by the majority of the property owners located within the proposed PID. Priority will be given to PIDs with the support of 100% of the landowners within a PID.

4. Priority will be given to PID improvements:
   a. In support of development that will generate economic development benefits to the City beyond what normal development would;
   b. In the public right of way (e.g., entryways, landscaping, fountains, specialty lighting, art, decorative and landscaped streets and sidewalks, bike lanes, multi-use trails, signage); and,
   c. Which meet community needs (e.g., enhanced drainage improvements, parks and off-street public parking facilities, wastewater and/or water on or off-site improvements).
5. A PID's budget shall include sufficient funds to pay for all costs above and beyond the City's ordinary costs, including additional administrative and/or operational costs.
6. A Landowner's Agreement must be recorded in the Official Public Records of the County in which the PID is located which, among other things, will notify any prospective owner of the existence or proposal of special assessments on the property. All closing statements and sales contracts for lots must specify who is responsible for payment of any existing PID assessment or a *pro rata* share thereof.
7. The City Council reserves the right, on a case-by-case basis, to waive specific requirements listed in the Policy. Such waived requirements shall be noted in the approval of any petition together with a finding that the deviation from the Policy is in the best interest of the City. Additionally, the Council maintains discretion to approve or disapprove the PID application.
8. A PID zone must be identified as a PID with use of Signage along the main entry/exits located at the boundaries of the PID. All signage shall be a clearly visible to all motorist entering and exiting the PID.
9. Property owned by the City of Kyle that is located in the boundaries of the PID shall not be subject to any assessment by the PID.
10. No PIDs will be allowed to be created that overlap the boundaries of another PID.
11. The boundaries of existing PIDs can be modified during a renewal process (with updated map as part of the petition). However, a boundary change during the existing term of a PID may only be considered if a re-petition of the entire PID area (both current boundary and proposed modified areas) meets the minimum criteria for creation/renewal and application fee as described below is submitted.

PETITION REQUIREMENTS

In accordance with Texas Local Government Code §372.005(a) the petition must state:

1. the general nature of the proposed improvements;
2. the estimated cost of the improvements;
3. the boundaries of the proposed assessment district;
4. the proposed method of assessment, which may specify included or excluded classes of assessable property;
5. the proposed apportionment of costs between the public improvement district and the municipality or county as a whole;
6. whether the district will be managed by the municipality or county, by the private sector, or by a partnership of the two;

7. that the persons signing the petition request or concur with the establishment of the district; and that an advisory board may be established to develop and recommend an improvement plan to the governing body of the municipality or the county; and
8. that an advisory body may be established to develop and recommend an improvement plan to the governing body of the municipality or county.

Additional requirements include:

1. PID petitions shall include this additional note: "With respect to community property, the City may accept the signature of a spouse as a representation of both spouses that they support the creation or renewal of the PID absent a separate property agreement. *However, if City staff is made aware of any disagreement among owners of community property, those petitions will not be counted.*"
2. Signatures for PID petitions must be gathered not more than six months preceding submittal of the PID Application.

For a district to be established, a petition shall include the following:

1. Evidence that the petition's signatures meet the state law requirements or the petition must be accompanied by a reasonable fee to cover the City's costs of signature verification. If the proposed district is an expansion of an existing district, a petition for the new portion of the district must identify each subdivision, or portion thereof, within the proposed boundaries of the new district, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under Section 372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by Section 232.021 of the Texas Local Government Code.
2. Map of the area, a legal description of the boundaries of the district for the legal notices and a "commonly known" description of the area to be included in the district.
3. Statement that the petitioners understand that the annual budget for the district is subject to review by City staff with final approval by the City Council.
4. Upon approval of the PID, the boundaries of the PID will be immediately annexed into the City of Kyle.

In addition, the following issues must be addressed before the City Council will take action on a petition:

1. A non-refundable application fee of $15,000 will be required for all new or renewing PIDS. This fee is regulatory in character and approximates the costs of administering the PID through creation or renewal by City Staff.
2. A petition will be viewed more favorably if it has attached a current tax roll with the signatures of the owners registering support of the petition next to the account for the owner's property on the tax rolls.
3. A copy of the Market Feasibility study shall be submitted with the Petition.

PID ADMINISTRATION

1. The City may contract with a qualified third party company to manage and administer the PID, subject to appropriate oversight by City staff.
2. Any management firm for a PID shall be required to submit quarterly reports of all activities and expenditures to the City; perform and submit an annual independent audit of all PID expenditures to the City; and shall hold an annual meeting open to all property owners and held in a public meeting space with written notice to all property owners in the PID at least two weeks prior to this meeting to provide an opportunity for property owner questions, comments and input to be considered during the PID Budget and Service Plan approval process.
3. If the City elects to hire a third party administrator, the administrator will coordinate the annual development of the Budget and Five Year Service Plan which will be submitted to the City Council for consideration following a public hearing conducted in accordance with the Code and any other applicable State of Texas law. The PID Service Plan shall contain procedures for the termination of the PID without imposing unintended costs on the City of Kyle. A PID cannot be dissolved without a petition from property owners and must be sufficient as for creation or renewal in accordance with Chapter 372, Section 372.005(b).

BOND SIZE LIMITATIONS

The following limitations and performance standards shall apply to a PID debt issue approved by the City:

1. Minimum appraised value to lien ratio at date of each bond issue:	3:1
2. Maximum annual permitted increase in annual assessment installment:	2%
3. Maximum years of capitalized interest for each bond issue:	3
4. Maximum maturity for each series of bonds (to extent allowed by law):	20 years

The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund: (i) the actual costs of the qualified public improvements (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 3 years from the date of the initial delivery of the bonds and (iii) any costs of issuance. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future Bond issuances.

FINANCING CRITERIA

1. The PID may seek bond issues in advance of construction of an individual Phase of a Project subject to compliance with these standards.
2. No General Obligation or Certificate of Obligation bonds will be utilized by the City to fund or support the PID Bonds.
3. All proposed subsequent PID bond issues for a Project, if any, will be subject to approval by the City Council.

4. Special assessments on any given portion of the property may be adjusted in connection with subsequent bond issues as long as an agreed-upon maximum annual assessment rate is not exceeded, and the special assessments are determined in accordance with the Service and Assessment Plan and the PID Act. Special assessments on any portion of the property will bear a direct proportionate relationship to the special benefit of the public improvements to that improvement area. In no case will assessments be increased for any parcel unless the property owner of the parcel consents to the increased assessment.
5. The City shall not be obligated to provide funds for any improvement except from the proceeds of the PID Bonds and PID assessments.
6. Each PID Bond Indenture will contain language precluding the City from making any debt service payments for the PID Bonds other than from available special assessment revenues.
7. A PID will be responsible for payment of all of the City's reasonable and customary costs and expenses including the cost of any appraisal.
8. Improvements funded with PID proceeds will be exempt from any public bidding or other purchasing and procurement policies per Texas Local Government Code Section 252.022(a) (9) which states that a project is exempt from such requirements if "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements."
9. Any PID Bond issued will include a Reserve Fund in an amount equal to the lesser of: (i) the maximum annual debt service on the bonds, (ii) 10 percent of the Bond Par Amount, or (iii) 125 percent of the average annual debt service and that such Reserve Fund will be funded from bond proceeds at the time bonds are issued.
10. Improvements to be funded by the PID are limited to those defined as Authorized Improvements under Texas Local Government Code Section 372.003(b):
    a. Landscaping and irrigation in public rights of way;
    b. Erection of fountains, distinctive lighting, backlit street signs and way finding signs;
    c. Acquiring, constructing, improving, widening, narrowing, closing or rerouting sidewalks, streets or any other roadway or their rights-of-way;
    d. Construction or improvement of pedestrian malls;
    e. Acquisition and installation of pieces of public art;
    f. Acquisition, construction or improvement of libraries;
    g. Acquisition, construction or improvement of public off-street parking facilities;
    h. Acquisition, construction, improvement or rerouting of mass transportation facilities;
    i. Acquisition, construction or improvement of water, wastewater or drainage improvements;
    j. The establishment or improvement of parks;
    k. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
    l. Acquisition, by purchase or otherwise, of real property that shall be designated as conservation habitat, protected with a conservation easement, or used in furtherance of the protection of endangered species, or aquifer recharge features;
    m. Special supplemental services for improvement and promotion of the district, including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and culture

enhancement;

n. Payment of expenses incurred in the establishment, administration, and operation of the district, including expenses related to the operation and maintenance of mass transportation facilities; and
o. The development, rehabilitation, or expansion of affordable housing.

11. Any trails, parks, streets or other public amenities that are located within a gated community or otherwise inaccessible location may not be funded or reimbursed by the PID.
12. All public infrastructure within the PID that is to be reimbursed must be in compliance competitive bidding in accordance with Texas Local Government Code.
13. All landowners will provide any required continuing disclosure obligations associated with the issuance of PID Bonds as required under the Indenture or any other regulatory agreement or regulatory agency.

PROJECT CRITERIA

In agreeing to form a PID for which debt will be issued to fund the costs of constructing qualified public improvements, the City will require the following:

1. The property owner must demonstrate to the City that it has the expertise to complete the new development that the PID will support.
2. The property owner must provide the City with its sources of funding the Public Improvements not being funded by the PID.
3. The proposed development must be consistent with the entitlements on the property. All required zoning, other required land use approvals or other required permits must be in place for the development prior to the issuance of any PID bonds.
4. The property owner must provide evidence to the City that the utility service provider has sufficient capacity to provide all necessary utility services.
5. All reasonable estimated costs must be identified before a decision is reached on a request to issue bonds for a PID. Costs to be identified include costs related to establishing the district; costs for construction and/or the acquisition of improvements, the maintenance and operation of improvements (if any) and PID administrative costs.
6. If the City elects to hire a qualified third party PID administrator to administer the PID, the costs for such administration shall be paid for with PID funds. The PID administrator will be required to review and comment on the Budget and to attend the annual public hearing regarding the Service and Assessment Plan.
7. The PID Financing Agreement (or other applicable PID documentation) shall contain a section, which clearly identifies the benefit of the PID to the affected property owners and to the City as a whole (i.e., public purpose) and also evidence of insurance.
8. The Service and Assessment Plan shall describe, if applicable, all City-owned land within the district as well as its proposed share of project costs.
9. Specified assurances that the construction of improvements in the public right-of-way will be dedicated to and maintained by the City after the PID has dissolved. For the life of the PID, public infrastructure will be maintained by the PID, unless otherwise stated in a subsequent agreement.

Developer Reimbursement

1. The Developer will submit expenses for reimbursements.
2. The appointed designee will verify expenses' validity towards the PID agreement.
3. Once expenses have been verified, payment will be processed within thirty (30) days. .

Miscellaneous

1. Severability: If any section, subsection, sentence, clause, phrase, or word of this policy is declared unconstitutional or invalid for any purpose, the remainder of this policy shall not be affected.
2. Any waivers to this policy must be approved by the City Council of the City of Kyle.
3. The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to Reimbursable Amounts under this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.
4. Recapture. In the event of default by Developer under the negotiated Agreement related to Reimbursement Amount Requests, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture Reimbursement Amount Requests.
5. No Personal Liability of Public Officials. No public official or employee shall be personally responsible for any liability arising under or growing out of any approved PID. Any obligation or liability of the Developer whatsoever that may arise at any time under the approved PID or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the Developer only and the City shall have no liability.
6. All PID Agreements shall include Indemnification language as follows:

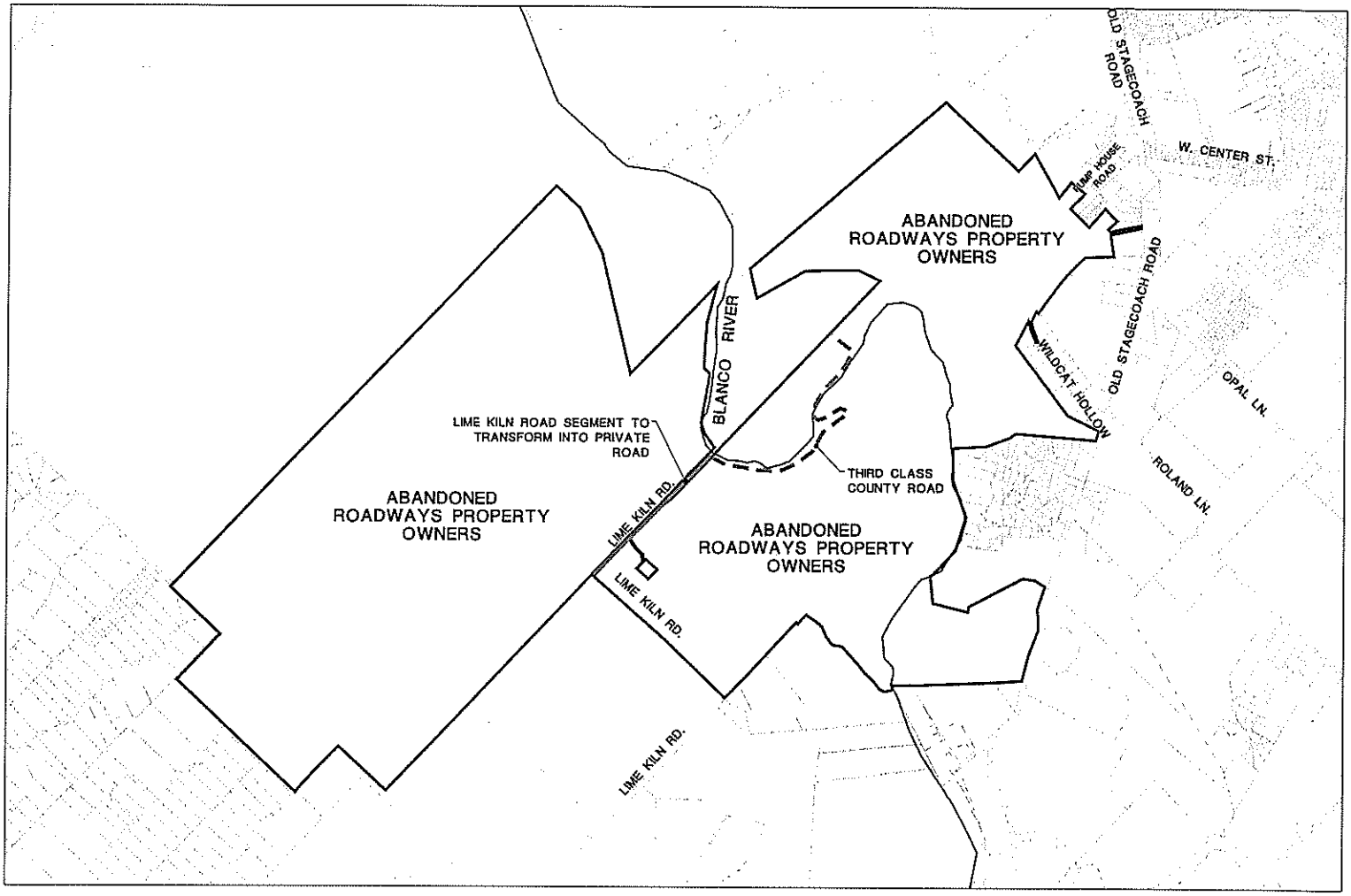
   Indemnification. **DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES,**

DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTEREPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFCATION OF THE CITY AND / OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW

EXHIBIT G

DEPICTION OF THIRD CLASS ROADWAY
TO BE PRIVATE ROADWAY FOLLOWING ANNEXATION



Blanco River Investments, LTD.
Transportation and Road Alignment Agreement

Exhibit G
Abandoned Roadways

North
Scale: 1" = 2,500'
Date: April 13, 2016

SEC Planning, LLC
Land Planning + Landscape Architecture + Community Branding
AUSTIN, TEXAS

EXHIBIT H

LUE CALCULATIONS

LUE Determination Table

Estimated Maximum Expected Flow Rate (gpm)	Displacement & Multi-jet SRII & PMM	Compound C702. Table 1.	Turbine C701. Table 2. OMNI C2 & WR*	Living Unit Equivalents (LUEs)
10	5/8" × 3/4"			1
15	3/4"			1.5
25	1"			2.5
50	1.5"			5
80	2"	2"	1.5"	8
100			2"	10
160		3"		16
240			3"	24
250		4"		25
420			4"	42
500		6"		50
800		8"		80
920			6"	92
1600			8" *	160

*The WR turbine meter is for 8" size only and does not have low flow accuracy capability.

EXHIBIT I

REQUEST FOR ANNEXATION

February 26, 2016

Howard J. Koontz, AICP
Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

Dear Howard:

Blanco River Investments LTD and the R. Scott Nance Family, together own approximately 292.05 acres located within the City of Kyle Extra Territorial Jurisdiction (ETJ). The property is comprised of several Hays County Appraisal District (CAD) tax parcels as outlined on the attached summary. As discussed during our meeting on February 24, 2016 at the City of Kyle offices, the CAD parcel boundaries are slightly different from survey work underway by our families. Once complete, the survey data will reflect the surveyed boundary of our family's property. In the meantime, attached is a subject tract exhibit illustrating the property boundary based on the survey work conducted.

On behalf of Blanco River Investments LTD and the R. Scott Nance Family (property owners) we are submitting this letter and attached Application for Voluntary Annexation of the 292.05 acre property located generally along Lime Kiln Road, with the Hays CAD Property ID Numbers on the attached list of properties. As we have discussed, this request for voluntary annexation is conditioned on reaching agreement on a mutually approved form of development agreement for the property and may be withdrawn in whole or in part at any time prior to the completion of the annexation proceedings.

We look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdicchio, the Project Agent, or me with any questions.

Sincerely,

Blanco River Investments LTD

By:_____

Name: Brian F. McCoy

R. Scott Nance Family

By:_____

Name: R. Scott Nance

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

(Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the application to be accepted for review.

___ 1. Letter requesting annexation, signed and dated by all property owners and detailing the following information:
   a. The name of the property owner(s)
   b. The street address of the property
   c. Tax appraisal district property ID number(s)
   d. Acknowledgement that the property is contiguous to the current city limits.
   e. Identify the number of residents living on the property.
   f. Current use of the property.
   g. Proposed use of the property

___ 2. Map of the subject property

___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.

___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.

___ 5. Application Fee: $850.00 + $190.21 (Newspaper Notification Fee)

Property Information

Owners: Nance, Robert Scott & Blanco River Investments, LTD

Address: See Attached

Phone: _____ **Email:** _____

Acreage: 292.05 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

Phone: 512.246.7003 **Email:** PeterV@SECPlanning.com **Fax Number:** N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note: The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.**

(Check One:)

____ *I will represent my application before city staff and the City Council.*

X *I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.*

Robert Scott Nance	512.262.2136	
Owner's Name (printed)	Phone	Fax
205 Live Oak Drive	Mountain City	TX 78610
Owner's Address	City	State Zip
Robert Scott Nance	2-26-16	lhnance@verizon.net
Owner's Signature	Date	Email Address

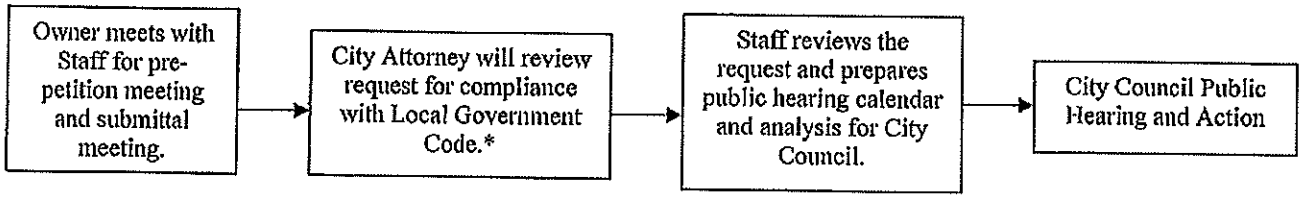
Agent's Name: Peter Verdicchio, RLA

Company: SEC Planning, LLC

Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220 Austin TX 78727
Street City State Zip

512.246.7003	N/A	PeterV@SECPlanning.com
Phone	Fax	Email address

GENERAL PROCESS



**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

2/26/16
(Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the application to be accepted for review.

___ 1. Letter requesting annexation, signed and dated by all property owners and detailing the following information:
   a. The name of the property owner(s)
   b. The street address of the property
   c. Tax appraisal district property ID number(s)
   d. Acknowledgement that the property is contiguous to the current city limits.
   e. Identify the number of residents living on the property.
   f. Current use of the property.
   g. Proposed use of the property

___ 2. Map of the subject property

___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.

___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.

___ 5. Application Fee: $850.00 + $190.21 (Newspaper Notification Fee)

Property Information

Owners: Nance, Robert Scott & Blanco River Investments, LTD

Address: See Attached

Phone: _____ **Email:** _____

Acreage: 292.05 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

BM

Phone: 512.246.7003 **Email:** PeterV@SECPlanning.com **Fax Number:** N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note: The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.**

(Check One:)

_____ *I will represent my application before city staff and the City Council.*

__X__ *I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.*

McCoy, Brian F.
Owner's Name (printed)

1350 IH 35 No., P.O. Box 1028 — San Marcos — TX — 78667
Owner's Address — Phone — City — State — Zip

Owner's Signature — 2/26/16 — brian.mccoy@mccoys.com
Owner's Signature — Date — Email Address

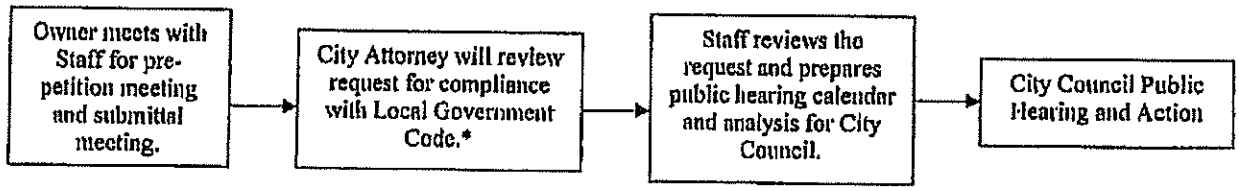
Agent's Name: Peter Verdicchio, RLA

Company: SEC Planning, LLC

Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220 — Austin — TX — 78727
Street — City — State — Zip

512.246.7003 — N/A — PeterV@SECPlanning.com
Phone — Fax — Email address

GENERAL PROCESS



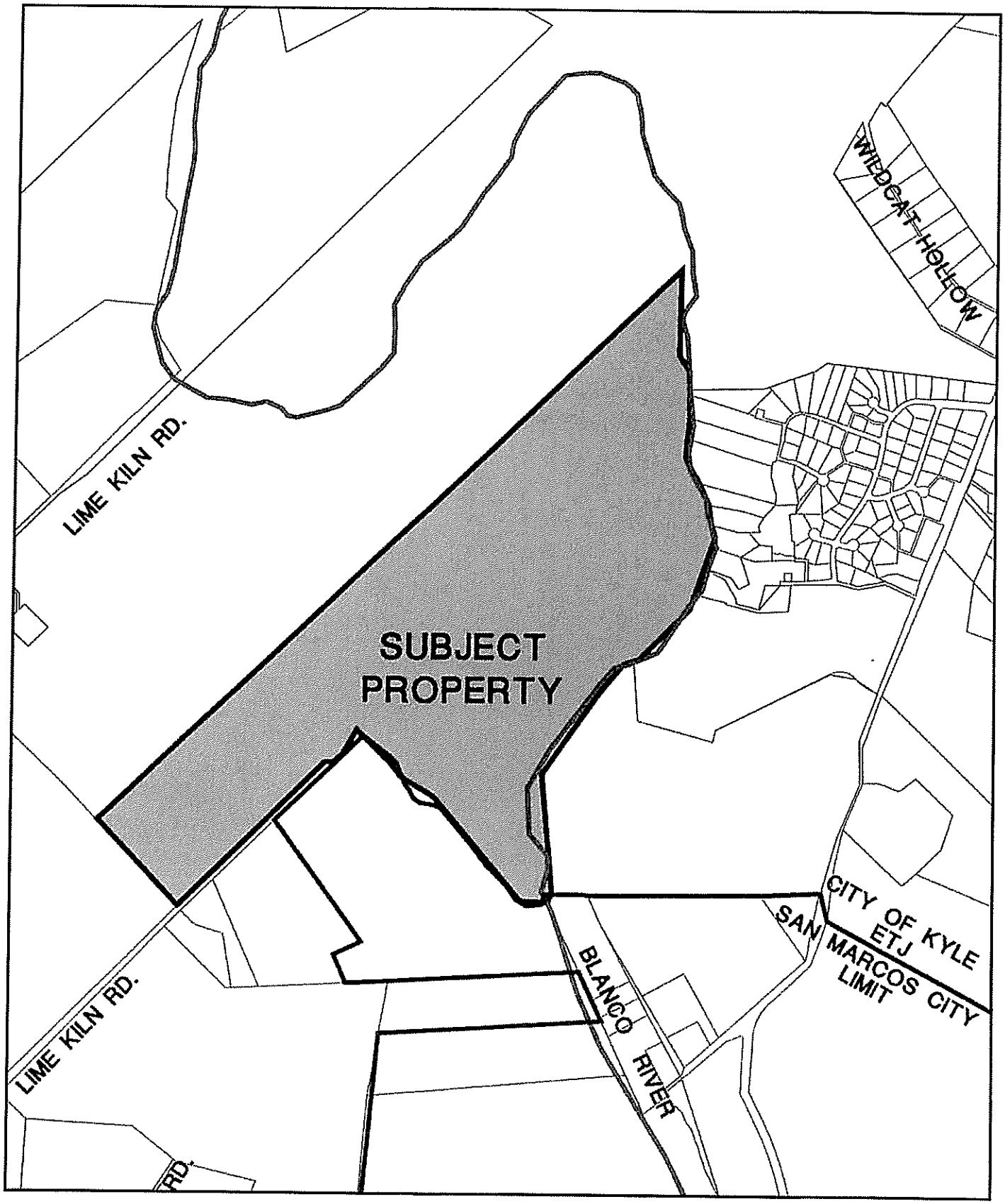
**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

BM

Nance/Blanco River Investments LTD Property List
Annexation Request: Property ID and Legal Description

Property ID	Address	Legal Description
R14729	CYPRESS RD, KYLE, TX 78640	ABS 220 Z HINTON SURVEY 56.95 AC GEO#90601733
R18141	CYPRESS RD, KYLE, TX 78640	A0416 FREDERICK STEUSSY SURVEY, ACRES 166.88
R18775	CYPRESS RD, KYLE, TX 78640	ABS 467 WM WARD SURVEY 68.22 AC GEO#90603776

**This information is subject to final review. Refer to Subject Property Annexation Exhibit for depiction of land owned by Applicant.*



SUBJECT PROPERTY-VOLUNTARY ANNEXATION EXHIBIT

BRI/NANCE NANCE PROPERTIES

KLYE, TEXAS

0 600 1200 1800

Scale: 1" = 1,200'

North Date: February 25, 2016

SEC Planning, LLC

Land Planning + Landscape Architecture + Community Branding

AUSTIN, TEXAS

SHEET FILE: R:\140030-BRI&NCad\xref\PLANNING\Submittals\Annexation\BRI Nance Properties.dwg

Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change

February 25, 2016

Howard J. Koontz, AICP
Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

Dear Howard:

Blanco River Investments LTD, owns approximately 2,511.60 acres located within the City of Kyle Extra Territorial Jurisdiction (ETJ). The property is comprised of several Hays County Appraisal District (CAD) tax parcels as outlined on the attached summary. As discussed during our meeting on February 24, 2016 at the city of Kyle offices, the CAD parcel boundaries are slightly different from survey work underway by my family. Once complete, the survey data will reflect the surveyed boundary of our family's property. In the meantime, attached is a subject tract exhibit illustrating the property boundary based on the survey work conducted.

On behalf of Blanco River Investments LTD, the property owner, I am submitting this letter and attached Application for Voluntary Annexation of the 2,511.60 acre property located generally along Old Stagecoach Road and Lime Kiln Road, with the Hays CAD Property ID Numbers on the attached list of properties. As we have discussed, this request for voluntary annexation is conditioned on reaching agreement on a mutually approved form of development agreement for the property and may be withdrawn in whole or in part at any time prior to the completion of the annexation proceedings.

We look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdicchio, the Project Agent, or me with any questions.

Sincerely,

Blanco River Investments LTD

By: _____

Name: Brian McCoy

Title: PARTNER

February 25, 2016

Howard J. Koontz, AICP
Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

Dear Howard:

I own approximately 13.55 acres located within the City of Kyle Extra Territorial Jurisdiction (ETJ). The property is comprised of several Hays County Appraisal District (CAD) tax parcels as outlined on the attached summary. As discussed during our meeting on February 24, 2016 at the city of Kyle offices, the CAD parcel boundaries are slightly different from survey work underway by my family. Once complete, the survey data will reflect the surveyed boundary of our family's property. In the meantime, attached is a subject tract exhibit illustrating the property boundary based on the survey work conducted.

I am submitting this letter and attached Application for Voluntary Annexation of the 13.55 acre property located on Lime Kiln Road, with the Hays CAD Property ID Numbers on the attached list of properties. As we have discussed, this request for voluntary annexation is conditioned on reaching agreement on a mutually approved form of development agreement for the property and may be withdrawn in whole or in part at any time prior to the completion of the annexation proceedings.

I look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdicchio, the Project Agent, or me with any questions.

Sincerely,

Miriam M. McCoy

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: 6001 Lime Kiln Rd., San Marcos, TX 78666 — 2/26/16 (Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the application to be accepted for review.

___ 1. Letter requesting annexation, signed and dated by all property owners and detailing the following information:
   a. The name of the property owner(s)
   b. The street address of the property
   c. Tax appraisal district property ID number(s)
   d. Acknowledgement that the property is contiguous to the current city limits.
   e. Identify the number of residents living on the property.
   f. Current use of the property.
   g. Proposed use of the property

___ 2. Map of the subject property

___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.

___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.

___ 5. Application Fee: $850.00 + $190.21 (Newspaper Notification Fee)

Property Information

Owners: McCoy, Miriam M.

Address: See Attached

Phone: 512-353-8771 **Email:** Miriam.McCoy@gmail.com

Acreage: 13.55 total **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use:

Agent: Peter Verdicchio, RLA SEC Planning, LLC

BM

Phone: 512.246.7003 **Email:** PeterV@SECPlanning.com **Fax Number:** N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note: The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.**

(Check One:)

____ *I will represent my application before city staff and the City Council.*

X *I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.*

McCoy, Miriam, M. — 512-353-8771
Owner's Name (printed) — Phone

P.O. Box 1424 — San Marcos — TX — 78667
Owner's Address — City — State — Zip

Miriam M McCoy — 2-26-16 — Miriam.McCoy@gmail.com
Owner's Signature — Date — Email Address

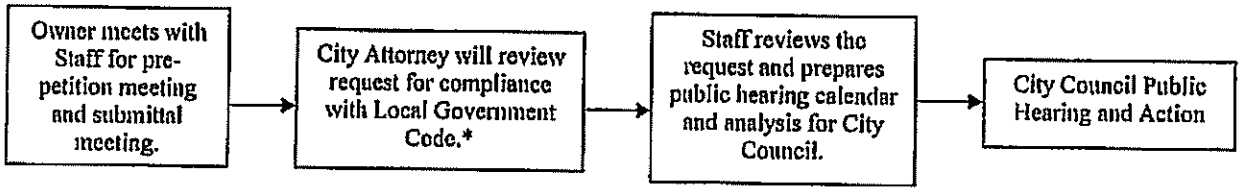
Agent's Name: Peter Verdicchio, RLA

Company: SEC Planning, LLC

Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220 — Austin — TX — 78727
Street — City — State — Zip

512.246.7003 — N/A — PeterV@SECPlanning.com
Phone — Fax — Email address

GENERAL PROCESS



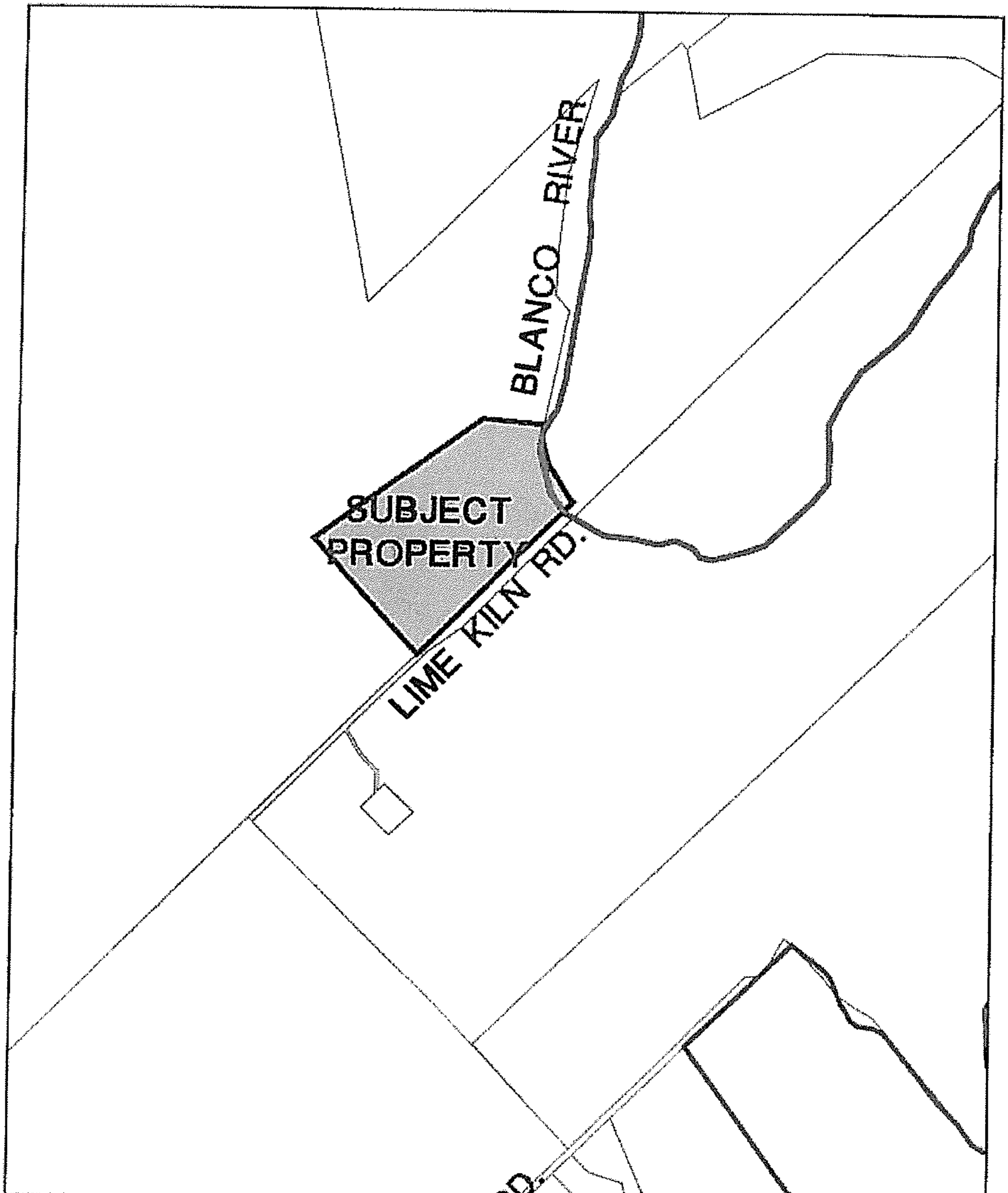
**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

BM

McCoy, Miriam Property List
Annexation Request: Property ID and Legal Description

Property ID	Address	Legeal Description
R13728	6001 LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 5.56
R138220	6001 LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 7.99

*This information is subject to final review. Refer to Subject Property Annexation Exhibit for depiction of land owned by Applicant.



SUBJECT PROPERTY-VOLUNTARY
ANNEXATION EXHIBIT

MIRIAM McCOY PROPERTIES

KLYE, TEXAS

SEC Planning, LLC

Land Planning + Landscape Architecture + Community Branding

AUSTIN, TEXAS

North

0 500 1000 1500

Scale: 1" = 1,000'

Date: February 25, 2016

Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

BM

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Lime Kiln Rd., San Marcos, TX 78666 2/26/16 (Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the application to be accepted for review.

___ 1. Letter requesting annexation, signed and dated by all property owners and detailing the following information:
   a. The name of the property owner(s)
   b. The street address of the property
   c. Tax appraisal district property ID number(s)
   d. Acknowledgement that the property is contiguous to the current city limits.
   e. Identify the number of residents living on the property.
   f. Current use of the property.
   g. Proposed use of the property

___ 2. Map of the subject property

___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.

___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.

___ 5. Application Fee: $850.00 + $190.21 (Newspaper Notification Fee)

Property Information

Owners: Blanco River Investments LTD

Address: See Attached

Phone: 512.395.6644 x6202 **Email:** brian.mccoy@mccoys.com

Acreage: 2511.6029 total **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use:

Agent: Peter Verdicchio, RLA SEC Planning, LLC

BM

Phone: 512.246.7003 **Email:** PeterV@SECPlanning.com **Fax Number:** N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note: The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.**

(Check One:)

_____ *I will represent my application before city staff and the City Council.*

__X__ *I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.*

McCoy, Brian F.
Owner's Name (printed)

1350 IH 35 No., P.O. Box 1028 — San Marcos — TX — 78667
Owner's Address — Phone — City — State — Zip

Owner's Signature — 2/26/16 Date — brian.mccoy@mccoys.com Email Address

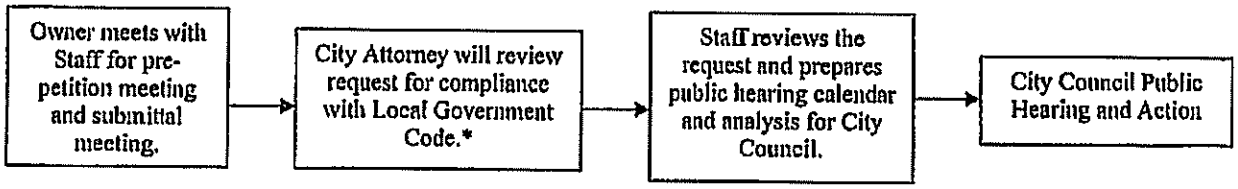
Agent's Name: Peter Verdicchio, RLA

Company: SEC Planning, LLC

Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220 — Austin — TX — 78727
Street — City — State — Zip

512.246.7003 — N/A — PeterV@SECPlanning.com
Phone — Fax — Email address

GENERAL PROCESS



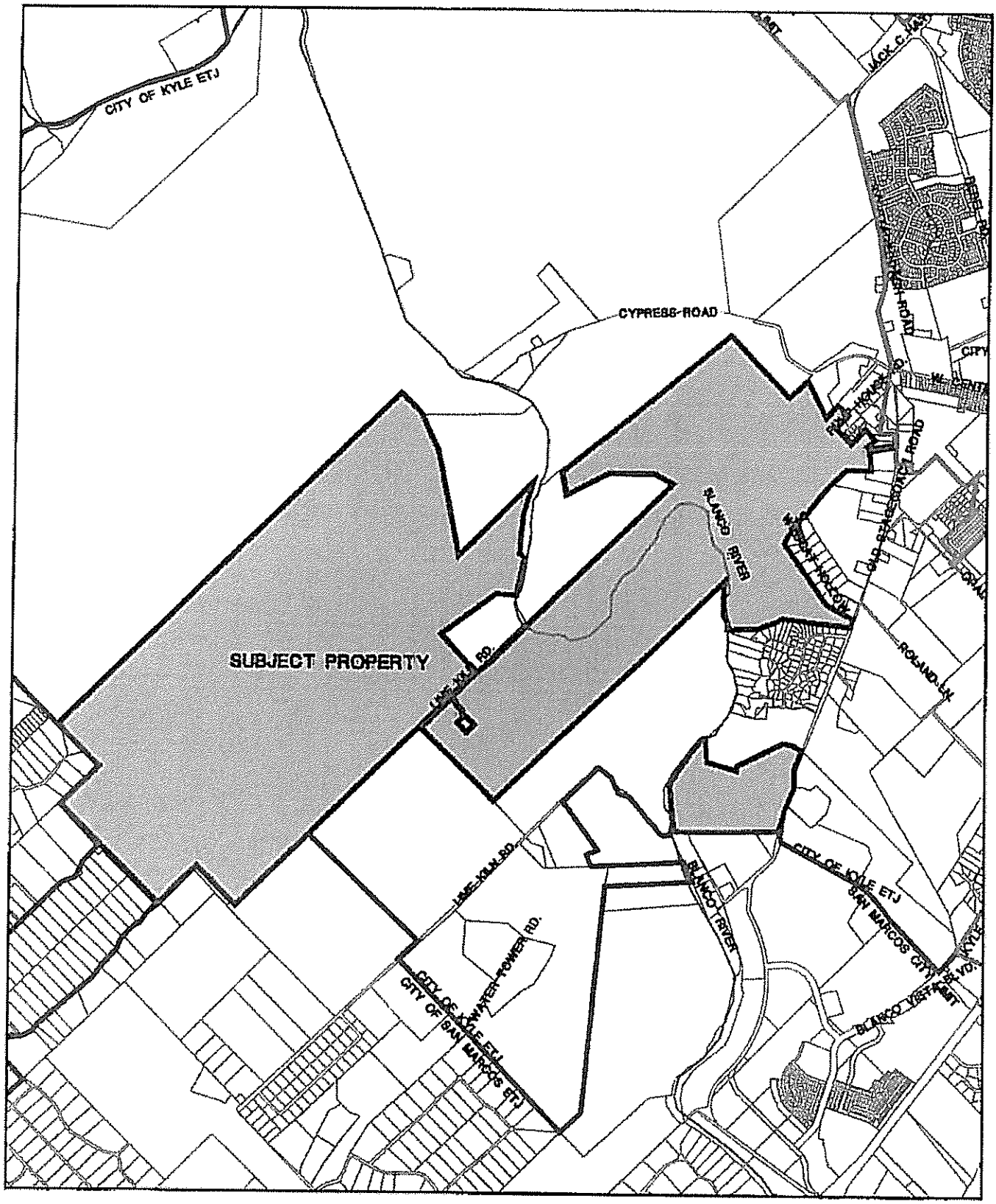
**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

BM

Blanco River Investments LTD
Annexation Request: Property ID and Legal Description

Property ID	Address	Legal Description
R100689	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 4.61 (0.50 AC RES)
R118051	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 9.00
R13729	LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 28.61
R13730	LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 200.00
R13734	LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 516.218
R13735	LIME KILN RD, SAN MARCOS, TX 78666	A0146 WILLIAM DUTY SURVEY, ACRES 21.00
R14723	LIME KILN RD, SAN MARCOS, TX 78666	AB 220 & 361 Z HINTON & J PHARASS 62.02 AC GEO#90601726
R14724	LIME KILN RD, SAN MARCOS, TX 78666	ABS 220 Z HINTON SURVEY 9.84 AC GEO#90601727
R14818	LIME KILN RD, SAN MARCOS, TX 78666	ABS 220 Z HINTON SURVEY 110.2194 AC GEO#90618024
R16944	LIME KILN RD, SAN MARCOS, TX 78666	ABS 361 JOHN PHARASS SURVEY 49.70 AC GEO#90602850
R16972	LIME KILN RD, SAN MARCOS, TX 78666	ABS 361 JOHN PHARASS SURVEY 21.85 AC GEO#90602874
R16973	LIME KILN RD, SAN MARCOS, TX 78666	ABS 361 JOHN PHARASS SURVEY 268.00 AC GEO#90602876
R17012	LIME KILN RD, SAN MARCOS, TX 78666	ABS 361 JOHN PHARASS SURVEY 1.00 AC GEO#90602907
R17039	LIME KILN RD, SAN MARCOS, TX 78666	ABS 361 JOHN PHARASS SURVEY 8.02 AC
R17700	LIME KILN RD, SAN MARCOS, TX 78666	A0408 FRANCIS M STOVAL, ACRES 53.027
R17721	LIME KILN RD, SAN MARCOS, TX 78666	ABS 409 THOMAS C SNAILM SURVEY 660.26 AC GEO#90603363
R17726	LIME KILN RD, SAN MARCOS, TX 78666	ABS 409 THOMAS C SNAILM SURVEY 1.00 AC HOUSE GEO#90603362
R18137	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 200.10
R18138	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 100.00
R18139	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 20.42
R18140	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 2.06
R18142	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, TRACT 2A, ACRES 8.261
R18143	5700 LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 2.00
R18144	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 1.00
R18146	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 18.930
R18147	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 11.317
R18148	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, TRACT 2B, ACRES 45.8565
R46346		VALLEY VIEW WEST, LOT 9-10, ACRES 39.71, * AKA A0408 FRANCES M STOVAL SURVEY
R85354	LIME KILN RD, SAN MARCOS, TX 78666	A0416 FREDERICK STEUSSY SURVEY, ACRES 37.574

**This information is subject to final review. Refer to Subject Property Annexation Exhibit for depiction of land owned by Applicant.*



SEC Planning, LLC

AUSTIN, TEXAS

SUBJECT PROPERTY-VOLUNTARY ANNEXATION EXHIBIT

BLANCO RIVER INVESTMENTS

KLYE, TEXAS

0 1500 3000 4500

Scale: 1" = 3,000'

North Date February 25 2016

Base mapping compiled from best available information. All map data should be considered as great history, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

After recording please return to:

McGinnis Lochridge, LLP
Attn: Phillip Schmandt
600 Congress Avenue, Suite 2100
Austin, Texas 78701