

MUNICIPAL CODE
OF
IOWA COLONY, TEXAS

Published in 2023 by Order of the City Council

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OFFICIALS
of the
CITY OF
IOWA COLONY, TEXAS
AT THE TIME OF THIS CODIFICATION

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Arnetta Murray, Position 2
Marquette Greene-Scott, Position 3
Tim Varlack, District A
Steven Byrum-Bratsen, District B
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City Manager

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City Attorney

Kayleen Rosser
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PREFACE

This Code constitutes a codification of the general and permanent ordinances of the City of Iowa Colony, Texas.

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

Acknowledgments

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

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***Editor's note**—Printed below is the home rule charter approved by the city council on April 15, 2020, and later approved by registered city voters at the election of November 3, 2020.

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HOME RULE CHARTER OF THE CITY OF IOWA COLONY, TEXAS

PREAMBLE

We, the citizens of Iowa Colony, Texas, in order to establish a home rule municipal government, provide for the future progress of our city, obtain more fully the benefits of local self-government, and provide for the public health, safety, and welfare, hereby adopt this Home Rule Charter in accordance with the constitution and statutes of the State of Texas.

ARTICLE 1. INCORPORATION, FORM OF GOVERNMENT, AND BOUNDARIES**Sec. 1.01. Incorporation.**

All inhabitants of the City of Iowa Colony, Texas, within the boundaries of this city as now established or as later amended, shall continue to constitute a municipal body politic and shall be incorporated forever as a home rule city under the name "City of Iowa Colony" (sometimes herein called the "city") with all powers, rights, authority, privileges, obligations, and immunities provided herein or by law.

Sec. 1.02. Form of Government.

The municipal government provided by this charter shall be known as the "council-manager government." Pursuant to its provisions and subject only to the limitations imposed by the state constitution, the statutes of this state, and this charter, all powers of the city shall be vested in an elective council, hereinafter referred to as the "city council," which shall enact local legislation, adopt budgets, determine policies, and appoint the city manager, who in turn shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance, the state constitution or the statutes of the state.

Sec. 1.03. The Boundaries.

a. *Establishment of Boundaries.* The boundaries and extraterritorial jurisdiction of the city shall be as they exist when this charter is adopted, until changed as provided by law. Any authority or provision herein to establish or change the city's boundaries shall also establish and authorize changes to the extraterritorial jurisdiction.

b. *Official Map.* The City Secretary shall at all times keep on file a correct and complete description and official map of the city boundaries and extraterritorial jurisdiction.

Sec. 1.04. Extension of Boundaries.

The extraterritorial jurisdiction and boundaries of the city may hereafter be enlarged and extended authorized under the terms and provisions of Texas Local Government Code chapters 42 and 43 [V.T.C.A., Local Government Code chs. 42 and 43] as now existing or later amended, or as otherwise provided by law.

Sec. 1.05. Contraction of Boundaries.

a. *Authority from Charter.* Whenever the city council determines that any territory within the corporate limits of the city is not suitable or necessary for city purposes, the city council may disannex that territory by ordinance, upon a petition signed by a majority of the qualified voters residing in that territory if it is inhabited, or without any such petition if that territory is uninhabited. That petition and ordinance shall specify accurately the metes and bounds of the territory sought to be eliminated from the city and shall contain a plat designating that territory, so that it can be definitely ascertained. When the disannexation ordinance has been duly passed, it shall be entered upon the minutes and records of the city, and from and after the passage of that ordinance, that territory shall cease to be a part of the city, but that territory shall still be liable for its pro rata share of any debts incurred while that territory was a part of the city, and the city shall continue to levy, assess, and collect taxes on the property within that territory to pay the indebtedness incurred while that territory was a part of the city, as though that territory had not been excluded from the boundaries of the city.

b. *Authority from Other Law.* In addition, the city may remove territory from the extraterritorial jurisdiction or city limits as provided by law.

ARTICLE 2. POWERS OF THE CITY

Sec. 2.01. [Specific Powers].

The city may use a corporate seal; may sue and be sued; may contract and be contracted with; may implead and be impleaded in all courts in all matters whatsoever; may cooperate with the government of the State of Texas or any agency thereof, the federal government or any agency thereof, or any political subdivision of the State of Texas; and shall have all the powers granted to cities by the constitution and laws of the

State of Texas, together with all the implied powers necessary or convenient to carry into execution all the powers granted. The city may acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, hold, manage and control any property now owned by it or which it may later acquire; and may construct, own, lease, operate and regulate public utilities; may assess, levy and collect taxes for general and special purposes on all lawful subjects of taxation; may borrow money on the faith and credit of the city by the issuance and sale of bonds, notes, or other lawful debt instruments of the city; may appropriate the money of the city for all lawful purposes; may regulate and control the use, for whatever purpose, of the streets and other public places; may make and enforce all police, health, sanitary and other regulations; and may pass such ordinances as may be expedient for the protection and maintenance of good government, peace and welfare of the city, for the performance of the functions thereof, for the order and security of its residences; and may provide suitable penalties for the violation of any ordinance enacted by the city; and, except as prohibited by the constitution and laws of this state or restricted by this charter, the city may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

Sec. 2.02. General Powers Adopted.

The enumeration of the particular powers in this charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise of those powers, the city shall have and may exercise all powers of local self-government and all other powers which, under the constitution and laws of the State of Texas, it would be competent for this charter specifically to enumerate. The city shall have and may exercise all the powers enumerated in the laws of the State of Texas, as now or later amended.

Sec. 2.03. Eminent Domain.

The city shall have the full power of eminent domain, subject to all limitations and restrictions provided by law.

ARTICLE 3. THE CITY COUNCIL

Sec. 3.01. Number, Selection, and Term.

a. *General.* The legislative and governing body of the city shall consist of a mayor and six councilmembers and shall be known as the "City Council of the City of Iowa Colony" and is sometimes herein called the "council" or "city council."

b. *Mayor.* The mayor shall be elected to office from the city at large. The mayor shall be a member of the city council for all purposes.

c. *At Large and District Council Places.* There shall be three at large council places, which shall be designated Position One, Position Two, and Position Three. These three positions shall be elected as at large positions. There shall also be three council places, which shall be designated District A, District B, and District C, and the council members in those places shall reside in and shall be elected from districts to be established and determined as herein provided in compliance with applicable law. Each council place shall constitute a separate office. A person may not be a candidate for more than one place on the council at one time, and a candidate must specify that place at the time of officially becoming a candidate. Every qualified voter in the city shall be entitled to vote on a candidate for the mayor and for each at large council position. Only qualified voters who reside within a council district shall be eligible to vote for a candidate for the council place for that district.

d. *Staggered Terms.*

1. *Transition Provisions.*

- i. At the general election of city officers in 2020, persons shall be elected to council member Positions 1 and 2, which shall be the same as the current council member Positions 1 and 2, for two-year terms and until their respective successors are rightfully sworn in.
- ii. At the general election of city officers in 2021, persons shall be elected to the offices of mayor and council member Positions 4 and 5, which shall be the same as the current positions of mayor and council member Positions 4 and 5, for two year terms and until their respective successors are rightfully sworn in, and a person shall be elected to the office of council member Position 3 for a transitional one year term and until his or her successor is rightfully sworn in. For the sole purpose of determining when a successor is sworn in, council member District A shall be considered the successor to council Position 4, and council member District B shall be considered the successor to council Position 5.

2. *After the Transition.*

- i. At the general election of city officers in 2022, and in each even-numbered year after that, persons shall be elected to the offices of council member Positions 1, 2, and 3 for two-year terms and until their respective successors are rightfully sworn in.

- ii. At the general election of city officers in 2023, and in each odd-numbered year after that, persons shall be elected to the offices of mayor and council members Districts A, B, and C for two-year terms and until their respective successors are rightfully sworn in.
3. *Uniform Election Dates.* The annual election of city officers shall be held on the statutory uniform election date in May of each year, except as otherwise provided in response to the COVID-19 pandemic or other emergency measures. If an election of officers is postponed from the May uniform election date because of an emergency, the reference herein to a two-year term shall mean two years from the May election date when the election would have been held without the emergency postponement, except as otherwise provided by law.
 - e. *Term of Office; Elections.* Each council member shall hold office for a period of two years and until his or her successor is rightfully sworn in. A council member whose term ends early due to a resignation or any other reason shall not hold over in office after the resignation or other early termination becomes effective. All elections shall be held in the manner provided in article 5 of this charter and in compliance with law.
 - f. *District Boundaries.*
 1. *Initial Districts.* The initial council district boundaries shall be drawn by the charter commission members, and they are hereby constituted as the initial district boundaries commission for that purpose. The initial district boundaries drawn by the district boundaries commission shall be delivered to the mayor and shall not be changed until after the city council election of May 2022.
 2. *Redistricting.*
 - i. Beginning after the city council election of May 2022, the council may at its discretion review and revise council district boundaries from time to time, and the council must review the district boundaries for possible revision as soon as practicable after the release of data from each decennial federal census. After the initial district boundaries are established, the charter review commission appointed under section 11.12 shall advise the council on redistricting.
 - ii. Changing district boundaries shall not require an amendment of this charter and may be done by ordinance, but the number of districts shall not be changed except by an amendment of this charter.
 - iii. The city must consult with one or more independent experts to ensure the district boundaries are drawn in accordance with applicable law; however, the boundaries shall not be subject to challenge on the grounds that such consultation was not done.

- iv. Promptly following the addition of territory to the city by a boundary change, the city council shall by ordinance add that territory to an adjacent district or districts.

Sec. 3.02. Qualifications; Resign-to-Run.

a. *Qualifications.* To be eligible to be a candidate for, elected to, or appointed to the city council, a person must:

1. Be a United States citizen;
2. Be 21 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
3. Have not been determined by a court exercising probate jurisdiction to be:
 - i. Totally mentally incapacitated; or
 - ii. Partially mentally incapacitated without the right to vote;
4. Be a qualified voter of the city, whether registered to vote or not;
5. Have been a resident of the territory from which the office is elected or appointed for 12 months immediately preceding the following date:
 - i. The date of the regular filing deadline for a candidate's application for a place on the ballot;
 - ii. For a write-in candidate, the date of the election for which the candidate's name is written in; or
 - iii. For an appointee to the council, the date of the appointment;
 - iv. If territory is annexed into the city within the 12-month period described in this section, then the person's residence in that territory before the annexation counts toward the residency requirement; and
6. Meet all requirements of applicable law.

b. *Resign-to-Run.*

1. Any of the following events shall constitute an automatic resignation from the office on the council already being held by a person:
 - i. That person officially becomes a candidate for a different office on the council, which act entitles that person to a place on the ballot for that office or to receive write-in votes for that office, unless the term of the earlier office is scheduled to expire at or before the beginning of the term of the office for which the person becomes a candidate; or

- ii. That person is sworn in to a different office on the council.
2. This subsection "b" does not apply to the office of mayor pro-tem or any office other than council member, which as always in this charter includes the mayor.
3. The city secretary shall give notice on the city's internet website of a vacancy created under this subsection promptly when the vacancy is created. The city secretary shall give notice on that website of any filing period for any special election to fill that vacancy, promptly when the election is ordered.

Sec. 3.03. Council to be Judge of Election and Qualification.

The city council shall be the judge of the election and qualification of its own members and other elected officers of the city.

Sec. 3.04. Compensation.

a. *No Compensation for Services.* City council members shall not receive compensation for their services as council members.

b. *Expenses.* City ordinances may provide for and regulate payments to council members for reasonable expenses incurred in the performance of their official duties.

Sec. 3.05. Mayor and Mayor Pro Tem.

a. *Mayor.* The mayor shall be the presiding officer of the city council and may make and second motions, participate in discussions, and vote on all matters under consideration by the council, subject to the same restrictions as any other council member. The mayor shall be the head of the city government for all ceremonial purposes but shall have no regular administrative duties. The mayor shall be the official head of the city for purposes of martial law and of other emergency powers, except to the extent otherwise provided by law. The mayor shall annually present to the council a written report on the state of the city. The mayor shall perform such other duties consistent with the office as may be imposed upon the mayor by this charter, ordinances and resolutions passed pursuant hereto, or other law.

b. *Mayor Pro Tem.* The city council, at its first meeting after installation of council members after each regular election of council members, shall elect a council member as mayor pro-tem, and he or she shall perform all the duties of the mayor in the absence or disability of the mayor.

Sec. 3.06. Vacancies.

a. *Creation of Vacancy.* A vacancy in the office of a council member occurs upon any of the following:

1. The council member fails to maintain the qualifications for that office throughout the term of office, as determined by the council;
2. The council member is absent from three consecutive regularly scheduled council meetings without valid excuse, as determined by the council;
3. The council member resigns voluntarily or involuntarily;
4. The council member is removed from office; or
5. A vacancy otherwise exists by law.

b. *Filling Vacancy by Appointment.* The council must fill a vacancy on the council by appointment for the remainder of the unexpired term, except as otherwise provided in subsection "c."

c. *Special Election to Fill Vacancy.* However, this subsection applies in either of the following circumstances:

1. There are three or more appointed members on the council; or
2. The vacancy is created by a resignation but not by an automatic resignation, not by a resignation while a recall petition is pending, and not by a disqualification.

Where this subsection applies, the council may fill the vacancy by appointment until the next regularly scheduled date for the election of municipal officers occurring long enough after the creation of the vacancy for an election to fill the vacancy to be held lawfully on that date, and on that date an election must be held to fill the vacancy for the remainder of the unexpired term.

Sec. 3.07. Powers of the City Council.

All powers of the city and the determination of all matters of policy shall be vested in the city council, except as otherwise specifically provided in this charter. Without limitation of the foregoing and among the other powers that may be exercised by the city council, the following are hereby enumerated for greater certainty:

- a. Appoint and remove from any office or position of employment in the city government any officer, employee, or member of any board or commission, except as otherwise provided in sections 4.[0]1, 4.[0]2, or any other provision of this charter.

- b. Establish and consolidate any offices or administrative departments and abolish offices or departments established by the council but not by this charter.
- c. Adopt the budget of the city.
- d. Authorize the issuance of bonds by a bond ordinance.
- e. Inquire into the conduct of any office, department or agency of the city and make investigations as to municipal affairs.
- f. Provide for any boards and commissions and appoint the members thereof. Such boards and commissions shall have all powers and duties now or later conferred and created by this charter, by city ordinance, or by law.
- g. Adopt and modify the zoning plan and the building code of the city.
- h. Adopt and modify the official map of the city.
- i. Adopt, modify, and carry out plans for urban renewal and economic development.
- j. Adopt, modify, and carry out plans proposed by the planning commission for the planning, improvement, and redevelopment of any area destroyed in whole or in part by disaster.
- k. Regulate, license, and fix the charges or fares made by any person, firm or corporation owning, operating, or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.
- l. Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings, structures, or improvements to be erected, and provide for the erection of fireproof buildings within those limits, and provide for the condemnation of buildings or structures that are dangerous, dilapidated, or likely to increase the fire hazard, and prescribe the manner of their removal or destruction within those limits.
- m. Set the salaries and compensation of the city officers and employees, except to the extent that the council delegates that authority to the city manager.
- n. The council may provide for sanitary garbage disposal, set fees and charges therefor, and provide penalties for failure to pay those fees and charges.
- o. Exercise exclusive dominion, control, and jurisdiction in, upon, over, and under the public streets, avenues, sidewalks, alleys, highways, boulevards, and public

grounds of the city and provide for the improvement of those as provided in Texas Transportation Code ch. 313 [V.T.C.A., Transportation Code ch. 313], as now or later amended, or in any applicable law.

- p. Compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the city, its officers, or its employees in their official capacity.

Sec. 3.08. Meetings of the City Council.

The city council shall hold at least one regular meeting in each month at a time to be fixed by it for such regular meetings and may hold additional or special meetings when called by the mayor or any two members of the council. All meetings of the city council shall be public, except to the extent otherwise allowed by law. All council meetings shall be held at the city hall, except that the council or the mayor and two other council members may designate another place for those meetings, and notice of any meeting at a place other than city hall shall be posted at city hall, at the place of that meeting, and on the internet website of the city, in the manner provided by law for notice of council meetings.

Sec. 3.09. Rules of Procedure.

The city council shall determine its own rules of procedure and may compel the attendance of its members. A majority of the qualified members of the city council shall constitute a quorum to do business, and the affirmative vote of a majority of the qualified members present shall be necessary to adopt any ordinance or resolution. Minutes of the proceedings of all meetings of the city council shall be kept, to which any person may have access at all reasonable times and which shall constitute one of the archives of the city. The vote upon the passage of all ordinances and resolutions shall be entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book or other suitable, lawful medium kept for that purpose, and shall be authenticated by the signature of the presiding officer and the city secretary.

Sec. 3.10. Procedure for Passage of Ordinances.

- a. The city council shall only pass ordinances and resolutions that are in written or printed form.
- b. All ordinances, except ordinances making appropriations, codifying or rearranging existing ordinances, or enacting a code of ordinances, shall state the general subject matter in the caption or title.

c. The enacting clause of all ordinances shall be: "Be it ordained by the city council of the City of Iowa Colony." The enacting clause need not be included in a codification of ordinances.

d. No ordinance shall be finally passed unless either:

1. The general subject matter caption or title has been read at two regular council meetings on separate days;
2. The passage of the ordinance requires either a public hearing or more notice than normally required by the Texas Open Meetings Act; or
3. The council finds that an emergency, an urgent public necessity, or an imminent and unusual threat of substantial property damage or of other substantial economic loss requires the passage of the ordinance without two readings. The council must clearly identify in the ordinance the emergency, the urgent public necessity, or the imminent and unusual threat of substantial property damage or of other substantial economic loss. An emergency or an urgent public necessity exists only if immediate action is required of the council because of:
 - i. An imminent threat to public health and safety, including a threat described by paragraph "ii" below if imminent; or
 - ii. A reasonably unforeseeable situation, including:
 - A. Fire; explosion; chemical release; flood; earthquake; hurricane; tornado; wind, rain, hail, ice, or snow storm; or other natural or human-caused disaster;
 - B. Power failure; transportation failure; or interruption of water, sewage treatment, or communication services;
 - C. Epidemic;
 - D. Riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or
 - E. The sudden relocation of a large number of residents from the area of a declared disaster to this city or its extraterritorial jurisdiction.
4. Amending a proposed ordinance between the first reading and the final passage shall not require restarting the process of two readings.
5. Each ordinance of the city passed after this charter takes effect shall be posted on the internet website of the city, unless that ordinance has been included in a codification of the city's ordinances appearing on the internet with a link from the city's website to that codification.

e. Notice of Passage of Ordinances.

1. *Posting on Website.* The city secretary shall post every ordinance on the city's internet website promptly after final passage.
2. *Publication in Newspaper.* Except as otherwise required by law or by this charter, the city secretary shall give notice of the enactment of every penal ordinance and, to the extent required by law, every other ordinance promptly after final passage thereof, by causing the general subject matter title or caption of the ordinance, including a summary of the penalty for violation, to be published one time in a newspaper of general circulation in the city.
3. *Proof of Notice.* An affidavit of that publication by a printer or publisher of that newspaper, or an affidavit of that posting by an administrator of that website, filed with the city secretary shall be conclusive evidence in all courts and elsewhere of the legal publication and posting, respectively, of that ordinance.
4. *Effective Date of Penalty.* The penalty, fine, or forfeiture shall apply five days after publication, or at a later time provided in the ordinance.

Sec. 3.11. Official Bonds for City Officers and Employees.

The city manager, the city secretary, and such other city officers and employees as the city council may require, shall before entering upon the duties of their offices, enter into a good and sufficient fidelity bond in a sum to be determined by the city council, payable to the city and conditioned upon the faithful discharge of the duties of those persons and upon the faithful accounting for all monies, credits, and things of value coming into the hands of those persons, and those bonds shall be signed as surety by a company authorized to do business under the laws of the State of Texas, and the premium on those bonds shall be paid by the city, and those bonds must be acceptable to the city council.

Sec. 3.12. Investigation by City Council.

The city council shall have power to inquire into the conduct of any office, department, agency, officer, or employee of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Failure to obey that subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed two hundred dollars.

Sec. 3.13. Audit and Examination of City Books and Accounts.

The city council may require a special audit to be made of the books and accounts of each and every department of the city at any time during the year. At the close of each fiscal year a complete audit shall be made by a certified public accountant, who shall be selected by the city council, and that audit shall include a recapitulation of all audits made during the course of that fiscal year, and all audit reports shall be presented to the city council, shall be available for public inspection, and shall be made a part of the records of the city. The accountant so selected shall not maintain or keep any of the city's accounts or records.

ARTICLE 4. ADMINISTRATIVE SERVICES**Sec. 4.01. Appointment and Removal of Personnel.**

a. *Action by Council.* The council appoints and removes the city manager, city attorney, municipal judge, and members of any board or commission. In the event of any conflicting terms concerning the authority to appoint or remove personnel, the authority of the council shall take precedence.

b. *Action by City Manager with Concurrence of Council.*

1. *Appointments.* The city manager appoints, with the concurrence of the council, all department heads except the city manager, city attorney, and municipal judge.
2. *Removal.* Not applicable.

c. *Action by City Manager.*

1. *Appointments.* The city manager hires all employees except the city manager, city attorney, municipal judge, and other department heads. Those exceptions are appointed as described in subsections "a" and "b.1."
2. *Removal.* The city manager removes all employees, including department heads, except the city manager, city attorney, and municipal judge.

Sec. 4.02. Restrictions on Personnel Authority of Council.

a. *Appointments.* Except as otherwise provided in section 4.01, neither the city council nor any of its members shall direct the appointment of any person to office by the city manager or by any of his or her subordinates.

b. *Dealing through City Manager.* Except for the purpose of inquiry, the city council and its members shall deal with the administrative services solely through the city manager. Neither the council nor any member thereof shall give orders to any subordinate of the city manager, either publicly or privately.

c. *Mayor's Emergency Powers.* However, the emergency powers of the mayor are an exception to this section.

Sec. 4.03. City Manager.

a. *Appointment and Qualifications.* The city council shall appoint a city manager who shall be the chief administrative and executive officer of the city and shall be responsible to the city council for the administration of all the affairs of the city. He or she shall be chosen by the city council solely on the basis of his or her executive and administrative training, experience and ability. The city manager must become a resident of the city within a time to be set by the council. No member of the city council shall be appointed city manager during the time for which he or she is elected or appointed and for one year thereafter.

b. *Term and Salary.* The council shall set the terms of employment and compensation of the city manager and may enter into an employment agreement with the city manager. In case of the absence or disability of the city manager, the city council may designate a person or persons to perform the duties of the office during that absence or disability. The city manager shall receive such compensation as may be fixed by the council.

c. *Annual Performance Review.* The council shall cause a performance review of the city manager to be done annually.

d. *Powers and Duties of the City Manager.* The city manager shall have the following powers and duties:

1. Appoint and remove any employee of the city, except as otherwise provided by Section 4.01, any other provision of this charter or any ordinance consistent with this charter.
2. Prepare the budget annually and submit it to the city council, and be responsible for its administration after adoption.
3. Prepare and submit to the city council as of the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year.

4. Keep the city council advised of the financial condition and future needs of the city and make such recommendation as may seem desirable.
5. Supervise all employees of the city, including department heads.
6. Perform such duties as may be prescribed by this charter or may be required of him or her by the city council, not inconsistent with this charter.

Sec. 4.04. Police Department.

The city shall establish and maintain a police department to preserve order within the city, to secure the residents of the city from violence and the property therein from injury or loss, and for all other lawful purposes.

Sec. 4.05. City Secretary.

a. *Duties.* The city secretary is subject to appointment and removal as provided in section 4.01. The city secretary or an assistant city secretary shall give notice of council meetings, shall keep the minutes of the proceedings of those meetings, shall authenticate those minutes by his or her signature, and shall keep all those minutes, all ordinances, and all resolutions in records indexed for the purpose. The city secretary or an assistant city secretary shall perform such other duties as the city manager shall assign to him/her, and those elsewhere provided for in this charter or by law.

b. *Assistants, Deputies, and Substitutes.* Any reference to the city secretary in this charter or in an ordinance passed pursuant hereto shall mean the person performing the duties of the city secretary, unless the reference expressly excludes anyone other than the city secretary.

Sec. 4.06. Municipal Court.

a. *Court Established.* There shall be established and maintained a court designated as the municipal court for the trial of misdemeanor offenses, with all powers and duties now or later prescribed by the laws of the State of Texas relative to municipal courts.

b. *Municipal Judge.* The judge of that court shall:

1. Be a citizen of the United States;
2. Be a resident of the State of Texas;
3. Not meet any of the disqualifications to vote under either the Texas Constitution or state law;

4. Be a duly licensed attorney in the State of Texas, unless that person has continuously served as a municipal judge of this city since the adoption of this charter; and
5. Hold no other city office or city employment with this city during the term for which that person is appointed judge of the municipal court.

c. *Appointment and Removal of Judge.* The judge shall be appointed by the council, shall hold this office at the pleasure of the council, and shall receive such salary as may be fixed by the council.

d. *Alternate Judges.* To provide for adequate judicial service, the city council may appoint temporary, alternate, or relief judges in case of the disability, absence, or other unavailability of the municipal judge. All temporary, alternate, or relief judges must meet the same qualifications as the municipal judge.

e. *Municipal Court Clerk.*

1. The clerk of the municipal court shall be appointed and removed as provided in section 4.[0]1.
2. The clerk of the court and his or her deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of the court thereto, and generally perform any and all acts usual and appropriate by the clerk of a court in issuing process of a court and conducting its business.

Sec. 4.07. City Attorney.

The city council shall appoint a competent attorney licensed to practice law in the State of Texas, who shall be the city attorney. He or she shall receive for his or her services such compensation as may be fixed by the city council and shall hold office at the pleasure of the city council. The city attorney, or such other attorneys selected by him or her with the approval of the city council, shall represent the city in all litigation. He or she shall be the legal advisor, attorney, and counsel for the city and all officers and departments thereof.

ARTICLE 5. NOMINATIONS AND ELECTIONS

Sec. 5.01. Elections.

Regular municipal elections shall be conducted by the appointed election authorities and shall be held on a uniform election date set out in state law. The city council shall fix the hours and place for holding those elections. The city council may order a special election in a manner provided by law.

Sec. 5.02. Regulation of Elections.

The city council shall make all regulations which it considers needful or desirable, not inconsistent with this charter or the laws of the State of Texas, for the conduct of municipal elections, for the prevention of fraud in those elections, and for the recount of ballots in case of doubt or fraud. Municipal elections shall be conducted by the appointed election authorities, who shall also have power to make regulations not inconsistent with this charter, any regulations made by the council, or the laws of the State of Texas.

Sec. 5.03. Filing for Election to Office.

Any person having the qualifications set forth for council members under section 3.02 of this charter shall have the right to file an application in writing for any elective office of the city as provided by law.

Sec. 5.04. Official Ballot.

Ballots shall be as provided by the Texas Election Code. No party designation shall appear on the ballot in connection with the name of a candidate for city office.

Sec. 5.05. Election by Plurality.

To be elected to city office, a person must receive more votes than any other candidate for that office, except that ties shall be resolved as provided by law.

Sec. 5.06. Laws Governing City Elections.

All city elections shall be governed, except as otherwise provided by this charter, by the laws of the State of Texas governing general and municipal elections.

Sec. 5.07. Conducting and Canvassing Elections.

The election judges and other necessary election officials for conducting all city elections shall be appointed by the city council. The election judges shall conduct the elections and perform all duties as provided by the general election laws of Texas. Within the time set by state law, the city council shall canvass the elections as provided by law.

Sec. 5.08. Oath of Office.

Every officer of the city shall, before entering upon the duties of office, take the oaths or affirmations of office as set forth in the Texas Constitution.

ARTICLE 6. RECALL OF OFFICERS**Sec. 6.01. Scope of Recall.**

Any city officer holding an elective office, whether elected by the voters or appointed to fill a vacancy, shall be subject to removal from office by a recall election only on the grounds of incompetency, corruption, misconduct, or malfeasance in office, and only in compliance with the requirements of this article.

Sec. 6.02. Procedures Before Circulating Petition.

a. *Filing Petition for Preliminary Review.* Before an election is ordered on the question of the recall of an officer, a petition with the number of valid signatures required by this charter and demanding that recall must be filed with the city secretary. Before a recall petition is circulated for multiple signatures, one petitioner must sign the proposed petition and submit it to the city secretary.

b. *Review by City Attorney.* Upon receipt of a petition under subsection "a," the city secretary shall promptly transmit it to the city attorney for an advance determination of the legal sufficiency of the alleged grounds for removal and of the form and content of the petition. The city attorney must, within ten days after receiving the petition, notify one petitioner who filed the petition with the city secretary ("the submitting petitioner") of the city attorney's determination concerning the legal sufficiency, form, and content of the petition. That notice shall state the reasons for any insufficiency.

c. *Consequence of Insufficiency.* The city shall not consider a petition that the city attorney determines is insufficient.

d. *No Fee for Review.* No fee shall be due from a petitioner for the review of a petition.

Sec. 6.03. Contents of Petition.

a. *Addressed to Council. Statement of Grounds.* The recall petition must be addressed to the city council and must distinctly and specifically state each separate ground for which the petition seeks removal, with sufficient certainty to give the officer sought to be removed notice of the charges against him or her.

b. *Multiple Counterparts.* The petition may consist of one or more counterparts, and the petitioners may sign the same or separate counterparts. The petitioners' signatures may be on the same page as the charges or on other pages firmly attached to the pages containing the charges.

c. *Sworn Declaration by Petitioners.* Each page bearing one or more signatures must state at the top of the page in conspicuous lettering distinct from the other writing on the page:

"BY SIGNING THIS PETITION, EACH SIGNER SWEARS OR AFFIRMS UNDER PENALTY OF PERJURY AS FOLLOWS:

- "1. I HAVE READ THE CHARGES IN THIS PETITION, AND I HAVE GOOD REASON TO BELIEVE AND DO BELIEVE THOSE CHARGES ARE TRUE.
- "2. I AM NOW A REGISTERED VOTER OF THE CITY OF IOWA COLONY.
- "3. ALL OF THE INFORMATION ABOUT ME ON THIS PETITION IS TRUE."

d. *Number of Signatures.* The petition must be signed by at least the following numbers of registered voters of the area from which the officer sought to be removed was selected:

1. At least 20 percent of the number of registered voters in that area as of the voter registration deadline for the most recent general election date for officers of the city for that area before the petition is filed with the city secretary, as shown on the voter registration records of the Brazoria County clerk; but
2. In any event, not less than:
 - i. 900 such petitioners for a recall of an officer selected from the entire city; or
 - ii. For an officer selected from a council district, a number of such petitioners equal to 900 divided by the number of council districts in the city at the time of the most recent general election of officers of the city before the petition is filed with the city secretary.

A reference in this subsection to the most recent general election date shall also include the date such an election would have been held if it had not been cancelled.

e. *Information on Signers.* Each signer of the recall petition must personally hand-write the following information on the petition in ink: his or her printed name; his or her signature; his or her place of residence, including the street name and number; and the day, month, and year he/she signed the petition.

f. *Oath of Circulators.* Each signature page of the petition shall also bear the signed, notarized oath of any signer of any page of the petition, as follows:

"I, _____ (printed name of affiant), being first duly sworn, on oath state that I am one of the signers of the above petition, although I may have signed a different page or counterpart of this same petition; and that each signature appearing on this page was made in my presence on the day and date it purports to have been made; and I solemnly swear that each signature on this page is the genuine signature of the person whose name it purports to be."

Sec. 6.04. Procedures Upon Filing of Petition with City Secretary.

a. *Time for Filing Signed Petition.* A petition must be filed with the city secretary no later than 45 days after being signed, and no signature on the petition shall remain effective or be counted if it was placed on the petition more than forty-five days before the filing of the petition with the city secretary; however, the one signature required before the preliminary review of the petition shall not be subject to this 45-day limit. All papers comprising a recall petition shall be filed with the city secretary on the same day.

b. *Notice by City Secretary.* Upon receipt of a petition under subsection "a," the city secretary shall promptly notify in writing the city attorney and the officer to be removed.

c. *Review by City Attorney.* Within ten days after receipt of a petition from the city secretary, the city attorney shall determine the legal sufficiency of anything changed on the petition since the city attorney previously reviewed it, and the city attorney shall notify the city secretary and the submitting petitioner of the city attorney's determination, stating the reasons for any insufficiency.

d. *Review by City Secretary.* If the city attorney finds the petition legally sufficient, then within thirty days after that determination, the city secretary shall review the petition to determine the existence of the requisite number of valid, genuine, qualifying signatures of registered voters, and the city secretary shall notify the submitting petitioner of that determination, including a statement of the reasons for any insufficiency.

e. *Presentation of Petition to Council.* If the city attorney and city secretary find the petition sufficient, the city secretary shall present it to the city council at its next regular meeting with a certification from the city secretary to that effect.

Sec. 6.05. Manner of Notice from City Officers.

Any notice from a city officer under this article must be in writing, and if it is to the submitting petitioner, it must be by United States Mail, certified or registered mail, postage prepaid, addressed to the submitting petitioner at the address stated on the petition, unless the submitting petitioner signs and delivers to the city a document acknowledging receipt of the notice.

Sec. 6.06. Public Hearing to Be Held.

The officer whose removal is sought may, within five days after the recall petition has been presented to the city council, request that the council hold a public hearing to permit him or her to present matters pertinent to the charges specified in the recall petition. In this event, the city council shall hold a public hearing not less than ten days nor more than thirty days after receiving the request for a public hearing. The hearing cannot change the requirement that the council order an election if the officer does not resign, as provided in this article.

Sec. 6.07. Resignation; Recall Election.

a. *Election Ordered if No Timely Recall.* Except as otherwise provided in subsection "b," the council must order a recall election to be held on the next uniform election date for which all advance requirements can be satisfied:

1. If the officer whose removal is sought does not resign within five days after the hearing by the council; or
2. If that officer does not timely request, as provided in section 6.06, a hearing by the council, he or she does not resign within ten days after the recall petition has been presented to the council.

b. *Timing and Consequences of Resignation with Recall Pending.* If the officer resigns at any time after the circulated, signed recall petition is filed with the city secretary and before the recall election is ordered, then the election shall not be held, and the consequences of the resignation shall be the same as if the officer were recalled by the voters on the first uniform election date after the resignation. If the officer resigns after the recall election is ordered, then the election shall still be held, and if a majority of the votes are for a recall, then the officer is subject to the disqualification resulting from a recall.

c. *Area of Election.* The recall election shall be for the same area from which the officer was selected.

Sec. 6.08. Ballot in Recall Election.

The ballot in a recall election shall state:

"Shall [name of officer] be removed from the office of [name of office] by recall?

"FOR the recall of [name of person].

"AGAINST the recall of [name of person]."

Sec. 6.09. Result of Recall Election.

If a majority of the votes cast at a recall election are for the recall of the person named on the ballot, he or she shall be deemed removed from office, and the vacancy shall be filled as provided in section 3.06 of this charter. An officer recalled shall be ineligible to hold or run for city office for the area of the office from which he or she was recalled, until after the next regular city election of officers after the recall election.

Sec. 6.10. Restrictions on Recall.

No recall petition shall be filed against any officer of the city within six months after the start of that officer's current term of office, nor within six months after an election for that officer's recall.

Sec. 6.11. Failure of City to Comply Concerning Recall.

If all requirements of this charter concerning a recall petition have been met by the petitioners, and the city fails to comply with this charter concerning that recall, then any petitioner may bring suit in the appropriate district court to require the city to comply with this charter concerning the recall.

ARTICLE 7. INITIATIVE AND REFERENDUM

Sec. 7.01. General Power.

a. *Power of Initiative and Referendum.* The registered voters of the city shall have the power of direct legislation by initiative and referendum, only as provided in this article.

1. Initiative is begun by petition to the council demanding that the council enact a proposed ordinance.
2. Referendum is begun either:
 - (i) By petition to the council demanding that the council repeal an ordinance;
or

- (ii) By the council on its own motion ordering an election on the passage or repeal of an ordinance or resolution or on the approval or disapproval of a measure.

b. *Exceptions.* The powers of initiative and referendum shall not apply to ordinances approving franchises or agreements, authorizing any utilities, levying taxes (but this shall not be construed to limit the right to a statutory tax rollback election), appropriating funds, setting any fees or rates, annexing or disannexing territory, amending the extraterritorial jurisdiction, approving or issuing bonds that have been approved by the voters, approving or issuing certificates of obligation after the time established by law for the petitioners to challenge those certificates of obligation, or concerning personnel and administrative matters.

c. *Review of Petition and Ordinance Together.* Any reference in this article to review of a petition shall also include review of any proposed ordinance attached to that petition. Any reference in this article to the sufficiency of a petition shall also include the sufficiency and lawfulness of the proposed ordinance or repeal.

Sec. 7.02. Procedures Before Circulating Petition.

a. *Filing for Preliminary Review.* Before an election is ordered on the question of an initiative or referendum, except as provided by section 7.07 on voluntary action by the council, a petition must be filed with the city secretary and must have the number of valid signatures required by this charter, a demand to pass or repeal the ordinance in question, and the proposed ordinance, if any, stated in the petition or attached to it. Before such a petition is circulated for multiple signatures, one petitioner (the "submitting petitioner") must sign the proposed petition and submit it to the city secretary.

b. *Review by City Attorney.* Upon receipt of a petition under subsection "a," the city secretary shall promptly transmit it to the city attorney for an advance determination of:

- (1) The legal sufficiency, form, and content of the petition; and
- (2) The lawfulness of the proposed ordinance or repeal.

The city attorney must, within ten days after receiving the petition, notify the submitting petitioner of that determination, including the reasons for any insufficiency or unlawfulness.

c. *Consequence of Insufficiency or Unlawfulness.* The city shall not consider the petition if the city attorney determines that the petition is insufficient or that the proposed ordinance or repeal would be unlawful.

d. *No Fee for Review.* No fee shall be due from a petitioner for the review of a petition.

Sec. 7.03. Contents of Petition.

a. *Addressed to Council.* The petition must be addressed to the city council.

b. *Multiple Counterparts.* The petition may consist of one or more counterparts, and the petitioners may sign the same or separate counterparts. Each signature must be either on the same page as, or on a page firmly attached to, the demand for council action and any proposed ordinance.

c. *Sworn Declaration by Petitioners.* Each page bearing one or more signatures must state at the top of the page in conspicuous lettering distinct from the other writing on the page:

"BY SIGNING THIS PETITION, EACH SIGNER SWEARS OR AFFIRMS UNDER PENALTY OF PERJURY AS FOLLOWS:

"1. I AM NOW A REGISTERED VOTER OF THE CITY OF IOWA COLONY.

"2. ALL OF THE INFORMATION ABOUT ME ON THIS PETITION IS TRUE."

d. *Number of Signatures.* The petition must be signed by at least the following numbers of registered voters of the city:

1. At least twenty percent of the number of registered voters in the city as of the voter registration deadline for the most recent general election date for officers of the city before the petition is filed with the city secretary, as shown on the voter registration records of the Brazoria County clerk; but
2. In any event, not less than 900 such petitioners.
3. A reference in this subsection to the most recent general election date shall also include the date such an election would have been held if it had not been cancelled.

e. *Information on Signers.* Each signer of the petition must personally handwrite the following information on the petition in ink: his or her printed name; his or her signature; his or her place of residence, including the street name and number; and the day, month, and year he or she signed the petition.

f. *Oath of Circulators.* Each signature page of the petition shall also bear the signed, notarized oath of any signer of any page of the petition, as follows:

"I, _____ (printed name of affiant), being first duly sworn, on oath state that I am one of the signers of the above petition, although I may have signed a different page or counterpart of this same petition; and that each signature appearing on this page was made in my presence on the day and date it purports to have been made; and I solemnly swear that each signature on this page is the genuine signature of the person whose name it purports to be."

Sec. 7.04. Procedures Upon Filing of Petition with City Secretary.

a. *Time for Filing Petition.* A petition must be filed with the city secretary no later than 45 days after being signed, and no signature on the petition shall remain effective or be counted if it was placed on the petition more than forty-five days before the filing of the petition with the city secretary; however, the one signature required before the preliminary review of the petition shall not be subject to this 45-day limit. All papers comprising a petition under this article shall be filed with the city secretary on the same day.

b. *Notice by City Secretary.* Upon receipt of a petition under subsection "a," the city secretary shall promptly notify the city attorney.

c. *Review by City Attorney.* Within ten days after receipt of a petition from the city secretary, the city attorney shall determine the legal sufficiency of anything changed on the petition since the city attorney previously reviewed it, and the city attorney shall notify the city secretary and the submitting petitioner of the city attorney's determination, stating the reasons for any insufficiency.

d. *Review by City Secretary.* If the city attorney finds the petition legally sufficient, then within thirty days after that determination, the city secretary shall review the petition to determine the existence of the requisite number of valid, genuine, qualifying signatures of registered voters, and the city secretary shall notify the submitting petitioner of that determination, including a statement of the reasons for any insufficiency.

e. *Presentation to City Council.* If the city attorney and city secretary find the petition sufficient and the proposed ordinance or repeal lawful, then the city secretary shall present the petition to the city council at its next regular meeting with a certification from the city secretary to that effect.

Sec. 7.05. Manner of Notice from City Officers.

Any notice from a city officer under this article must be in writing, and if it is to the submitting petitioner, it must be by United States mail, certified or registered mail, postage prepaid, addressed to the submitting petitioner at the address stated on the petition, unless the submitting petitioner signs and delivers to the city a document acknowledging receipt of the notice.

Sec. 7.06. Council Action Upon Presentation of Petition for Initiative or Referendum.

a. *Initiative.* Upon presentation of an initiative petition with the draft of the proposed ordinance, the city council must, within thirty days after that presentation, enact that ordinance without alteration as to meaning or effect or order a special election, to be held on the next uniform election date for which all advance requirements can be satisfied, at which the qualified voters of the city shall vote for or against adopting the proposed ordinance.

b. *Referendum.* Upon presentation of a referendum petition, the city council must, within thirty days after that presentation, either entirely repeal the ordinance specified in the petition or order a special election, to be held on the next uniform election date for which all advance requirements can be satisfied, at which the qualified voters of the city shall vote on the question of repealing that ordinance. Pending the holding of that election, that ordinance shall be suspended from taking effect and shall not later take effect, unless a majority of the votes in that election are for the ordinance.

Sec. 7.07. Voluntary Submission of Legislation by the Council.

The city council, upon its own motion, may submit to popular vote at any city election the adoption of any proposed ordinance, resolution, or measure, or the repeal of any existing ordinance, resolution, or measure, in the same manner and with the same force and effect as provided in this article for submission by petition, and the council may in its discretion order a special election for this purpose.

Sec. 7.08. Form of Ballot.

The proposition on the ballot in an election on an initiative or referendum shall be drafted by the city council and shall set forth the nature of the ordinance, resolution, or measure in question sufficiently to identify it and shall also set forth upon separate lines the words:

"FOR THE ORDINANCE," AND

"AGAINST THE ORDINANCE," OR

"FOR THE RESOLUTION," AND
"AGAINST THE RESOLUTION."

Sec. 7.09. Posting of Proposed and Referred Ordinances.

The city secretary shall post the proposed or referred ordinance, resolution, or measure, together with a notice of the proposed passage or repeal by initiative or referendum, on the city's internet website from no later than fifteen days after the election is called through election day, in addition to any other notices required by law for that election.

Sec. 7.10. Effect of Election.

If a majority of the qualified votes in an election under this article are in favor of the proposed or referred ordinance, resolution, or measure, it shall take or remain in effect immediately or at such other time stated therein.

[Sec.] 7.11. Inconsistent Results.

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

Sec. 7.12. Ordinances Passed by Popular Vote, Repeal, or Amendment.

No legislative action taken by the council in response to a petition for initiative or referendum or by the voters in an election under this article shall be repealed or amended except pursuant to a petition for initiative or referendum or by a voluntary referendum under this article.

Sec. 7.13. Further Regulations by City Council.

The city council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this article consistent with this article.

Sec. 7.14. Failure of City to Comply.

If all requirements of this charter concerning an initiative or referendum by petition have been met by the petitioners, and the city fails to comply with this charter concerning that initiative or referendum, then any petitioner may bring suit in the appropriate district court to require the city to comply with this charter concerning the initiative or referendum.

ARTICLE 8. MUNICIPAL ZONING

Sec. 8.01. Zoning.

The City of Iowa Colony shall be a zoned city in accordance with applicable law.

ARTICLE 9. MUNICIPAL FINANCE

Sec. 9.01. Fiscal Year.

The fiscal year of the city shall begin on the first day of October and shall end on the last day of September of each calendar year. That fiscal year shall also constitute the budget and accounting year.

Sec. 9.02. Preparation and Submission of Budget.

The city manager, at least 45 days prior to the beginning of each fiscal year, shall submit to the council a proposed budget.

Sec. 9.03. Vote required for Adoption.

The budget shall be adopted by the favorable vote of a majority of the members of the whole city council.

Sec. 9.04. Budget as Appropriations.

Adoption of the budget shall constitute an appropriation of the amounts specified therein as expenditures from the funds indicated, except as otherwise provided by ordinance.

Sec. 9.05. Date of Final Adoption.

The budget shall be finally adopted prior to the beginning of the fiscal year, and if the city council fails to adopt a budget, then the existing budget shall remain in effect for the ensuing fiscal year, but only until such time as the council passes a budget for the new fiscal year or amends the budget as provided by law.

Sec. 9.06. Amendment of Budget.

The city budget may be amended as provided by law.

Sec. 9.07. Power to Tax.

The city council shall have the power to levy, assess, and collect an annual property tax within the city as provided by law.

ARTICLE 10. FRANCHISES AND PUBLIC UTILITIES**Sec. 10.01. Powers of the City.**

The city shall have the power to buy, own, construct, lease, maintain, operate, and regulate public services and utilities and to manufacture, distribute, and sell the output of those services and utility operations, and the city shall have further powers as may now or later be granted by law.

Sec. 10.02. Franchises; Power of City Council.

a. *Franchises.* The city council shall have power by ordinance to grant, amend, renew, and extend all franchises of all public utilities of every character.

b. *Additional Procedure for Passing Franchise Ordinance.* The title or caption stating the general subject matter of an ordinance granting, amending, renewing, or extending a franchise for public utilities shall be read at two separate regular meetings of the city council, and that ordinance shall not be finally passed until twenty-eight days after the first reading. The repeal of a franchise after a hearing shall not require two readings. Passage of a franchise ordinance is subject to the same requirements as other ordinances, except as otherwise provided in this subsection.

Sec. 10.03. Transfer of Franchise.

No public utility franchise shall be transferable except with the approval of the city council expressed by ordinance. The term "transferable" herein shall not be construed to prevent the franchise holder from pledging the franchise as security for a bona fide debt or mortgage.

Sec. 10.04. Right of Regulation.

All grants, removals, extensions, or amendments of public utility franchises shall be subject to the following rights of the city council:

- a. To repeal the same by ordinance at any time, after due notice and opportunity for a hearing, upon the failure of the grantee to comply with any provision of the franchise, any ordinance, or other applicable law;

- b. To require proper and adequate extension of plant and service, and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency;
- c. To establish reasonable standards of service and quality of products;
- d. After due notice and opportunity for a hearing, to regulate by ordinance the rates, charges, and fares of all public utility franchise holders operating in the city as authorized by applicable law;
- e. At any time to examine and audit the accounts and other records of any such utility and to require annual and other reports, including reports on operations within the city;
- f. To require such compensation and rental as not prohibited by law; and
- g. To impose any regulations and restrictions as the city considers desirable or conducive to the health, safety, welfare, or accommodation of the public.

Sec. 10.05. Franchise not Exclusive.

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

Sec. 10.06. Consent of Property Owners.

The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance, or operation of any public utility; but nothing in this charter or in any franchise granted hereunder shall deprive any such property owner of any right of action for damage or injury to his or her property as provided by law.

Sec. 10.07. Extensions.

Any extension of a public utility within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all obligations, reserved rights, and other terms of this charter and of any then-existing franchise to that utility, whether granted before or after the adoption of this charter. The right to use and maintain any such extension shall terminate with that pre-existing franchise and shall be terminable as provided in this charter.

Sec. 10.08. Other Conditions.

a. *Franchises as Contracts.* All franchises existing when this charter is adopted are recognized as contracts between the city and the grantee, and the contractual rights contained in any such franchise shall not be impaired by this charter, except that the city fully reserves:

1. The power of the city to exercise the right of eminent domain in the acquisition of utility property; and
2. All powers of the city to regulate the rates and services of a grantee, which shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency.

b. *Applicability of Charter Provisions.* Every public utility franchise granted after this charter is adopted shall be subject to all the terms and conditions of this article, whether or not such terms and conditions are specifically mentioned in the franchise.

c. *Discretion of City.* Nothing in this charter shall limit in any way the discretion of the city council or voters of the city in imposing terms and conditions as may be reasonable in connection with any franchise grant.

Sec. 10.09. Accounts of Municipally Owned Utilities.

Accounts shall be kept for each public utility owned or operated by the city and shall show the true and complete financial results of such city ownership and operation, including, but not limited to, the contents listed in this section. The accounts shall show actual capital and operating costs to the city of each public utility owned and the sources and amounts of funds expended for those purposes. The accounts shall show as nearly as possible the cost of any service furnished by any such utility to any department of this city and to any other governmental entity.

Sec. 10.10. Sales of Water, Sewer, and Other Services.

a. *Power of City.* The city shall have the power to sell and distribute water, sewer services, any other city utilities, and any other city services to any persons within or outside the city limits. The city may permit those persons to connect with those systems under contract with the city, under terms and conditions that the city considers for the best interests of the city.

b. *Advance Notice Required.* At least two years before the following requirements take effect, the city must deposit notice of the applicable requirement and the earliest date the requirement will take effect in the United States mail, addressed to the owner of the premises at the owner's address according to the records of the Brazoria County tax assessor-collector:

1. A requirement that any residence lawfully connected to a lawful water well must connect to city-owned water services; or
2. A requirement that any residence lawfully connected to a lawful sewage treatment system must connect to city-owned sewer services.

c. *Regulations by city council.* The city council shall have the power and authority:

- (1) To regulate and prescribe the specifications for utility infrastructure where the city furnishes the service, within or beyond the city limits;
- (2) To inspect that infrastructure and require it to be kept in good order and condition at all times; and
- (3) To make such rules and regulations as shall be necessary and proper, and prescribe penalties for noncompliance with those rules and regulations.

Sec. 10.11. Regulation of Rates and Service[s].

The city council shall have the power, after due notice and opportunity for a hearing, to regulate by ordinance the rates and services of every public utility operating in the city. The council shall have power to employ at the expense of the grantee expert assistance and advice in determining a reasonable rate and equitable profit to the grantee, all as provided by law. The council may choose to cede to an agency of the State of Texas the authority to regulate rates of a particular utility, as provided by law.

ARTICLE 11. GENERAL PROVISIONS

Sec. 11.01. Publicity of Records and Open Meetings; Internet or Website Malfunctions.

a. *Public Records and Meetings.* Records of the city shall be open to inspection by any person as provided by law, including but not limited to the Texas Public Information Act. Meetings of the council and boards or commissions appointed by the council shall be held in accordance with the applicable provisions of the laws of the State of Texas, including but not limited to the Texas Open Meetings Act. Minutes of all such

open meetings shall be kept, and those minutes shall constitute public records. This section shall not be construed to require any action or measure beyond that required by state law.

b. *Internet or Website Malfunctions.* When this charter or other applicable law requires any type of information to be posted on the city's internet website, and an outage or malfunction of the website or internet, which was not deliberately caused by the city, prevents or interrupts the required posting, then such failure or interruption of the internet posting shall not be a violation of that posting requirement. The city shall use good faith efforts to resolve the malfunction and post the information as soon as reasonably practicable.

Sec. 11.02. Conflict of Interest and Nepotism.

All city officers and employees must comply with applicable state law related to conflicts of interest and nepotism.

Sec. 11.03. Drilling Operations.

The city council may, by ordinance, regulate the drilling and use of water wells, subject to the restrictions on mandatory connections to city water and sewer in section 10.10.

Sec. 11.04. Assignment, Execution, and Garnishment.

No property of any kind owned or held by the city shall be subject to any garnishment, sequestration, attachment, seizure, forced sale, or execution of any kind. No property, funds, or debt held by the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceeding. The city shall not be obligated to recognize any assignment of wages or funds by its employees, agents, or contractors.

Sec. 11.05. City not Required to Give Security or Execute Bond.

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

b. *City Officers and Employees.* The exemption from a bond, undertaking, or security in subsection "a" shall also apply in favor of any city officer or employee in his or her official capacity, except in a suit by the city against that officer or employee.

Sec. 11.06. Notice of Claim Required; Immunities.

a. *Notice of Claim.* The city shall not be subject to liability for any death, personal injury, property damage, economic loss, or any other liability, loss, damage, or costs of any nature, and no suit shall be filed against the city on such claim, where the claimant fails to notify the city manager or city secretary in writing within six months of the initial incident or condition allegedly causing such damage or loss. That notice must include:

1. When, where, and how the death, injury, damage, or loss was sustained;
2. The amount of the damage, injury, or loss incurred, as accurately as possible;
3. The name and address of:
 - i. Each person who is dead, injured, or incurred property damage or any loss; and
 - ii. All persons with knowledge of facts pertinent to the claim; and
4. A statement of how any fault of the city allegedly contributed to causing the incident or loss.

b. *Not a Waiver.* This section shall not be construed to create any liability of the city or as a waiver by the city of any rights, privileges, defenses, or immunities.

c. *City Officers and Employees.* Any right, privilege, defense, or immunity of the city under this charter or any other applicable law shall also apply in favor of all city officers and employees in their official capacity, except in a claim by the city against such officer or employee.

Sec. 11.07. Severability Clause.

If any section or part of a section of this charter is ever held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such section or part of a section so held invalid may appear, except to the extent that an entire section or part of a section is inseparably connected in meaning and effect with the section or part of section to which that holding directly applies.

Sec. 11.08. Effect of this Charter on Existing Law.

All ordinances, resolutions, rules, and regulations now in force under the city government of Iowa Colony and not in conflict with the provisions of this charter shall remain in force under this charter until altered, amended or repealed by the council after this charter takes effect; and all rights of the city under existing franchises and contracts are preserved in full force and effect to the city.

Sec. 11.09. Transition.

The adoption of this charter shall neither end nor extend the term of office of any current officer or employee of the city.

Sec. 11.10. Applicability of General Laws.

In addition to all powers and rights available to home rule cities in Texas, the city shall also have all powers of any other type of municipality in Texas not contrary to the laws governing home rule cities. However, the exercise of any those additional powers by the city shall be optional with the city, and the city shall not be required to conform to the law governing any other types of municipalities, unless by ordinance it adopts those laws.

Sec. 11.11. Use of Terms.

Any term used herein, whether used in singular or plural form, shall be deemed to refer to the object of that term, regardless whether that object is singular or plural, as the context may suggest or require. Any pronoun, whether in masculine, feminine, or neuter form, shall be deemed to refer to the object of that pronoun, whether that object is masculine, feminine, or neuter in gender, as the context may suggest or require.

Sec. 11.12. Amending the Charter, Charter Review Commission, and District Boundaries Commission.

a. *Amendment of Charter by Voters.* Amendments to this charter may be drafted and submitted to the voters of the city as provided by this charter and applicable law.

b. *Charter Review Commission.*

1. *Appointment.* The city council shall appoint a charter review commission every five years or more often as determined by the city council. The charter review commission shall consist of the same number of members as the city council. Charter review commissioners must be residents of the city for one year at the

time of appointment. Each council member shall have the opportunity for at least one nomination to the commission for consideration by the council, but the appointments by the council are not limited to those nominees.

2. *Duties.* The Charter Review Commission shall:
 - i. Inquire into the operation of the city government under the charter and determine whether any charter provisions should be revised. To this end public hearings may be held, and the commission shall have the power to compel the attendance of any officer or employee of the city and to require the submission of any city records it deems or helpful to the work of the commission;
 - ii. Propose any recommendations it may deem desirable to ensure compliance with the charter by the city government;
 - iii. Propose any charter amendments the commission deems desirable; and
 - iv. Report its findings and present its proposed amendments, if any, to the city council.

c. *District Boundaries Commission.* After the initial adoption of district boundaries, the charter review commission shall also serve as the district boundaries commission, to review and make recommendations to the city council on amending the boundaries of the council districts, as provided in section 3.01(f).

- d. *Action by City Council.* The city council shall:
 1. receive and post on the city's website any report presented by the charter review commission;
 2. consider any recommendations made by the charter review commission; and
 3. if any charter amendment is presented as a part of that report, the council may choose to order that amendment to be submitted to the voters of the city in the manner provided by law.

E *Term of Office.* The term of office of the charter review commission shall be six months, or longer if approved by the city council. Upon the completion of the proceedings of the charter review commission, or upon dissolution of the commission, all records of the proceedings of the commission shall be filed with the city secretary.

HOME RULE CHARTER

Sec. 11.13. Submission of Charter to Voters.

a. The charter commission finds that it is impracticable to segregate each subject of this charter to be voted on separately, because the charter is so constructed that in order to function, it must be adopted in its entirety. Therefore, the charter commission directs that this charter shall be voted upon as a whole, and that it shall be submitted to the registered voters of the city at an election on May 2, 2020.

Editor's note—This election was deferred to November 3, 2020, due to the COVID-19 emergency.

b. Before the 30th day before the date of the election, the city council shall order the city secretary to mail a copy of this charter to each registered voter of the city. If a majority of the qualified voters voting in that election vote in favor of the adoption of this charter, then it shall become the Home Rule Charter of the City of Iowa Colony, and it shall take effect when the election returns have been canvassed, and when the council enters an order in the records of this city declaring this charter adopted.

c. The city secretary shall file an official copy of the charter with the records of the city and record it in a book or other appropriate, lawful medium for that purpose.

d. As soon as practicable after the city adopts this charter, the mayor shall certify to the secretary of state of Texas an authenticated copy of the charter under the city's seal showing approval by the voters of this city.

We, the undersigned officers of the Iowa Colony Charter Commission, duly selected to prepare a Home Rule Charter for the City of Iowa Colony, Texas, hereby certify that this document is the Home Rule Charter of the City of Iowa Colony, Texas, as duly approved by a majority of this Commission.

April 15, 2020

Sydney Hargroder, Chairperson

Rebecca Hester, Secretary

IOWA COLONY CHARTER COMMISSION MEMBERS:

Rebecca Barnett
Steven Byrum-Bratsen
Douglas Chumley
Brenda Dillon
Rosie Flores

IOWA COLONY CODE

Sydney Hargroder
Rebecca Hester
Michael Holton
Brenda Ledbetter
Marge Madariaga
Perry Roberts
Diana Tahtinen
Timothy Varlack
Carol Wall
Robert Wall

CHARTER COMPARATIVE TABLE

LEGISLATION

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

Legislation	Date	Section	Section this Charter
Ord. of 4-15-2020	4-15-2020	—	Char. (note)

PART II

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines of sections.
- Sec. 1-4. References to chapters or sections.
- Sec. 1-5. History notes.
- Sec. 1-6. References and editor's notes.
- Sec. 1-7. Continuation of existing Code provisions.
- Sec. 1-8. Provisions considered as continuation of existing ordinances.
- Sec. 1-9. Prior offenses, penalties and rights not affected by adoption of Code.
- Sec. 1-10. Effect of repeals.
- Sec. 1-11. Certain ordinances not affected by Code adoption.
- Sec. 1-12. Amendments to Code.
- Sec. 1-13. Supplementation of Code.
- Sec. 1-14. Severability of parts of Code.
- Sec. 1-15. Enforcement.
- Sec. 1-16. Conflicts in terms; nonwaiver of immunity; nonliability of city.

Sec. 1-1. Designation and citation of Code.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated as the "Municipal Code of Iowa Colony, Texas." This Code may also be referred to by its short title "Iowa Colony 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. Definitions and rules of construction.

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

City. The term "city" means the City of Iowa Colony, in the County of Brazoria within the State of Texas.

Code. The term "Code" means the "Municipal Code of Iowa Colony, Texas."

Computation of time. In computing any period of time prescribed or allowed by this Code, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

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

Council, city council. The term "council" or "city council" means the city council of the City of Iowa Colony, Texas.

County. The term "county" means Brazoria County, Texas.

Delegation of authority. Whenever a section of this Code requires or authorizes an officer or employee of the city to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty, unless the terms of the section specifically provide otherwise.

Gender. Words of gender include all genders.

State law reference—Gender, V.T.C.A., Government Code §§ 311.012, 312.003.

In the city. The phrase "in the city" means and includes all territory over which the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police, regulatory and other powers.

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.

State law reference—Joint authority, V.T.C.A., Government Code § 312.004.

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

State law reference—Definition of month, V.T.C.A., Government Code § 312.011(7).

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

State law reference—Number, V.T.C.A., Government Code § 312.003(b).

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."

Officers, departments, boards, committees, commissions, employees. Officers, departments, boards, commissions and employees referred to in this Code mean officers, departments, boards, committees, commissions and employees of the city, unless the context clearly indicates otherwise.

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

Or, and. The term "or" may be read "and," and the term "and" may be read "or," if the sense requires it.

Owner. The term "owner," applied to a building or land, means and 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.

Personal property. The term "personal property" means and includes every species of property, except real property as defined in this section.

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

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

Public place. The term "public place" means any public street, alley, square, highway, grounds, house or premises; or any hotel, restaurant, boardinghouse, grocery, saloon, garden, workshop or other place, or part of the same, to which people usually resort, or have a right to resort, for business or pleasure.

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

Regulation, city, or city regulation means this Code, any ordinance of the city, or any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in that officer or agency.

Roadway. The term "roadway" means that portion of a highway other than the berm or shoulder that is improved, designed or ordinarily used for vehicular travel. If a highway includes two or more separate roadways, the term "roadway" as used in this definition shall refer to any such roadway separately.

State law reference—Similar definition, V.T.C.A., Transportation Code § 541.301(11).

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

Sidewalk. The term "sidewalk" means any portion of the street between the curblines, or the lateral lines of the roadway, and the adjacent property lines, 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 or highway. The term "street" or "highway" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

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.

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

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.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code 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. 1-4. References to chapters or sections.

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

Sec. 1-5. History notes.

The history notes appearing in parentheses after sections of 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 are inserted as an aid and guide to the reader and are not controlling or meant to have any legal effect.

Sec. 1-7. Continuation of existing Code provisions.

The sections appearing in this Code of Ordinances existing at the time of adoption of this Code shall be considered as a continuation thereof and not new enactments.

Sec. 1-8. Provisions considered as continuation of existing ordinances.

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

Sec. 1-9. 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 of forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

(b) Nothing contained in this chapter shall be construed as abating any action pending under or by virtue of any general ordinance of the city repealed in this chapter, and all general ordinances contained in this Code shall be deemed to be continuing and not a new enactment of the same ordinance. This chapter shall not be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue or as affecting the liability of any person or as waiving any right of the city under any ordinance or section thereof in force at the time of the adoption of this Code.

Sec. 1-10. Effect of repeals.

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

(b) This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new sections upon the same subject or in any other ordinance.

Sec. 1-11. Certain ordinances not affected by Code adoption.

(a) Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred before the effective date of the ordinance adopting this Code.
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city or authorizing the issue of any bonds of the city or any evidence of the city's indebtedness or any contract, right, agreement, lease, deed or other instrument or obligation assumed by the city.
- (3) Any administrative ordinances or resolutions of the city not in conflict or inconsistent with this Code.
- (4) Any right or franchise granted by any ordinance.
- (5) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way.

- (6) The ordinance adopting the budget or any appropriation ordinance, or any ordinance establishing investment policies.
 - (7) Any ordinance levying or imposing taxes.
 - (8) Any ordinance prescribing through streets, parking and traffic regulations, speed limits, one-way traffic, limitations on load of vehicles or loading zones.
 - (9) Any zoning or rezoning ordinance or amendment to the zoning map or ordinance granting conditional use permits.
 - (10) Any ordinance establishing and prescribing the street grades of any street.
 - (11) Any ordinance providing for local improvements and assessing taxes therefor.
 - (12) Any ordinance dedicating or accepting any plat or subdivision.
 - (13) Any ordinance annexing territory or excluding territory or any ordinance extending the boundaries of the city.
 - (14) Any ordinance establishing positions, classifying positions, establishing pension or employee benefits, setting salaries of city officers and employees or any personnel regulations.
 - (15) Any temporary or special ordinance.
 - (16) Any ordinance calling an election.
 - (17) Any ordinance authorizing street maintenance agreements.
 - (18) Any ordinance levying a fee, rate, deposit or charge.
 - (19) Any ordinance regarding development, zoning or land use.
 - (20) Any ordinance regarding cable television franchises and regulations.
 - (21) Any ordinance or provision regarding the city council rules of order.
 - (22) Any ordinance establishing utility rates and charges.
 - (23) Any ordinance establishing school zones as uncodified and unaffected by codification.
- (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. All ordinances are on file in the city secretary's office.

Sec. 1-12. Amendments to Code.

(a) Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the city council to make the addition or amendment a part of this Code, shall be deemed to be incorporated in this Code so that reference to the Code shall be understood and intended to include such additions and amendments.

(b) 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 in this Code. 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 a 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.

(c) Amendments to any section of this Code shall be made by amending such section by specific reference to the section number of this Code in the following language: "That section ____ of the Municipal Code of Iowa Colony, Texas, is hereby amended to read as follows:" The new section shall then be set out in full and shall be underscored and any provisions which are to be deleted shall be enclosed in brackets.

(d) If a new section not existing in the Code is to be added, the following language shall be used: "That the Municipal Code of Iowa Colony, Texas, is hereby amended by adding a section, to be numbered ____, which section reads as follows:" The new section shall then be set out in full and shall be underscored.

(e) Every subsection, section, division, article or chapter desired to be repealed must be set out in full and specifically repealed by subsection, section, division, article or chapter, as the case may be.

(f) It is hereby provided, however, that any subsequent ordinance which fails to amend this Code in the manner provided for in this section, shall not be deemed invalid as a result of such failure to follow the procedure outlined in this section.

Sec. 1-13. 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 all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall

be so numbered that they will fit properly into the Code and will, where necessary, replace pages that 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, non-substantive 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 catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the term "this ordinance" or terms of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections ____ through ____." The inserted section numbers will indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code; and
- (5) Make other non-substantive 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. 1-14. Severability of parts of Code.

(a) 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.

(b) If any provision of this Code or the application thereof to any person, fact, situation or circumstance is held invalid, the remainder of this Code and the application of such provision to other persons, facts, situations or circumstances shall not be affected thereby.

Sec. 1-15. Enforcement.

(a) *Offenses.* No person shall do anything prohibited or fail to do anything required by this Code, by any ordinance of the city, or by any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in that officer or agency (herein collectively called "city regulations").

(b) *Penalties.* Any violation of this section or of any other city regulation shall be a misdemeanor and shall be punishable upon conviction by a fine as follows:

- (1) Not exceeding \$2,000.00 for each violation of a city regulation that governs or regulates fire safety, zoning or public health or sanitation, other than the dumping of refuse;
- (2) Not exceeding \$4,000.00 for each violation of a city regulation that governs the dumping of refuse;
- (3) Not exceeding \$500.00 for each violation of any other city regulation;

however, if the maximum penalty provided by this Code for any offense is greater than the maximum penalty provided for the same or a similar offense under the laws of the state, the maximum penalty for such violation provided by the state statute shall be the maximum penalty under this Code.

(c) *Culpable mental state.*

- (1) No culpable mental state shall be required for a violation of a city regulation punishable by a fine not exceeding \$500.00. The definition of each offense of violating a city regulation punishable by a fine not exceeding \$500.00 hereby plainly dispenses with any requirement of a culpable mental element.
- (2) An element of an offense of violating a city regulation punishable by a fine of over \$500.00 shall be that the unlawful conduct was committed intentionally,

knowingly, recklessly, or with criminal negligence, but only to the extent required by state law, including V.T.C.A., Penal Code § 6.02, to the extent applicable.

(d) *Continuing offenses.* Except where otherwise provided, each calendar day or portion of a calendar day any violation of this Code or of any such ordinance, rule, regulation, or order shall continue shall constitute a separate offense.

(e) *Other remedies.* Any and/or all of the following civil remedies may be imposed for violation of any provision of this Code or of any ordinance of the city, or of any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in that person or agency: injunctive relief, declaratory relief, monetary damages, attorney's fees and all other expenses incurred in enforcing the city's rights or the violator's obligations or liabilities, costs of court, interest as provided by law, and all other remedies at law, in equity, or any other authority.

(f) *Cumulative obligations and remedies; no election of obligations or remedies.*

- (1) All obligations, prohibitions, and offenses under this Code or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.
- (2) All remedies and penalties in favor of the city or against any person other than the city under this Code or under any other applicable laws are cumulative. The pursuit or receipt by the city of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the city from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.
- (3) Without limiting the generality of the foregoing, the city may pursue a criminal prosecution hereunder without pursuing civil remedies for a violation hereof; the city may pursue civil remedies without pursuing a criminal prosecution; or the city may do both.

(g) *Nonwaiver by nonenforcement.* The failure or omission of the city, upon one or more occasions, to enforce any right, obligation, or remedy under this Code or any other applicable laws shall never be construed as a waiver of the city's right to strictly enforce such right, obligation, or remedy, and the city may resume such strict enforcement without advance notice.

State law references—Penalty for ordinance violations, V.T.C.A., Local Government Code § 54.001; authority of city to prescribe penalties for violation of Code, V.T.C.A., Local Government Code § 53.001; jurisdiction of municipal courts, V.T.C.A., Government Code § 29.003.

Sec. 1-16. Conflicts in terms; nonwaiver of immunity; nonliability of city.

(a) *Conflicts in terms.* In the event of any conflict in the terms of this Code, or between the terms of this Code and any other ordinance, the more restrictive provision shall govern and control.

(b) *Nonwaiver of immunity.* Nothing herein, in any document issued pursuant hereto, or in any action, omission, or condition pursuant hereto shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the city or any of its agents, officers, attorneys, or employees.

(c) *Nonliability of city.* Neither the city nor any of its agents, officers, attorneys, or employees shall have any liability of any nature to any person other than the city for any act, omission, or condition in any way directly or indirectly related to the subject matter of this Code.

Chapter 2

ADMINISTRATION*

Article I. In General

Secs. 2-1—2-18. Reserved.

Article II. Council

Division 1. Generally

Secs. 2-19—2-39. Reserved.

Division 2. Council Meetings

Sec. 2-40. Agenda item.
Sec. 2-41. Policy on public participation.
Sec. 2-42. No vested rights.
Secs. 2-43—2-72. Reserved.

Article III. Mayor

Sec. 2-73. Definitions.
Sec. 2-74. Other laws and policies.
Sec. 2-75. Reports to city council.
Sec. 2-76. Other authority and duties of mayor.
Secs. 2-77—2-93. Reserved.

Article IV. Records Management

Sec. 2-94. Definition of records of the city.
Sec. 2-95. Records declared public property.
Sec. 2-96. Policy.
Sec. 2-97. Records management officer.
Sec. 2-98. Records control schedules.
Secs. 2-99—2-118. Reserved.

Article V. Personnel Policies

Sec. 2-119. Personnel policies handbook incorporated by reference.
Sec. 2-120. Effect of handbook on prior policies.
Sec. 2-121. Manager authority concerning handbook.

***Editor's note**—Readers of this Code of Ordinances are directed to the Home Rule Charter at the beginning of this publication for substantive provisions concerning the form of government, municipal powers, city council, ordinance passage, municipal administration and officials, elections, recall mechanisms, etc.

ARTICLE I. IN GENERAL

Secs. 2-1—2-18. Reserved.

ARTICLE II. COUNCIL

DIVISION 1. GENERALLY

Secs. 2-19—2-39. Reserved.

DIVISION 2. COUNCIL MEETINGS

Sec. 2-40. Agenda item.

The city secretary shall place an agenda item entitled "public comment" upon:

- (1) Each agenda for a scheduled city council meeting; and
 - (2) Request by the mayor or any councilmember, unless otherwise directed by the city council, upon the agenda of a special council meeting.
- (Ord. No. 2015-13, § 1, 7-20-2015)

Sec. 2-41. Policy on public participation.

The policy on public participation at council meetings and public hearings attached to the ordinance from which this division is derived is hereby adopted.
(Ord. No. 2015-13, § 2, 7-20-2015)

Sec. 2-42. No vested rights.

Regardless of any other provision, neither this division nor the policy referenced in section 2-41 shall create any vested right in any person other than the city. Although the city aspires to follow the procedures in said policy, no person other than the city shall have any right to enforce that policy, and no person other than the city shall have any right of action for any violation of that policy.
(Ord. No. 2015-13, § 3, 7-20-2015)

Secs. 2-43—2-72. Reserved.

ARTICLE III. MAYOR

Sec. 2-73. 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:

Employees means all employees of any nature of the city, whether permanent, temporary, full time or part time. Unless otherwise specified, the term "employees" also includes officers other than city councilmembers.

Officers means all municipal officers except city councilmembers. The term "officers" includes the police chief but not other police officers.
(Ord. No. 2014-11, § 2, 7-21-2014)

Sec. 2-74. Other laws and policies.

Regardless of the other provisions herein, this article does not authorize the mayor to contradict or breach any law or any ordinance, budget, resolution, policy, or other decision of the city council.
(Ord. No. 2014-11, § 4, 7-21-2014)

Sec. 2-75. Reports to city council.

The mayor shall keep the city council regularly and well informed of his/her actions pursuant to this article and of the matters subject to the mayor's authority and duties hereunder. In addition, the mayor shall promptly provide to any individual councilmember any information the councilmember requests concerning any actions by the mayor under this article or any matters subject to the mayor's authority or duties.
(Ord. No. 2014-11, § 5, 7-21-2014)

Sec. 2-76. Other authority and duties of mayor.

This article is intended to expand the statutory and constitutional authority and duties of the mayor and shall not be construed to reduce that authority.
(Ord. No. 2014-11, § 7, 7-21-2014)

Secs. 2-77—2-93. Reserved.

ARTICLE IV. RECORDS MANAGEMENT**Sec. 2-94. Definition of records of the city.**

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the city or any of its officers or employees pursuant to law or in the transaction of public business, are declared to be the records of the city and shall be created, maintained, and disposed of in accordance with the provisions of this article or procedures authorized by it and in no other manner.

(Ord. No. 2022-11, § 1, 8-15-2022)

Sec. 2-95. Records declared public property.

All records as defined in section 2-94 are declared to be the property of the city. No official or employee of the city has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

(Ord. No. 2022-11, § 2, 8-15-2022)

Sec. 2-96. Policy.

It is 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 records of this office 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 Local Government Records Act and accepted records management practice. This policy shall apply to all employees, agents, independent contractors, and volunteers of the city.

(Ord. No. 2022-11, § 3, 8-15-2022)

Sec. 2-97. Records management officer.

The person holding the office of city secretary and the successive holders of that office will serve as records management officer for the city as provided by law and will develop policies and procedures to ensure that the maintenance, preservation, security, destruction, electronic storage, and other disposition of the records of this office are carried out in accordance with the requirements of the Local Government Records

Act. As provided by state law, each successive holder of the office shall file his or her name with the director and librarian of the state library within 30 days of the initial designation or of taking up the office, as applicable.

(Ord. No. 2022-11, § 4, 8-15-2022)

Sec. 2-98. Records control schedules.

Appropriate records control schedules issued by the state library and archives commission shall be adopted by the records management officer for use in the city, as provided by law. The records management officer shall prepare amendments to the schedules as needed to reflect new records created or received by this office, or revisions to retention periods established in a records retention schedule issued by the commission. Any destruction of records of the city will be in accordance with these schedules and the Local Government Records Act.

(Ord. No. 2022-11, § 5, 8-15-2022)

Secs. 2-99—2-118. Reserved.

ARTICLE V. PERSONNEL POLICIES

Sec. 2-119. Personnel policies handbook incorporated by reference.

The Employee Personnel Policies and Procedures Handbook of the city attached to the ordinance from which this article is derived, as the same may have been from time to time amended by the city council or the city manager, is hereby adopted and is incorporated herein in full.

(Ord. No. 2021-30, § 1, 9-20-2021)

Sec. 2-120. Effect of handbook on prior policies.

The Employee Personnel Policies and Procedures Handbook hereby adopted supersedes any prior personnel policies, by any name, of the city; provided, however, that any personnel policies and manuals of the police department shall remain in effect, to the extent that they do not contradict the Employee Personnel Policies and Procedures Handbook.

(Ord. No. 2021-30, § 2, 9-20-2021)

Sec. 2-121. Manager authority concerning handbook.

(a) Section 4.02 of the Home Rule Charter now provides for the city manager to manage personnel, subject to the limited authority of the council under sections 3.07 (various powers of council), 4.01 (hiring certain personnel), and any other applicable

provisions of the Charter. Accordingly, the city manager is authorized to further amend, adopt, or replace the Employee Personnel Policies and Procedures Handbook and any city personnel policy, by any title, to the extent permitted by the Charter, without further approval by the city council. The city manager shall keep the city council informed of any changes to any such personnel policy.

(b) However, Charter section 3.07(m) reserves to the council the authority to set the salaries and compensation of the city officers and employees, except to the extent that the council delegates that authority to the city manager. Nothing in subsection (a) of this section or any other part of this article delegates that authority to the city manager. (Ord. No. 2021-30, § 3, 9-20-2021)

Chapter 3

RESERVED

CD3:1

Chapter 4

ANIMALS

- Sec. 4-1. Definitions.
- Sec. 4-2. Findings of fact.
- Sec. 4-3. Nuisance animals.
- Sec. 4-4. Additional animal nuisances.
- Sec. 4-5. Prohibition of nuisances.
- Sec. 4-6. Vicious animals.
- Sec. 4-7. Roosters.
- Sec. 4-8. Rabies.
- Sec. 4-9. Unlawful restraint of dog.
- Sec. 4-10. Confinement, impoundment, and destruction.
- Sec. 4-11. Enforcement.

Sec. 4-1. 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:

Animal means any living creature, including, but not limited to, mammals, reptiles, fish, fowl, and birds, but excluding human beings.

Animal control officer means a person who is certified under V.T.C.A., Health and Safety Code ch. 829.

Available to receive notice means that the person's address is known to the officer giving written notice to the person hereunder, or that the person's other contact information is known to the officer giving notice by that other contact information to the person hereunder.

Cat means *Felis catus*.

Chicken means any member of the genus *gallus* including all subspecies and their hybrids.

Current rabies vaccination means a rabies vaccination that was administered in compliance with the requirements of V.T.C.A., Health and Safety Code ch. 826 and 25 Tex. Admin. Code ch. 169 and that has not expired under the terms thereof.

Dangerous animal means any nonhuman primate, skunk, raccoon, jaguar, leopard, lynx, tiger, lion, ocelot, bobcat, cheetah, mountain lion, wildcat, panther, bear, wolf, coyote, any poisonous amphibian, any venomous reptile or any reptile expected to reach over six feet in length at maturity or any wild animal capable of or inclined to do serious bodily harm to humans or other animals, or any hybrid thereof.

Dog means a domesticated animal, regardless of sex or age that is a member of the canine family, including hybrids thereof.

Exotic fowl means any avian species that is not indigenous to the state. The term "exotic fowl" includes ratites.

Exotic livestock means grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to the state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families and any hybrids thereof.

Extreme weather conditions means conditions in which the actual or effective outdoor temperature is below 32 degrees Fahrenheit, or a hurricane, tropical storm, flood, flash flood, severe thunderstorm or tornado warning or heat advisory has been issued for the jurisdiction by the National Weather Service.

Fighting animal means any dog, rooster, or other animal that has been trained, used, exhibited, purchased, sold, or kept for the purpose of fighting with another animal.

Harbor means to provide food, water, shelter, or care to an animal, or to allow the animal to remain on premises owned, rented, leased, occupied, possessed, or controlled by the person in question. The term "harbor" herein means the same thing as keep or possess.

Keep means harbor, as herein defined.

Known to the officer means that the person's identity is known to the officer.

Livestock means any domestic grass-eating or plant-eating, single-hooved or cloven-hooved mammals and their hybrids, domestic fowl, domestic swine, exotic livestock and exotic fowl.

Menacing conduct means growling, snarling, snapping, charging, or any other threat display employed by the species of animal, or any other conduct that would lead a reasonable person to be apprehensive that an attack by the animal is imminent.

Neglect an animal means to fail to provide appropriate food, water, shelter, and veterinary care for the animal.

Own means to possess, harbor, keep, give food, water, shelter or care to, or own any animal, or to permit an animal to remain on premises subject to that person's ownership, custody, possession, occupation, rental, lease, or control.

Owner means any person who owns, as defined herein, an animal, or any person responsible for providing care to an animal.

Possess an animal means to harbor the animal, as herein defined.

Possess premises means to own, have custody, occupy, rent, lease, or control the premises.

Rabies means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

Rooster means an adult male chicken, including a capon, whether domestic or wild.

Stray animal means an animal roaming at large, the owner of which is unknown.

Unreasonable noise includes continued barking for long periods of time, or repeated barking, but the term "unreasonable noise" is not restricted to barking.

Vicious animal means a member of any species (not breed) of animal or any individual animal that has a dangerous disposition likely to be harmful to humans or other animals. The term "vicious animal" includes, but is not limited to, any animal that molests, threatens, attacks, or bites any person, vehicle, or other animal.

(Ord. No. 2017-5, § 1, 3-20-2017)

Sec. 4-2. Findings of fact.

The city council finds that the keeping, harboring, or possession of any animal in violation of this chapter constitutes a nuisance that endangers the people of the city and their property, disturbs the peace, impairs the use and enjoyment of public and private property, and impairs the value and marketability of public and private property.

(Ord. No. 2017-5, § 2, 3-20-2017)

Sec. 4-3. Nuisance animals.

The following animals are hereby found and declared to be a nuisance:

- (1) Any animal that molests, threatens, attacks, or bites any person, vehicle, or other animal, without deliberate provocation;
- (2) Any animal that damages private or public property that does not belong to the owner of the animal;
- (3) Any animal that makes unreasonable noise or noise that would be offensive to a reasonable person, that can be heard in a public place or on private property not owned, possessed, or controlled by the owner of the animal;
- (4) Any vicious animal;
- (5) Any dangerous animal;
- (6) Any livestock running at large;
- (7) Any dog or cat over four months old running at large that is not wearing a current, valid rabies vaccination tag;
- (8) Any abandoned animal;
- (9) Any stray animal;
- (10) Any fighting animal;

- (11) Any animal that is kept in such a way as to produce a foul odor that would be offensive to a reasonable person and that can be smelled on public property or on private property not owned, possessed, or controlled by the owner of the animal; providing the odor is not a temporary odor produced by common acceptable agricultural or animal husbandry practices. This section shall not apply to the normal, natural odor emitted by an animal;
 - (12) Any neglected animal;
 - (13) Any animal treated by its owner in a manner that includes the elements of the offense of cruelty to animals; and
 - (14) Any animal that is in violation of this chapter or that is kept, harbored, or possessed in violation of this chapter.
- (Ord. No. 2017-5, § 3, 3-20-2017)

Sec. 4-4. Additional animal nuisances.

The following are also found and declared to be nuisances:

- (1) The neglect of an animal by its owner;
 - (2) Cruelty to an animal;
 - (3) The abandonment of an animal by its owner;
 - (4) The release of any confined animal without the consent of its owner;
 - (5) Any violation of this chapter.
- (Ord. No. 2017-5, § 4, 3-20-2017)

Sec. 4-5. Prohibition of nuisances.

- (a) No person shall commit a nuisance as declared herein.
 - (b) No person shall permit any animal owned by that person to be a nuisance as declared herein.
 - (c) No person shall keep, harbor, possess, or own any animal that is a nuisance as declared herein.
- (Ord. No. 2017-5, § 4, 3-20-2017)

Sec. 4-6. Vicious animals.

An officer enforcing this chapter shall treat an animal as a vicious animal under this chapter if:

- (1) The officer observes the animal displaying vicious conduct or menacing conduct, and the animal is not confined in a way that prevents it from escaping and prevents it from harming people and property; or
- (2) a. Any officer of the city receives an affidavit or sworn complaint stating that the animal has displayed vicious conduct or menacing conduct, and stating:
 1. Where, when, and how such conduct occurred;
 2. A description of the animal; and
 3. If known, the name and address of the owner.
- b. The officer enforcing this chapter has reasonable grounds to believe the affidavit or complaint.

(Ord. No. 2017-5, § 6, 3-20-2017)

Sec. 4-7. Roosters.

(a) No person shall keep or maintain on any premises more than four roosters per half acre of continuous land not to exceed 40 total roosters. For land parcels smaller than one-half acre a maximum of two roosters may be kept. Each individual rooster that exceeds the number allowed above for the applicable size of the premises constitutes a separate violation of this section.

(b) Subsection (a) of this section shall not apply to licensed commercial poultry ranches the primary purpose of which is to produce eggs or meat for sale for human consumption, public or private schools, county-operated animal shelters or other animal-welfare organizations that employ animal control officers as described in V.T.C.A., Health and Safety Code ch. 829.

(c) Subsection (a) of this section shall not apply to a member of a local chapter of 4-H or Future Farmers of America (FFA), provided all of the following factors are met:

- (1) Written proof of current membership in 4-H or FFA shall be provided to any animal control officer, humane officer or peace officer upon demand;
- (2) Written documentation and approval of a 4-H or FFA project that involves the roosters shall be provided to any animal control officer, humane officer or peace

officer upon demand. The approval shall be from the 4-H, the county 4-H advisor or the FFA. The documentation shall detail the nature of the project, number of roosters included in the project, breed of each rooster, duration of the project, purpose for keeping the roosters, and address where the roosters are kept and maintained;

- (3) The roosters are on the property designated in the 4-H or FFA project documentation;
- (4) The number of roosters on the premises does not exceed the number of roosters specified in the 4-H or FFA project documentation; and
- (5) Any person seeking to assert this exemption shall allow an on-site inspection of the premises by an animal control officer, humane officer or peace officer upon demand to verify initial and continued eligibility for this exemption.

(d) Each enclosure for one or more roosters shall be located a minimum of 50 feet from any off-premises residence.

(e) Nothing in this section shall be construed as authorizing the keeping of any roosters in violation of any other county ordinance, including, but not limited to, the zoning ordinance. If there is any conflict between this section and any other ordinance, the most restrictive provision shall apply.

(f) No person shall maintain or keep any rooster by means of a tether attached to an object. Each individual rooster that is tethered constitutes a separate violation of this section.

(g) Each rooster shall, at all times, be provided with:

- (1) Access to water and shelter from the elements (rain, wind, direct sun, etc.).
- (2) Sufficient room to spread both wings fully and to be able to turn in a complete circle without any impediment and without touching the side of an enclosure.
- (3) Clean and sanitary premises that are kept in good repair.

(Ord. No. 2017-5, § 7, 3-20-2017)

Sec. 4-8. Rabies.

(a) Any dog or cat over four months old that has not received a current rabies vaccination is hereby found and declared to be a nuisance.

(b) No person shall keep, harbor, or possess a dog or cat over four months old without valid proof of current rabies vaccination.

(c) The provisions of this section govern and control over any conflicting terms of section 4-10 on confinement, impoundment, and destruction.

(d) An animal shall be impounded if:

- (1) The animal bites or scratches a person;
- (2) The animal is required to be vaccinated against rabies;
- (3) The owner of the animal does not provide a current rabies vaccination certificate for the animal upon request of an officer enforcing this chapter.

Such animal shall remain impounded for observation for ten days and shall not be destroyed or released within that time. If the animal dies while impounded, then it shall be tested for rabies. If the animal does not die within ten days of impoundment, and if the veterinarian certifies that it does not have rabies, then it is subject to reclamation, release, or destruction as provided in section 4-10. However, it may not be reclaimed or released without receiving a rabies vaccination at the expense of the person receiving the animal.

(e) No person shall fail to keep accurate records of the rabies vaccinations of any dog or cat over four months old that is owned by such person. No person shall fail to permit an officer enforcing this chapter to examine such records on request.

(Ord. No. 2017-5, § 8, 3-20-2017)

Sec. 4-9. 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 10:00 p.m. and 6:00 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. Ten feet;
 - (3) Is in an unsafe condition; or
 - (4) Causes injury to the dog.
- (c) This section 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 the 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.
- (d) This section does not prohibit a person from walking a dog with a handheld leash.
- (Ord. No. 2017-5, § 10, 3-20-2017)

Sec. 4-10. Confinement, impoundment, and destruction.

(a) As authorized in this section, any officer enforcing this chapter may confine, impound or destroy any animal that violates this chapter or that is being kept, harbored, owned, or possessed in violation of this chapter, except as otherwise provided in subsection (e) of this section.

(b) The officer shall notify the owner of the animal to confine or remove the animal or to take such other action as necessary to cure the violation, if:

- (1) The owner is known to the officer;
- (2) The owner is available to receive such notice; and
- (3) In the officer's discretion, it is not reasonably necessary for the officer to immediately confine, impound, or destroy the animal in order to protect the safety or property of any person.

(c) Except as provided in subsection (e) of this section, the officer may immediately confine, impound, or destroy the animal without first notifying the owner as provided in subsection (b) of this section if:

- (1) The owner is not known to the officer;
- (2) The owner is not available to receive such notice; or
- (3) The officer believes, in his or her discretion, that such action is reasonably necessary to protect the safety or property of any person.

(d) Except as provided in subsection (e) of this section, the officer may confine, impound, or destroy the animal, if the owner has not complied with the notice provided by subsection (b) of this section.

(e) The officer shall not destroy an animal under subsection (b), (c), or (d) of this section in lieu of impoundment, if in the officer's discretion, confinement, or impoundment can be accomplished without risk to the safety of property, any person, or any other animal.

(f) Any officer enforcing this section may, in his discretion, select the place of impoundment of an animal in violation of this section or being kept in violation of this section, unless the city council has designated such place.

(g) Upon impounding an animal, an officer enforcing this section shall:

- (1) Notify the owner of the animal of such impoundment, if the owner is known to the officer and is available to receive the notice; and

(2) File a report with the city secretary. The report shall include a description of the animal, where and when it was picked up, the name and address of the owner, if known, and a description of the violation.

(h) The owner of an impounded animal may reclaim possession of the animal only by paying all fees required by this section and providing proof of a current rabies vaccination as required by this section.

(i) An impounded animal shall be kept for seven days after notice is sent to the owner, if the owner is known to the officer impounding the animal and is available to receive the notice. Otherwise, an impounded animal shall be kept for seven days after impoundment. If an animal has not been reclaimed by its owner within the applicable seven days under this subsection, then the animal shall be released to another person as provided in subsection (j) of this section or destroyed.

(j) In lieu of destruction, an officer enforcing this section may, in his or her sole discretion, release the animal to a person who:

- (1) Agrees to keep the animal in compliance with all laws;
- (2) Demonstrates to the officer's reasonable satisfaction that the person has the ability and any and all equipment necessary to keep the animal in compliance with all laws; and
- (3) Pays all fees required by this section.

(k) There is hereby levied upon the owner and recipient to whom an impounded animal is released is separately and jointly responsible for fees for capture, impoundment, care and maintenance services of an impounded animal in accordance with the city's fee schedule, as it may be amended from time to time by city council. All fees shall be received by the city secretary. Any person receiving fees paid for impoundment of an animal shall deliver same to the city secretary, who shall deposit said fees in the general fund of the city. In addition, if the animal is impounded with a veterinarian, the person redeeming the animal shall pay all the actual charges of the veterinarian.

(Ord. No. 2017-5, § 11, 3-20-2017)

Sec. 4-11. Enforcement.

Any code enforcement officer of the city or any peace officer may enforce this chapter.

(Ord. No. 2017-5, § 12, 3-20-2017)

Chapter 5

RESERVED

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Chapter 6

BUILDINGS AND BUILDING REGULATIONS

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BUILDINGS AND BUILDING REGULATIONS

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ARTICLE I. IN GENERAL

Secs. 6-1—6-18. Reserved.

ARTICLE II. BUILDING OFFICIAL

Sec. 6-19. Creation of office.

The office of the city building official is hereby confirmed, reestablished, and regulated.

(Ord. No. 2020-40, § 1, 12-21-2020)

Sec. 6-20. Qualifications.

The building official shall have and maintain all certifications and other qualifications for his or her job, as required by all applicable law or governing authorities. In addition, the building official shall be properly qualified for the duties of the office as determined by the city manager.

(Ord. No. 2020-40, § 2, 12-21-2020)

Sec. 6-21. Employment and removal.

The building official shall be hired and removed as provided in the Home Rule Charter.

(Ord. No. 2020-40, § 3, 12-21-2020)

Sec. 6-22. At-will employment.

Regardless of any other provision, the building official shall be employed at will. Furthermore, nothing shall impair the at will status of the building official's employment except a writing signed by the city and the building official and specifically, expressly, and clearly stating that it changes the at will status of the building official's employment.

(Ord. No. 2020-40, § 4, 12-21-2020)

Sec. 6-23. Supervision.

The Home Rule Charter provides that the building official is under the supervision of the city manager.

(Ord. No. 2020-40, § 5, 12-21-2020)

Sec. 6-24. Duties.

The building official shall have all duties and authority:

- (1) Provided by law;
 - (2) Generally exercised by building officials in the state; or
 - (3) Assigned by city ordinance or by the city manager.
- (Ord. No. 2020-40, § 6, 12-21-2020)

Sec. 6-25. Deputies.

The building official may have such deputies as the city manager authorizes from time to time. All provisions of this article shall also apply to deputy building officials.
(Ord. No. 2020-40, § 7, 12-21-2020)

Sec. 6-26. Nonliability of the city and its personnel and representatives.

Neither the city nor any officer, agent, employee, or representative of the city shall have any liability, except liability to the city, for any act or omission of such person concerning this article or the subject matter hereof.
(Ord. No. 2020-40, § 8, 12-21-2020)

Secs. 6-27—6-55. Reserved.

ARTICLE III. TECHNICAL CODES

DIVISION 1. GENERALLY

Sec. 6-56. 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:

Building code, building codes, this code, or these codes, whether singular or plural, means the International Building Code, International Residential Building Code, National Electrical Code, International Energy Conservation Code, International Fuel Gas Code, International Mechanical Code, International Swimming Pool and Spa Code, International Plumbing Code, International Fire Code, International Property

Maintenance Code, the Amusement Ride Ordinance (Ordinance No. 2014-20, part X), and any other ordinances or codes under which the building official makes decisions, but not the zoning ordinance.

Building official means and includes not only the building official, but also the fire marshal, and the designees of the building official or fire marshal.

(b) Any reference herein to this section or the ordinance from which this section was derived also refers to all codes adopted or amended by this article.

(Ord. No. 2021-20, pt. II(A), 5-17-2021)

Secs. 6-57—6-85. Reserved.

DIVISION 2. BUILDING CODE

Sec. 6-86. Adoption of International Building Code.

The International Building Code, 2018 edition (nonresidential), hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code has been filed with the city secretary.

(Ord. No. 2019-40, § I-1, 12-16-2019)

Sec. 6-87. Amendments to International Building Code.

(a) Section 103 of the International Building Code is hereby deleted and a new section 103 is substituted therefor as follows:

103. *Department of building safety.* The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall have such duties, and shall be selected and serve in the position at the pleasure of the city council and may be removed without cause by city council. The building official may appoint deputies to assist him/her, subject to city council approval. Said deputies shall serve at the pleasure of the city council and may be removed without cause by city council.

(b) Sections 104.1, 104.3, 104.11 (but not any subsections of section 104.11 except 104.11.2), and 104.11.2 of said code are hereby deleted and new sections are substituted for those particular sections as follows:

104. *Powers and duties of the building official.*

104.1. *General.* The building official is hereby authorized and directed to enforce all of the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce

written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

104.3. *Notices and orders.* Whenever any work is being done contrary to the provisions of this code the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.

104.6. *Right of entry.* When it is necessary to make an inspection to enforce the provisions of this code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

104.10. *Modifications.* When there are practical differences involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code, and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.

104.11. *Alternate materials, alternative design and methods of construction.* The provisions of this code are not intended to prevent the use of a material, alternate design, or method of construction not specifically prescribed by this code, provided any alternate has been approved by the building official. The building official may approve any such alternate, provided the building official finds that the proposed material, design, or method is satisfactory and complies with the provisions of this code and that the material and method of work offered is, for the purpose intended, at least equivalent of that prescribed in this code in suitability, effectiveness, fire resistance, durability, and safety.

The building official shall require that sufficient written evidence or proof be submitted to substantiate any claims that may be made regarding an alternate. The details of any action granting approval of an alternate shall be written and recorded and entered in the files of the city.

104.11.2. *Tests.* Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or work does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to the city. Test methods shall be as specified by this code or other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures. All tests shall be made by an approved agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

(c) The following exemptions are hereby added to the exemptions in section 105.2 of the International Building Code:

105.2. *Work exempt from permit.*

Building:

1. Sidewalks and decks.
2. Painting, papering, tiling, carpeting, cabinets, countertops, or similar finish work.
3. Prefabricated swimming pools accessory to a group R-3 occupancy, which are less than 24 inches deep, do not exceed 5,000 gallons, and are installed above ground.
4. Swings and other playground equipment accessory to one- and two-family dwellings.

(d) Section 105.5 of the International Building Code is hereby deleted and new section 105.5 is substituted therefor as follows:

105.5. *Expiration; no construction schedule.* Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of said permit shall not exceed 1½ years. If any permitted work is not completed within this limitation, then the permit shall become invalid and must be reissued in order to resume work, together with payment of fees for such reissued permit.

Work pursuant to a construction schedule. A permit may be issued for a reasonable period of time, which coincides with a written construction schedule prepared by a licensed architect or engineer, and filed with the city. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the

maximum term of said permit shall not exceed two years. If any permitted work is not completed within this limitation, the permit shall become invalid and must be reissued in order to perform or resume work, together with payment of fees for such reissued permit.

(e) Section 105 of the International Building Code is hereby amended by adding a new section 105.8, which provides as follows:

105.8. *Liability insurance.* The person or entity that will actually perform the work or services covered by a permit shall provide to the city evidence of comprehensive general liability insurance, issued by a company licensed to do business in the state, in the following amounts, for the duration of the permit, and shall furnish certificates of insurance to the city as evidence thereof.

Comprehensive general liability insurance covering all risks associated with the work, with a minimum bodily injury limit of \$100,000.00, \$300,000.00 per occurrence, and a property damage limit of \$400,000.00, or a property damage limit equal to or exceeding the amount of the contract amount, whichever is greater.

The certificates shall provide that the insurance shall not be canceled, reduced, or changed without 30 days' advance notice to the city.

(f) Section 109.2 of the International Building Code is hereby deleted and a new section 109.2 is substituted therefor as follows:

109.2. *Schedule of permit fees.* For buildings, structures, or electrical, gas, mechanical, and plumbing systems or alterations thereof requiring a permit, a fee for each permit shall be paid as required, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(g) Section 109.4 of the International Building Code is hereby deleted and a new section 109.4 is substituted therefor as follows:

109.4. *Work commencing before permit issuance.* The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(h) Section 111.1 of the International Building Code is hereby deleted and a new section 111.1 is substituted therefor as follows:

111.1. *Use and occupancy.* No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a certificate

of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the city shall not be valid.

(i) Sections 112.1, 112.2, and 113, and appendix B of the International Building Code replaced. This amends the building codes by replacing sections 112.1, 112.2, and 112.3 and appendix B of the International Building Code and any other provisions, by whatever number, concerning appeals from decisions of the building official in any building codes.

(1) *The board.*

- a. *Establishment of board.* The building codes board of appeals ("BCBOA," "board of appeals," or "board") is hereby established.
- b. *Membership.* The city council shall appoint the members of the board, as provided in the Home Rule Charter. The board shall have at least three members and as many alternate members as the council chooses to appoint. The council shall specify whether each appointment is of a regular member or an alternate.
- c. *Ex officio member.* The building official shall be an ex officio member of the board but shall have no vote on any matter before the board.
- d. *Length of term.* Each member shall serve a two-year term, coincident with the term of the mayor, and until the member's successor is duly installed, but regardless of any provision, a member is subject to removal at will at any time by the city council.
- e. *Alternate members.* The board chairperson shall call alternate members to hear appeals during the absence or disqualification of one or more members. All provisions of this section applicable to members shall also apply to alternate members. Any reference to a number or fraction of members shall mean the regular members and alternate members participating in the matter, unless otherwise specified.
- f. *Qualifications.* The city council shall be the sole judge of the qualifications of the members of the board. The council may consider a prospective member's education, training, and experience in the subject matters of the building codes and any other qualifications the council believes are pertinent.

- g. *Chairperson.* The board shall annually select one of its members to serve as chairperson.
 - h. *Secretary.* The chairman or his/her designee shall make a detailed record of all proceedings and deliver it to the city secretary, who shall preserve it as provided by law.
 - i. *No compensation of members.* The members shall not be compensated.
- (2) *Authority of board.*
- a. *Authority to hear certain appeals.* The board is hereby authorized to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code.
 - b. *Not zoning appeals.* However, appeals from decisions of the building official under the zoning ordinance are heard by the zoning board of adjustment and appeals under the zoning ordinance and the unified development code, not by the building codes board of appeals under this article.
 - c. *Limitations on authority.* An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or that an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.
 - d. *Purpose and scope of appeals.* The purpose of an appeal is to contest an initial decision of the building official based upon alleged misapplication of the criteria for that decision. An appeal shall not be used as a means of amending, varying, or otherwise modifying the standards of this code that apply to the decision.
 - e. *Disqualification of member.* A member shall not hear an appeal in which that member has a personal, professional, or financial interest.
 - f. *Procedures.*
 - 1. *Requirements for appeal.*
 - (i) The applicant and any interested person may appeal a final decision of the building official within the authority of the board.
 - (ii) The appeal must be filed with the building official within 20 days after notice of the building official's decision being appealed was served.

- (iii) The appeal shall contain a written statement of the reasons why the decision is erroneous. The appeal must be accompanied by a copy of the application or request on which the initial decision was rendered. The appeal may include any other documents that support the position of the appellant.
 - (iv) The appeal must be accompanied by the fee established by the city council. The fee for an appeal under this article shall be in accordance with the city fee schedule as it may be amended from time to time by city council.
- 2. *Documents to board.* Upon receipt of an appeal, the building official shall compile all documents constituting the record of the decision on appeal and transmit the record to the board.
- 3. *Appeal creates a stay.*
 - (i) Receipt of a complete, written appeal of a decision stays all proceedings of the city in furtherance of the decision from which the appeal is taken, including without limitation acceptance, processing, or issuance of any applications that are dependent on the decision being appealed, and any development activities authorized by initial approval of the application.
 - (ii) The stay shall be lifted only if the building official certifies in writing to the board that a stay would probably cause imminent peril to life or property.
 - (iii) Thereafter, the stay may be reinstated only by order of the board or a court of record, on application, after notice to the responsible official, for due cause shown.
- 4. *Criteria for deciding appeal.* In deciding the appeal, the board shall apply the same criteria that govern the initial decision being appealed under the provisions of this code.
- 5. *Time to decide appeal.* The board must decide an appeal within 30 days after the date of filing an appeal that the building official certifies is administratively complete, including the payment of the applicable fee for the appeal. The 30 days run from the date of filing the complete application, not from the date the building official certifies completeness. The appellant may waive the 30-day requirement.
- 6. *Postponed hearing.* When a quorum is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

7. *Vote required.* Modifying or reversing a decision of the building official requires a concurring vote of two-thirds of the number of regular members of the board.
8. *Written decision.* The decision of the board shall be in writing. Certified copies shall be furnished to the appellant and to the building official.
9. *Action on decision of board.* The building official shall take immediate action in accordance with the decision of the board.
10. *Time periods running from decision of board.* For purposes of determining expiration or extension periods under this code or other applicable law, the date of the board's decision on an appeal is the date on which the application is deemed approved or denied.
11. *Notice of meetings.* The board shall meet upon notice from the chairperson or at stated periodic meetings.
12. *Open meetings and hearings.* The meetings and hearings of the board shall be subject to the Texas Open Meetings Act. The appellant, the appellant's representative, the building official, and any person whose interests are affected shall be given an opportunity to be heard.
13. *Quorum.* A majority of the number of regular members shall constitute a quorum. In the absence of one or more regular members, alternate members participating in the matter shall count toward a quorum.
14. *Other rules and procedures.* The board is authorized to establish policies and procedures necessary to carry out its duties, consistently with this article. The procedures for hearings shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

(j) Section 113.1 of the Code is hereby deleted and new section 113.1 is substituted therefor as follows:

113.1. *Appeals.* Appeals of orders, decisions, or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.

(k) Section 113.3 of the code is hereby deleted in its entirety.

(l) Section 114 of the code is deleted in its entirety and the penalty provision of this article is substituted in its place.

(m) Section 903, entitled "Sprinkler Systems," is hereby deleted.

(n) Moving of structures. A building permit shall be required for moving any building or other structure into, out of, or within the city, except for portable storage buildings of less than 150 square feet that are moved from one point within the city to another point within the city. The fees for permits under this section shall be determined by the city's separate fee schedule.

(o) Demolition. A building permit shall be required for the demolition of any building or other structure in the city. The fee for the permit shall be as stated in the city's separate fee schedule and shall be based upon the value of the demolition work, not the value of the structure to be demolished.

(p) Appendices.

(1) The following appendices contained in the International Building Code are deleted their entirety:

- a. Appendix A, Employee Qualifications;
- b. Appendix B, Board of Appeals;
- c. Appendix D, Fire Districts;
- d. Appendix G, Manufactured Homes;
- e. Appendix H, Signs; and
- f. Appendix I, Patio Covers.

(2) Appendices C, E, F, and J contained in such code are hereby adopted.
(Ord. No. 2019-40, § I-2, 12-16-2019; Ord. No. 2021-20, pt. II(B), (C), 5-17-2021)

Secs. 6-88—6-117. Reserved.

DIVISION 3. ELECTRICAL CODE

Sec. 6-118. Adoption of National Electrical Code.

The National Electrical Code, 2017 edition, hereinafter sometimes referred to as the "code," is hereby adopted. A copy of said code has been filed with the city secretary.
(Ord. No. 2019-40, § II-1, 12-16-2019)

Secs. 6-119—6-149. Reserved.

DIVISION 4. PLUMBING CODE

Sec. 6-150. Adoption and amendment of plumbing code.

Part Three, Plumbing Code, of Ordinance No. 2019-40 is hereby amended to read as stated on exhibit A to the ordinance from which this division is derived, which exhibit is incorporated herein in full.

(Ord. No. 2021-11, § A, 2-22-2021)

Sec. 6-151. Savings clause, fines, and other provisions.

(a) Except as specifically provided herein, the remainder of Ordinance No. 2019-40, all other ordinances, and all other portions of ordinances of the city shall remain in full force and effect.

(b) The provisions repealed by this division shall nevertheless remain in full force and effect as to violations and acts occurring before the effective date of the ordinance from which this division is derived.

(c) This division is subject to all provisions of division 12 of this article, including, but not limited to, a penalty of up to \$2,000.00 per day for a violation of this division. (Ord. No. 2021-11, § B, 2-22-2021)

Secs. 6-152—6-170. Reserved.

DIVISION 5. FUEL GAS CODE

Sec. 6-171. Adoption of International Fuel Gas Code.

The International Fuel Gas Code, 2018 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code has been filed with the city secretary.

(Ord. No. 2019-40, § IV-1, 12-16-2019)

Sec. 6-172. Amendments to International Fuel Gas Code.

(a) Section 101.1 of the International Fuel Gas Code is hereby deleted in its entirety and a new section 101.1 is substituted therefor as follows:

101.1. *Title.* These regulations shall be known as the Fuel Gas Code of the City of Iowa Colony, Texas, hereinafter sometimes referred to as "this code."

(b) Section 103 of the International Fuel Gas Code is hereby deleted in its entirety.

(c) Sections 106.6.2 and 106.6.3 of the International Fuel Gas Code are hereby deleted in their entirety and a new section 106.6.2 is substituted therefor as follows:

Section 106.6.2. *Fee schedule.* The fees for all plumbing work shall be paid as required, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(d) Sections 108.3 and 108.4 of the International Fuel Gas Code are deleted in their entirety and the penalty provision of this article is substituted in their place.

(e) Section 109 of the International Fuel Gas Code is hereby deleted in its entirety and a new Section 109 is substituted therefor as follows:

109.1. *Appeals.* Appeals of orders, decisions, or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.
(Ord. No. 2019-40, § IV-2, 12-16-2019)

Secs. 6-173—6-197. Reserved.

DIVISION 6. ENERGY CONSERVATION CODE

Sec. 6-198. Adoption of International Energy Conservation Code.

The International Energy Conservation Code, 2018 edition, hereinafter sometimes referred to as the code, as published by the International Code Council, Inc., is hereby adopted. A copy of said code has been filed with the city secretary.
(Ord. No. 2019-40, § V-1, 12-16-2019)

Sec. 6-199. Amendments to International Energy Conservation Code.

Section C101.1 of the International Energy Conservation Code is hereby deleted in its entirety and a new section C101.1 is substituted therefor as follows:

C101.1. *Title.* These regulations shall be known as the Energy Conservation Code of the City of Iowa Colony, Texas, hereinafter sometimes referred to as "this code."
(Ord. No. 2019-40, § V-2, 12-16-2019)

Secs. 6-200—6-221. Reserved.

DIVISION 7. MECHANICAL CODE

Sec. 6-222. Adoption of International Mechanical Code.

The International Mechanical Code, 2018 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code has been filed with the city secretary.
(Ord. No. 2019-40, § VI-1, 12-16-2019)

Sec. 6-223. Amendments to International Mechanical Code.

(a) Section 103 of the International Mechanical Code is deleted in its entirety.

(b) Sections 104.1, 104.3, and 104.5 of the International Mechanical Code are hereby deleted in their entirety and new sections are substituted for those particular sections as follows:

104. *Duties and powers of the building official.*

104.1. *General.* The building official is hereby authorized and directed to enforce all of the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

104.3. *Notices and orders.* Whenever any work is being done contrary to the provisions of this code the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.

104.4. *Right of entry.* When it is necessary to make an inspection to enforce the provisions of this code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

(c) Sections 105.1, 105.2, and 105.3 of the International Mechanical Code are hereby deleted in their entirety and replaced with the following sections:

105.1. *Modifications.* When there are practical differences involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the

strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code, and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.

- 105.2. *Alternate materials, alternative design and methods of construction.* The provisions of this code are not intended to prevent the use of a material, alternate design, or method of construction not specifically prescribed by this code, provided any alternate has been approved by the building official.

The building official may approve any such alternate, provided the building official finds that the proposed material, design, or method is satisfactory and complies with the provisions of this code and that the material and method of work offered is, for the purpose intended, at least equivalent of that prescribed in this code in suitability, effectiveness, fire resistance, durability, and safety.

The building official shall require that sufficient written evidence or proof be submitted to substantiate any claims that may be made regarding an alternate. The details of any action granting approval of an alternate shall be written and recorded and entered in the files of the city.

- 105.3. *Tests.* Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or work does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to the city.

Test methods shall be as specified by this code or other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

All tests shall be made by an approved agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

- (d) Section 106.4.3 and 106.4.4 of the International Mechanical Code are deleted in their entirety and a new section 106.4.3 is substituted therefor as follows:

- 106.4.3. *Expiration.* Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of such permit shall not

exceed 1½ years. If any permitted work is not completed within this limitation, then the permit shall become invalid and must be reissued in order to resume work, together with payment of fees for such reissued permit.

(e) Sections 106.5.2 and 106.5.3 of the International Mechanical Code are hereby deleted in their entirety, and the following section 106.5.2 is substituted therefor:

106.5.2. *Fee schedule.* The fees for all mechanical work shall be paid as required, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(f) Section 106 of the International Mechanical Code is amended by adding a new section 106.5.4, which provides as follows:

106.5.4. *State license.* All persons performing work within the city governed by this code shall be licensed by the state, and shall submit to the city proof of insurance as required by the state or by statute.

(g) Section 106 of the International Mechanical Code is amended by adding a new section 106.5.5, which provides as follows:

106.5.5. *Construction hours.* Within the city, outdoor (unenclosed) construction of buildings and structures and related activities within the city is permitted during the following time periods only:

Monday through Friday	7:00 a.m. to 6:00 p.m.
Saturday, Sunday, and any city holiday	9:00 a.m. to 6:00 p.m.

The building official shall include written notice of these construction hours with each building permit issued.

These hours shall apply except in cases of extreme and urgent necessity, which are in the interest of public safety and convenience, and then only by permit obtained from and issued by the city's building official. Such permit may be renewed during the time the emergency exists.

(h) Section 106 of the International Mechanical Code is amended by adding a new section 106.5.6, which provides as follows:

106.5.6. *Work commencing before permit issuance.* The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(i) The International Mechanical Code is amended by deleting section 106.5 (but not any subsections thereof except as may be specifically stated herein) and appendix B, entitled "Permit Fee Schedule," as fees shall be charged in accordance with the city's fee schedule, as it may be amended from time to time.

(j) Section 109 of the International Mechanical Code is deleted in its entirety and a new section 109 substituted therefor as follows:

109. *Means of appeal.* Appeals of orders, decisions, or determinations made by the building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on the particular subject under consideration.

(k) Section 108 of the International Mechanical Code is deleted in its entirety and the penalty provision of this article is substituted in its place.

(l) Appendix A contained in the International Mechanical Code is hereby adopted. (Ord. No. 2019-40, § VI-2, 12-16-2019)

Secs. 6-224—6-253. Reserved.

DIVISION 8. FIRE CODE

Sec. 6-254. Adoption and amendment of International Fire Code.

Part Seven, Fire Code, of Ordinance No. 2019-40 is hereby amended to read as stated on exhibit A to that ordinance, which exhibit is incorporated herein in full. (Ord. No. 2021-03, § A, 1-15-2021)

Sec. 6-255. Additional amendments to International Fire Code.

The International Fire Code, as adopted and amended in section 6-254, shall be further amended as follows:

(1) Existing Section 503.6. Security gates. The existing section 503.6 of the International Fire Code, 2018 edition, states:

503.6. *Security gates.* The installation of security gates across a fire apparatus access road shall be approved by the fire code official. Where security gates are installed, they shall have an approved means of emergency operation. The security and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be listed in

accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F2200.

- (2) Section 503.6.1 of the International Fire Code, 2018 edition, is hereby enacted to read as follows:

503.6.1. *Electronic gates.*

503.6.1.1. Any electronic gate across a fire apparatus access road to a commercial property for human occupancy, a multifamily building, or a residential subdivision must provide for emergency vehicle access using a radio controlled opener that responds to the radios and frequencies used by each agency providing emergency services at the location of that gate. The reliability and functionality of the radio controlled opener must be acceptable to the fire marshal. The Click2Enter radio controlled opener is one system that complies with this section, until the fire marshal determines otherwise.

503.6.1.2. However, an electronic gate subject to section 503.6.1.1 that was in place on January 27, 2020, must comply with section 503.6.1.1 no later than January 27, 2021.

503.6.1.3. No person shall activate or close an electronic gate described by section 503.6.1 until the fire marshal has inspected and approved the gate for compliance with the fire code.

503.6.1.4. The owner of the property shall be responsible for all costs associated with the purchase, installation, and maintenance of the electronic and radio controlled opening system.

(Ord. No. 2020-04, §§ 2, 3, 1-27-2020)

Sec. 6-256. Fines and other provisions.

This division is subject to all provisions of part XII, of Ordinance No. 2019-40, including, but not limited to, a penalty of up to \$2,000.00 per day for a violation of this division.

(Ord. No. 2021-03, § B, 1-15-2021)

Secs. 6-257—6-275. Reserved.

DIVISION 9. RESIDENTIAL BUILDING CODE

Sec. 6-276. Adoption of International Residential Building Code for One- and Two-Family Dwellings.

The International Residential Code for One- and Two-Family Dwellings, 2019 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted. A copy of said code has been filed with the city secretary.

(Ord. No. 2019-40, § VII I-1, 12-16-2019)

Sec. 6-277. Amendments to residential building code.

(a) Section R103 of the International Residential Code for One- and Two-Family Dwellings is hereby deleted in its entirety and a new section R103 is substituted therefor as follows:

R103. *Department of building safety.* The enforcement of this code shall be under the administrative and operational control of the building official. The building official shall have such duties, and shall be selected and serve in the position at the pleasure of the city manager and may be removed without cause by the city manager. The building official may appoint deputies to assist him/her, subject to city manager approval. Said deputies shall serve at the pleasure of the city manager and may be removed without cause by city council.

(b) Sections R104.1, R104.3, R104.6, R104.10, R104.11, and R104.11.1 of the International Residential Code for One- and Two-Family Dwellings are hereby deleted in their entirety and new sections are substituted for those particular sections as follows:

R104. *Duties and powers of the building official.*

R104.1. *General.* The building official is hereby authorized and directed to enforce all of the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

R104.6. *Right of entry.* When it is necessary to make an inspection to enforce the provisions of this code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in violation of this code which makes the

building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

R104.3. *Notices and orders.* Whenever any work is being done contrary to the provisions of this code the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.

R104.10. *Modifications.* When there are practical differences involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code, and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.

R104.11. *Alternate materials, alternative design and methods of construction.* The provisions of this code are not intended to prevent the use of a material, alternate design, or method of construction not specifically prescribed by this code, provided any alternate has been approved by the building official.

The building official may approve any such alternate, provided the building official finds that the proposed material, design, or method is satisfactory and complies with the provisions of this code and that the material and method of work offered is, for the purpose intended, at least equivalent of that prescribed in this code in suitability, effectiveness, fire resistance, durability, and safety.

The building official shall require that sufficient written evidence or proof be submitted to substantiate any claims that may be made regarding an alternate. The details of any action granting approval of an alternate shall be written and recorded and entered in the files of the city.

R104.11.1. *Tests.* Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or work does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to the city. Test methods shall be as specified by this code or other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

All tests shall be made by an approved agency. Reports of such tests shall be retained by the building official for the period required for the retention of public records.

(c) Section R105.2 of the International Residential Code for One- and Two-Family Dwellings is hereby amended by deleting exemptions listed as numbers 1 and 10.

(d) Section R105.5 of the International Residential Code for One- and Two-Family Dwellings is hereby deleted in its entirety and a new section R105.5 is substituted therefor as follows:

R105.5. *Expiration: No construction schedule.* Every permit issued shall become invalid unless the work at the site authorized by such permit is commenced within 180 days after its issuance. The building official is authorized to grant, in writing, an extension or extensions of such permit, provided the maximum term of said permit shall not exceed 1½ years. If any permitted work is not completed within this limitation, then the permit shall become invalid and must be reissued in order to resume work, together with payment of fees for such reissued permit.

(e) Section R105 of the International Residential Code for One- and Two-Family Dwellings is hereby amended by adding a new section R105.10, which provides as follows:

R105.10. *Liability insurance.* The person or entity that will actually perform the work or services covered by a permit shall provide to the city evidence of comprehensive general liability insurance, issued by a company licensed to do business in the state, in the following amounts, for the duration of the permit, and shall furnish certificates of insurance to the city as evidence thereof. The certificates shall provide that the insurance shall not be canceled, reduced, or changed without 30 days' advance notice to the city.

Comprehensive general liability insurance covering all risks associated with the work, with a minimum bodily injury limit of \$100,000.00, \$300,000.00 per occurrence, and a property damage limit of \$400,000.00, or a property damage limit equal to or exceeding the amount of the contract amount, whichever is greater.

(f) Section R108 of the International Residential Code for One- and Two-Family Dwellings is amended by adding to section R108.2 the following provision:

R108.2. *Schedule of permit fees.* Fees shall be charged in accordance with the city's fee schedule, as it may be amended from time to time.

(g) Section R108 of the International Residential Code for One- and Two-Family Dwellings is hereby amended by adding a new section R108.6, which provides as follows:

R108.6. *Work commencing before permit issuance.* The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(h) Section R110.1 of the International Residential Code for One- and Two-Family Dwellings is deleted in its entirety and a new section R110.1 is substituted therefor, which provides as follows:

R110.1. *Use and occupancy.* No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein.

Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the city shall not be valid.

(i) Section R112.1 of the International Residential Code for One- and Two-Family Dwellings is hereby deleted and new section 112.1 is substituted therefor as follows:

112.1. *Appeals.* Appeals of orders, decisions, or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.

(j) Section R112.3 of the International Residential Code for One- and Two-Family Dwellings is hereby deleted in its entirety.

(k) Section R113 of the International Residential Code for One- and Two-Family Dwellings is deleted in its entirety and the penalty provision of this article is substituted in its place.

(l) The following Appendix contained in the International Residential Code for One- and Two-Family Dwellings is deleted its entirety: Appendix E, Manufactured Housing Used as Dwellings.

(m) Appendices A through D, and F through K contained in the International Residential Code for One- and Two-Family Dwellings are hereby adopted.
(Ord. No. 2019-40, § VIII-2, 12-16-2019)

Secs. 6-278—6-302. Reserved.

DIVISION 10. PROPERTY MAINTENANCE CODE

Sec. 6-303. Adoption of International Property Maintenance Code.

The International Property Maintenance Code, 2018 edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., is hereby adopted.

(Ord. No. 2019-40, § IX-1, 12-16-2019)

Secs. 6-304—6-324. Reserved.

DIVISION 11. ADDITIONAL ENFORCEMENT AUTHORITY

Sec. 6-325. Scope.

The authority granted by this article shall apply to all of the codes adopted, enacted, or amended by any part of this article and to all regulations enacted in or pursuant to this article. The additional enforcement authority granted by this article shall apply to the building official, the fire marshal, the code official, and all other persons authorized by any ordinance or other law to enforce any of the codes or regulations mentioned in this article. The term "building official" in this article shall mean any of the officials described in this section. The term "this code" or similar terms in this article shall mean not only each code adopted, enacted, or amended by any part of this article, but also to all regulations enacted in or pursuant to this article. The authority granted by this article is in addition, not in lieu of, any enforcement authority granted by any other ordinance or other law.

(Ord. No. 2019-40, § XI-1, 12-16-2019)

Sec. 6-326. Powers and duties of the building official.

(a) *General.* The building official is hereby authorized and directed to enforce all of the provisions of this Code. The building official shall have the power to render interpretations of this code and to adopt and enforce written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this Code.

(b) *Right of entry.* When it is necessary to make an inspection to enforce the provisions of this Code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in

violation of this Code which makes the building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

(c) *Stop orders.* Whenever any work is being done contrary to the provisions of this Code the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.

(d) *Modifications.* When there are practical differences involved in carrying out the provisions of this Code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this Code impractical and that modification is in conformance with the intent and purpose of this Code, and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.

(e) *Alternate materials, alternative design and methods of construction.* The provisions of this Code are not intended to prevent the use of a material, alternate design, or method of construction not specifically prescribed by this Code, provided any alternate has been approved by the building official.

- (1) The building official may approve any such alternate, provided the building official finds that the proposed material, design, or method is satisfactory and complies with the provisions of this Code and that the material and method of work offered is, for the purpose intended, at least equivalent of that prescribed in this Code in suitability, effectiveness, fire resistance, durability, and safety.
- (2) The building official shall require that sufficient written evidence or proof be submitted to substantiate any claims that may be made regarding an alternate. The details of any action granting approval of an alternate shall be written and recorded and entered in the files of the city.

(f) *Tests.* Whenever there is insufficient evidence of compliance with any of the provisions of this Code or evidence that any material or work does not conform to the requirements of this Code, the building official may require tests as proof of compliance to be made at no expense to the city. Test methods shall be as specified by this Code or other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures.

(Ord. No. 2019-40, § XI-2, 12-16-2019)

Secs. 6-327—6-355. Reserved.

DIVISION 12. GENERAL CONDITIONS

Sec. 6-356. Conflicts in terms.

In the event of a conflict of terms between this article and any other ordinance or other law, the more restrictive provision shall govern and control.

(Ord. No. 2019-40, § XII-3, 12-16-2019)

Sec. 6-357. Future amendments.

Future amendments of the codes hereby adopted (other than clarifications or technical notices of any type) are not adopted by this article and must be subsequently approved and adopted by the city council.

(Ord. No. 2019-40, § XII-4, 12-16-2019)

Sec. 6-358. Effect of article.

This article shall not be construed to relieve or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the city council, the city, its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by this Code or any permits or certificates issued under this Code.

(Ord. No. 2019-40, § XII-5, 12-16-2019)

Sec. 6-359. References to article.

Any reference herein to this article shall also refer to all codes adopted by this article.

(Ord. No. 2019-40, § XII-6, 12-16-2019)

Sec. 6-360. Offenses, penalties, and remedies.

(a) Any references in this article to "the penalty provisions of this article" or similar phrases shall refer to this section and the penalties herein.

(b) Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this article or of any code hereby adopted shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day or portion of a day a violation continues, occurs, or recurs shall constitute a separate offense.

(c) The city shall have the right to enforce this article and the codes hereby adopted by injunction and by other actions in a civil court and/or by any and all remedies from any and all sources.

(d) All rights and remedies of the city provided in this article shall be cumulative of all other rights and remedies provided herein, by other ordinances, or by any applicable law. Furthermore, the exercise of one right or remedy by the city shall not be construed as an election of remedies and shall not impair any other right or remedy of the city. The city may exercise any right or remedy herein either alone or together with any other right or remedy under this article, any other ordinance, or any applicable law. Without limiting the generality of the foregoing, pursuing or receiving any civil remedy for any violation of this article shall not preclude the pursuit or receipt of any criminal penalty for any violation hereof.

(Ord. No. 2019-40, § XII-7, 12-16-2019)

Sec. 6-361. Nonwaiver.

The failure or omission of the city, upon one or more occasions, to enforce any right, obligation, or remedy under this article or any other law concerning utilities shall never be construed as a waiver of the city's right to strictly enforce such right, obligation, or remedy, and the city may resume such strict enforcement without advance notice.

(Ord. No. 2019-40, § XII-8, 12-16-2019)

Sec. 6-362. Nonwaiver of immunity.

Nothing in this article or in any other law concerning utilities shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the city or its officers, agents, employees, or representatives.

(Ord. No. 2019-40, § XII-9, 12-16-2019)

Sec. 6-363. Nonliability.

Neither the city, nor its officers, employees, agents, or representatives shall be liable to any person, other than the city, for any act, omission, or condition in any way concerning this article or the subject matter hereof.

(Ord. No. 2019-40, § XII-10, 12-16-2019)

Secs. 6-364—6-384. Reserved.

ARTICLE IV. ENGINEERING DESIGN**Sec. 6-385. Adoption of engineering design criteria manual.**

The City of Iowa Colony Engineering Design Criteria Manual (the "engineering design criteria manual" or "design criteria manual") attached to the ordinance from which this article is derived is hereby adopted and ordained, and the regulations and provisions therein stated are hereby established. Any reference in any other ordinance, policy, or other source to an engineering design criteria manual or design criteria manual of the city shall refer to the City of Iowa Colony Engineering Design Criteria Manual, as amended from time to time. Any reference herein to "this article" or similar terms shall also include the engineering design criteria manual hereby adopted and amended, and that manual and amendments are adopted by reference and incorporated as a part of this article.

(Ord. No. 2017-13, § 1, 8-21-2017; Ord. No. 2019-20, § 2, 6-10-2019)

Sec. 6-386. 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:

Engineering design criteria manual or *design criteria manual* means the City of Iowa Colony Engineering Design Criteria Manual, as amended from time to time.

(Ord. No. 2019-20, § 1, 6-10-2019)

Sec. 6-387. Amendment of engineering design criteria manual.

The engineering design criteria manual and all ordinances previously adopting or amending the design criteria manual are hereby amended as herein stated, and the provisions of the engineering design criteria manual hereby adopted shall be part of those ordinances.

(Ord. No. 2019-20, § 3, 6-10-2019)

Sec. 6-388. Compliance required.

Any construction, planned construction, or plans for which a permit or approval from the city is required must be done in compliance with the design criteria manual, according to its terms.

(Ord. No. 2017-13, § 2, 8-21-2017)

Sec. 6-389. Denial or revocation of permits for approval.

The failure of any plans, construction, or planned construction to comply with design criteria manual shall be grounds for the city to deny or revoke any approval or permit from the city concerning such plans, construction, or planned construction. (Ord. No. 2017-13, § 3, 8-21-2017)

Sec. 6-390. Other requirements.

The attached engineering design criteria manual replaces the prior engineering design criteria manual of the city. Otherwise, the attached engineering design criteria manual is cumulative of all requirements from any other source and shall not authorize noncompliance with any other regulation or requirement from any source. In the event of any conflict in terms, the stricter requirement shall govern and control. (Ord. No. 2017-13, § 4, 8-21-2017)

Secs. 6-391—6-416. Reserved.**ARTICLE V. SUBSTANDARD BUILDINGS****Sec. 6-417. 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:

Substandard building means any of the following:

- (1) Any building or structure that has any of the following conditions, such that the life, health, property, or safety of its occupants or the general public are endangered, including, but not limited to, one or more of the following:
 - a. Any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic;
 - b. Any means of egress or portion thereof, such as, but not limited to, fire doors, closing devices, and fire resistive ratings, as in disrepair or in a dilapidated or nonworking condition such that means of egress could be rendered unsafe in case of fire or panic;
 - c. The stress in any material, member or portion thereof, due to all imposed loads, including dead load, exceeds the stress allowed in the city's building code for new buildings;

- d. The building, structure or portion thereof has been damaged by fire, flood, earthquake, wind or other cause to the extent that the structural integrity of the building or structure is less than the minimum requirements established by the city's building code for new buildings;
- e. Any exterior appendage or portion of the building or structure is not securely fastened, attached or anchored such that it is capable of resisting wind, seismic or similar loads as required by the standard building code for new buildings;
- f. For any reason the building, structure or portion thereof is manifestly unsafe or unsanitary for the purpose for which it is being used;
- g. The building, structure or portion thereof as a result of decay, deterioration or dilapidation is likely to fully or partially collapse;
- h. The building, structure or portion thereof has been constructed or maintained in violation of a specific requirement of the standard codes or of a city, county or state law;
- i. Any building, structure or portion thereof that is in such a condition as to constitute a public nuisance;
- j. Any building, structure or portion thereof that is unsafe, unsanitary or not provided with adequate egress, or which constitutes a fire hazard, or is otherwise dangerous to human life, or, which in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

The city council hereby finds that any substandard building as defined in this section is dilapidated, substandard, and unfit for human habitation and a hazard to the public health, safety, and welfare, within the meaning of V.T.C.A., Local Government Code § 214.001 and is a nuisance within the meaning of V.T.C.A., Local Government Code ch. 217.

- (2) Any building or structure currently or previously designed, built, adapted, or used for residential purposes, regardless of its structural condition, that is 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.

- (3) Any building or structure currently or previously designed, built, adapted, or used for residential purposes that is boarded up, fenced, or otherwise secured in any manner if:
- a. The building or structure constitutes a danger to the public even though secured from entry; or
 - b. The means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building or structure in the manner described by subsection (2) of this definition.

(Ord. No. 2009-12, § 1, 6-15-2009)

Sec. 6-418. Minimum standards for the continued use and occupancy of all buildings.

(a) *Minimum standards.* The city council hereby establishes minimum standards for the continued use and occupancy of all buildings and other structures, regardless of the date of their construction; the definition of "substandard building" in section 6-417 is that standard. Any building or other structure that is a substandard building, as defined in section 6-417, fails to meet the minimum standards for continued use and occupancy. This article shall be cumulative of any other law prohibiting or restricting the use or occupancy of a building or other structure, and this article shall not be construed to permit or enlarge the use or occupancy of a building or structure in violation of any other law.

(b) *Use and occupancy prohibited.* After proper notification and public hearing as required by this article, the use or occupancy of any building or other structure defined as a substandard building by this article is prohibited, regardless of the date of construction of the building or structure.

(Ord. No. 2009-12, § 2, 6-15-2009)

Sec. 6-419. Hearing required to determine whether a building or structure complies with the standards of this article.

(a) *Hearing required.* A public hearing must be held by the municipal court to determine whether a building or structure complies with the standards set out in this article.

(b) *Notice required.* No less than 15 days prior to the public hearing, a notice must be sent to an owner, lienholder, or mortgagee. The notice must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the provisions of this article and the time it will take to reasonably perform the work.

(c) *Burden of proof.* In a public hearing to determine whether a building complies with the standards set out in this article, the owner, lienholder, or mortgagee has 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.

(Ord. No. 2009-12, § 3, 6-15-2009)

Sec. 6-420. Order that building be vacated, secured, repaired, removed or demolished.

(a) *Order.* After the public hearing, if a building or other structure is found in violation of the standards set out in this article, the municipal court may order that the building or structure be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this article. The municipal court may also order that the occupants be relocated within a period as prescribed by this article.

(b) *Failure to comply with order.* If the owner fails to comply with a municipal court order under this section within the allotted time, the city shall:

- (1) Make a diligent effort to discover each mortgagee and lienholder having an interest in the building or structure or in the property on which the building or structure is located; and
- (2) The city shall send to each identified mortgagee and lienholder a notice containing:
 - a. An identification, which is not required to be a legal description, of the building and the property on which it is located;
 - b. A description of the violation of these standards that is present at the building or structure; and
 - c. A statement that the city will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time, to be stated in the notice.

(c) *Alternative procedure with notice to lienholders and mortgagees before hearing.*

- (1) As an alternative to the procedure stated in subsections (a) and (b) of this section, the city may make a diligent effort to discover each mortgagee and lienholder before conducting the public hearing and may give them a notice of the hearing and an opportunity to comment at the hearing. In addition, the city may file notice of the hearing in the official public records of real property in the county in which the property is located. The notice must contain:
 - a. The name and address of the owner of the affected property if that information can be determined as provided in section 6-423;

- b. A legal description of the affected property; and
 - c. A description of the hearing.
- (2) The filing of any notice or order under any portion of this section shall be binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice or order, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice or order.
- (3) If the city operates according to this subsection (c), the order issued by the municipal court may specify a reasonable time in accordance with the provisions of this section for the building or structure to be vacated, secured, repaired, removed, or demolished by the owner or for the occupants to be relocated by the owner and an additional time in accordance with the provisions of this section for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply within the time provided for action by the owner. Under this section, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the owner fails to comply with the ordered action in the time provided by the municipal court.
- (d) *Filing and publication of order.* Within ten days after an order is issued under this section, the city shall:
- (1) File a copy of the order in the office of the city secretary; and
 - (2) Publish in a newspaper of general circulation in the city a notice containing:
 - a. The street address or legal description of the property;
 - b. The date of the hearing;
 - c. A brief statement indicating the results of the order; and
 - d. Instructions stating where a complete copy of the order may be obtained.
- (e) *Mailing of order to owner of building and to any lienholder or mortgagee of building.* After the hearing, the city shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The city shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.
- (Ord. No. 2009-12, § 4, 6-15-2009)

Sec. 6-421. Time period to comply with order of municipal court.

(a) *Order for action within 30 days.* If the municipal court determines, as a result of the hearing required by this article, that a building or other structure is in violation of the minimum standards set by this article, the municipal court shall require the owner, lienholder, or mortgagee of the building to comply within 30 days:

- (1) Secure the building or other structure from unauthorized entry; or
- (2) Repair, remove, or demolish the building or other structure, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days. If the municipal court allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the municipal court shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

(b) *Orders limited to not more than 90 days.* The municipal court may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the building or other structure or fully perform all the work required to comply with the order unless the owner, lienholder, or mortgagee:

- (1) Submits a detailed plan and time schedule for the work at the hearing; and
- (2) Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

If the municipal court allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building or other structure, the municipal court shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the city to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the municipal court to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds \$100,000.00 in total value, the municipal court may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this subsection. In lieu of a bond, the municipal court may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party

approved by the municipal court. The bond must be posted, or the letter of credit or third-party guaranty provided, not later than the 30th day after the date the municipal court issues the order.

(Ord. No. 2009-12, § 5, 6-15-2009)

Sec. 6-422. Remedial action by city.

(a) *Generally.* If the building or other structure is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, all as ordered by the municipal court, then the city may vacate, secure, remove, or demolish the building or other structure or relocate the occupants at its own expense, regardless whether the municipal court order recites such authorization of the city. This subsection does not limit the ability of the city to collect on a bond or other financial guaranty that may be required by this article.

(b) *Expenses and lien.* If the city incurs expenses under subsection (a) of this section, 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 building was located. Such expenses and lien shall also include clerical, administrative, legal and other professional costs. 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 recorded 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 with a reasonable 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.

(c) *Privileged lien.* If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by section 6-420(a), (b) or (d), the lien is a privileged lien subordinate only to tax liens.

(Ord. No. 2009-12, § 6, 6-15-2009)

Sec. 6-423. Search for owners, lienholders, and mortgagees.

Whenever this article requires the city to make a diligent effort, to use its best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee, the city shall be deemed to have satisfied such requirement if the city searches the following records:

- (1) County real property records;

- (2) County appraisal district records;
 - (3) Records of the secretary of state;
 - (4) County assumed name records;
 - (5) City tax records; and
 - (6) City utility records.
- (Ord. No. 2009-12, § 7, 6-15-2009)

Sec. 6-424. City may secure unsafe building.

(a) *Securing unsafe building.* The city may secure a building if the building official determines that the building is:

- (1) A substandard building, as defined in section 6-417; and
- (2) Unoccupied or is occupied only by persons who do not have a right of possession to the building.

(b) *Notice to owner.*

- (1) Within ten days after the date the building is secured, the city shall give notice to the owner by:
 - a. Personally serving the owner with written notice;
 - b. Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
 - c. Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or
 - d. Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.
- (2) The notice must contain:
 - a. An identification, which is not required to be a legal description, of the building and the property on which it is located;
 - b. A description of the violation of the municipal standards that is present at the building;
 - c. A statement that the city will secure or has secured, as the case may be, the building; and

- d. An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing of the building.

(c) *Hearing upon timely request.* The municipal court shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing of the building if, within 30 days after the date the city secures the building, the owner files with the clerk of the municipal court a written request for the hearing. The municipal court shall conduct the hearing within 20 days after the date the request is filed. A hearing under this section may be combined with a hearing under any other provision of this article.

(d) *Expenses and liens.* The city has the same authority to assess expenses incurred pursuant to this section as it has to assess expenses under section 6-422. A lien is created under this section in the same manner that a lien is created under section 6-422 and is subject to the same conditions and scope as a lien created under section 6-422.

(e) *Cumulative, additional authority.* The authority granted by this section is in addition to that granted by the other sections of this article.
(Ord. No. 2009-12, § 8, 6-15-2009)

Sec. 6-425. Additional enforcement authority.

(a) *Repair by city; expenses; penalties.* In addition to the authority granted to the city by other sections of this article, after the expiration of the time allotted under section 6-420(a) or (b) for the repair, removal, or demolition of a building, the city may:

- (1) Repair the building at the expense of the city 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 property owner for failure to repair, remove, or demolish the building.

The city shall assess such expenses or civil penalty by the same method provided in section 6-422(b). The city shall give written notice of the assessment or civil penalty to any owner, lienholder, or mortgagee, whose name and address are ascertainable by reasonable efforts. Such notice shall include the amount of the assessment or civil penalty, a statement that the assessment or civil penalty was made under this article, the names and addresses of any owner, lienholder, or mortgagee that can be learned by reasonable diligence, and a legal description of the property subject to the assessment or civil penalty. Such notice shall be given by the method provided by section 6-426. Such notice shall also be recorded in the official records of real property of the county clerk.

(b) *Extent of repair by city.* The city may repair a building under subsection (a) of this section to the extent necessary to bring the building into compliance with the minimum standards 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 housing standards.

(c) *Lien.* The city shall have 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 must file for record, in recordable form in the office of the county clerk, a written notice of the imposition of the lien. The notice must contain a legal description of the land.

(d) *Priority of liens.* Except as provided by section 6-422(c), 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) *Interest.* Any civil penalty or other assessment imposed under this section accrues interest at the rate provided by law from the date of the assessment until paid in full.

(f) *Lien is non-transferable.* The city's right to the assessment lien may not be transferred to third parties.

(g) *Senior citizen homestead.* 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.

(h) *Amount of civil penalty.* The municipal court by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of this article, in an amount not to exceed \$1,000.00 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10.00 a day for each violation, if the city proves:

- (1) The property owner was notified of the requirements of this article and the owner's need to comply with the requirements; and
- (2) After notification, the property owner committed an act in violation of this article or failed to take an action necessary for compliance with this article.

A hearing on civil penalties may be held separately or together with any other hearing under this article. If held separately, notice of the hearing shall be given to the owner at least 15 days before the hearing.

(i) *Assessment is final and binding.* An assessment of a civil penalty under subsection (h) of this section is final and binding and constitutes a prima facie evidence of the penalty in any suit brought by the city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

(j) *Basis for judgment.* To enforce a civil penalty under this article, the clerk or secretary of the city must file with the district clerk of court a certified copy of an order issued under this section stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

(Ord. No. 2009-12, § 9, 6-15-2009)

Sec. 6-426. Notices.

(a) *Method of giving notice.* Any notice required or permitted by this section shall be given by personal delivery or by certified mail, return receipt requested, except to the extent that any specific provision of this section expressly and specifically provides for notice by another method.

(b) *Refused or unclaimed notice.* When the city mails a notice in accordance with this section to a property owner, lienholder, or mortgagee, 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 delivered.

(Ord. No. 2009-12, § 10, 6-15-2009)

Sec. 6-427. Authority.

Wherever this article provides for an action to be taken by the city, without specifying which agent of the city shall take such action, the code enforcement officer, building official, city secretary, clerk of the municipal court, or city attorney, or any of them, is hereby authorized to take such action.

(Ord. No. 2009-12, § 11, 6-15-2009)

Sec. 6-428. Inspection; entry on premises.

The city shall have the right to enter and inspect any premises to determine whether the premises are in compliance with the standards adopted by this article, any order issued pursuant to this article, or any other aspect of this article, or to enforce or administer this article.

(Ord. No. 2009-12, § 12, 6-15-2009)

Sec. 6-429. Hearings.

(a) *Jurisdiction.* The municipal court shall have jurisdiction of any hearing provided for in this article.

(b) *Civil proceeding.* A proceeding under this article in the municipal court shall be a civil proceeding, and the burden of proof shall be a preponderance of the evidence.

(c) *Commencement of proceedings.* A proceeding under this article in the municipal court shall be commenced by the filing of a petition by the city.

(d) *Request to postpone hearing.* A hearing under this article shall not be postponed unless:

- (1) A party files a written, sworn, motion for the postponement, stating the reason it is requested;
- (2) The court finds good cause for such postponement; and
- (3) All parties waive any deadlines or time restrictions that would be violated by the postponement.

(Ord. No. 2009-12, § 13, 6-15-2009)

Sec. 6-430. Judicial review.

(a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the municipal court issued under this article may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipal court is personally delivered or mailed to them by first class mail, certified return receipt requested, or such decision shall become final as to each of them upon the expiration of each such 30-calendar-day period.

(b) On the filing of the petition, the district court may issue a writ of certiorari directed to the municipal court to review the order of the municipal court and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than ten days, and served on the relator or the relator's attorney.

(c) The municipal court may not be required to return the original papers acted on by it, but it is sufficient for the municipal court to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(e) The issuance of the writ does not stay proceedings on the decision appealed from.

(f) Appeal in the district court shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the city.

(h) If the decision of the municipal court is affirmed or not substantially reversed but only modified, the district court shall allow to the city all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners, lienholders, or mortgagees as well as all persons subject to the proceedings before the city.

(Ord. No. 2009-12, § 14, 6-15-2009)

Sec. 6-431. Offenses and penalties.

Each owner of any interest in any building or structure shall maintain such building or structure so that it is not a substandard building, as defined herein. No person shall occupy any building or structure that is a substandard building, as defined herein. A violation of this section is a misdemeanor offense, punishable upon conviction by a fine not to exceed \$2,000.00. Each day or portion of a day that an offense continues shall constitute a separate offense. A criminal penalty under this section may be imposed separately from, or in addition to, any other right or remedy of the city.

(Ord. No. 2009-12, § 15, 6-15-2009)

Chapter 7

RESERVED

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Chapter 8

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ARTICLE I. IN GENERAL

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ARTICLE II. FOOD SERVICE ESTABLISHMENTS**DIVISION 1. GENERALLY****Sec. 8-19. State regulations adopted.**

The city adopts the Texas Food Establishment Rules (TFER) promulgated by the department of state health services and set forth in 25 Tex. Admin. Code ch. 228. The Texas Food Establishment Rules are incorporated herein by reference for all purposes and shall govern the food establishments in the city, together with all other provisions of this article and any other applicable law. A copy of the Texas Food Establishment Rules shall be on file in the office of the city secretary.

(Ord. No. 2021-19, § I-1, 5-17-2021)

Sec. 8-20. Definitions.

The definitions in the Texas Food Establishment Rules shall apply to the terms used in this article. Additionally, 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:

Authorized agent or employee means an employee of the city.

Food establishment.

- (1) The term "food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption as follows:
 - a. A restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, ending location, (machine), self-service food market, conveyance used to transport people, institution, or food bank;
 - b. An establishment that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout order, or delivery service that is provided by common carriers; and

- c. Includes an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority and an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.
- (2) The term "food establishment" does not include an establishment that offers only prepackaged foods that are not time/temperature controlled for safety food, a produce stand that only offers whole, uncut fresh fruits and vegetables, a food processing plant, a cottage food industry, an area where cottage food is prepared, sold or offered for human consumption, a bed and breakfast limited facility as defined in the TFER, or a private home that receives catered or home-delivered food.

Inspection report card means a document with the letter grade that is assigned by the health officer based on the total inspection score at the completion of the inspection of a food establishment.

Inspection report form means a complete report of a food establishment or mobile food unit inspection. This document shall reference by section number each section violated and shall state the correction to be made.

Mobile food unit (MFU) means a vehicle-mounted, self or otherwise propelled, self-contained food service operation that is manufactured, modified, designed, or used to be readily movable (including, but not limited to, catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve, or sell food. Mobile units must completely retain their ability to move at all times. A mobile food unit does not include a stand or a booth. A roadside food vendor is also classified as an MFU.

Mobile food unit—additional permit to an existing food establishment means a mobile food unit operated by an existing permitted food establishment as an additional source of food service.

Non-profit organization means an organization which exists for educational or charitable reasons, and from which its shareholders or trustees do not benefit financially. Non-profit status must be verified by submission of supporting documentation, such as an IRS Form 501c.

Person in charge (PIC) means the individual present at a food establishment who is responsible for the operation at the time of inspection.

Regulatory authority means the City of Iowa Colony, Texas.

Temporary food establishment means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. The term "temporary food establishment" may include a stand or a booth.

Texas Food Establishment Rules (TFER) means the most current version of the rules promulgated by the department of state health services and set forth in 25 Tex. Admin. Code ch. 228, as they may be amended from time to time.
(Ord. No. 2021-19, § I-2, 5-17-2021)

Sec. 8-21. Application of article.

(a) This article shall apply to all areas within the corporate limits of the city.

(b) Persons or organizations whose food services are regulated and regularly inspected by another federal or state governmental entity are required to comply with this article.

(Ord. No. 2021-19, § I-3, 5-17-2021)

Sec. 8-22. Enforcement.

(a) The position of health official is hereby established. The health official is not a department head and shall be appointed and removed as provided in the Home Rule Charter. Regardless of any other provision from any source, the health official serves at the will of the city.

(b) The health official must have all qualifications required either by law to enforce this article or by the city manager.

(c) The city manager may appoint one or more deputy health officials, and any reference herein to the health official shall also include any deputy health officials, unless the context clearly requires otherwise.

(d) The health official is hereby authorized to enforce this article.
(Ord. No. 2021-19, § I-4, 5-17-2021)

Secs. 8-23—8-47. Reserved.

DIVISION 2. PERMIT

Sec. 8-48. Required.

No person shall participate in any way in operating a food establishment, temporary food establishment, mobile food unit, child care center, or group residence that provides

food service without a valid permit issued by the city. Permits are not transferable from place to place or person to person. A valid permit shall be posted in public view in every establishment required to have a permit. Each and every food establishment, whether under one roof or not, shall be considered a separate establishment, and a permit must be obtained for each establishment. Each such establishment is subject to the requirements in this division.

(Ord. No. 2021-19, § II-1, 5-17-2021)

Sec. 8-49. Duration.

(a) Permits shall be issued annually and shall extend from the date of issuance or renewal, as applicable. Annual renewal applications must be submitted at least 30 days prior to the expiration date of the permit. A permit shall be issued only if the establishment is in complete compliance with this division.

(b) A mobile food unit (commonly known as a "food truck") that operates for a period of no more than three consecutive days in conjunction with a single event or celebration may obtain a temporary food establishment permit.

(Ord. No. 2021-19, § II-2, 5-17-2021)

Sec. 8-50. Fees.

(a) Before any application for a permit under this division shall be considered filed, the applicant shall pay the applicable fees set forth in the fee ordinance of the city.

(b) The re-inspection fee set forth in the fee ordinance shall apply in cases where reinspection is deemed necessary by the city's health official.

(c) A non-profit organization as defined by this division is required to submit an application for a permit, and upon submission of supporting documentation of nonprofit status, the organization will be issued a permit, but all fees associated with this permit shall be waived.

(d) Permit application fees are not refundable and shall not be prorated.

(Ord. No. 2021-19, § II-3, 5-17-2021)

Sec. 8-51. Suspension and other decisions of the health official.

(a) The city may suspend any permit to operate a food establishment, temporary food establishment, and/or mobile food unit, if the permit holder does not comply with the requirements of this division, and the violation creates an immediate threat to the health or safety of any portion of the public. Suspension is effective upon written

notice, and service operations shall immediately cease. Whenever a permit is suspended, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reasons for the suspension.

(b) The notice of suspension shall also inform the recipient of the opportunity to appeal the suspension to the building codes board of appeals.

(c) The building codes board of appeals is hereby authorized to hear appeals from decisions of the health official under the same rules and procedures applicable to an appeal to that board under the building codes.

(Ord. No. 2021-19, § II-4, 5-17-2021)

Sec. 8-52. Revocation.

The city may revoke a permit for serious or repeated violations of any of the requirements of this division or for interference with the health official/code compliance officer in the performance of his/her duties. Prior to revocation, the city shall notify the permit holder or the person in charge of the food establishment in writing of the reasons for which the permit is subject to revocation and inform them of the opportunity for a hearing before the city manager. If the permit holder requests a hearing, they shall file their written request for a hearing with the city secretary within ten days following service of such notice of revocation. If a request for hearing is filed, a hearing shall be scheduled within 30 days of the city's receipt of such request. If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(Ord. No. 2021-19, § II-5, 5-17-2021)

Sec. 8-53. Service of notice.

A notice provided for in this division is properly served when it is delivered to the permit holder or the person in charge of the establishment; when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder or person in charge of the establishment; or when it is delivered to the last known address of the permit holder or of the person in charge of the establishment by a well-established commercial courier such as Federal Express or United Parcel Service, for example.

(Ord. No. 2021-19, § II-6, 5-17-2021)

Sec. 8-54. Application for a new permit after revocation.

The holder of a permit that has been revoked must wait 180 days after the final date of the revocation decision before making written application for a new permit.
(Ord. No. 2021-19, § II-7, 5-17-2021)

Secs. 8-55—8-81. Reserved.

DIVISION 3. INSPECTIONS

Sec. 8-82. Frequency.

Inspections shall be performed as often as necessary to enforce this division.
(Ord. No. 2021-19, § III-1, 5-17-2021)

Sec. 8-83. Access.

The authorized agent of the city, after proper identification, shall be permitted to enter any food establishment, mobile food unit, or establishment for which a permit has been issued or is required, at any reasonable time for the purpose of making inspections to determine compliance with this division. The employees/agents of the city shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received or used or to persons employed by the establishment, and compliance with this division.
(Ord. No. 2021-19, § III-2, 5-17-2021)

Sec. 8-84. Reports.

When an inspection of a food establishment is conducted, the findings shall be recorded on an inspection report form, and a copy of each inspection report form with number score and corresponding letter grade shall be provided to the food service manager or other person in charge (PIC) of the establishment. Upon conclusion of the inspection, the city's health officer shall post the retail food establishment's inspection report card on the main public entrance of the establishment showing the number score and corresponding letter grade. No person except the city health officer shall alter, deface, or remove the inspection report.
(Ord. No. 2021-19, § III-3, 5-17-2021)

Sec. 8-85. Correction of violations.

(a) The inspection form shall specify a reasonable period of time to correct the violations and such violations must be corrected within the specified period; provided, however, that:

- (1) If an imminent health hazard exists the establishment, including a mobile food unit, shall immediately cease food service operations and operations shall not be resumed until authorized by the city; and
- (2) All violations at temporary food establishments shall result in cessation of temporary food service operations.

(b) The establishment or mobile food unit shall not resume operations until such time as a reinspection determines that the condition responsible for the requirement to cease operations no longer exists. The city shall offer to reinspect the establishment within a reasonable time.

(Ord. No. 2021-19, § III-4, 5-17-2021)

Secs. 8-86—8-113. Reserved.

DIVISION 4. CONSTRUCTION, REMODELING AND CONVERSION

Sec. 8-114. Plans.

Two sets of properly prepared plans and specifications for each construction, remodeling, or alteration of a food establishment shall be submitted to the code compliance department prior to any on-site construction. The plans must be drawn to scale no smaller than one-eighth inch and shall consist of a plot plan, floor plan, foundation plan, structural plan, plumbing plan, elevation plan, wall section, engineer's scale and survey (if required by applicable law), mechanical and electrical details, and health equipment detail with elevations.

(Ord. No. 2021-19, § IV-1, 5-17-2021)

Sec. 8-115. Other code requirements.

A building permit shall be required for construction, alteration, remodeling, or conversion of a food establishment in accordance with the building code adopted by the city. Any construction, alteration, remodeling, or conversion of a food establish-

ment shall comply with all applicable federal and state laws and codes and regulations of the city. To the extent of a conflict between or among the provisions of this division and other codes or ordinances of the city, the more restrictive provision shall control. (Ord. No. 2021-19, § IV-2, 5-17-2021)

Sec. 8-116. Ownership of food establishment.

(a) Often, when an existing food establishment is purchased, the purchase does not include the property or the structure, but includes the rental or lease of space and equipment. The city requires that the person who operates a food establishment obtain a valid food dealer's permit. The person who applies for the food dealer's permit is considered, legally, to be the owner.

(b) The person who is registered on the food dealer's permit is the responsible party for the property, premises, structure and complete operating services. The operator of the food establishment is the ultimate responsible party, and the conditions under which the food establishment was leased or rented does not release the operator from the requirements of this division.

(c) A new owner may continue to operate a food establishment without interruption from the city when the establishment is in complete compliance with this division. Total compliance is the basis for issuing the food dealer's permit, which must be obtained prior to opening the establishment for business. An inspection of the premises and operations can demonstrate the extent to which the food establishment is in compliance. Upon normal conditions, depending on the condition of the food establishment, many violations can be corrected within such a short period of time that an interruption of food services is unnecessary and not required.

(d) Depending on the wear and tear (depreciation) on the establishment, the building and equipment may already be close to compliance, and it is the responsibility of the new owner to schedule an inspection from the city to determine what is required to meet current codes.

(Ord. No. 2021-19, § IV-3, 5-17-2021)

Secs. 8-117—8-145. Reserved.

DIVISION 5. MOBILE FOOD UNITS

Sec. 8-146. General compliance to article.

A mobile food unit is subject to and must comply with not only this division but also all other applicable requirements in all other ordinances, including, but not limited to,

this article and exhibit A to the ordinance from which this article is derived, incorporating regulations of mobile food units, as it may be amended from time to time, and all other applicable law. The city's health official and/or code enforcement officer may also impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation and may prohibit the sale of some or all potentially hazardous foods.

(Ord. No. 2021-16, § A, 5-17-2021; Ord. No. 2021-19, § V-1, 5-17-2021)

Sec. 8-147. Additional regulations.

The following additional regulations shall apply to mobile food units:

- (1) *Plan submission.* Plans must be submitted to the code compliance department at the time of permit application prior to operation of a mobile food unit. Plans shall show the signage, layout, arrangement of equipment, and construction material of the inside of the mobile food unit, including food preparation, storage and service window areas.
- (2) *Fixed location.* A mobile food unit operating from a fixed location shall obtain written permission from the property owner to operate on the property owner's premises. A copy of such letter must be provided to the city with the permit application. The operator of a fixed location mobile food unit shall notify the code compliance department each time the mobile food unit changes location of operation no later than 24 hours after the change has taken place and provide written permission to operate at such location. A mobile food unit operating from a fixed location cannot set up within 25 feet of the roadway or the public easement.
- (3) *Identification of mobile food units.* Every mobile food unit must be readily identifiable by the business name which must be printed, permanently affixed and prominently displayed upon at least two sides of such units in letters not less than three inches in height. Additionally, the following identification requirements are for mobile food units used for the purpose of selling or dispensing frozen desserts, prepackaged food and beverages from a moving truck:
 - a. A sign clearly visible from both the front and the rear, mounted on the top of the truck, must bear the warning sign "CAUTION - CHILDREN." The lettering for such sign shall be in block style letters and not less than six inches in height and one-half inch wide, and letters shall be black against a yellow background.

- b. Flasher-type warning lights displaying yellow to the front and red to the rear and which operate continuously while the truck is stopped for the purpose of making a sale shall be installed at each end of the "CAUTION - CHILDREN" sign.
- (4) *Sanitation requirements.* The following additional sanitation requirements shall apply:
- a. Any accident involving a mobile food unit shall be reported in writing, to the code compliance department within 24 hours from the time the accident occurred, and before operation of mobile food unit resumes if such accident results in damage to the water system, waste retention tank, food service equipment, or any facility which may result in the contamination of the food being carried. Such report shall be made by the holder of the mobile food unit permit.
 - b. In the event that the permit issued under this division to any food establishment that has agreed to be a central preparation facility for a mobile food unit has been revoked, suspended, or without timely renewal, the permit for the same mobile food unit shall be automatically suspended until and unless the permit for the food establishment is restored to valid status.

(Ord. No. 2021-19, § V-2, 5-17-2021)

Secs. 8-148—8-178. Reserved.

DIVISION 6. MISCELLANEOUS PROVISIONS

Sec. 8-179. Future amendments.

Future amendments of any codes, statutes, rules, or regulations hereby adopted (other than clarifications or technical notices of any type) are not adopted by this article and must be subsequently approved and adopted by the city council.

(Ord. No. 2021-19, § VI-2, 5-17-2021)

Sec. 8-180. Effect of article.

This article shall not be construed to relieve or lessen the responsibility of any person owning, operating, or controlling any food establishment for any damages to persons or

property caused by defects, nor shall the city council, the city, its agents or representatives assume any such liability by reason of these regulations, the inspections authorized by this article, or any permits or certificates issued pursuant to this article.

(Ord. No. 2021-16, § B2, 5-17-2021; Ord. No. 2021-19, § VI-3, 5-17-2021)

Sec. 8-181. References to article.

Any reference herein to this article shall also refer to any codes, statutes, rules, and regulations adopted by this article.

(Ord. No. 2021-16, § B3, 5-17-2021; Ord. No. 2021-19, § VI-4, 5-17-2021)

Sec. 8-182. Offenses, penalties, and remedies.

(a) Any references in this article to "the penalty provisions of this article" or similar phrases shall refer to this section and the penalties herein.

(b) Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this article or of any code, statute, rule, or regulation hereby adopted shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00.

(c) Any person who violates any provision of this article, but does so neither intentionally, knowingly, recklessly, nor with criminal negligence, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00.

(d) Each day or portion of a day a violation continues, occurs, or recurs shall constitute a separate offense.

(e) The city shall have the right to enforce this article and any code, statute, rule, or regulation hereby adopted by injunction and by other actions in a civil court and/or by any and all remedies from any and all sources.

(f) All rights and remedies of the city provided in this article shall be cumulative of all other rights and remedies provided herein, by other ordinances, or by any applicable law. Furthermore, the exercise of one right or remedy by the city shall not be construed as an election of remedies and shall not impair any other right or remedy of the city. The city may exercise any right or remedy herein either alone or together with any other right or remedy under this article, any other ordinance, or any applicable law. Without

limiting the generality of the foregoing, pursuing or receiving any civil remedy for any violation of this article shall not preclude the pursuit or receipt of any criminal penalty for any violation hereof.

(Ord. No. 2021-16, § B4, 5-17-2021; Ord. No. 2021-19, § VI-5, 5-17-2021)

Secs. 8-183—8-208. Reserved.

ARTICLE III. AMUSEMENT RIDES

Sec. 8-209. 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:

Amusement ride means a mechanical device that carries passengers along, around, or over a fixed or restricted course or within a defined area for the purpose of giving the passengers amusement, pleasure, or excitement. The term "amusement ride" does not include:

- (1) A coin-operated ride that:
 - a. Is manually, mechanically, or electrically operated;
 - b. Is customarily placed in a public location; and
 - c. Does not normally require the supervision or services of an operator;
- (2) Nonmechanical playground equipment, including a swing, seesaw, stationary spring-mounted animal feature, rider-propelled merry-go-round, climber, playground slide, trampoline, and physical fitness device; or
- (3) A challenge course or any part of a challenge course if the person who operates the challenge course has an insurance policy currently in effect written by an insurance company authorized to do business in the state or by a surplus lines insurer, as defined by V.A.T.S. Insurance Code, ch. 981, insuring the operator against liability for injury to persons arising out of the use of the challenge course, in an amount not less than:
 - a. For facilities with a fixed location: \$100,000.00 bodily injury and \$50,000.00 property damage per occurrence, with a \$300,000.00 annual aggregate; and
 - b. For facilities other than those with a fixed location:
 1. \$1,000,000.00 bodily injury and \$500,000 property damage per occurrence; or

2. \$1,500,000.00 per occurrence combined single limit.

Challenge course.

- (1) The term "challenge course" means a challenge, ropes, team building, or obstacle course, which may include logs, tires, platforms, beams, bridges, poles, ropes, ladders, nets, climbing walls, rock climbing walls, climbing towers, traverses, rock climbing devices, cables, swings, or zip lines, that is constructed and used for educational, team and confidence building, or physical fitness purposes.
- (2) The term "challenge course" or any part of a challenge course is not considered an amusement ride subject to regulation under this article if the person who operates the challenge course has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in the state or by a surplus lines insurer, as defined by V.A.T.S. Insurance Code, ch. 981, or has an independently procured policy subject to V.A.T.S. Insurance Code, ch. 101, insuring the operator against liability for injury to persons arising out of the use of the challenge course in an amount of at least:
 - a. For a challenge course with a fixed location:
 1. \$100,000.00 bodily injury and \$50,000.00 property damage per occurrence with a \$300,000.00 annual aggregate; or
 2. \$150,000.00 per occurrence combined single limit with a \$300,000.00 annual aggregate; and
 - b. For a challenge course other than one with a fixed location:
 1. \$1,000,000.00 bodily injury and \$500,000.00 property damage per occurrence; or
 2. \$1,500,000.00 per occurrence combined single limit.

(Ord. No. 2014-20, § X-1, 10-14-2014)

Sec. 8-210. Operation.

No person shall operate an amusement ride, unless such person is properly trained and competent to operate the amusement ride, and unless such person is also certified in writing by the owner or his designated agent to be properly trained and competent to operate the amusement ride. No person shall operate an amusement ride unless such person has knowledge of the use function of all normal operating controls, signal systems and safety devices applicable to the ride and of the proper use, function, capacity and speed of the particular ride that he/she is operating. A ride operator shall

have complete control of the ride at all times that it is being operated for the public's use. When the ride is shut down, provision shall be made to prevent operation by the public. No person other than a certified ride operator shall be permitted to handle the controls of a ride during normal operation except where it is designed to be controlled by a passenger. No person who owns or leases (as lessor or lessee) any interest in an amusement ride shall permit any person to operate the ride in violation of this article. (Ord. No. 2014-20, § X-2, 10-14-2014)

Sec. 8-211. Identification.

Every amusement ride shall be identified by a trade or descriptive name and an identification number. There shall be permanently attached to every amusement ride or device, in a readily visible location, a metal plate containing the name and identification number of the amusement ride or device, and the name and address of the manufacture. Upon the same or another plate so attached there shall be legible impressed the maximum safe number of passengers, maximum safe load in pounds and the maximum safe speed.

(Ord. No. 2014-20, § X-3, 10-14-2014)

Secs. 8-212—8-230. Reserved.

ARTICLE IV. SEXUALLY ORIENTED BUSINESSES

Sec. 8-231. Purpose and intent.

(a) It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. The prohibition of the promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the penal code.

(b) It is the intent of the city council that the location regulations of section 8-243 are promulgated pursuant to V.T.C.A., Local Government Code ch. 243.

(Ord. No. 2000-2(b), § 1-100, 7-17-2000)

Sec. 8-232. 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 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 specific sexual activities or specific anatomical areas.

Adult bookstore or *adult video store* means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations that depict or describe specific sexual activities or specific anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specific sexual activities.

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

- (1) Persons who appear in a state of nudity or semi-nudity, including topless dancers, nude male or female dancers or strippers;
- (2) Live performances that are characterized by the exposure of specific anatomical areas or by specific sexual activities; or
- (3) Films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.

Adult motel means a hotel, motel or similar commercial establishment that:

- (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 that are characterized by the depiction or description of specific sexual activities or specific anatomical areas;

- (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 shown that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.

Adult tanning salon means a commercial establishment where for any form of consideration provides facility for tanning the human skin, such as tanning beds, suntan lights or other similar facilities, and regularly features, for the entertainment of its clientele:

- (1) Person who appear in a state of nudity; or
- (2) Live performance or style show of lingerie performed by persons who appear in a state of nudity or which are characterized by the exposure of specific anatomical areas or by specific sexual activities.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specific anatomical areas or by specific sexual activities.

Building inspector/code enforcement officer means the city's building inspector/code enforcement officer or his/her designated agent.

Child care facility means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care or custody of children under 16 years of age.

Church or place of religious worship means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

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, for a fee, tip, or other consideration.

Escort agency means a person who, or business association that furnishes, offers to furnish, or advertises to furnish, escorts as one of its business purposes, for a fee, tip, or other consideration.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) A location and place of business.

Hospital means a building used to provide health services for human inpatient medical care for the sick or injured. Licensed personnel to the Texas Hospital Licensing Law (V.T.C.A., Health and Safety Code § 241.001 et seq.) or operated by any of the federal government or a convalescent facility licensed pursuant to V.T.C.A., Health and Safety Code § 242.001 et seq.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

Nude model studio means any place where a person who appears in a state of nudity or semi-nudity or displays specific anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or state of nudity means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (2) A state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast. This involves material that is painted or applied to the body, such as paint, liquid latex or employment of any device or covering intended to give the appearance of or simulate the parts of the body listed in this definition.

The term "nudity" does not include a mother in the act of nursing her child.

Operates or causes to be operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operating a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Park means a tract of land maintained by the federal, state or local government or private homeowner association for the recreation and enjoyment by the general public or members of the homeowners association.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Residential district means a single family, duplex, townhouse, multiple family, recreational vehicle park, manufactured housing subdivision, manufactured housing rental community or area so designated by such uses.

Residential use means property used for single family, duplex, multiple family, recreational vehicle park, manufactured housing subdivision, manufactured housing rental community or for campground purposes.

School means a building where persons regularly assemble for the purpose of instruction or education together with playgrounds, dormitories, stadiums and other structures or grounds used in conjunction therewith.

Semi-nude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (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 semi-nudity.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, escort agency, nude model studio, or sexual encounter center, or other commercial enterprise, the primary business of which is the offering of a service or the selling, renting or exhibition of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Specific anatomical areas means:

- (1) Human genitals in a state of arousal; or
- (2) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

Specific sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of, or in connection with, any of the activities set forth in subsections (1) through (3) of this definition.

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 20 percent, as the floor area existed on the date of the enactment of the ordinance from which this article is derived.

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 that 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 that 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. 2000-2(b), § 1-101, 7-17-2000)

Sec. 8-233. Classifications.

- (a) Sexually oriented businesses include, but are not limited to, the following:
 - (1) Adult arcades;
 - (2) Adult bookstores or adult video stores;
 - (3) Adult cabarets;

- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult tanning salons;
- (7) Adult theaters;
- (8) Escort agencies;
- (9) Nude model studios; and
- (10) Sexual encounter centers.

(b) Determination of what constitutes a sexually oriented business shall be made by the chief of police and shall be appealable to city council.

(Ord. No. 2000-2(b), § 1-102, 7-17-2000)

Sec. 8-234. License required.

(a) A person commits an offense if he operates a sexually oriented business within the city limits, without a valid license issued by the city for the particular type of business.

(b) An application for a license must be made on a form provided by the city secretary. The application form shall be sworn to and shall:

- (1) Include the name and address of the applicant;
- (2) State whether the applicant meets each of the requirements set forth in section 8-235;
- (3) Include the name and address of each person required to sign the application pursuant to subsection (d) of this section, and the name, address and type of entity (if applicable) of each person or entity owned or controlled by such person that owns or controls or has a vested interest in the business to be licensed; and
- (4) Such other matters, consistent with this article, as may be specified in the application form. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with section 8-249 shall submit a diagram meeting the requirements of section 8-249.

(c) The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the building inspector/code enforcement officer.

(d) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under section 8-235 and each applicant shall be considered a licensee if a license is granted.

(e) A new application shall be required to be filed with the city within 30 days of a change in operations, including, but not limited to, a transfer of ownership or control, a change in business name, or the type of business or services provided therein.

(Ord. No. 2000-2(b), § 1-103, 7-17-2000)

Sec. 8-235. Issuance of license.

(a) The building inspector/code enforcement officer shall approve the issuance of a license to an applicant within 30 days after receipt of an application unless the building inspector/code enforcement officer finds one or more of the following to be true:

- (1) An applicant is under 18 years of age.
- (2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against, or imposed upon, the applicant or the applicant's spouse in relation to a sexually oriented business. The city manager or designee shall make this determination and report any findings to the chief of police/designee.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this article other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (5) The license fee required by this article has not been paid.

- (6) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (7) An applicant or the proposed establishment is in violation of, or is not in compliance with, any section of this article.
- (8) The premises to be used for the sexually oriented business is not in compliance with all applicable city laws, regulations and city council orders.
- (9) An applicant or an applicant's spouse has been convicted of a crime:
 - a. Involving:
 1. Any of the following offenses as described in V.T.C.A., Penal Code ch. 43:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution, display of material harmful to a minor;
 - (vii) Sexual performance by a child; or
 - (viii) Possession of child pornography;
 2. Any of the following offenses as described in V.T.C.A., Penal Code ch. 21:
 - (i) Public lewdness;
 - (ii) Indecent exposure; or
 - (iii) Indecency with a child;
 3. Sexual assault or aggravated sexual assault as described in V.T.C.A., Penal Code ch. 22;
 4. Incest, solicitation of a child, or harboring a runaway child as described in V.T.C.A., Penal Code ch. 25; or
 5. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

- b. For which:
1. Less than two years have elapsed since the date of conviction of the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense;
 2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is for a felony offense; or
 3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(c) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(d) No license shall be issued if the applicant is in violation of any health and safety statutes of the state or health and safety ordinance of the city.
(Ord. No. 2000-2(b), § 1-104, 7-17-2000)

Sec. 8-236. License fees.

The annual fee for a sexually oriented business license shall be in accordance with the city's fee schedule, as it may be amended from time to time by city council. No portion of this fee shall be returned after a permit application has been filed.
(Ord. No. 2000-2(b), § 1-105, 7-17-2000)

Sec. 8-237. Inspection.

(a) An applicant or licensee shall permit representatives of the police department of the city and the city's building inspector/code enforcement officer to inspect the premises of a sexually oriented business at any time it is occupied or open for business for the purpose of ensuring compliance with the law.

(b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department or the building inspector/code enforcement officer at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an adult motel that are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. No. 2000-2(b), § 1-106, 7-17-2000)

Sec. 8-238. Expiration of license.

Each license shall expire on December 31 of each year following the date of issuance and may be renewed only by making application as provided in section 8-234. Application for renewal should be made at least 30 days before the expiration date; however, when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(Ord. No. 2000-2(b), § 1-107, 7-17-2000)

Sec. 8-239. Suspension.

The building inspector/code enforcement officer shall suspend a license for a period not to exceed 30 days if he/she determines that a licensee, or an agent or employee of a licensee, has:

- (1) Violated or is not in compliance with any section of this article;
- (2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- (4) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(Ord. No. 2000-2(b), § 1-108, 7-17-2000)

Sec. 8-240. Revocation.

(a) The building inspector/code enforcement officer shall revoke a license if a cause of suspension in section 8-239 occurs and the license has been suspended within the preceding 12 months.

(b) The building inspector/code enforcement officer shall revoke a license if he determines that:

- (1) A licensee gave false or misleading information in the material submitted to the building inspector/code enforcement officer during the application process;
- (2) A licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) A licensee, an agent or an employee has knowingly allowed prostitution on the premises;
- (4) A licensee, an agent or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (5) A licensee has been convicted of an offense listed in section 8-235(a)(9)a for which the time period required in section 8-235(a)(9)b has not elapsed;
- (6) On two or more occasions within a 12-month period, a person committed an offense, occurring in or on the licensed premises, of a crime listed in section 8-235(a)(9)a, for which a conviction has been obtained, and the person was an agent or employee of the sexually oriented business at the time the offenses were committed;
- (7) A licensee or agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licenses premises. The term "sexual contact" shall have the same meaning as it is defined in V.T.C.A., Penal Code § 21.01;
- (8) A licensee is delinquent in payment to the city for any ad valorem taxes, sales or other taxes related to the sexually oriented business; or
- (9) A licensee has violated a health and/or safety statue or ordinance as listed in section 8-235(d).

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Subsection (b)(7) of this section does not apply to adult motels as grounds for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the building inspector/code enforcement officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If,

subsequent to revocation, the building inspector/code enforcement officer finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 8-235(a)(9)b has elapsed.

(Ord. No. 2000-2(b), § 1-109, 7-17-2000)

Sec. 8-241. Appeal.

If the chief of police/designee denies the issuance of a license, or suspends or revokes a license, the chief of police/designee shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action a statement of acts with supporting documentation which formed the basis for the decision, and notice of the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the city council. An appeal to the city council must be filed within 30 days after the receipt of notice of the decision of the chief of police/designee. Filing an appeal to city council stays the chief of police/designee in suspending or revoking a license until the city council makes a final decision. The city council shall, within 15 days after receiving a notice of appeal, grant a hearing on the appeal, and shall within a period of 15 days sustain or reverse the decision of the chief of police/designee. If no appeal is taken from the findings made by the chief of police/designee with the time provided herein, the decision of the chief of police is final. The licensee shall bear the burden of proof in said appeal.

(Ord. No. 2000-2(b), § 1-110, 7-17-2000)

Sec. 8-242. Transfer of license.

A licensee shall not transfer a license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. No. 2000-2(b), § 1-111, 7-17-2000)

Sec. 8-243. Location restrictions.

(a) A person commits an offense if the person operates, or causes to be operated, a sexually oriented business within 1,500 feet of:

- (1) A church or a place of religious worship;
- (2) A school;

- (3) A child care facility;
- (4) A boundary of a residential district;
- (5) A public park;
- (6) The property line of a lot devoted to residential use; or
- (7) A hospital.

(b) A person commits an offense if he or she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business located within 1,500 of another sexually oriented business.

(c) A person commits an offense if he or she causes or permits the operation, establishment, or maintenance of more than one sexually oriented businesses in the same building, structure, or portion thereof, or where he or she increases the floor area of any sexually oriented business by adding another room to the business.

(d) For the purpose of subsection (a) or (b) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line of the proposed sexually oriented business to the nearest property line of the facility described in subsection (a) or (b) in which alcoholic beverages are offered for sale.

(e) Any sexually oriented business lawfully operating on the effective date of the ordinance from which this article is derived that is in violation of subsection (a) or (b) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 12 months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use 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 1,500 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.

(f) A sexually oriented business lawfully operated as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, or a church school, child care facility, public park, residential district, or residential lot, or any building or structure in which alcoholic beverages are offered for sale, within 1,500 feet of the sexually oriented

business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(Ord. No. 2000-2(b), § 1-112, 7-17-2000)

Sec. 8-244. Exemptions from locational restrictions.

(a) If the chief of police/designee denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of any section of this article, then the applicant may, not later than ten business days after receiving notice of the denial, file with the city council a written request for an exemption from the locational restrictions of this article.

(b) If the written request is filed with the city council within the ten-day limit, the city council shall consider the request. The city council shall set a date for a public hearing within 60 days from the date the written request is received.

(c) A hearing by the city council may proceed if a quorum of the city council is present. The city council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The city council may, at its discretion, grant an exemption from the locational restrictions of this article if it makes the following findings:

- (1) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- (2) That the granting of the exemption will not violate the spirit and intent of this article;
- (3) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban or rural blight;
- (4) That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration;
- (5) That all other applicable provisions of this article will be observed; and
- (6) That the applicant proves that there is no other location within the city's corporate limits with which to operate a sexually oriented business in compliance with the location requirements of this article.

(e) The city council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the city council is final.

(f) If the city council grants the exemption, the exemption is valid for one year from the date of the city council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this article until the applicant applies for and receives another exemption.

(g) If the city council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the city council's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this article other than the locational restrictions.

(Ord. No. 2000-2(b), § 1-113, 7-17-2000)

Sec. 8-245. Additional regulations for escort agencies.

(a) An escort agency shall not employ any person under the age of 18 years.

(b) A person commits an offense if he acts as an escort, or agrees to act as an escort, for any person under the age of 18 years.

(Ord. No. 2000-2(b), § 1-114, 7-17-2000)

Sec. 8-246. Additional regulations for nude model studios.

(a) A nude model studio shall not employ any person under the age of 18 years.

(b) A person under the age of 18 years commits an offense if he/she appears in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years of age was in a restroom not open to public view or persons of the opposite sex.

(c) A person commits an offense if he appears in a state of nudity or semi-nudity or knowingly allows another to appear in a state of nudity or semi-nudity in an area of a nude model studio which can be viewed from the public right-of-way.

(d) A nude model studio shall not place, or permit, a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. No. 2000-2(b), § 1-115, 7-17-2000)

Sec. 8-247. Additional regulation for adult theaters and adult motion picture theaters.

(a) A person commits an offense if he knowingly allows a person under the age of 18 years of age to appear in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(b) A person under the age of 18 years of age commits an offense if he/she knowingly appears in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(c) It is a defense to prosecution under subsections (a) and (b) of this section if the person under 18 years of age was in a restroom not open to public view or persons of the opposite sex.

(Ord. No. 2000-2(b), § 1-116, 7-17-2000)

Sec. 8-248. Additional regulations for adult motels.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the term "rent" or "sub-rent" means the act of permitting a room to be occupied for any form of consideration.

(Ord. No. 2000-2(b), § 1-117, 7-17-2000)

Sec. 8-249. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates, or causes to be operated, a sexually oriented business, other than an adult motel, which exhibits on the premises, in a viewing room of less than 150 square feet of floor space, a film, video or other video reproduction which depicts specific sexual activities or specific anatomical areas shall comply with the following requirements;

- (1) Upon application of a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures and switches, which lights are controlled by which switches, and

designating any portion of the premises in which patrons will not be permitted. Only agents or employees shall have access to light switches. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of police/designee may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration for the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police/designee.
- (4) It is the duty of the owner/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. 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 owner/operator, and it also shall be the duty of any agents/employees present on 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 that any patron is present on the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

- (7) The premises 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.
- (8) It shall be the duty of the owner/operator and it also shall be the duty of any agents/employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(b) A person having a duty under subsection (a) of this section commits an offense if he/she knowingly fails to fulfill that duty.

(Ord. No. 2000-2(b), § 1-118, 7-17-2000)

Sec. 8-250. Display of sexually explicit material to minors.

(a) A person commits an offense, if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;
- (2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts.
- (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered;

(b) In this section, the term "display" means to locate an item in such a manner that, without obtaining assistance from an agent or employee of the business establishment:

- (1) It is available to the general public for handling and inspection; or
- (2) The cover, outside packing on the item or contents of the items is visible to members of the general public.

(Ord. No. 2000-2(b), § 1-119, 7-17-2000)

Sec. 8-251. Enforcement.

(a) Except as provided by subsection (b) of this section, any person violating section 8-243, upon conviction, is punishable by a fine not to exceed \$2,000.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of section 8-234(a) or section 8-243 is punishable as a Class A misdemeanor.

(c) Except as provided by subsection (b) of this section, any person violating a provision of this article other than section 8-243, upon conviction, is punishable by a fine not to exceed \$2,000.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(d) It is a defense to prosecution under section 8-234(a), 8-243 or 8-246(d) that a person appearing in a state of nudity or semi-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 or semi-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 or semi-nude model is on the premises at any one time.

(e) It is a defense to prosecution under section 8-234(a) or 8-243 that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

(Ord. No. 2000-2(b), § 1-120, 7-17-2000)

Secs. 8-252—8-282. Reserved.

ARTICLE V. PEDDLERS AND SOLICITORS**Sec. 8-283. 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:

Commodities, goods or merchandise means personal property of any nature whatsoever.

Crime involving moral turpitude means a conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation, the determination of which shall be made in accordance with Vernon's Ann. Civ. St. arts. 6252-13c and 6252-13d.

Itinerant vendor means any individual, firm, organization, or corporation, as well as its representatives, agents and employees, who engages in a business in the city of selling, or offering for sale, any goods or merchandise, or exhibiting goods or merchandise for sale, or for the purpose of taking orders for the sale thereof, who displays, exhibits, sells, or offers for sale such goods, merchandise or services upon or from a truck or other vehicle within the city, or who temporarily hires, rents, leases or occupies any room or space in any building, structure or other enclosure, or vacant lot in the city upon which such business is to be operated or conducted. The term "itinerant vendor" shall not include individuals connected with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this section.

Peddler means any individual, firm, organization, or corporation, as well as its representatives, agents and employees, who engages in the business in the city of selling, offering for sale, or exhibition for sale of any commodity or service, from house to house or from place to place and not from one established spot. Delivery of the commodity or service is made at the time of sale. Collection of the sales price at time of sale or later is immaterial. The term "peddler" does not include individuals connected with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this section.

Religious, civic, or charitable solicitation means the seeking of support or contributions for political, religious, charitable or civic causes, including without limitation the promotion of conservation of resources or animals, or advocating a philosophy or religion.

Services means the performance of labor for the benefit of another or at another's command.

Solicitor or canvasser means any individual, firm, organization or corporation, as well as its representatives, agents and employees, who engages in the business in the city of taking orders for future delivery of commodities or services, or solicits subscriptions, orders, contributions, or any kind of support, for remuneration or gain, from house to house or from place to place. The term "solicitor" or "canvasser" does not include individuals connected with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this section.

Temporary business means the business use of any real property in the city for which definite written arrangements with the owner have not been made for occupancy of the premises for a term in excess of 90 days. Definite arrangements would include, without being limited to, a lease agreement or other document conveying an enforceable right of occupancy.

(Ord. No. 2008-4, § 2, 4-21-2008)

Sec. 8-284. Exemptions from article.

(a) A peddler, solicitor, canvasser or itinerant vendor conducting activities on the property of another by the express, prior invitation of the owner thereof is exempt from the provisions of this article.

(b) A vendor selling or exhibiting for sale commodities, goods, merchandise or services to persons engaged in the business of buying, selling and dealing in the same within the city is exempt from the provisions of this article.

(Ord. No. 2008-4, § 3, 4-21-2008)

Sec. 8-285. Unlawful conduct.

It shall be unlawful for any peddler, solicitor, canvasser or itinerant vendor to:

- (1) Conduct a business or related activities within the city without a valid registration certificate, as provided in this article.
- (2) Conduct a business or related activities within the city without a valid identification card, as provided in this article.
- (3) Conduct a business or related activities without visibly displaying the identification card issued to that individual.
- (4) Alter a registration certificate or identification card issued by the city.

- (5) Conduct a business or related activities within the city after the expiration of the registration certificate issued by the city.
 - (6) Conduct a business or related activities within the city different than described in the registration statement required by section 8-304.
 - (7) Provide false, inaccurate or misleading information in the registration statement required by section 8-304.
 - (8) Use a vehicle in the conduct of a business or related activities not identified in the registration statement required by section 8-304.
 - (9) Conduct a business from a location within the city not listed in the registration statement required by section 8-304.
 - (10) Conduct a business of selling, offering for sale, or taking orders for delivery of any commodities, goods, merchandise or services not listed and described in the registration statement required by section 8-304.
 - (11) Sell, assign or transfer, or attempt to sell, assign or transfer, a registration certificate or identification card.
 - (12) Conduct a business authorized under a registration certificate issued pursuant to this article, on any public sidewalk, public street right-of-way, or other public property within the city, without written authorization from the city.
 - (13) Conduct a business during hours other than those permitted by this article.
 - (14) Conduct any activity for which a registration is required by this article at any building or dwelling, or upon any lot, tract or parcel of land, upon which is located, in a conspicuous location, any sign which gives notice that peddlers, solicitors, canvassers or itinerant vendors are prohibited. For the purpose of this section, any sign continuing the terms "no solicitors," "no solicitation," "solicitors prohibited," or any other phrase of similar meaning, shall constitute notice that peddlers, solicitors, canvassers and itinerant vendors are prohibited at such location.
- (Ord. No. 2008-4, § 4, 4-21-2008)

Secs. 8-286—8-303. Reserved.

ARTICLE VI. REGISTRATION**Sec. 8-304. Registration statement; application.**

(a) Prior to commencement of business and related activities by any peddler, solicitor, canvasser or itinerant vendor, a registration statement shall be completed on a form provided by the chief of police for the purpose, stating the following:

- (1) Name of applicant (person who completes the registration statement);
- (2) Height, weight, sex and hair color of applicant;
- (3) A recent color or black and white photograph of the applicant, no larger than two inches by two inches;
- (4) Social security number of applicant;
- (5) Permanent home address, and local address, if different;
- (6) Applicant's driver's license number and state of issuance;
- (7) Name of individual, firm, company or organization represented, if any, and the permanent address and local address of any individual, firm, company or organization represented;
- (8) The last four communities in which business was conducted by the individual, firm, company or organization represented shall be listed, with the period (beginning and ending month/year) business was conducted in each community listed;
- (9) The following information:
 - a. If such applicant or individual, firm, company or organization represented is a corporation incorporated under the laws of the state, the corporation shall provide a certified copy of the charter or articles of incorporation; or
 - b. If such applicant or individual, firm, company or organization represented is a corporation incorporated under the laws of a state other than Texas, the corporation shall provide a certified copy of its certificate of authority to do business in Texas;
- (10) Description, vehicle license number, and state of registration of each vehicle, if any, that will be operated under the registration certificate being applied for;

- (11) The name, height, weight, sex, hair color, social security number, permanent home address, and driver's license number and state of issuance for each individual who will be involved in business under the registration certificate. If an individual has no driver's license, other identification shall be provided;
- (12) A recent color or black and white photograph of each individual who is listed by the applicant, no larger than two inches by two inches;
- (13) A description of the business and related activities to be conducted;
- (14) Character and description of commodities, goods, merchandise or services to be offered for sale;
- (15) Location from which the business and other activities will be conducted; and
- (16) The term or period during which the business and activities will be conducted, not to exceed 30 days. Upon expiration of the 30-day period, or shorter period indicated by the applicant on the permit registration statement, the applicant must complete a new registration statement, in accordance with the requirements of this article, if renewal is desired.

(b) Every registration statement shall be accompanied by a registration fee established by city council and maintained by the city secretary. A fee established by city council and maintained by the city secretary shall be charged for replacement of a registration certificate.

(Ord. No. 2008-4, § 5, 4-21-2008)

Sec. 8-305. Identification of applicant, etc.

Prior to issuance of the registration certificate and identification cards provided for in this division, each individual whose name is listed on the registration certificate by the applicant shall present his driver's license or other identification in person to the chief of police for verification of the information provided by the applicant.

(Ord. No. 2008-4, § 6, 4-21-2008)

Sec. 8-306. Statement of felony, etc., convictions.

(a) Prior to issuance of the registration certificate and identification cards provided for in this division, the applicant and each individual whose name is listed by the applicant shall answer on the registration statement, or on an attachment thereto, whether he has ever been convicted of a felony or a misdemeanor involving moral turpitude.

(b) Prior to issuance of the registration certificate and identification cards provided for in this division, the applicant and each individual whose name is listed by the applicant shall, on the registration statement or attachment thereto, separately list by the applicant shall, on each and every conviction, if any, whether for felony or misdemeanor offenses, other than conviction for misdemeanor traffic law offenses, and give the state where the conviction occurred and the year of such conviction.

(Ord. No. 2008-4, § 7, 4-21-2008)

Sec. 8-307. Issuance of registration certificate.

(a) When all prerequisites of this article have been complied with, the chief of police shall initiate appropriate action to process the application. The chief of police shall make an appropriate investigation of an applicant, any person listed by the applicant, and any information provided. The chief of police shall verify the information on the registration statement regarding the driver's license from the applicant's driver's license. If the applicant has no driver's license, other identification shall be provided.

(b) The chief of police shall issue a registration certificate to the applicant authorizing the sale, offer of sale, taking of orders for sale, and exhibition of commodities, goods, merchandise and services within 15 working days after the applicant has fully complied with all applicable provisions of this article, subject to denial of registration certificate or identification card as outlined in section 8-313.

(Ord. No. 2008-4, § 8, 4-21-2008)

Sec. 8-308. Duration; renewal.

The registration certificate shall state the effective term, and the beginning and ending dates, not to exceed 30 days. Upon expiration, the registration certificate may be renewed upon full compliance with the requirements of this article.

(Ord. No. 2008-4, § 9, 4-21-2008)

Sec. 8-309. Transfer prohibited.

A registration certificate issued under the terms of this article shall be personal to the applicant and shall not be sold, assigned or transferred to any other person. Any attempted sale, assignment or transfer of a registration certificate shall be grounds for revocation of the registration certificate.

(Ord. No. 2008-4, § 10, 4-21-2008)

Sec. 8-310. Identification cards.

(a) In conjunction with the issuance of a registration certificate, the chief of police shall issue identification cards for each individual whose name is listed in the registration statement. The identification card shall be laminated in clear plastic, shall have a metal clothing clip, shall contain the photograph of the holder, and shall state the holder's name, driver's license number and state of issuance, and height, weight, sex and hair color of the cardholder, the term of the permit, and the nature of the business and related activities. The card shall contain the following disclaimer of any endorsement by the city, to be placed in a conspicuous place upon such card: "The City of Iowa Colony, Texas, does not endorse the product, service or activity promoted by this cardholder."

(b) An identification card issued in accordance with this article shall be personal to the cardholder and shall not be sold, assigned or transferred to any other person. Any attempted sale, assignment or transfer of an identification card shall be grounds for revocation of the registration certificate and the identification cards issued thereunder.

(c) The chief of police shall issue up to give identification cards with the registration certificate without any additional or replacement identification cards upon payment to the city of a fee as established by city council and maintained by the city secretary. (Ord. No. 2008-4, § 11, 4-21-2008)

Sec. 8-311. Display of identification cards.

While conducting business covered by the registration certificate, each identification cardholder shall visibly display the identification card for identification by clipping the identification card to the clothing of the holder, so that the identification card is in plain view.

(Ord. No. 2008-4, § 12, 4-21-2008)

Sec. 8-312. Inspection.

A representative of the city designated by the chief of police shall have the authority to request admission to inspect, at a reasonable time without advance notice, a business operating under a registration certificate issued pursuant to this article, to determine whether the permit holder's business and related activities are as represented in the registration statement. If such admission is denied, or if the chief of police deems it advisable, the chief shall have the authority to obtain a warrant, in accordance with applicable law, for the purpose of allowing the inspection.

(Ord. No. 2008-4, § 13, 4-21-2008)

Sec. 8-313. Denial of registration certificate or denial of identification card to specified individuals.

- (a) The issuance of a registration certificate may be denied if:
- (1) Any violation of this article or other city ordinances or laws relating to the business or related activities to be conducted under the registration certificate applied for has been committed by any individual who would operate under such registration certificate;
 - (2) False, inaccurate, incomplete or misleading information is contained in the registration statement; or
 - (3) The applicant is overdue in payment to the city of taxes, fees, fines or penalties assessed or imposed against him.

(b) Conviction of a felony or crime involving moral turpitude shall be grounds for the denial of issuance to the individual of a identification card, and/or the removal from the registration statement on file with the city of any such person so convicted, and/or the denial of the right to conduct the business covered by such certificate by any person so convicted.

(c) Notice of denial of a registration certificate or denial of an identification card to any individual shall be given in writing, specifically setting forth the reason for such denial and what action will be required before a registration certificate can be issued. Such notice shall be served in person, or by depositing the notice in the United States mail, addressed to the applicant's local address, if provided, or to the permanent business or home address listed in the registration statement.

(Ord. No. 2008-4, § 14, 4-21-2008)

Sec. 8-314. Hours.

Business conducted in accordance with this article shall be permitted only between the hours of 9:00 a.m. and 9:00 p.m.

(Ord. No. 2008-4, § 15, 4-21-2008)

Sec. 8-315. Revocation of certificate.

- (a) The city may revoke a registration certificate if:
- (1) Any violation of this article, or any violation of other city ordinances or law relating to the business or related activities covered by the registration certificate is committed by any individual or individuals operating under the registration certificate during the original term or renewal thereof;

- (2) False, inaccurate, incomplete or misleading information is contained in the registration statement; or
- (3) Any certificate holder is convicted of a crime involving moral turpitude.

(b) If a certificate is revoked pursuant to this section, the period of revocation shall extend until the date the certificate so revoked would have otherwise expired. Any itinerant vendor, peddler, solicitor or canvasser having two certificates revoked within any 24-month period shall be ineligible to receive a certificate for a period of one year following the date of the second revocation.

(Ord. No. 2008-4, § 16, 4-21-2008)

Sec. 8-316. Appeal of denial or revocation of registration certificate or identification card.

An applicant or other individual who has been denied a registration certificate or identification card, or who has had a registration certificate revoked, may appeal that action to the city council by submitting a letter to the city secretary's office within ten days of the action complained of. A hearing on the denial will be scheduled for the next regular city council meeting. The city council will render its decision on the appeal at the meeting during which the appeal is considered.

(Ord. No. 2008-4, § 17, 4-21-2008)

Secs. 8-317—8-337. Reserved.

ARTICLE VII. OIL AND GAS WELLS

DIVISION 1. GENERALLY

Sec. 8-338. Applicability of article.

The rules set out in this article shall apply to all oil and gas wells in the limits of the city, or to wells directionally drilled so as to complete the well at a bottom hole location within the limits of the city, or to wells completed in a drilling block, any portion of which may lie within the limits of the city.

(Ord. No. 88-1a, § 1-1, 9-19-1988)

Sec. 8-339. Unlawful drilling.

It shall be unlawful for any person to drill any well for oil or gas within any of the streets or alleys of the city or to block or encumber or close up any street or alley in any drilling or producing operations, except by special permit by order of the city council and then only temporarily.

(Ord. No. 88-1a, § 1-2, 9-19-1988)

Sec. 8-340. Trespassing.

It shall be unlawful for any person to trespass across any properties to enter onto the oil or gas well drilling sites or their flow line rights-of-way, other than from an existing street or dedicated highway used by the public's convenience.

(Ord. No. 88-1a, § 1-3, 9-19-1988)

Sec. 8-341. No grant of license or right.

Neither this article nor any permit issued hereunder shall be interpreted to grant any right or license to the permittee to enter upon or occupy, in any respect in drilling or production operations, any land except by the written consent of the owner; nor shall it limit or prevent the free right of any lot owner to contract for the amount of royalty to be paid with respect to his own land or other consideration therefor, or for damages, rights or privileges with respect thereto.

(Ord. No. 88-1a, § 1-4, 9-19-1988)

Secs. 8-342—8-372. Reserved.

DIVISION 2. PERMITS

Sec. 8-373. Drilling permit required.

It shall be unlawful for any person to drill or commence to drill a well for oil or gas within the limits of the city, or to directionally drill so as to complete the well at a bottom hole location within the limits of the city, or to complete in a drilling block, any portion of which may lie within the city limits, or to work upon or assist in any way in the prosecution of the drilling of any such well, without a permit for the drilling, completion and operation of such well having been first issued by authority of the city council, in accordance with the provisions of this division.

(Ord. No. 88-1a, § 2-1, 9-19-1988)

Sec. 8-374. Application review.

All applications and accompanying data submitted in compliance with this division for a permit to drill, complete and operate a well for oil or gas within the limits of the city will be reviewed by the city council within a 90-day time limit and action taken thereon. The city reserves the right to refuse any application for a permit.

(Ord. No. 88-1a, § 2-2, 9-19-1988)

Sec. 8-375. Refusal of application.

The city council shall have the power and hereby reserves the authority to refuse any application for a permit under this division to drill an oil or gas well, when, by reason of the location of the proposed well and the character and value of the permanent improvements already erected on the drilling block in question or adjacent thereto, and the use to which the land and surroundings are adapted for civic purposes, or for sanitary reasons, or will be a serious disadvantage to either the health, comfort, convenience, the order, good government, safety, morals or welfare of the city and its inhabitants. When a permit is refused the fee made with the application as provided in section 8-380 shall be returned to the applicant.

(Ord. No. 88-1a, § 2-3, 9-19-1988)

Sec. 8-376. Permit application.

(a) Every application for a permit to drill, complete and operate a well for oil or gas shall be in writing and signed by the applicant or by some person duly authorized to sign the same on his behalf. It shall be filed with the city secretary and shall state whether the well shall be drilled as an oil or gas well, the proposed depth, the drilling block and the particular lot and location in the block where the proposed well is to be located and bottomed, and shall have attached to it a plat showing the well location with a list of owners of leased and unleased interest certified by the applicant's attorney as to ownership. In the event, however, the city council shall find the necessity for same the applicant shall furnish, with no cost to the city, certified or photostatic copies of the deed, oil and gas lease or drilling contract with the owners of the land covering the lots, blocks or tracts in the drilling block over which the applicant has control for oil and gas purposes, together with abstracts of title or certificates of title satisfactory to the city council, to the end that the application will show what proportion and what parts of the drilling block the applicant owns in fee or holds under lease or drilling contract from the owners. The applicant may withdraw the abstracts or certificates of title after they have been examined by the city council.

(b) The application shall also be accompanied by a plat or map of the drilling block, showing the designation of the lots, blocks or tracts owned or controlled by the applicant and showing the exact location of the proposed well and proposed bottom hole location.

(c) The application shall also be accompanied by a full and detailed description of all proposed or anticipated operations, the casings and mud programs, a proposed procedure to minimize noise and vibrations, the proposed safety procedures, and any other related engineering details.

(d) No wells shall be drilled and no permit shall be issued for any well to be drilled at any location with a drilling block which location is nearer than 200 feet of any residence, building, or site upon which construction has been started on a residence, or building without the applicant having first secured the written permission of the owners thereof, signed and acknowledged before notaries public in the manner required for the recording of deeds, or in the alternative, witnessed by two disinterested persons. No wells shall be drilled and no permit shall be issued for any well to be drilled at any location within a drilling block which location is nearer than 300 feet to any exterior boundary line of land utilized for a public or parochial school, college, university, hospital, church or public building without permission of the owner or owners as above set out. No wells shall be drilled and no permit shall be issued for any well to be drilled at any location within a drilling block which location is a part of the city block to which there are public record restrictions or covenants prohibiting the drilling of any oil or gas well in said city block; provided, however, this provision shall not apply when the permittee is drilling a substitute well or deepening any existing or abandoned well.

(Ord. No. 88-1a, § 2-4, 9-19-1988)

Sec. 8-377. Notice of filing.

(a) Notice of the filing of each application for a permit under this division shall be given by the applicant as follows: At least ten days prior to the date of hearing on the application, a copy of the notice in the form hereinafter prescribed shall be sent by certified mail to each owner or lessee of lots, blocks and tracts in the drilling block not owned by or under lease to the applicant, addressed to the last known address of such owner or lessee, if known to the applicant. A copy of such notices shall likewise be published at the cost of the applicant in one issue of the official newspaper of the city, which date of publication will be at least ten days prior to the date of such hearing. Such

notice shall state the lot and block number on which the applicant is asking for a permit to drill and the date and place of hearing, and shall be in words and figures as follows:

"Notice is hereby given that _____, acting under and pursuant to the terms and provisions of Iowa Colony Oil and Gas Well Drilling Ordinance, of the City of Iowa Colony, Texas, did, on the ____ day of _____, 20____, file with the City Secretary of the City of Iowa Colony an application for a permit to drill as well for _____ (state whether oil or gas) to a depth of ____ feet, upon (use legal land description). A hearing upon such application will be held in the City Council chambers of the City of Iowa Colony, Texas, at _____ on the ____ day of _____, 20____ at _____ M."

(b) Proof of notice shall be made by the applicant by filing with the city secretary an affidavit of the printer or publisher of the paper in which the notice is published containing a copy of the notice and stating the issue in which and period of time during which the notice was published, also an affidavit of the applicant shall be filed with the city secretary showing the date and persons to whom and the addresses to which the notice was mailed by the applicant, together with a verified or sworn statement that such addresses are the last addresses of the persons involved known to the applicant.

(c) The time fixed in such notice of hearing on such application shall be set by the city secretary.

(Ord. No. 88-1a, § 2-5, 9-19-1988)

Sec. 8-378. Bond required.

(a) An application for a permit under this division shall be accompanied by one duly executed bond, that must meet the approval of the mayor, and given by the applicant as principal and a surety company authorized to do business in the state, as surety. The bond shall run to the city for the benefit of the city and all persons, firms and corporations concerned, conditioned that, if the permit is granted and if drilling operations are commenced thereunder, the applicant and his assigns will comply with the terms and conditions of this chapter in the drilling and operation of a well; that the applicant will restore the streets and sidewalks and other public places of the city which may be disturbed in the operations to their former condition, and will clear the block and lots of all litter machinery, derricks and buildings erected or used in the drilling or operation of the well whenever the well shall be abandoned or the operation thereof discontinued. Such bond shall be in the sum of \$100,000.00; provided, however, that, if, within two years after the drilling and completion of such well, no claims have been presented against the applicant or his assigns under the terms and conditions of such

bond, then the sum of same shall be automatically reduced to \$20,000.00 for the remainder of the time said well produces without reworking. During reworking operations the amount of the bond shall be increased to the original amount. Upon proper application, should the city find that such bond is excessive, the same may be terminated or reduced by the city council.

- (1) In the event the applicant drills a dry hole he/she may apply to have the bond discharged. When so applying, applicant shall pay the city secretary an inspection fee in accordance with the city's fee schedule, as it may be amended from time to time by city council. After payment of such fee a qualified inspector designated by the mayor shall inspect the drilling area and public areas to determine if applicant has complied with this division.
- (2) If it is apparent there is no likelihood that a claim will be filed under applicant's bond, the bond shall be discharged within 45 days after applicant applies for a discharge.

(b) In addition to the bond required and set out above, the permittee shall carry a policy or policies of standard comprehensive public liability insurance, including contractual liability covering bodily injuries and property damage, naming the permittee and the city, with an insurance company authorized to do business within the state, said policy or policies in the aggregate shall provide for the following minimum coverages:

- (1) Bodily injuries \$500,000.00 one person: \$1,000,000.00 one accident;
- (2) Property damage: \$200,000.00.

Permittee shall file with the city secretary of the city certificates of said insurance as above stated, and shall obtain written approval thereof by the city secretary of the city who shall act thereon within ten days from the date of such filing. Said insurance policy or policies shall not be cancelled without written notice to the city secretary of the city at least ten days prior to the effective date of such cancellation. In the event said insurance policy or policies are cancelled, the permit granted shall terminate, and permittee's rights to operate under said permit shall cease until permittee files additional insurance as provided herein.

(c) If, after completion of a well, permittee has complied with all of the provisions of this division, such as to removing derrick, clearing premises, etc., he may apply to the city council to have said insurance policies reduced as follows:

- (1) Bodily injuries \$100,000.00 one person: \$1,000,000.00 one accident;
- (2) Property damage: \$100,000.00;

for remainder of the time said well produces without reworking. During reworking operations, the amount of the insurance policy or policies shall be increased to the original amount.

(d) In lieu of any security bond required to be given under this section, the applicant may file with the city secretary a valid letter of credit or his personal undertaking or undertakings which shall be in the same amount and shall contain the same conditions as herein before provided with respect to surety bonds and which undertaking or undertakings shall be secured by United States government securities or securities of the state, or of counties or municipalities in the state, having a par value equal to the amount of the surety bond in lieu of which undertaking is given, which securities shall be deposited in escrow in a bank in the city jointly selected by the city secretary and the applicant or his assigns along with and attached to a copy of the written undertaking for which they are to be held as security. If a letter of credit is used applicant will file a sworn affidavit that there are presently no law suits filed against the applicant and no judgments existing against the applicant.

(e) If any permit shall terminate and become inoperative as provided in section 8-375 or, if the permittee or his assigns shall file with the city council written notice of his or their election to surrender his or their permit and abandon the premises covered thereby, then, if no claims under the bonds or undertakings are filed within two years, the city secretary shall return the bonds or undertakings and/or securities theretofore furnished by the permittee in connection with such permit. If no claims are filed within such time, upon the satisfaction or defeat of such claims, such bonds or undertakings and/or securities shall thereupon be returned to the permittee or his assigns.

(Ord. No. 88-1a, § 2-6, 9-19-1988)

Sec. 8-379. Permit fee.

The fee for a permit required by this division shall be in accordance with the city's fee schedule, as it may be amended from time to time by city council, which fee shall accompany the application for the permit.

(Ord. No. 88-1a, § 2-7, 9-19-1988)

Sec. 8-380. Issuance of permit.

Except as provided in section 8-375, if an application for a permit under this chapter is found by the city council to comply in all respects with the terms of this chapter, the city secretary shall be authorized to issue a permit for the drilling completion and operation of the well applied for. The granting and issuance of a permit for a well on a

drilling block as provided in this article shall automatically operate as rejection and denial of all other pending applications for wells upon the drilling block involved, or any portion thereof.

(Ord. No. 88-1a, § 2-8, 9-19-1988)

Sec. 8-381. Ground for drilling to be owned by applicant.

No permit shall be granted or issued under this division for the drilling of a well except upon ground owned by the applicant or held by him under an oil and gas lease or drilling contract from the owner, giving the owner's permission or authority to drill the well.

(Ord. No. 88-1a, § 2-9, 9-19-1988)

Sec. 8-382. Drilling to commence within 12 months.

A permit issued under this division shall terminate and become inoperative without any action on the part of the city council unless, within 12 months from the date of the issue, actual drilling of the well is commenced. After the drilling of the well is commenced, the cessation of drilling operations prior to the completion of the well for a period of six months shall operate to terminate and cancel the permit and the well shall be considered as abandoned for all purposes of this chapter and it shall be unlawful thereafter to continue the operation of drilling of such well without the issuance of another permit. If the well is completed as a producer and thereafter ceases to produce, the permittee shall obtain a drilling permit as provided in this division to conduct deepening or side tracking operations on the well.

(Ord. No. 88-1a, § 2-10, 9-19-1988)

Secs. 8-383—8-407. Reserved.

DIVISION 3. REGULATIONS AND PROHIBITED ACTIONS

Sec. 8-408. Storage tanks not to exceed 500-barrel capacity; must be vaportight.

(a) 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 storage tanks exceeding 500-barrel capacity each and each such tank will be constructed and maintained as to be vaportight and equipped with gas vents. Each tank to be surrounded with a fire wall at such distance from each tank as will under any circumstances hold and retain at least 1½ times the maximum capacity of such tanks. A permittee may use, construct and operate a steel conventional separator, and such other steel tanks and

appurtenances as are necessary for treating oil, with each of such facilities to be so constructed and maintained as to be vaportight. Each oil and/or gas separator and any other pressure vessel containing oil or gas under pressure shall be equipped with both a pressure relief safety valve and a bursting head.

(b) All battery and storage tanks, fired vessels and separators hereinafter erected or installed shall be at least 200 feet from any public or parochial school, hospital, church, theater or public building.

(Ord. No. 88-1a, § 3-1, 9-19-1988)

Sec. 8-409. Fired vessels, open flames no closer than 150 feet from well or storage tank.

It shall be unlawful for any person within the corporate limits of the city to install any fired vessel or to operate any equipment with an open flame nearer than 150 feet to any well or storage tank, unless equipped with approved spark arresters.

(Ord. No. 88-1a, § 3-2, 9-19-1988)

Sec. 8-410. Offenses.

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 or steam powered rig, 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. All engines shall be equipped with effective mufflers to prevent noise.

(Ord. No. 88-1a, § 3-3, 9-19-1988)

Sec. 8-411. Signage.

Printed signs reading "DANGEROUS, NO SMOKING ALLOWED" or similar words shall be posted in conspicuous places on each producing well and tank battery.

(Ord. No. 88-1a, § 3-4, 9-19-1988)

Sec. 8-412. Maintenance of well premises.

(a) The premises of any oil or gas well shall be kept clear of high grass, weeds and combustible trash within a radius of 100 feet around an oil rank or producing wells.

(b) Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 100 feet from the vicinity of wells, tanks and pump stations. All waste shall be burned or disposed of in such a manner as to avoid creating a fire hazard or polluting streams and fresh water strata.

(c) Proper sanitation facilities must be provided for the use of workmen at the site in accordance with the direction of the building inspector for the city.
(Ord. No. 88-1a, § 3-5, 9-19-1988)

Sec. 8-413. Prohibited accumulation.

Accumulation and storage of oil in open pits is prohibited.
(Ord. No. 88-1a, § 3-6, 9-19-1988)

Sec. 8-414. Conditions for drill stem tests.

Drill stem tests may be conducted only if the well effluent during the test shall be separated, the liquids shall be properly stored and the gases shall be properly burned and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.
(Ord. No. 88-1a, § 3-7, 9-19-1988)

Sec. 8-415. Approval required for pipelines.

No pipelines for the transportation of oil and/or gas shall be constructed, laid, repaired or replaced without approval of the city inspector.
(Ord. No. 88-1a, § 3-8, 9-19-1988)

Sec. 8-416. Condition for pipelines laid upon public roads and highways.

All oil and gas pipelines laid upon or across a public road or highway must be buried to a reasonably safe depth and approved by the city inspector.
(Ord. No. 88-1a, § 3-9, 9-19-1988)

Sec. 8-417. Lights and power.

Wherever available and practicable, electric light and power shall be installed in congested drilling areas.
(Ord. No. 88-1a, § 3-10, 9-19-1988)

Sec. 8-418. Requirements for well operators.

(a) The operator of any well in any field or area within the city shall be required to set and cement a sufficient amount of surface casing to properly protect all fresh water sands as specified by the state board of water engineers and the director of utilities for the particular area or field. The surface casing shall be of new or reconditioned casing and shall be set and cemented in accordance with the rules, regulations and orders of the railroad commission of the state for the field or area in which the well is to be

drilled. Cementing shall be by the pump and plug method and sufficient cement shall be used to fill the annular space back of the casing to the surface of the ground with full returns or corrective measures must be taken. The cement shall be allowed to set for a period of 12 hours before drilling plug.

(b) In lieu of setting the full amount of surface casing required to protect fresh water sands, the applicant may use the multi-stage cementing process. In using the multi-stage cementing process, sufficient cement shall be used in the stage cement job that is equivalent to the volume of the annulus from the cementing tool to the surface of the ground. Should the cement not reach the surface of the ground, a temperature survey must be conducted, then corrective measures must be taken. Any applicant using the multi-stage process must file with the city secretary a copy of the railroad commission of the state letter granting such permit and an affidavit from the company performing the cementing. Failure to file either of these shall be unlawful and shall be punishable in accordance herewith.

(c) In any well drilled in any field or area within the city, the producing string casing shall be of new or reconditioned pipe which has been tested and withstood the maximum anticipated pressures to be encountered. Cementing shall be by the pump and plug method and sufficient cement shall be used to fill the calculated annular space back of the casing to a point at least 600 feet above the shoe or the highest production zone, whichever is applicable, and the cement shall be allowed to stand for a period of 12 hours before drilling plug. After cementing, the casing shall be tested at a pressure in pounds per square inch calculated by multiplying the length of the producing string by 0.02, being maximum test pressure required. If at the end of 30 minutes the pressure shows a drop of ten percent or more of the above required test pressure, the casing shall be condemned. After corrective operation, the casing shall again be tested in the same manner.

(Ord. No. 88-1a, § 3-11, 9-19-1988)

Sec. 8-419. Blowout preventers required.

Two fluid operated blowout preventers with dual controls with working pressures equal to the maximum anticipated wellhead pressured shall be used for all drilling or completion operations involving the use of drill pipe or tubing after the surface casing has been set. The mechanical operation of the preventors shall be checked every 24 hours and shall be tested with pump pressure with enough frequency to ensure good working order at all times.

(Ord. No. 88-1a, § 3-12, 9-19-1988)

Sec. 8-420. Bradenhead required.

Each well drilled within the city limits shall be equipped with a bradenhead with a test pressure of not less than 6,000 pounds per square inch. The bradenhead installed on the surface casing shall be equipped with fittings having a test pressure rating of not less than 6,000 pounds per square inch. The bradenhead pressure shall be checked at least one each calendar month and if pressure is found to exist, proper remedial measures shall be immediately taken to eliminate the source and the existence of the pressure.

(Ord. No. 88-1a, § 3-13, 9-19-1988)

Sec. 8-421. Completed wells to be equipped with Christmas tree fittings, wellhead connections.

All completed wells within the city shall be equipped with Christmas tree fittings and wellhead connections, with a rated working pressure equal to no greater than the surface shut-in pressure of the well. All wellhead connections shall be assembled and tested prior to installation by a fluid pressure which shall be equal to the test pressure of the fitting employed.

(Ord. No. 88-1a, § 3-14, 9-19-1988)

Sec. 8-422. Abandoned wells.

(a) Whenever any well is abandoned within the city limits, it shall be the obligation of the permittee to plug such well in accordance with the rules and regulations of the railroad commission of the state and to take any and all additional provisions of precautionary measures prescribed by the state or the railroad commission of the state in connection with abandonment and plugging of the well.

(b) It shall be the further obligation of the permittee or the operator of the well to cut the surface casing off at least six feet below the surface of the ground and to place at least a 25-foot cement plug in the top of the casing and to weld the top of the casing completely shut. The resulting hole in the ground must be completely filled to the surface of the ground and duly tamped.

(Ord. No. 88-1a, § 3-15, 9-19-1988)

Sec. 8-423. Wells to be fenced.

Any person who completes any well as a producer shall have the obligation to fence said well, together with its surface facilities and storage tanks.

(Ord. No. 88-1a, § 3-16, 9-19-1988)

Sec. 8-424. Disposal of salt water, other impurities.

The permittee shall make adequate provisions for the disposal of all salt water or other impurities which he may bring to the surface, and disposal to be made in such manner as to not contaminate the water supply, present or prospective, or to injure surface vegetation and the same must not be discharged into the sanitary sewer system or storm sewer.

(Ord. No. 88-1a, § 3-17, 9-19-1988)

Chapter 9

RESERVED

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Chapter 10

COURT*

Article I. In General

- Sec. 10-1. Municipal court judge.
- Secs. 10-2—10-20. Reserved.

Article II. Fees and Costs

- Sec. 10-21. Special expense fee.
- Sec. 10-22. Collection fee.
- Sec. 10-23. Court building security fee and fund.
- Sec. 10-24. Technology fee.

***Editor's note**—Readers are directed to section 4.06 of the Home Rule Charter for relevant provisions concerning the municipal court, municipal court judge, and municipal court clerk.

ARTICLE I. IN GENERAL**Sec. 10-1. Municipal court judge.**

(a) Compensation for the office of the municipal court judge shall be set by the city council, and may be adjusted or changed at any time by the city council.

(b) In the event it is desirable to remove any incumbent municipal court judge from his office, then such removal shall be accomplished only by a unanimous vote of the city council, and in conformity with all then-applicable state law.

(Ord. No. 87-2, §§ V, VI, 7-20-1987)

Secs. 10-2—10-20. Reserved.**ARTICLE II. FEES AND COSTS****Sec. 10-21. Special expense fee.**

(a) The municipal judge, or his associate presiding in his stead, is authorized to and may assess an administrative fee in accordance with the city's fee schedule, as it may be amended from time to time by city council, against any person charged with the offenses of:

- (1) Driving with an expired driver's license;
- (2) Driving with an expired inspection sticker; or
- (3) Driving with expired registration;

provided, however, such request is accompanied with adequate proof that such offense was remedied within ten days of the date of issuance of citation.

(b) The municipal court clerk is hereby authorized to collect the above-mentioned administrative fee, and upon collection shall forward the same to the director of finance for deposit in the municipal treasury.

(c) The administrative fee collected hereunder shall not be refundable.
(Ord. No. 90-1, §§ 1—3, 1-15-1990)

Sec. 10-22. Collection fee.

In accordance with Vernon's Ann. C.C.P. art. 103.0031, there is hereby imposed an additional fee of 30 percent on all debts and accounts receivable, i.e.: fines, fees, court

costs, restitution, and other debts, that are more than 60 days past due and have been referred to a private firm for collection; provided, however, that this section is limited to the types of debts described in Vernon's Ann. C.C.P. art. 103.0031. (Ord. No. 2014-21, § 2, 10-14-2014)

Sec. 10-23. Court building security fee and fund.

(a) A defendant convicted in a trial for a misdemeanor offense in the municipal court shall pay a security fee, as a cost of court, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(b) In this section, a person is considered convicted if:

- (1) A sentence is imposed on the person;
- (2) The person receives community supervision, including deferred adjudication; or
- (3) The court defers final disposition of the person's case.

(c) A municipal court building security fund is hereby established. All costs of court provided by this section shall be deposited in that fund.

(d) The clerk of the court shall collect the security fee herein provided and pay it to the municipal treasurer for deposit into the municipal court building security fund.

(e) The municipal court building security fund may be used only to finance the following items related to buildings that house a municipal court:

- (1) The purchase or repair of X-ray machines and conveying systems;
- (2) Handheld metal detectors;
- (3) Walkthrough metal detectors;
- (4) Identification cards and systems;
- (5) Electronic locking surveillance equipment;
- (6) Video conferencing systems;
- (7) Bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (8) Signage;
- (9) Confiscated weapon inventory and tracking systems;
- (10) Locks, chains, alarms, or similar security devices;
- (11) The purchase or repair of bullet-proof glass;

- (12) Warrant officers and related equipment;
- (13) Continuing education on security issues for court personnel and security personnel; and
- (14) Any other purpose allowed by law now or in the future.

(f) The municipal court building security fund shall be administered by or under the direction of the city council.

(g) The municipal judge shall provide to the office of court administration of the state judicial system a written report regarding any security incident involving court security that occurs in or around a building housing the municipal court not later than the third business day after the date the incident occurred.

(Ord. No. 2011-07, §§ 1—7, 11-21-2011)

Sec. 10-24. Technology fee.

(a) A defendant convicted in a trial in the municipal court for a misdemeanor offense shall pay a technology fee, as a cost of court, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(b) In this section, a person is considered convicted if:

- (1) A sentence is imposed on the person;
- (2) The person is placed on community supervision, including deferred adjudication community supervision; or
- (3) The court defers final disposition of the person's case.

(c) A municipal court technology fund is hereby established. All costs of court provided by this section shall be deposited in that fund.

(d) The clerk of the court shall collect the technology fee herein provided and pay it to the municipal treasurer for the deposit into the municipal court technology fund.

(e) The municipal court technology fund may be used only to finance the purchase of technological enhancements for the municipal court, including:

- (1) Computer systems;
- (2) Computer networks;
- (3) Computer hardware;
- (4) Computer software;
- (5) Imaging systems;

- (6) Electronic kiosks;
- (7) Electronic ticket writers; and
- (8) Docket management systems.

(f) The municipal court technology fund shall be administered by or under the direction of the city council.

(Ord. No. 2011-08, §§ 1—7, 11-21-2011)

Chapter 11

RESERVED

Chapter 12

EMERGENCY MANAGEMENT

Article I. In General

- Sec. 12-1. Organization.
- Sec. 12-2. Emergency management director; powers and duties.
- Sec. 12-3. Emergency management plan.
- Sec. 12-4. Interjurisdictional program.
- Sec. 12-5. Override.
- Sec. 12-6. Liability.
- Sec. 12-7. Commitment of funds.
- Sec. 12-8. Offenses; penalties.
- Secs. 12-9—12-34. Reserved.

Article II. County Emergency Management Plan

- Sec. 12-35. Findings of fact.
- Sec. 12-36. Supplement to city emergency plan.
- Sec. 12-37. Offenses and penalties.

ARTICLE I. IN GENERAL**Sec. 12-1. Organization.**

There exists the office of emergency management director of the city, which shall be held by the mayor in accordance with Charter section 3.05a, which provides that the mayor is official head of the city for purposes of martial law and other emergency powers.

- (1) An emergency management coordinator may be appointed by and serve at the pleasure of the director.
- (2) The director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this article. He/she may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.
- (3) The operational emergency management organization of the city shall consist of the officers and employees of the city so designated by the director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

(Ord. No. 89-1, § 1, 3-27-1989)

Sec. 12-2. Emergency management director; powers and duties.

The duties and responsibilities of the emergency management director shall include the following:

- (1) Conduct an ongoing survey of actual or potential hazards which threaten life and property within the city and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.
- (2) Supervision of the development and approval of an emergency management plan for the city, and shall recommend for adoption by the city council all mutual aid arrangements deemed necessary for the implementation of such plan.

- (3) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven days except by or with the consent of the city council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.
- (4) Issuance of necessary proclamations, regulations or directives which are necessary for carrying out the purposes of this article. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the city secretary.
- (5) Direction and control of the operations of the city emergency management organization as well as the training of emergency management personnel.
- (6) Determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.
- (7) Maintenance of liaison with other municipal, county, district, state, regional or federal emergency management organizations.
- (8) Marshaling of all necessary personnel, equipment or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.
- (9) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of other local political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which said city is located and with other municipalities within the county, for the county-wide coordination of emergency management efforts.
- (10) Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.
- (11) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.
- (12) Survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster as provided for herein.

(13) Other requirements as specified in Texas Disaster Act 1975 (V.T.C.A., Government Code § 418.001 et seq.).
(Ord. No. 89-1, § 2, 3-27-1989)

Sec. 12-3. Emergency management plan.

A comprehensive emergency management plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization, establish and designate divisions and functions, assign responsibilities, tasks, duties, and powers, and designate officers and employees to carry out the provisions of this article. As provided by state law, the plan shall follow the standards and criteria established by the state division of emergency management of the state. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this article and have the effect of law during the time of a disaster.

(Ord. No. 89-1, § 3, 3-27-1989)

Sec. 12-4. Interjurisdictional program.

The mayor is hereby authorized to join with the county judge and the mayors of the other cities in the county in the formation of an emergency management council for the county and shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a county-wide program of emergency management insofar as said program may affect the city.

(Ord. No. 89-1, § 4, 3-27-1989)

Sec. 12-5. Override.

At all times when the orders, rules, and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(Ord. No. 89-1, § 5, 3-27-1989)

Sec. 12-6. Liability.

This article is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety and neither the city, the agents and representa-

tives of said city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with, any order, rules, or regulation promulgated pursuant to the provisions of this article shall be liable for any damage sustained to persons as the result of said activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the city a license of privilege, or otherwise permits the city to inspect, designate and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural or man-made disaster shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to any person on or about such real estate or premises under such license privilege or other permission or for loss of, or damage to, the property of such person. (Ord. No. 89-1, § 6, 3-27-1989)

Sec. 12-7. Commitment of funds.

No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this article without prior approval by the city council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the city council unless during a declared disaster. During a declared disaster, the mayor may expend and/or commit public funds of the city when deemed prudent and necessary for the protection of health, life, or property.

(Ord. No. 89-1, § 7, 3-27-1989)

Sec. 12-8. Offenses; penalties.

(a) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this article, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this article.

(b) It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the emergency management organization of the city, unless authority to do so has been granted to such person by the proper officials.

(c) Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal, or the termination of a warning, shall be deemed guilty of a violation of this article and shall be subject to the penalties imposed by this article.

(d) Conviction for violation for provisions of this article shall be punishable by the maximum penalty permitted under state law.

(Ord. No. 89-1, § 8, 3-27-1989)

Secs. 12-9—12-34. Reserved.

ARTICLE II. COUNTY EMERGENCY MANAGEMENT PLAN

Sec. 12-35. Findings of fact.

The city council hereby finds and declares that the following facts are true:

- (1) The city has adopted the emergency management plan of the county.
- (2) This article is authorized by V.T.C.A., Government Code § 418.173 and all applicable law.

(Ord. No. 2017-15-1, § 1, 9-2-2017)

Sec. 12-36. Supplement to city emergency plan.

This entire article is a supplement to the city's emergency plan.

(Ord. No. 2017-15-1, § 2, 9-2-2017)

Sec. 12-37. Offenses and penalties.

(a) A failure to comply with this emergency management plan or with a rule, order, or ordinance adopted under this plan is an offense punishable by a fine not to exceed \$500.00. Each day or portion of a day that a violation continues, occurs, or recurs shall be a separate offense.

(b) However, this section shall not apply to a failure of a public employee, officer, or representative in executing this plan or any duties hereunder.

(c) The remedies in this article are cumulative of all other remedies provided by any law or by equity, including, but not limited to, injunctive relief. Pursuing or obtaining any remedies shall not preclude any other remedies.

(Ord. No. 2017-15-1, § 3, 9-2-2017)

Chapter 13

RESERVED

Chapter 14

EMERGENCY SERVICES

Article I. In General

Secs. 14-1—14-18. Reserved.

Article II. EMS and Ambulance Regulations

- Sec. 14-19. Definitions.
- Sec. 14-20. Business license and vehicle permits required; exceptions.
- Sec. 14-21. Business license requirements.
- Sec. 14-22. Ambulance permit requirements.
- Sec. 14-23. Issuance of licenses and permits.
- Sec. 14-24. Renewal.
- Sec. 14-25. Transferability.
- Sec. 14-26. Alterations of terms by city council.
- Sec. 14-27. Revocation.
- Sec. 14-28. Emergency medical services committee.
- Sec. 14-29. Unlawful operation.

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. EMS AND AMBULANCE REGULATIONS**Sec. 14-19. 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:

Ambulance means any privately or publicly owned motor vehicle used, designed or redesigned and equipped for the primary purpose of the transportation of the sick or injured persons, whether functioning as a basic life support, advanced life support, or mobile intensive care unit service level as provided by state law, and shall include gurney cars but not wheelchair vans.

City means the city of Iowa Colony, Texas.

City limits means the area in the city within the corporate city limits.

Department means any designated emergency medical service in the city.

Direct call means a request for ambulance service made by telephone or other means directly to an ambulance operator, his or her agents or employees.

DSHS means the Texas Department of State Health Services as presently constituted, or a successor agency.

Emergency ambulance means an ambulance used, designed, redesigned or equipped for the purpose of transporting sick or injured persons under emergency circumstances, and the rendering of first aid.

Emergency circumstance means the existence of circumstances in which the element of time in expeditiously transporting a sick or injured person for medical or surgical treatment is essential to the health or life of such person, and in which rescue operations or competent first aid or both, at the place of emergency, may be essential to the health or life of such person.

ETJ means the city's extraterritorial jurisdiction.

Non-emergency medical transfer service license means a certificate of authorization issued by the city to the owner of a business allowing such owner to operate a non-emergency medical transfer service business within the city limits.

Non-emergency medical transfer service permit means a certificate of authorization issued by the city to the owner allowing such owner to operate an ambulance for non-emergency medical transfer services within the city limits.

Non-emergency medical transfer service provider means a person providing non-emergency medical transfer services pursuant to a valid non-emergency medical transfer services license.

Non-emergency transfer service means a pre-scheduled response made by an ambulance for the transportation of individuals to or from a medical facility, a nursing home, an assisted living facility, dialysis center, or residence under circumstances, which do not constitute an emergency.

(Ord. No. 2019-30, § 2, 9-16-2019)

Sec. 14-20. Business license and vehicle permits required; exceptions.

(a) *Required.* No person shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in the operation of non-emergency medical transfer services upon or over any public street within the city limits without having first obtained a non-emergency medical transfer services business license and an ambulance permit for each vehicle providing said services within the city limits.

(b) *Exception.* Non-emergency medical transfer services business licenses and ambulance permits shall not be required for:

- (1) Emergency medical service vehicles or ambulances owned or operated by or designated by the city or another governmental entity;
- (2) Emergency medical service vehicles or ambulances operating at the request of the city or the designated emergency medical service provider for the city in cases of mutual aid, a disaster, or system overload; or
- (3) Emergency medical service vehicles or ambulances operating from a location outside the city limits and who are transporting patients from a location outside the limits of the city to a location within the city or through the city to some other location.

(c) *Fees.* Each application for a license or permit required by the city shall be accompanied by a non-refundable fee, payable to the city, in accordance with the city's fee schedule, as it may be amended from time to time by city council, to cover the expense of carrying out the provisions of this article:

- (1) License application fee, per year.

- (2) Permit fee (each ambulance), per year.
 - (3) There shall be no prorating of fees.
 - (4) The ambulance permit fees are in addition to the business license fee.
- (Ord. No. 2019-30, § 3, 9-16-2019)

Sec. 14-21. Business license requirements.

(a) *Application.* An application for a business license to operate an ambulance on the public streets of the city for the purpose of providing non-emergency transfer ambulance service within the city shall be made by the business owner thereof, or an agent authorized in writing by such owner to make such application, on forms prepared by the city manager or a city employee designee which shall contain:

- (1) The name, address and telephone number of the owner;
- (2) Any trade or other fictitious name used or to be used by the owner when providing ambulance service;
- (3) The make, model, year of manufacture, motor and chassis number, and current state license number of each ambulance;
- (4) The length of time each ambulance has been in service;
- (5) The color scheme, insignia, name, monogram or other distinguishing characteristics used or to be used by the owner to designate such ambulance;
- (6) A complete report on whether or not the applicant has any legal claims alleged, pending lawsuits or judgments against the applicant for damages resulting from the operation of the applicant's ambulance; and
- (7) A complete report, including background and criminal history checks on each attendant answering calls in the city.

(b) *Insurance.* Any applicant for a permit under this section shall, before the permit can be issued, procure, maintain, and furnish proof of financial responsibility as required by law and as prescribed in this section. The applicant shall keep in full force and effect during the entire term of this permit, the insurance coverages for commercial general liability, automobile liability and professional liability in the minimum limits listed:

- (1) Automobile liability insurance in the amount of not less than \$100,000.00 for each person and \$500,000.00 for each accident for personal injuries, and \$100,000.00 for property damage. This automobile liability insurance shall not

contain passenger liability exclusion. A written statement from an authorized agent of the ambulance operator's insurance carrier shall provide for a 30-day cancellation notice to the city.

- (2) Commercial general liability insurance with a minimum aggregate of \$3,000,000.00 and a minimum per occurrence of \$1,000,000.00.
- (3) Professional liability insurance in an amount of not less than \$1,000,000.00.
- (4) Applicant must agree to indemnify, defend, and hold harmless the city, its officers, employees and agents, and department, for any and all claims arising from the applicant's acts or omissions. Additionally, the city and department shall be added as additional insureds on the policies, and the coverage shall contain no special limitation on the scope of protection afforded to the city and department.
- (5) The insurance company shall be of sufficient assets, with an agent in the state upon whom service of the process may be made, and shall be approved by the city attorney. Every insurance policy and certificate of insurance must contain a provision or an endorsement requiring that the policy will not be cancelled, suspended, voided, or reduced until at least 30 days prior written notice has been given to the city via certified mail, return receipt requested. If the policy does not provide coverage for any auto, then a schedule of the covered autos is required to be submitted and filed with the city secretary. Only those covered vehicles will be permitted to operate within the city.
- (6) If the city attorney determines that the insurance coverages required in subsection (a) of this section become so impaired so as to require new and additional insurance, the city attorney shall require such additional insurance in such company as he may feel is necessary to ensure faithful performance by the operator of ambulances, his or her agents, servants, and employees.
- (7) If the insurance policy is cancelled and no insurance policy is filed by the owner or ambulance operators before the cancellation, the permit to operate ambulances granted to such person shall be immediately and automatically revoked.

(c) *Taxes.* It shall be the duty of every non-emergency medical transfer services provider to pay all ad valorem taxes assessed by the city against such vehicle and all other personal and real property used in such business. The failure to pay such ad valorem taxes before they become 90 days delinquent shall result in revocation of the business license issued in accordance with this section.

(d) *Requirements for business location.* If the business location of the ambulance service, firm or organization is located within the city limits, the building must be in compliance with all city ordinances, state and federal laws. Pursuant to this article, no such ambulance service, firm or organization shall operate as its main place of business or a storage supply facility in a private residence. The city manager or designee has the right to inspect such locations as often as deemed necessary to ensure compliance with all provisions of this section. The refusal of any ambulance operator with a business office located within the city limits to allow the city manager or designee, or city appointee to inspect such premises shall be considered a violation of this section.

(e) *Staffing.* No transfer ambulance vehicle shall ever be operated upon the streets, highways or other public places of the city unless such vehicle is operated by at least two validly permitted ambulance attendants, one of whom must possess a current emergency care attendant certificate as required by the state, and the other attendant must be certified by the state as at least an EMT-basic.

(f) *Posting of fee schedule.* All transfer ambulance vehicles shall have a current usual and customary fee schedule conspicuously posted in the patient's compartment.

(g) *Applicability.* The requirements listed in this section are not applicable to the department's emergency ambulance service.

(Ord. No. 2019-30, § 4, 9-16-2019)

Sec. 14-22. Ambulance permit requirements.

(a) In addition to obtaining a business license, it shall be unlawful for any person to drive or operate any ambulance vehicle upon the public streets, alleys or other public ways of the city unless such vehicle shall have lawfully affixed thereto a valid ambulance vehicle permit issued pursuant to the terms of this section for all vehicles utilized, deployed, housed or stationed in the city.

(b) An application for an ambulance permit to operate an ambulance on the public streets of the city for the purpose of providing non-emergency transfer ambulance service within the city shall be made by the business owner thereof, or an agent authorized in writing by such owner to make such application, on forms prepared by the city manager or a city employee designee.

(c) Before approving a permit, the city manager, or designee, shall inspect the ambulance to be permitted under this section to determine if such vehicle meets the following minimum standards:

- (1) Each vehicle shall be equipped according to the DSHS equipment standards, and as determined by the ambulance service medical director;

- (2) Each vehicle shall be free from dirt or rubbish and shall be otherwise clean and sanitary;
- (3) Each vehicle shall meet the general standards and requirements of this section;
- (4) Each vehicle shall have the company name displayed on each side of the vehicle and on the rear; and
- (5) Each vehicle shall be inspected each year by a person authorized to conduct vehicle safety inspections by the state.

(d) The city manager or a city employee designee shall inspect such ambulances no less than once each year. At no time shall any ambulance that is found to be unsafe by the city manager, or a city employee designee, or the police department be operated on the streets of the city. Nothing in this section however shall prevent the city manager, or a city employee designee, from inspecting any ambulance at any time. If the inspector finds that any ambulance is in defective condition, the city manager, or a city employee designee, shall order the use of the ambulance discontinued until the ambulance is re-inspected and approved. In the event an ambulance or vehicle fails to pass inspection, the city manager or a city employee designee shall notify the ambulance operator to correct the defects noted in the inspection and, after such notification, the city manager or a city employee designee shall cause such ambulance to be re-inspected within 48 hours, or two working days should the inspection take place on a weekend. If upon such re-inspection the defects noted in the original inspection have not been corrected, the permit decal shall be removed from the ambulance or vehicle and shall only be replaced upon such ambulance or vehicle after the defects have been corrected. A fee, in accordance with the city's fee schedule, as it may be amended from time to time by city council, shall be assessed for re-inspection where the decal has been removed subject to this subsection.

(e) At no time shall a person operating a permitted non-emergency transfer ambulance in the city respond to or from a direct call for an emergency medical service, operate such ambulance under emergency conditions, using emergency equipment, unless otherwise permitted by this section and even then not until notifying the police dispatcher serving the city. The operator of the ambulance shall notify dispatch of the reason for emergency traffic, where responding from and destination.

(f) The permit requirements listed in this section are not applicable to the department's emergency ambulance vehicles.

(Ord. No. 2019-30, § 5, 9-16-2019)

Sec. 14-23. Issuance of licenses and permits.

(a) The city manager, or a city employee designee, shall issue to each applicant a license to operate a non-emergency transfer ambulance service upon determination that all requirements of this section and all applicable state and federal statutes and regulations have been satisfied.

(b) The city manager, or a city employee designee, shall issue to each applicant a permit for each vehicle upon the applicant's filing of written proof of insurance as required in this division, upon ensuring that all city taxes on each vehicle and all other personal and real property used in such business have been paid and upon determination that all requirements of this section and all applicable state and federal statutes and regulations have been satisfied.

(c) Licenses and permits shall be issued for a 12-month period. Such period shall run from January 1 to December 31 of each year. Any new license or permit issued during the year shall begin on the date of issuance and shall end on December 31 of that year. Permits shall state the period for which the permit is issued, the name of the owner, the make of the vehicle, the vehicle identification number, and the current license number. (Ord. No. 2019-30, § 6, 9-16-2019)

Sec. 14-24. Renewal.

(a) An application for renewal of an existing license or permit shall be filed on or before November 15 for the renewal period covering the following calendar year. The application process shall be the same as specified in this article for initial licenses and permits.

(b) The city manager or a city employee designee shall renew a medical transfer service license for which it has received a renewal application upon the determination that all requirements of this article and all applicable state and federal statutes and regulations have been satisfied.

(c) The city manager or a city employee designee shall renew a non-emergency medical transfer service permit for each ambulance for which it has received a renewal application upon the applicant's filing of written proof of insurance as required in this article, upon ensuring that all city taxes on each vehicle and on all other personal and real property used in such business have been paid and upon determination that all requirements of this article and all applicable state and federal statutes and regulations have been satisfied.

(d) If a license or permit has been suspended during the permit year, renewal of such license or permit will be reviewed by the December of the same year. The renewal of such license or permit shall be denied if the city manager or city employee designee determines that the health, general public safety and welfare of the citizens of the city would not be protected by renewal of said license or permit.

(Ord. No. 2019-30, § 7, 9-16-2019)

Sec. 14-25. Transferability.

A license or permit issued under this article shall be personal to the licensee/permittee and shall not be transferable.

(Ord. No. 2019-30, § 8, 9-16-2019)

Sec. 14-26. Alterations of terms by city council.

The city council expressly reserves the right to modify, amend, change, or eliminate any of the provisions of any permit issued under this article, during the life of the license or permit, to:

- (1) Eliminate or delegate any conditions that might prove obsolete or impractical;
or
- (2) Impose any additional conditions upon any owner as may be just and reasonable, and which are deemed necessary for the purpose of promoting adequate, efficient, and safe ambulance to the public.

(Ord. No. 2019-30, § 9, 9-16-2019)

Sec. 14-27. Revocation.

(a) In addition to the penalties provided for violations of this article, a non-emergency medical transfer service provider or any of its officers, agents and/or employees who operates or allows drivers to operate or drive any vehicle while not properly permitted, without the proper required insurance, or while intoxicated/incapacitated, is subject to immediate suspension of its non-emergency medical transfer service license to operate within the city limits by the city manager or a city employee designee.

(b) Any other violation of this article may subject the non-emergency medical transfer service provider to suspension or revocation of its emergency medical transfer service license, after notice and a hearing. Not less than ten days before any revocation or suspension (for other than operating a vehicle while not properly licensed, without proper insurance, or while intoxicated/incapacitated), the owner shall be given written

notice, by either personal delivery or certified mail to the permittee's address as shown on the permit application, and an opportunity to be heard before the city manager or a city employee designee as to why the permit should not be revoked or suspended.

(c) If the city manager's or a city employee designee's decision is not acceptable to the licensee or permittee, the licensee or permittee may, within ten days of that decision, file an appeal in writing with the mayor. Such a written appeal shall set forth the specific grounds therefor. The mayor shall notify the appellant within ten days after the receipt of appeal as to the time and place of the hearing, which shall be within 30 days of receipt of such appeal. The determination of the mayor on any appeal pursuant to this article shall be final.

(d) Upon suspension or revocation of non-emergency medical transfer service business license, such non-emergency medical transfer service shall cease operations in the city and no person shall permit such non-emergency medical transfer service to continue such operations.

(e) Upon suspension or revocation of an ambulance permit, such non-emergency medical transfer service shall cease operations in the city with that vehicle, and no person shall permit such vehicle to continue to provide non-emergency medical transfer service within the city.

(f) Revocation or suspension of a business license shall automatically revoke or suspend any and all ambulance permits associated with that license. The ambulances may not be operated under another licensed non-emergency medical transfer service without being re-permitted.

(Ord. No. 2019-30, § 10, 9-16-2019)

Sec. 14-28. Emergency medical services committee.

(a) With the concurrence of the city council, the mayor may create, and appoint members to, an emergency medical services committee which shall, if appointed, administer the provisions of this article as herein provided. The emergency medical services committee may promulgate rules and regulations governing emergency and non-emergency medical services and transportation of patients to ensure the proper administration of this article. The rules and regulations may include provisions for hearings on actions of suspension and revocation under this article, due notice thereof to interested persons and adequate opportunity for due process, and may include recommendations for standards of care, additional regulations, and changes to this article to meet the changing needs of the system.

(b) The emergency medical services committee shall be responsible for continuing study of and seeking recommendations concerning the emergency and non-emergency medical services in the city. The emergency medical services committee shall consist of at least five members composed as follows:

- (1) Two members who represent the health care professions or emergency medical services and who are professionally recommended as being knowledgeable in the field of emergency medicine, one of whom shall be a licensed member of the medical profession;
- (2) Two members of the city staff or the department; and
- (3) One member who is a representative of the community at large.

(c) Members of the board shall be appointed for one-year terms expiring on September 30 and shall serve until a successor has been appointed.
(Ord. No. 2019-30, § 11, 9-16-2019)

Sec. 14-29. Unlawful operation.

No person shall operate, participate in the operation of, cause to be operated, or participate in causing to be operated any vehicle in violation of any provision of this article.
(Ord. No. 2019-30, § 12, 9-16-2019)

Chapter 15

RESERVED

Chapter 16

ENVIRONMENT

Article I. In General

- Sec. 16-1. Adoption of state law.
- Secs. 16-2—16-20. Reserved.

Article II. Property Nuisances

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- Sec. 16-22. Prohibition of hazards and nuisances.
- Sec. 16-23. Abatement of hazards and nuisances.
- Sec. 16-24. Persons enforcing article.
- Sec. 16-25. Offenses and penalties.
- Sec. 16-26. Work or improvements by municipality; notice.
- Sec. 16-27. Assessment of expenses; lien.
- Sec. 16-28. Finding and declaration of nuisance and authorization.
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Article III. Junk Vehicles

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ARTICLE I. IN GENERAL**Sec. 16-1. Adoption of state law.**

The city hereby adopts Vernon's Ann. C.C.P. art. 4.14, as amended or redesignated, and V.T.C.A., Health and Safety Code § 365.001 et seq. (Texas Litter Abatement Act), as amended by Senate Bill 920 of the 70th Legislature, Chapter 341 Sanitation and Environmental Quality (V.T.C.A., Health and Safety Code ch. 341) and chapter 342 Local Regulation of Sanitation (V.T.C.A., Health and Safety Code ch. 342) as an ordinance to control the health hazards created by junk vehicles, weed and litter. (Ord. No. 99-2, § IV, 6-21-1999)

Secs. 16-2—16-20. Reserved.**ARTICLE II. PROPERTY NUISANCES****Sec. 16-21. Definitions.**

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

Garbage means decayable waste from a public or private establishment or restaurant. The term "garbage" includes vegetable, animal, and fish offal and animal carcasses, but does not include sewage, body waste, or an industrial byproduct.

Neighborhood means a platted subdivision; or property contiguous to and within 300 feet of a platted subdivision.

Occupant means any person occupying any premises temporarily or permanently, as a tenant or otherwise.

Owner means any person owning all or part of the fee title of any premises.

Person means any individual, corporation, partnership, limited liability company, other business entity, other legal entity, association, or group.

Property means premises, and the two terms shall have the same meaning herein.

Refuse means garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.

Rubbish means non-decayable waste from a public or private establishment or residence.

(Ord. No. 2015-19, § 1, 9-21-2015)

Sec. 16-22. Prohibition of hazards and nuisances.

(a) Each owner of any premises in a neighborhood shall keep the premises free of refuse, unless the refuse is entirely contained in a closed receptacle.

(b) Each owner of any premises shall keep the premises free of rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, that remain for ten days or more on premises in a neighborhood or within 300 feet of a public street, unless the rubbish or object is completely enclosed in a building or is not visible from a public street.

(c) Each owner of any premises shall keep the premises from being maintained in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests.

(Ord. No. 2015-19, § 2, 9-21-2015)

Sec. 16-23. Abatement of hazards and nuisances.

Each owner and occupant of premises shall immediately remove from those premises any item or condition that violates this article or that is a nuisance under this article.

(Ord. No. 2015-19, § 3, 9-21-2015)

Sec. 16-24. Persons enforcing article.

The city code enforcement officer and/or any peace officer may enforce this article. This section shall not impair or reduce any authority of any other person to enforce this article.

(Ord. No. 2015-19, § 4, 9-21-2015)

Sec. 16-25. Offenses and penalties.

(a) Any violation of any portion of this article shall be a misdemeanor punishable upon conviction by a fine not to exceed \$2,000.00. Each day or portion of a day that a violation continues shall be a separate offense.

(b) Nothing in section 16-26 shall be a requirement or a prerequisite for a prosecution under this section.

(Ord. No. 2015-19, § 5, 9-21-2015)

Sec. 16-26. Work or improvements by municipality; notice.

(a) If the owner of a premises does not comply with this article within seven days of notice of a violation, the city may:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

- (1) Personally to the owner in writing;
- (2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the county appraisal district; or
- (3) If personal service cannot be obtained:
 - a. By publication at least once in a newspaper of general circulation in the city;
 - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) If the city mails a notice to a property owner in accordance with subsection (b) 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.

(d) In a notice provided under this section, the city may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses 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 correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the city has not been informed in writing by the owner of an ownership change, then the city without notice may take any action permitted by subsection (a) of this section and assess its expenses as provided by section 16-27.

(Ord. No. 2015-19, § 6, 9-21-2015)

Sec. 16-27. Assessment of expenses; lien.

(a) The city council may assess expenses incurred under section 16-26 against the real estate on which the work is done or improvements made.

(b) 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. The mayor hereby designates the city secretary, city manager or administrator, city attorney, and police chief as additional municipal officials who may file a statement of expenses under this article. 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.

(c) The lien obtained by the city council 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.

(d) The lien is inferior only to:

- (1) Tax liens; and
- (2) Liens for street improvements.

(e) The city council may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to the remedy provided by any other provision.

(h) The city council may foreclose a lien on property under this section in a proceeding relating to the property brought under subchapter E, chapter 33, Tax Code (V.T.C.A. Tax Code § 33.01 et seq.).
(Ord. No. 2015-19, § 7, 9-21-2015)

Sec. 16-28. Finding and declaration of nuisance and authorization.

(a) The city council hereby finds and declares that any violation of this article is a public and private nuisance and a danger to persons and property.

(b) The city council further finds and declares that this article is authorized by V.T.C.A., Local Government Code ch. 217, V.T.C.A., Health and Safety Code ch. 342, and all other applicable law.

(Ord. No. 2015-19, § 8, 9-21-2015)

Secs. 16-29—16-52. Reserved.

ARTICLE III. JUNK VEHICLES

Sec. 16-53. 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:

City means the city, and its officers, agents, employees, and representatives.

Demolisher means any person whose business is to convert a motor vehicle into processed or scrap metal, or otherwise to wreck or dismantle a motor vehicle.

Junked vehicle means a vehicle that is self-propelled and inoperable and meets the conditions of this definition:

- (1) The vehicle does not have lawfully attached to it:
 - a. A valid, unexpired license plate;
 - b. A valid, unexpired registration sticker; or
 - c. A valid, unexpired inspection sticker;
- (2) The vehicle is wrecked, dismantled, partially dismantled, or discarded; or
- (3) The vehicle has remained inoperable for more than:
 - a. 72 consecutive hours if the vehicle is on public property; or
 - b. 30 consecutive days if the vehicle is on private property.

(Ord. No. 2012-16, § 1, 10-15-2012)

Sec. 16-54. Exceptions.

- (a) This article shall not apply to a vehicle or vehicle part:
 - (1) That is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property;

- (2) That is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - a. Maintained in an orderly manner;
 - b. Not a health hazard; and
 - c. Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery; or
- (3) That is any of the following:
 - a. A "farm tractor," defined as a motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry;
 - b. An "implement of husbandry," defined as farm implements, machinery, and tools as used in tilling the soil, including self-propelled machinery specifically designed or adapted for applying plant food materials or agricultural chemicals but not specifically designed or adapted for the sole purpose of transporting the materials or chemicals. The term "implement of husbandry" does not include a passenger car or truck; or
 - c. A combine or harvester of any type.

However, the exceptions in this subsection (a)(3) shall not apply to any car or truck of any size or weight, so that this article does apply to cars and trucks of all sizes and weights, regardless whether they are used for agricultural purposes.

(b) 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:

Antique vehicle means a passenger car or truck that is at least 35 years old.

Motor vehicle collector means a person who:

- (1) Owns one or more antique or special interest vehicles; and
- (2) Acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special interest vehicle means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

(Ord. No. 2012-16, § 2, 10-15-2012)

Sec. 16-55. Purpose of article.

The ordinance from which this article is derived is adopted pursuant to the provisions of V.T.C.A., Local Government Code ch. 217 and V.T.C.A., Transportation Code §§ 683.071 through 683.078 for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way. The city council hereby finds and declares that V.T.C.A., Local Government Code ch. 217 and V.T.C.A., Transportation Code §§ 683.071 through 683.078 each constitute separate and independently sufficient authority for this article.

(Ord. No. 2012-16, § 3, 10-15-2012)

Sec. 16-56. Public nuisance declared.

The city council hereby finds and declares that a junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

- (1) Is detrimental to the safety and welfare of the public;
- (2) Tends to reduce the value of private property;
- (3) Invites vandalism;
- (4) Creates a fire hazard;
- (5) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) Produces urban blight adverse to the maintenance and continuing development of the city; and
- (7) Is a public nuisance to be abated and removed as herein provided.

(Ord. No. 2012-16, § 4, 10-15-2012)

Sec. 16-57. Prohibited acts, punishment and continuing offenses.

(a) *Reconstructing or making vehicle operable.* After a vehicle has been removed pursuant to the provisions of this article, it shall be unlawful for any person (other than the owner at the time of removal or a person to whom said owner voluntarily transfers the vehicle, directly or indirectly) to thereafter reconstruct or make such vehicle operable.

(b) *Maintaining public nuisance.* Any person maintaining a public nuisance as defined in this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$200.00. Each day any such violation continues or occurs shall constitute a separate offense.

(c) *Court order for nuisance abatement and removal.* The court shall order abatement and removal of the nuisance on conviction under subsection (b) of this section, but only if the procedures in sections 16-59 and 16-60 have been followed. The procedures in sections 16-59 and 16-60 are not required for a criminal prosecution for a violation of this article, but they are required for a court order to abate and remove a nuisance under this article.

(Ord. No. 2012-16, § 5, 10-15-2012)

Sec. 16-58. Administration of article.

(a) The procedures for abatement and removal of a public nuisance under this article, as distinguished from a criminal prosecution for a violation of this article, must be administered by regularly salaried, full-time employees of the municipality or county, except that any authorized person may remove the nuisance.

(b) A person authorized to administer the procedures under this article may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

(Ord. No. 2012-16, § 6, 10-15-2012)

Sec. 16-59. Notice.

(a) The actions in this section are not required for a criminal prosecution for a violation of section 16-57(a) or (b), as distinguished from a civil hearing and other civil procedures to abate and remove a nuisance under this article.

(b) The officer enforcing this article shall give not less than ten days' notice of the nature of the junked vehicle nuisance by certified mail with a five-day return requested to:

- (1) The last known registered owner of the nuisance;
- (2) Each lienholder of record of the nuisance; and
- (3) The owner or occupant of:
 - a. The property on which the nuisance is located; or
 - b. If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(c) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.

(d) The notice must state that:

- (1) The nuisance must be abated and removed not later than the tenth day after the date on which the notice was mailed; and
- (2) Any request for a hearing must be made before that ten-day period expires.

(e) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

(Ord. No. 2012-16, § 7, 10-15-2012)

Sec. 16-60. Hearing.

(a) A criminal prosecution for a violation of section 16-57(a) or (b) does not require a civil hearing under this section.

(b) The municipal court is the body to conduct hearings under the procedures adopted under this section. There is no right to a jury trial in a civil hearing on the removal of a nuisance vehicle or part, but there is a right to a jury trial in a misdemeanor prosecution for a violation of this section. The municipal court may choose whether to conduct a criminal prosecution and a civil hearing under this section simultaneously or separately.

(c) If a hearing is timely requested by a person for whom notice is required under section 16-59, the hearing shall be held not earlier than the 11th day after the date of the service of notice.

(d) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(e) If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's:

- (1) Description;
- (2) Identification number; and
- (3) License plate number.

(f) The municipal court may issue necessary orders to enforce this section.

(Ord. No. 2012-16, § 8, 10-15-2012)

Sec. 16-61. Removal and disposition by officer administering this article.

Upon the issuance of a court order under this article requiring the removal of a vehicle or part thereof as a public nuisance, or if a public hearing as herein provided is not requested within ten days after service of notice under section 16-59 to abate the nuisance, then the officer administering this article shall enter upon the private or public property where the nuisance is located and cause to be removed the vehicle or parts thereof declared to be a public nuisance. The officer shall dispose of the nuisance by causing it to be delivered to any commercial scrapyard, demolisher, or suitable site operated by a municipality or county, selected by the officer administering this article. In the event more than one scrapyard or demolisher requests junked vehicles or parts thereof removed by the officer administering this article, the same shall be distributed to all such scrapyards or demolishers on a rotating basis.

(Ord. No. 2012-16, § 9, 10-15-2012)

Sec. 16-62. Notice to state.

Within five days after the date of the removal of any junked vehicle or part thereof pursuant to the provisions of this section, the officer administering this article shall give notice to the state department of transportation identifying the vehicle or part thereof removed.

(Ord. No. 2012-16, § 10, 10-15-2012)

Sec. 16-63. Effect of article on other laws.

This article shall not impair a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property, or a law authorizing removal for any other reason.

(Ord. No. 2012-16, § 11, 10-15-2012)

Chapter 17

RESERVED

CD17:1

Chapter 18

FIRE PROTECTION

Article I. In General

Secs. 18-1—18-18. Reserved.

Article II. Fire Marshal

Sec. 18-19. Creation of office.
Sec. 18-20. Qualifications.
Sec. 18-21. Employment and removal.
Sec. 18-22. At-will employment.
Sec. 18-23. Supervision.
Sec. 18-24. Duties.
Sec. 18-25. Deputies.
Sec. 18-26. Nonliability of city personnel and representatives.
Secs. 18-27—18-55. Reserved.

Article III. Fireworks

Sec. 18-56. Definitions.
Sec. 18-57. Possession prohibited in certain circumstances.
Sec. 18-58. Firing prohibited in certain circumstances.
Sec. 18-59. Exception for firing fireworks on certain large tracts of land.
Sec. 18-60. Permit required for certain displays.
Sec. 18-61. Illegal fireworks as nuisance; seizure and destruction.
Secs. 18-62—18-90. Reserved.

Article IV. Outdoor Burning

Division 1. Generally

Sec. 18-91. General prohibition; conditions.
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Secs. 18-93—18-114. Reserved.

Division 2. Burn Bans

Sec. 18-115. Findings of fact.
Sec. 18-116. City burn ban in effect.
Sec. 18-117. Notice of burn ban.
Sec. 18-118. Enforcement.

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. FIRE MARSHAL

Sec. 18-19. Creation of office.

The office of fire marshal of the city is hereby created.
(Ord. No. 2020-39, § 1, 12-21-2020)

Sec. 18-20. Qualifications.

The fire marshal shall have and maintain all certifications and other qualifications for his or her job, as required by all applicable law or governing authorities. In addition, the fire marshal shall be properly qualified for the duties of the office as determined by the city manager.
(Ord. No. 2020-39, § 2, 12-21-2020)

Sec. 18-21. Employment and removal.

The fire marshal shall be hired and removed as provided in the Home Rule Charter.
(Ord. No. 2020-39, § 3, 12-21-2020)

Sec. 18-22. At-will employment.

Regardless of any other provision, the fire marshal shall be employed at will. Furthermore, nothing shall impair the at-will status of the fire marshal's employment except a writing signed by the city and the fire marshal and specifically, expressly, and clearly stating that it changes the at-will status of the fire marshal's employment.
(Ord. No. 2020-39, § 4, 12-21-2020)

Sec. 18-23. Supervision.

The Home Rule Charter provides that the fire marshal is under the supervision of the city manager.
(Ord. No. 2020-39, § 5, 12-21-2020)

Sec. 18-24. Duties.

The fire marshal shall have all duties and authority:

- (1) Provided by law;

- (2) Generally exercised by fire marshals in the state; or
 - (3) Assigned by city ordinance or by the city manager.
- (Ord. No. 2020-39, § 6, 12-21-2020)

Sec. 18-25. Deputies.

The fire marshal may have such deputies as the city manager authorizes from time to time. All provisions of this section shall also apply to deputy fire marshals.

(Ord. No. 2020-39, § 7, 12-21-2020)

Sec. 18-26. Nonliability of city personnel and representatives.

Neither the city nor any officer, agent, employee, or representative of the city shall have any liability, except liability to the city, for any act or omission of such person concerning this article or the subject matter hereof.

(Ord. No. 2020-39, § 8, 12-21-2020)

Secs. 18-27—18-55. Reserved.

ARTICLE III. FIREWORKS

Sec. 18-56. 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:

Burn ban means an order of the commissioners court of the county prohibiting or restricting outdoor burning pursuant to V.T.C.A., Local Government Code § 352.081 or any successor statute.

Fireworks or *firework* means any rocket, firecracker, cannon cracker, torpedo, squib, Roman candle, sparkler, shell, cap, or cartridge, by any name; any other combustible fireworks of any kind; or any composition or device designed or used to produce a visible or audible effect by combustion, explosion, or detonation.

- (1) The term "fireworks" does not include ammunition for firearms, or any of the following items, provided that these items are manufactured and sold for use in ammunition for firearms, and provided that these items have not been made into a firework: primers, percussion caps, black powder, smokeless powder, or Pyrodex.

- (2) The term "fireworks" does not include railroad signal flares when possessed or used by a railroad company for signaling purposes in the business of the railroad.
- (3) The term "fireworks," whether singular or plural, refers to one or any number of fireworks.

Firing or *fire* means lighting, discharging, launching, shooting, or causing combustion of any firework, except for disposal of spent, previously fired fireworks by burning. (Ord. No. 2016-04, § 1, 3-21-2016)

Sec. 18-57. Possession prohibited in certain circumstances.

No person shall possess any fireworks on the premises where any person is then unlawfully firing any fireworks. This article does not prohibit possession of fireworks, except as stated in this section.

(Ord. No. 2016-04, § 2, 3-21-2016)

Sec. 18-58. Firing s prohibited in certain circumstances.

(a) Firing fireworks prohibited during burn ban. Regardless of any other provision, no person shall fire any fireworks in the city while a burn ban issued by county is in effect for any land adjoining any portion of the city.

(b) Firing of fireworks prohibited except on certain large tracts or in a licensed display. No person shall fire any fireworks in the city, except as provided in section 18-59 or 18-60.

(Ord. No. 2016-04, § 3, 3-21-2016)

Sec. 18-59. Exception for firing fireworks on certain large tracts of land.

Section 18-58(b) does not prohibit firing fireworks when all of the following conditions are satisfied:

- (1) The fireworks are fired in a tract of ten acres or more;
- (2) The fireworks are fired more than 150 feet from a residence or occupied building located on another property, but it shall be an affirmative defense to the satisfaction of this requirement that the owner or an adult occupant of such residence or occupied building consented to the firing of the fireworks at that time and place;

- (3) The fireworks are fired in a manner and under conditions making it extremely likely that the fireworks will stay within the tract of ten acres or more from which they are fired; and
 - (4) The fireworks are not fired as part of a commercial fireworks display or a public fireworks display.
- (Ord. No. 2016-04, § 4, 3-21-2016)

Sec. 18-60. Permit required for certain displays.

(a) Section 18-58(b) does not prohibit firing fireworks pursuant to and in compliance with a permit issued by the city for a fireworks display.

(b) A permit shall be required for any commercial or public display of fireworks conducted within the city. This permit requirement applies regardless whether section 18-59 would otherwise allow the firing. Such permit shall not be granted unless such display is of such a character as to not be offensive to a reasonable person of ordinary sensibilities and is located in an area so as not be harmful to any person or property. The city council shall make the final decision as to the acceptability of the character and location of any such display. All such permits shall be issued in accordance with the fire code then in effect in the city.

(c) An application for a permit to hold a fireworks display shall be submitted to the city council not less than 45 days prior to the proposed date of such display, and such application shall not be approved without first being reviewed by the fire marshal and police department. The application for a permit hereunder shall contain the following:

- (1) The name, physical address, mailing address, and telephone number of the applicant;
- (2) The location of the proposed fireworks display;
- (3) The name, physical address, mailing address, and telephone number of the owner of the property where the fireworks display is to be held;
- (4) The signed, written consent of the owner of the property where the fireworks display is to be held;
- (5) The name, physical address, mailing address, and telephone number of each person who may participate in conducting the fireworks display, except for persons involved only in concessions, ticket sales, parking, or other matters not directly involving the fireworks;

- (6) The name, physical address, mailing address, and telephone number of the supplier of the fireworks;
- (7) An itemized list of the numbers and types of fireworks to be in the display;
- (8) A description of the safety and fire prevention measures to be used;
- (9) The insurance or bond and the application fee required by this article;
- (10) Any other information required by the city council, fire marshal, police department, city manager, or city attorney; and
- (11) The signature of the applicant, affirming that all information in the application is complete and correct.

(d) An application for a fireworks display permit shall be accompanied by a nonrefundable application fee, in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(e) An applicant for a fireworks display permit shall, at the time of filing the application, furnish to the city a certificate of insurance evidencing workers' compensation insurance for all employees, as provided by the laws of the state. In addition, the applicant shall file with the fire marshal, and receive approval thereof, either:

- (1) A certificate of insurance evidencing public liability insurance in an amount of not less than \$1,000,000.00, naming the applicant as the insured, and issued by an insurance carrier authorized to do business within the state and acceptable to the city; or
- (2) A bond in the amount of \$1,000,000.00, issued by a surety company authorized to do business in the state and acceptable to the city, and conditioned upon the applicant's payment of all damages to persons and/or property and other losses, which may result either from such display of fireworks, or from any negligence or fault of the applicant or the applicant's agents, servants, employees, or subcontractors concerning such display.

(f) A fireworks display permitted under this section shall be conducted only under the supervision of the fire marshal, police chief, or a designee of one of them.

(g) The permit issued under the provisions of this section shall not be transferable. (Ord. No. 2016-04, § 5, 3-21-2016)

Sec. 18-61. Illegal fireworks as nuisance; seizure and destruction.

(a) The unlawful possession or unlawful use of any fireworks within the city in violation of this article, or any other violation of this article, is hereby declared to be a common and public nuisance. The fire marshal, any deputy fire marshal, any police

officer of the city, or any other duly constituted the state peace officer is empowered to seize any fireworks found in violation of this article, except for unopened, packaged fireworks, and to close any building where any fireworks are illegally stored, until those fireworks, other than unopened, packaged fireworks, may be seized pursuant to this article.

(b) Although nothing in this article authorizes the seizure or confiscation of unopened, packaged fireworks, possession of those fireworks is still unlawful under the circumstances stated in section 18-57.

(Ord. No. 2016-04, § 6, 3-21-2016)

Secs. 18-62—18-90. Reserved.

ARTICLE IV. OUTDOOR BURNING

DIVISION 1. GENERALLY

Sec. 18-91. General prohibition; conditions.

No person shall cause or permit any outdoor burning of combustible trash within the city, unless a natural person is visible, outdoors and present (within 25 feet or less) at all times while such burning occurs until such fire is completely extinguished.

(Ord. No. 90-2, § 1, 1-22-1990)

Sec. 18-92. 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:

Trash means any combustible material, whether it be a solid, gas, or liquid, such as leaves, grass, shrub or tree limbs, trunks or roots, lumber, rubber, roofing materials, papers, cardboard or rags, but not limited to those enumerated.

(Ord. No. 90-2, § 2, 1-22-1990)

Secs. 18-93—18-114. Reserved.

DIVISION 2. BURN BANS

Sec. 18-115. Findings of fact.

The city council finds that all facts stated in this section or in any other part of this division are true.

- (1) The county may order a burn ban (herein called a "county burn ban") during extremely dry conditions, as specified in V.T.C.A., Local Government Code § 352.081.
 - (2) A county burn ban is valid only in the unincorporated areas of the county, not within the incorporated limits of the city.
 - (3) The city is within and surrounded by the county. Therefore, a county burn ban surrounds the city.
 - (4) Conditions within the city are just as dry as those in the surrounding county, and the fire danger in the city is just as high as in the surrounding county.
 - (5) When conditions are so extremely dry, and fire danger is so extremely high, as to authorize a county burn ban in an area of county that adjoins the limits of the city, then outdoor burning in the city that would violate the county burn ban if it occurred in the county just outside the city limits is a clear fire hazard and a danger to homes, other buildings, vehicles, other public and private property, livestock, pets, and human health and lives.
 - (6) Much of the city is heavily vegetated with forest, brush, or pasture land, further exacerbating the danger of wildfires spreading during a county burn ban.
 - (7) Burning in violation of this division is a public and private nuisance.
 - (8) This division is authorized under the city's authority to define, declare, and abate nuisances under V.T.C.A., Local Government Code § 217.002.
 - (9) This division is independently authorized under the city's authority to adopt rules for the prevention and extinguishment of fires as the city council considers necessary, under V.T.C.A., Local Government Code § 342.003.
 - (10) This division is also authorized by V.T.C.A., Local Government Code §§ 54.001 and 54.002 and all applicable law.
- (Ord. No. 2016-12, § 1, 6-20-2016)

Sec. 18-116. City burn ban in effect.

(a) The city hereby prohibits any outdoor burning in the city of any combustible material outside of an enclosure serving to contain all flames and/or sparks, while a county burn ban is in effect for an area of county that adjoins the city. Thus, a burn ban in the city ("the city burn ban") takes effect automatically under this division when a county burn ban takes effect for an area of county that adjoins the city. The city burn ban expires when the county burn ban does.

(b) No person shall intentionally, knowingly, recklessly, or with criminal negligence participate in doing or in causing any prohibited burning. It shall not be a defense that the person did not know that the burning constituted prohibited burning under this division or that the burning was unlawful.

(c) However, it is an affirmative defense to prosecution hereunder that the burning in question constitutes outdoor burning activities related to public health and safety that are authorized by the state commission on environmental quality for:

- (1) Firefighter training;
- (2) Public utility, natural gas pipeline; or
- (3) Burns that are conducted by a prescribed burn manager certified under V.T.C.A., Natural Resources Code § 153.048, and meet the standards of V.T.C.A., Natural Resources Code § 153.047.

(Ord. No. 2016-12, § 2, 6-20-2016)

Sec. 18-117. Notice of burn ban.

Whenever a county burn ban is in effect for an area of county that adjoins the city, the city secretary shall cause a copy of that county burn ban and this division to be posted at the city hall and on the city's website, in the same manner as posting a notice of a city council meeting. However, the failure to post that notice shall not impair the effectiveness of any portion of this division.

(Ord. No. 2016-12, § 3, 6-20-2016)

Sec. 18-118. Enforcement.

(a) The procedures, remedies, and other matters in this section shall not in any way impair any other procedures, remedies, or other matters for dealing with prohibited burning.

(b) In addition to any other person authorized by law to enforce this division, any peace officer of the city, the fire marshal, and any person acting as or in place of the fire marshal pursuant to a contract are hereby authorized to enforce this division.

(c) Upon notification of suspected unlawful outdoor burning, any fire department assigned to the location of the fire shall respond to the scene and take immediate measures to contain and/or extinguish the fire if reasonably necessary or prudent.

(d) As soon as possible, a duly commissioned peace officer shall be sent to the scene to investigate the nature of the fire.

(e) If in the opinion of the officer at the scene and/or the fire chief, the goal of this division can be attained by informing the responsible party about the prohibitions established by this division, the officer may, at his discretion, notify the party about the provisions of this division and request compliance with it. In such instances, an entry of the notification shall be made into the dispatcher's log containing the time, date, and place of the warning, and the name of the person receiving the warning.

(Ord. No. 2016-12, § 4, 6-20-2016)

Chapter 19

RESERVED

Chapter 20

FLOOD DAMAGE PREVENTION

Article I. In General

- Sec. 20-1. Findings of fact.
- Sec. 20-2. Statement of purpose.
- Sec. 20-3. Methods of reducing flood losses.
- Sec. 20-4. Definitions.
- Sec. 20-5. Lands to which articles I through III of this chapter apply.
- Sec. 20-6. Basis for establishing areas of special flood hazard.
- Sec. 20-7. Establishment of development permit.
- Sec. 20-8. Compliance.
- Sec. 20-9. Abrogation and greater restrictions.
- Sec. 20-10. Interpretation.
- Sec. 20-11. Warning and disclaimer of liability.
- Sec. 20-12. Violation and penalty.
- Secs. 20-13—20-40. Reserved.

Article II. Administration

- Sec. 20-41. Designation of the floodplain administrator.
- Sec. 20-42. Duties and responsibilities of the floodplain administrator.
- Sec. 20-43. Permit procedures.
- Sec. 20-44. Variance procedures.
- Secs. 20-45—20-63. Reserved.

Article III. Provisions for Flood Hazard Reduction

- Sec. 20-64. General standards.
- Sec. 20-65. Specific standards.
- Sec. 20-66. Standards for subdivision proposals.
- Sec. 20-67. Standards for areas of shallow flooding (AO/AH zones).
- Sec. 20-68. Floodways.
- Secs. 20-69—20-94. Reserved.

Article IV. Drainage and Fill

- Sec. 20-95. Definitions.
- Sec. 20-96. Prohibition of detrimental effect on drainage or flooding.
- Sec. 20-97. Prohibition of filling or changes in drainage.
- Sec. 20-98. Permits and exceptions.
- Sec. 20-99. Appeals.

ARTICLE I. IN GENERAL**Sec. 20-1. Findings of fact.**

(a) The areas of special flood hazard 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 occupancy of flood hazard areas by uses vulnerable to floods and hazardous other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(Ord. No. 2016-06, art. I(B), 4-18-2016)

Sec. 20-2. Statement of purpose.

It is the purpose of articles I through III of this chapter 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 flood prone 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. 2016-06, art. I(C), 4-18-2016)

Sec. 20-3. Methods of reducing flood losses.

In order to accomplish its purposes, articles I through III of this chapter use the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 2016-06, art. I(D), 4-18-2016)

Sec. 20-4. Definitions.

The following words, terms and phrases, when used in articles I through III of this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Additionally, unless specifically defined below, words or phrases used in articles I through III of this chapter shall be interpreted to give them the meaning they have in common usage and to give articles I through III of this chapter their most reasonable application.

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 or 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 alluvial fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of articles I through III of this chapter or a request for a variance.

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 flood based upon 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 ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

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 man-made 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.

- (1) The term "elevated building" means a non-basement building:
 - a. Built, in the case of a building in Zones A1-30, AE, A, A99, AO, AII, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal

structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and

- b. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.
- (2) In the case of Zones A1-30, AE, A, A99, AO, AII, B, C, X, and D, the term "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.
 - (3) In the case of Zone V1-30, VE, or V, the term "elevated building" also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of section 60.3(e)(5) of the National Flood Insurance Program (NFIP) regulations.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

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; or
- (2) The unusual and rapid accumulation or runoff of surface water from any source.

Flood insurance rate map means an official map of a community, on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by FEMA. The report contains flood profiles, water surface elevation of the base flood, as well as the flood boundary-floodway map (FBFM).

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 *Flood or flooding*.

Floodplain management means the operation of an overall program of corrective and flood damage, including, but not limited to, emergency preparedness plans, flood control works and flood 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 "floodplain management regulations" describes such state and local regulations in any combination thereof, which provides standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary sewer facilities, structures and their contents.

Floodway (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 "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Habitable floor means any floor usable for the following purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only is not a habitable floor.

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 the 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 preliminary determined by the Secretary of the Interior 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 man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee or 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 non-elevation design requirement of section 60.3 of the NFIP 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. For insurance purposes, 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 for sale.

Mean sea level means, for purposes of the NFIP the National Geodetic Vertical Datum (NGVD) of 1929, or other datum to which base flood elevations shown on a community's FIRM are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial firm or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community.

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 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) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

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, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent

construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which 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 start of construction of the improvement. The term "substantial improvement" includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term "substantial improvement" 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 of enforcement office and which are the minimum necessary to ensure safe living 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 from the terms of a floodplain management regulation. For full requirements see section 60.6 of the NFIP 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 section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the NFIP 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 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. 2016-06, art. II, 4-18-2016)

Sec. 20-5. Lands to which articles I through III of this chapter apply.

Articles I through III of this chapter shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Ord. No. 2016-06, art. III(A), 4-18-2016)

Sec. 20-6. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by FEMA in a scientific and engineering report titled "The Flood Insurance Study for the City of Iowa Colony," dated May 17, 1982, with accompanying FIRMs and FBFMs and any revisions thereto are hereby adopted by reference and declared to be a part of articles I through III of this chapter.

(Ord. No. 2016-06, art. III(B), 4-18-2016)

Sec. 20-7. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of articles I through III of this chapter.

(Ord. No. 2016-06, art. III(C), 4-18-2016)

Sec. 20-8. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of articles I through III of this chapter and other applicable regulations.

(Ord. No. 2016-06, art. III(D), 4-18-2016)

Sec. 20-9. Abrogation and greater restrictions.

Articles I through III of this chapter are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where articles I through III of this chapter and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2016-06, art. III(E), 4-18-2016)

Sec. 20-10. Interpretation.

In the interpretation and application of articles I through III of this chapter, 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. 2016-06, art. III(F), 4-18-2016)

Sec. 20-11. Warning and disclaimer of liability.

The degree of flood protection required by articles I through III of this chapter 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 man-made or natural causes. Articles I through III of this chapter do not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. Articles I through III of this chapter 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 articles I through III of this chapter or any administrative decision lawfully made thereunder. (Ord. No. 2016-06, art. III(G), 4-18-2016)

Sec. 20-12. Violation and penalty.

(a) Any person, firm or corporation who shall violate any of the provisions of articles I through III of this chapter or fail to comply therewith or who shall violate or fail to comply with any order or regulations made thereunder, or who shall build in violation of any detailed statement of specification of plans submitted and approved thereunder, or any certificate or permit issued thereunder, shall, for each and every violation and noncompliance respectively be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than \$25.00 nor more than \$200.00, and each and every day that such violation or noncompliance shall exist shall be deemed a separate offense.

(b) In case any person, firm or corporation violates any of the provisions of articles I through III of this chapter or fails to comply therewith, the city, in addition to imposing the penalties above provided, may institute any appropriate action or proceedings in court to prevent, restrain, correct, or abate or to prevent any illegal act, conduct, business or use in or about any land, and the definition of any violation of the

terms of articles I through III of this chapter as a misdemeanor, shall not preclude the city from invoking the civil remedies given it by law in such cases, but same shall be cumulative of and in addition to the penalties prescribed for such violation.

(Ord. No. 2016-06, art. IV(E), 4-18-2016)

Secs. 20-13—20-40. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 20-41. Designation of the floodplain administrator.

The city engineer is hereby appointed the floodplain administrator to administer and implement the provisions of articles I through III of this chapter and other appropriate sections of 44 CFR (NFIP regulations) pertaining to floodplain management.

(Ord. No. 2016-06, art. IV(A), 4-18-2016)

Sec. 20-42. Duties and responsibilities of the floodplain administrator.

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 articles I through III of this chapter.
- (2) Review permit application to determine whether 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 adoption of the ordinance from which articles I through III of this chapter are derived.
- (4) Review permits for proposed development to assure 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 state commission on environmental quality (the "commission"), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
- (7) Assure 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 20-6, 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 article III of this chapter.
- (9) a. 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 FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- b. Under the provisions of section 65.12 of the NFIP regulations (44 CFR 65.12), a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by said section 65.12.

(Ord. No. 2016-06, art. IV(B), 4-18-2016)

Sec. 20-43. Permit procedures.

(a) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/her 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:

- (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 non-residential floodproofed structure shall meet the floodproofing criteria of section 20-65(3);
 - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (5) Maintain a record of all such information in accordance with section 20-42(1).
- (b) Approval or denial of a development permit by the floodplain administrator shall be based on all of the provisions of articles I through III of this chapter 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; and
 - (10) The relationship of the proposed use to the comprehensive plan for that area.
- (Ord. No. 2016-06, art. IV(C), 4-18-2016)

Sec. 20-44. Variance procedures.

- (a) The council shall hear and render judgment on requests for variances from the requirements of articles I through III of this chapter.

(b) The council 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 articles I through III of this chapter.

(c) Any person aggrieved by the decision of the council 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 FEMA 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 articles I through III of this chapter.

(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 20-43(b) 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 above and the intent of articles I through III of this chapter, the council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of articles I through III of this chapter (section 20-2).

(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. 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 subsections (a) through (i) of this section 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. 2016-06, art. IV(D), 4-18-2016)

Secs. 20-45—20-63. Reserved.

ARTICLE III. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 20-64. 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. 2016-06, art. V(A), 4-18-2016)

Sec. 20-65. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in section 20-6, 20-42(8), or 20-66(c), the following provisions are required:

- (1) *Permanent construction.* New construction or substantial improvements of any permanent structure shall be constructed 200 feet from a floodway and 75 feet from the edge of a bayou, creek, floodway, drainage ditch or similar waterway.
- (2) *Residential construction.* New construction and substantial improvements of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. New construction or substantial improvements within the areas of no special flood hazard in Zone X or any residential structure shall have the habitable floor 24 inches above grade. New construction or substantial improvements of any residential structure within an area of special flood hazard shall have the habitable floor 24 inches 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 20-43(a)(1), is satisfied.
- (3) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated 24 inches 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.

- (4) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that 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.
- (5) *Manufactured homes.*
- a. Require that all manufactured homes to be placed within Zone A shall be installed using methods and practices which minimize flood damage. For the purpose 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 FIRM 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 erected to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, 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 FIRM that are not subject to the provisions of subsection (4) of this section be 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 floatation, collapse, and lateral movement.

(6) *Recreational vehicles.* Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM 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 20-43(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.

(7) *Fill material.*

- a. A permit is required for any quantity of fill material being placed in the floodplain, except for fill for commercial farming or ranching use on a tract larger than five acres.

- b. The property owner must provide to the city, upon request by the flood-plain administrator, written information showing the location from which the fill material came, whether or not it was from a governmental project, and who hauled/delivered the fill material.
- c. Fill material shall be placed no closer than ten feet from the property line.
- d. If the fill is placed on a piece of property in which the natural flow of water is conveyed on the proposed fill site, then the property owner is required to mitigate for the altered flow. Natural flow could be by sheet flow, swale, ditch, slough, or other natural or man-made means of conveyance of water. Mitigation could include ditches, swales, detention/retention ponds or other reasonable means of conveyance/detention/retention.
- e. All fill material must be spread evenly within six months of the permit issuance date. If the fill material is not spread within this time period, the property owner may be required to remove the material.

(Ord. No. 2016-06, art. V(B), 4-18-2016)

Sec. 20-66. Standards for subdivision proposals.

(a) All subdivision proposals including manufactured home parks and subdivisions shall be consistent with sections 20-1 through 20-3.

(b) All proposals for the development of subdivisions including manufactured home parks and subdivisions shall meet development permit requirements of sections 20-7 and 20-43 and the provisions of this article.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to section 20-6 or 20-42(8).

(d) All subdivision proposals including manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(e) All subdivision proposals including 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. 2016-06, art. V(C), 4-18-2016)

Sec. 20-67. Standards for areas of shallow flooding (AO/AH zones).

Located within the areas of special flood hazard established in section 20-6 are areas designated as areas of 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 highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);
- (2) All new construction and substantial improvements of nonresidential structures shall:
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (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 20-43, are satisfied.
- (4) Require within Zone AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 2016-06, art. V(D), 4-18-2016)

Sec. 20-68. Floodways.

Located within areas of special flood hazard established in section 20-6 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 practices 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 articles I through III of this chapter.
- (3) Under the provisions of section 65.12 of the NFIP regulations (44 CFR 65.12), 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 by said section 65.12. (Ord. No. 2016-06, art. V(E), 4-18-2016)

Secs. 20-69—20-94. Reserved.

ARTICLE IV. DRAINAGE AND FILL

Sec. 20-95. 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:

Agricultural use or agriculture purposes means used for, or for the purpose of, commercial farming and/or ranching on a tract that is over five acres in size.

Change in drainage means any of the following actions: excavating, ditching, otherwise filling, or in any way appreciably changing the elevation or the existing drainage of any real property, regardless whether done by filling or otherwise.

Fill means any material such as soil, dirt, sand, clay, loam, gravel, riprap, rocks, mulch, compost, or similar materials.

Filling means moving fill in any manner, either within a tract or to a tract from a source external to the tract.

Floodplain has the same definition as in section 20-4, as it may be amended.

Load means one truckload of fill or 14 cubic yards.

Tract means a contiguous area of land with whole or partial common ownership of each lot, parcel, or part, regardless of the number of lots, parcels, or parts.

(Ord. No. 2016-07, art. I, 4-18-2016)

Sec. 20-96. Prohibition of detrimental effect on drainage or flooding.

No person shall participate in causing or performing any filling or change in drainage, whether incidental or not, that would be likely to have a detrimental effect on the drainage or flooding of any property.

(Ord. No. 2016-07, art. II, 4-18-2016)

Sec. 20-97. Prohibition of filling or changes in drainage.

(a) No person shall participate in causing or performing any filling or change in drainage, except as provided in section 20-98.

(b) No landowner shall allow any filling or change in drainage to be performed on that owner's land, except as provided in section 20-98.

(Ord. No. 2016-07, art. III, 4-18-2016)

Sec. 20-98. Permits and exceptions.

(a) *Exceptions.* Section 20-97 does not apply to filling or changes in drainage performed:

- (1) Under circumstances for which this article does not require a permit;
- (2) Under and in compliance with a permit granted under this article before the filling or change in drainage begins; or
- (3) Pursuant to an exception under this article:

a. *In the floodplain.*

1. *Commercial agricultural use on a tract over five acres.* This article does not require a permit for filling or changes in drainage for commercial agricultural use on a tract of over five acres.
2. *Other uses or other tracts in the floodplain.*
 - (i) Over one load (14 cubic yards) per year per tract: Filling or a change in drainage in this category requires a permit with a full application and fee under subsection (d) of this section.
 - (ii) One load (14 cubic yards) or less per year per tract:
 - A. For residential, non-agricultural use, such as gardening, landscaping, or leveling: Filling or a change in drainage in this category is incidental fill in the floodplain and requires a permit with a simplified application and fee under subsection (c) of this section.

- B. For any other use: Filling or a change in drainage in this category requires a permit with a full application and fee under subsection (b) of this section.
- b. *Outside the floodplain.*
1. *Commercial agricultural use on a tract over five acres.* This article does not require a permit for filling or changes in drainage for commercial agricultural use on a tract of over five acres.
 2. *Other uses or other tracts outside the floodplain.*
 - (i) Over five loads (70 cubic yards) per tract: Filling or a change in drainage in this category requires a permit under this article with a simplified application and fee under subsection (c) of this section.
 - (ii) Five loads (70 cubic yards) or less per tract: Filling or a change in drainage in this category does not require a permit under this article.
- c. *Inside or outside the floodplain.* This article shall not apply to filling or changes in drainage conducted by the United States of America, the state, the county, or any other governmental entity, in their respective rights-of-way.

(b) *Full application for permit.* Except as otherwise provided by this section, an applicant for a permit under this article shall file an application for the permit on a form prepared by the floodplain administrator. The application must be filed before the start of any of the filling or change in drainage for which the permit is sought. The application shall include the following:

- (1) A written plan of the proposed action;
- (2) All elevations on the subject property and adjacent properties before and after the proposed change;
- (3) The detailed drainage plan showing the effect of the proposed change signed and sealed by a professional engineer in the state;
- (4) Overall layout of lots or parcels;
- (5) 0.5-foot contours;
- (6) Any defined waterways on or adjacent to the site;
- (7) Drainage area map showing on-site and off-site areas draining across or adjacent to the site with calculations of flows;

- (8) Flood zones and flood ways as determined by the applicable FEMA maps. The base flood elevation (BFE) shall be indicated on the drainage plan as shall the flood zone;
- (9) Proposed drainage improvements including detention areas and depths with calculations;
- (10) Proposed easements which shall include all drainage and maintenance easements;
- (11) The use of the land upon which the filling or change in drainage is proposed;
- (12) The identity and size of the tract for which any filling or change in drainage is proposed;
- (13) Any other information concerning such action reasonably requested by the floodplain administrator; and
- (14) A certification, signed by the applicant, that the information in the application is complete and correct.

(c) *Simplified application for permit.* An applicant for a permit under the simplified application under this article shall file an application for the permit on a form prepared by the floodplain administrator. The application must be filed before the start of any of the filling or change in drainage for which the permit is sought. The application shall include the following:

- (1) A written plan of the proposed action;
 - (2) The quantity of fill or change in drainage for which the permit is sought;
 - (3) The size of the tract for which the fill or change in drainage is proposed;
 - (4) The total quantity of filling and changes in drainage already either:
 - a. Done; or
 - b. Permitted by the city on the same tract in the same calendar year;
 - (5) Any other information concerning such action reasonably requested by the floodplain administrator; and
 - (6) A certification, signed by the applicant, that the information in the application is complete and correct.
- (d) *All permit applications.*
- (1) Regardless of any other provision and regardless of the city's fee ordinance, the floodplain administrator shall have discretion to increase the fee required for

any permit application hereunder, to an amount reasonably sufficient to cover the full time and/or cost of reviewing and evaluating the application and proposed filling and/or change in drainage, as determined by the floodplain administrator, in his or her sole, good faith discretion.

- (2) Regardless of any other provision, the floodplain administrator may require a full application and fee under subsection (b) of this section, when this article would not otherwise require that, if in his or her good faith discretion, such additional information is reasonably necessary to determine the effect of the proposed filling or change in drainage upon drainage and/or flooding.
- (3) The floodplain administrator shall have discretion to waive the requirements of scale drawings and measured elevations for minor projects in which the floodplain administrator believes those items are unnecessary to assess the drainage effect of the project.
- (4) A nonrefundable application fee shall be paid to the city at the time the permit application is filed in accordance with the approved fee schedule of the city at the time of the permit application. That fee shall less for a simplified application under subsection (c) of this section and for a full application under subsection (b) of this section.
- (5) After receiving all required documents and the fee, the floodplain administrator shall approve the plan and issue a permit for the fill or change in drainage, unless either:
 - a. The proposed fill or change in drainage is likely to have a detrimental effect on the drainage or flooding of any property; or
 - b. The proposed fill or change in drainage would violate any provision of the county drainage criteria manual.

(Ord. No. 2016-07, art. IV, 4-18-2016)

Sec. 20-99. Appeals.

(a) Any person aggrieved by a decision of the floodplain administrator under this article shall have the right to appeal to the city council by delivering to the city secretary notice of such appeal. The notice must be actually received by the city secretary at city hall or at the city's post office box within ten days after the decision being appealed.

(b) The appellant and the applicant for the filling or change in drainage permit shall be entitled to notice and the opportunity to be heard by the city council. The city council shall decide the appeal anew, as if the floodplain administrator had not decided either way (de novo review).

(c) None of the filling or change in drainage shall be performed while the appeal is pending.

(Ord. No. 2016-07, art. V, 4-18-2016)

Chapter 21

RESERVED

Chapter 22

MANUFACTURED HOUSING

Article I. In General

- Sec. 22-1. Definitions.
- Sec. 22-2. Application.
- Sec. 22-3. Existing homes.
- Sec. 22-4. Inspection.
- Sec. 22-5. Nonliability.
- Sec. 22-6. Other ordinances and laws.
- Sec. 22-7. Permits for manufactured housing.
- Sec. 22-8. Inspection and permits.
- Sec. 22-9. Abandonment or disrepair.
- Sec. 22-10. Temporary travel trailers and motor coaches.
- Sec. 22-11. Site requirements.
- Sec. 22-12. Fire safety standards.
- Sec. 22-13. Water supply.
- Sec. 22-14. Sewage disposal.
- Sec. 22-15. Electrical.
- Sec. 22-16. Fuel supply.
- Sec. 22-17. Temporary construction use.
- Secs. 22-18—22-37. Reserved.

Article II. Manufactured Home and Trailer Parks

- Sec. 22-38. Definitions.
- Sec. 22-39. Licenses.
- Sec. 22-40. Physical requirements of mobile home and/or travel trailer parks.
- Sec. 22-41. Operating a mobile home and/or travel trailer park.
- Sec. 22-42. Facilities and services.

ARTICLE I. IN GENERAL**Sec. 22-1. 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:

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" includes a movable or portable building constructed to be towed by a motor vehicle on its own chassis over roads and highways under permit or special permit and connected to utilities, and designed without a permanent foundation for year-round occupancy, and it may consist of one or more units that can be telescoped when towed in one or more sections and expanded later for additional capacity, and designed to be joined into one integral unit (i.e., manufactured, modular, etc.). The term "manufactured home" also includes any item so defined in the Texas Manufactured Housing Standards Act (V.T.C.A., Occupations Code § 1201.001 et seq.), as amended from time to time. The fact that an item is not used as a dwelling or residence shall not prevent it from being a manufactured home, if it otherwise meets the definition in this chapter. All references to any mobile home or trailer coach in any ordinances of the city are hereby amended to refer to manufactured homes, and said other ordinances shall otherwise remain in full force and effect, except as herein provided. The term "manufactured home" includes any mobile home or trailer coach or travel trailer.

(Ord. No. 98-6, § 1, 9-21-1998)

Sec. 22-2. Application.

No manufactured home shall be placed, developed, built, altered, expanded, redeveloped, or rebuilt, except according to this chapter.

(Ord. No. 98-6, § 2, 9-21-1998)

Sec. 22-3. Existing homes.

This chapter does not make unlawful any manufactured home already in place and complying with all laws when the ordinance from which this chapter is derived becomes effective; provided, however:

- (1) Each such nonconforming manufactured home, and the owners, licensees, operators, and occupants therefor, shall comply with this chapter by September 1, 1999, except as to the location of the manufactured home and the lot size.

- (2) The nonconforming use shall cease if the manufactured home is unoccupied for six months or is moved. The owners and occupants of each such nonconforming manufactured home shall be allowed to remain until such time as the home is moved.
- (3) The nonconforming use shall cease, if the manufactured home is destroyed (but not intentionally destroyed by the owner or occupant or anyone acting at their discretion) and if it is repaired within 180 days after destruction. The term "destroyed" herein means damage such that repairs would cost more than 60 percent of the value of the manufactured home immediately before the damage, in order to restore the manufactured home to the condition it was in immediately before the damage.

(Ord. No. 98-6, § 3, 9-21-1998)

Sec. 22-4. Inspection.

A city inspector, county health officer or city code enforcement officer may enter the premises of any proposed or existing manufactured home in order to inspect for compliance with this chapter. The city officials must make diligent efforts to contact the property owner of the premises before entering the proposed or existing manufactured home.

(Ord. No. 98-6, § 4, 9-21-1998)

Sec. 22-5. Nonliability.

The city and its officers, agents and employees shall have no liability of any nature for any actions, omissions, conditions or other matters in any way concerning this chapter or the subject matter of this chapter.

(Ord. No. 98-6, § 5, 9-21-1998)

Sec. 22-6. Other ordinances and laws.

All other ordinances of the city and all other laws shall apply according to their terms to the subject matter of this chapter; except as this chapter expressly and specifically contradicts said ordinances or laws. The fact that this chapter specifically invokes some other laws and ordinances shall not mean that still other laws and ordinances not specifically invoked do not apply.

(Ord. No. 98-6, § 6, 9-21-1998)

Sec. 22-7. Permits for manufactured housing.

(a) Permit applications shall be made to the permit department of the city. Permits shall be issued in proper circumstances by the permit department. No permit shall be issued until the application has been reviewed and approved by the building inspector for compliance with applicable laws.

(b) No utilities (gas or electric) will be released for service until all final inspections (electrical, plumbing, gas, building, tie downs, driveways) are approved by the permit department and the elevation certificate is submitted, showing that the elevation of the manufactured home will comply with this chapter and all applicable law.

(c) The permit application shall be on a form provided by the city and shall contain the following:

- (1) The name, address and telephone number of the owner.
 - (2) A legal description and street address of the manufactured home.
 - (3) A scale site plan of the manufactured home and any other information deemed helpful by any city official charged with reviewing said application or enforcing this chapter.
 - (4) The application shall be signed by the owner.
 - (5) The application shall provide all facts necessary to show that all aspects of the manufactured home and site comply with this chapter and all applicable law.
 - (6) The application will show that the manufactured home is in compliance with the windstorm regulations for the coastal area which is Zone 2. The application will also show the lot, block, or plat size to be in compliance. If it is not in compliance, no permit will be issued.
 - (7) Lot, block or plat must be a minimum of one acre (43,560 square feet) for any manufactured housing or any other type of residential structure.
 - (8) Any person, firm, or corporation wanting to move a manufactured home into an area that has been designated by FEMA to be in a flood zone or floodplain will first obtain an elevation certificate to be reviewed with the application to move the manufactured home into the city. No permit will be issued for any construction or moving a manufactured home into a flood way unless said person, firm, or corporation has consulted and had a special designed septic system by a registered professional engineer or professional sanitarian, that will not create a health hazard or contamination to the public.
 - (9) The permit application fee shall be in accordance with the city's fee schedule, as it may be amended from time to time by city council, which includes inspection of the site, electrical, plumbing, and set-up.
- (d) Permits hereunder are not transferable as to location.

(e) A permit may be revoked by the building inspector for any violation of applicable law concerning any aspect of the manufactured home. Upon the revocation, denial, or refusal to renew a permit, the owner or applicant may appeal to the city council by so notifying the city secretary in writing within ten days after the action being appealed. The city council shall hear the complaint within 15 days after the city secretary receives said notice of appeal and shall decide the appeal within 15 days after the hearing. If the manufactured home is under a permit at the time of the revocation or refusal to renew the permit, then the owner or applicant may continue to occupy the home pending decision of the appeal.

(f) A permit hereunder shall not be construed as a bar to prosecution for or enforcement of any applicable law, or as any type of waiver by the city.

(g) Each manufactured home shall be maintained in conformity with its permit and permit application, and shall not be altered without the advance approval of the building inspector.

(Ord. No. 98-6, § 7, 9-21-1998)

Sec. 22-8. Inspection and permits.

No person shall install any manufactured home, or erect, construct, add to, enlarge, improve, alter, repair, convert, extend, improve, or demolish any manufactured home, manufactured home site, building, or structure, or any part thereof, or install any plumbing, electrical, or mechanical equipment or structure, or cause the same to be done, without first obtaining an inspection and permit from the city building official.

(Ord. No. 98-6, § 8, 9-21-1998)

Sec. 22-9. Abandonment or disrepair.

(a) No manufactured housing, to include mobile homes, travel trailers, motor coach or motor-driven coach, that is utilized as a residence on a year-round basis, shall be left unattended, abandoned or in such disrepair that it creates a health and safety hazard to the citizens of the city. The maximum time allowed would be 90 days before enforcement action could be initiated.

(b) Any manufactured home in violation of this section is subject to the enforcement and regulations of the city's unsafe building ordinance.

(Ord. No. 98-6, § 9, 9-21-1998)

Sec. 22-10. Temporary travel trailers and motor coaches.

Temporary travel trailers and motor coaches will only be permitted on a temporary basis. Such travel trailer and motor coach may be placed upon a lot, tract, or plot of land to be lived in while constructing a permanent residence, up to one year.

(Ord. No. 98-6, § 9A, 9-21-1998)

Sec. 22-11. Site requirements.

(a) *General.* All manufactured homes:

- (1) Must be at least ten feet from any other structure;
- (2) Must be at least 25 feet behind front property line;
- (3) Must be at least ten feet from side property line;
- (4) Must be at least eight feet from back property line or the easement width, whichever is greater;
- (5) Must present a scaled drawing of the lot showing where the dwelling will be placed on the lot in relation to all the above requirements, including legal description.

a. All manufactured homes shall be so situated upon the lot or tract of land so as to not be within ten feet of any building (excluding mobile home) or within 15 feet from the front and/or rear end or 20 feet from the side of any mobile home or manufactured home.

b. All manufactured home placement on a private lot shall be required to have a minimum lot area of 43,560 square feet (one acre).

c. An elevation certificate by a registered public surveyor must be obtained and returned to the permit department showing that the furnished floor level of the mobile home/manufactured home shall be at or above the elevation of the flood zone on the tract of land that the mobile home/manufactured home sets on before utilities are released for occupancy.

(b) *Tie down requirements.* All manufactured homes/mobile homes shall have tie downs complying with the following requirements:

- (1) Wheels, axles, and tires must be removed to permit level placement of the mobile home no greater than two feet and no less than 12 inches. Soil beneath the mobile home must be graded to prevent erosion caused by standing water.

- (2) All mobile homes will be skirted or screened to prevent rodents and other animals beneath mobile homes. The mobile home will be skirted after the tie down inspection, but prior to the final inspection.
- (c) *Tie down/blocking standards for mobile home/manufactured homes.*
 - (1) *Anchoring systems.* Combinations of ties, anchoring equipment, and anchoring devices that will, when properly designed and installed, resist overturning and lateral movement of the mobile home or HUD Code manufactured home from wind forces.
 - (2) *Cap.* A one-inch by eight-inch by 16-inch and/or two-inch by eight-inch by 16-inch wood plate placed between the top of the pier and the bottom of the I-beam. Such cap shall not be less than one inch (nominal) nor more than 2¼ inches (actual) total thickness.
 - (3) *Diagonal tie.* A tie intended to primarily resist horizontal or shear forces and which secondarily resists vertical uplift, and overturning forces as a result of wind loading.
 - (4) *Footing.* That portion of the support system that transmits loads directly to the soil.
 - (5) *Ground anchor.* Any device at the mobile home or HUD Code manufactured home stand installed in the ground to transfer mobile home or HUD Code manufactured home anchoring loads.
 - (6) *Hurricane-resistant HUD Code manufactured home.* A home which meets the wind design load requirements for Zone II in the Federal Mobile Home Construction and Safety Standards (MHCSS) section 3280.305(c)(2).
 - (7) *Main frame.* The structural components on which the body of the mobile home of HUD Code manufactured home is mounted.
 - (8) *Mobile home stand.* That area of a mobile home lot which has been reserved for the placement of the mobile home.
 - (9) *Permanent foundation.* A system of supports, including piers, either partially or entirely below grade, which is:
 - a. Capable of transferring all design loads imposed by or upon the structure into soil or bedrock without failure;
 - b. Placed at an adequate depth below grade to prevent frost damage;
 - c. Constructed of concrete, metal, treated lumber or wood, or grouted masonry;

- d. Designed so that the components of the foundation system cannot be removed from the site and used at any other location;
 - e. Designed so that the attached structure resists overturning due to wind pressure by the dead load resisting moment of the structure and foundation. The weight of earth superimposed over footings may be used to calculate the dead load resisting moment. The overturning moment shall not exceed two-thirds of the dead load resisting moment;
 - f. Designed to have the structure attached without the towing hitch, axles, brakes, wheels and other parts of the chassis that operate only during transportation; and
 - g. Certified by the consumer/mortgagor and the lender/mortgagee in a real estate loan transaction as having permanently affixed the structure to the real estate.
- (10) *Pier*. That portion of the support system between the footing and the mobile home or HUD Code manufactured home exclusive of caps and shims.
- (11) *Shims*. A wedge-shaped piece of cedar, oak, walnut, pecan, gum, ash, hickory, or elm not to exceed one-inch vertical (actual) height.
- (12) *Stabilizing devices*. All components of the anchoring and support systems such as piers, footings, ties, anchoring equipment, anchoring devices, and any other equipment which supports the mobile home or HUD Code manufactured home and secures it to the ground.
- (13) *Support system*. A combination of footings, piers, caps and shims that will, when properly installed, support the mobile home or HUD Code manufactured home.
- (14) *Tie*. Strap, cable, or securing device used to connect the mobile home or HUD Code manufactured home to anchoring devices.
- (15) *Provisions for stabilizing systems*.
- a. Each HUD Code manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard and shall be capable of transmitting the loads to anchoring systems without causing an unsafe deformation or an abnormal internal movement of the structure or its structural parts.

- b. Each HUD Code manufactured home shall have provisions for anchoring systems, which when properly designed and installed, will resist overturning and lateral movement of the mobile home as imposed by the respective design loads.
- (16) *Generic installation requirements.* All new and used HUD Code manufactured homes, mobile homes, and rebuilt salvaged homes shall be anchored in accordance with the manufacturer's installation instructions or these generic standards approved and promulgated by the department.
- a. Ground anchors shall be approved in compliance with the requirements of these standards and shall be used in soil types for which the ground anchors are designed. The anchors shall be installed in accordance with the anchor manufacturer's instructions.
 - b. Over-the-top straps shall be placed on top of roof trusses and studs and shall be a continuous strip, running from the anchoring equipment on one side of the home to the anchoring equipment on the opposite side. Strapping shall meet the requirements relating to provisions for anchoring systems, and brackets shall be provided for the strapping at sharp corners where otherwise necessary to minimize damage to the roofing and siding.
 - c. Vertical (over-the-top) and diagonal ties may be connected to the same anchoring device provided that the anchoring device used is designed to carry both loads.
 - d. All other applicable installation requirements as set forth in the rules and regulations of the department shall be followed.
 - e. The diagonal and over-the-top ties shall be as evenly spaced as possible. Where windows, doors or other obstructions prevent even spacing of over-the-top ties, or where even spacing would place over-the-top ties between two trusses, the over-the-top straps shall be placed on top of the nearest truss.
 - f. Ties shall be as evenly spaced as practicable along the length of the home, and the distance from each end of the home and the tie nearest that end shall not exceed four feet for frame ties and eight feet for vertical ties.
 - g. The number of over-the-top vertical ties used to anchor a home shall be in accordance with the home manufacturer's installation instructions or the following hurricane and non-hurricane zone charts showing installation instructions for many types of homes. The following counties are in the

hurricane zone: Aransas, Bee, Brazoria, Brooks, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Wells, Kenedy, Kleberg, Liberty, Live Oak, Matagorda, Montgomery, Newton, Nueces, Orange, Refugio, San Patricio, Victoria, Waller, Wharton and Willacy.

(d) *Over-the-top vertical ties.* Many homes are designed with built-in over-the-top vertical ties or are designed without the need for any over-the-top vertical ties. Additional over-the-top ties will not be necessary for homes with all of the following characteristics: 13.67 feet or more in width; ten feet or less in wall height (including chassis height); the diagonal frame ties extend from under the side wall to the nearest longitudinal beam; the longitudinal beams are eight feet or more apart; and there is no evidence that vertical ties have been cut and removed. Over-the-top vertical ties that are built in and are still present shall be connected to anchors. Special column ties, if present, shall be connected to anchors. If an over-the-top vertical tie has been cut and removed on a used home and an additional over-the-top vertical tie cannot be added because of the eaves (or other condition), piers can be increase stability. Piers under the longitudinal beams shall be placed in accordance with subsection (b) of this section. The diagonal frame ties must extend from under the side wall to the nearest longitudinal beam. Piers shall also be placed under the perimeter walls at the locations of the cut straps. The original chassis to floor joist fasteners shall be intact. The diagonal frame ties used to anchor a home shall be spaced in accordance with the home manufacturer's installation instructions or shall be spaced no more than six feet apart on a side in the hurricane zone and no more than ten feet apart on a side in the non-hurricane zone. The spacing of ties may be adjusted for obstructions, but the number of ties for a side for a length of home shall be a whole number of the next highest whole number calculated by:

- (1) Length (eight feet);
- (2) Required tie spacing.

(e) *Support.* All mobile homes, HUD Code manufactured homes, rebuilt salvaged homes, and used HUD Code manufactured homes shall be supported in accordance with the home manufacturer's installation instructions or the following requirements:

- (1) Piers for single section homes are to be placed under each longitudinal main frame member not to exceed eight feet on-center spacing for homes that are 14 feet wide or less and six feet on-center spacing for homes that are over 14 feet wide. Where practical, end piers shall be placed within one foot of the ends of the main frame. When the location and spacing of wheels and axles or other

structural members of the home frame or undercarriage prevent spacing of piers on eight-foot or six-foot centers, the spacing shall be as near eight or six feet maximum spacing as practicable in the area of the obstruction. Exterior doors must have perimeter piers under the sides of the opening. For homes 12 feet or less in width, this requirement is optional. The minimum footing area shall be 240 square inches.

- (2) Piers for multi-section homes are to be placed under each longitudinal main frame member not to exceed six feet on-center spacing. Where practical, end piers shall be placed within one foot of the ends of the main frame. When the location and spacing of wheels and axles or other structural members of the home frame or under carriage prevent spacing of piers on six feet centers, the spacing shall be six feet maximum spacing in all other areas and shall be a near six feet maximum spacing as practicable in the area of the obstruction. Piers are to be placed under the center marriage line within one foot at each end, under support columns, and under both sides of openings greater than 12 feet. Exterior doors must have perimeter piers under the sides of the opening. For homes with 12-foot sections this requirement is optional. The minimum footing area shall be 240 square inches.
- (f) *Approval of stabilizing devices and systems.*
- (1) Installers shall only use approved stabilizing devices or systems. Before granting approval for any stabilizing device or system, the department will require the device or system manufacturer to submit such information as the department deems necessary to evaluate the device or system and ensure its safe performance in accordance with accepted engineering practices and nationally recognized standards. The department will promulgate administrative orders that refer to acceptable standards. All stabilizing devices must be resistant to the effects of weathering, such as that encountered along the Texas Gulf coast. All stabilizing devices must be tested to destruction by a recognized independent testing laboratory. The manufactured home installation instructions describe the location and capacity of required stabilizing devices. The installer must install stabilization devices that have the required capacity.
 - (2) The department may, on a spot-check basis, direct each manufacturer to test randomly selected stabilizing devices of each model type approved. These spot-check tests will be performed by a recognized independent testing laboratory under the observation of a qualified representative of the department. The department's representative will be responsible for selection of the random samples tested.

(g) *Requirements for ground anchor approval.* To secure approval of their product each ground anchor manufacturer must submit to the department the following data:

- (1) Detailed drawing of each type of anchor submitted for approval.
- (2) Each drawing shall show model identification, all dimensions, type of welds, or fastening, type of material, method of securing strap, orientation after installation in soil, and directions of applied loads, and must indicate the location of the model number.

(h) *Notification of withdrawal of approval anchoring systems.*

- (1) The department will notify a manufacturer of an anchoring system in writing, of the model's anchoring system for which approval is being withdrawn. The notification will state, in detail, the reason that approval is being withdrawn, and the effective date of such withdrawal.
- (2) The manufacturer of anchoring systems may request a hearing at which evidence may be presented showing why approval should not be withdrawn for the anchoring system model in question. Such hearings or presentations of views will follow the requirements of the department's procedures for hearings as set forth in the Act.

(i) *Blocking standards.* Installation of mobile homes and HUD Code manufactured homes must meet or exceed the following support and blocking requirements:

- (1) Pier placement.
 - a. Piers and/or supports are to be located in accordance with the mobile home or HUD Code manufactured home manufacturer's installation instructions.
 - b. If manufacturer's installation instructions are not available, homes shall be anchored and supported in accordance with state law relating to mobile home requirements.
- (2) Pier footing for concrete piers.
 - a. The footing for each concrete pier shall be two four-inch by eight-inch by 16-inch solid pads placed side by side and longitudinally to the I-beam or one four-inch by 16-inch by 16-inch solid concrete pad, pre-cast or poured in place or equivalent. Concrete runners shall be acceptable if they are a minimum of 16 inches wide and four inches in thickness.
 - b. All grass and organic matter should be removed and the pier footing placed on firm ground.

- (3) Pier footing for metal blocking stands.
 - a. Treated two-inch by 12-inch by 24-inch wood pads or treated phenolic resin bonded particle board pads, if approved by the department, are acceptable for use with metal stands.
 - b. Pre-cast four-inch by 16-inch by 16-inch solid concrete pads may be used with metal stands if specifically approved by the department. Such pads shall be marked to indicate approval. Placement of pad during installation shall be with the approval mark visible.
 - c. Footing pads made of other materials, if approved by the department, may be used with metal stands.
- (4) Pier components shall be as follows:
 - a. Concrete blocks, meeting ASTM-C90-70 Grade (N) standards, placed above the footing block perpendicular to main frame member.
 1. Eight-inch by eight-inch by 16-inch open cells or solid (open cells vertical);
 2. Two-inch by eight-inch by 16-inch or four-inch by eight-inch by 16-inch solid blocks (short dimension vertical). The ASTM standard for solid blocks is C145-59 Grade N.
 - b. Wood plates one inch by eight inches by 16 inches or two inches by eight inches by 16 inches, required for use with concrete piers, shall be placed on top of the concrete blocks. Wood plates used in combination shall not exceed 2¼ inches.
 - c. Hardwood shims may be fitted and driven tight between the wood plates and the main frame not to exceed one inch in vertical height.
 - d. Pier components other than approved footings are prohibited under approved metal blocking stands.
- (5) Height of concrete piers.
 - a. All piers 30 inches to 48 inches in height (measured from top of footing or footing block to main frame member) shall be double tiered with blocks interlocked and capped with a four-inch by 16-inch by 16-inch solid concrete block and wood plates (two one-inch by eight-inch by 16-inch or two two-inch by eight-inch by 16-inch placed side by side).
 - b. Piers that exceed 48 inches in height must be designed by a registered professional engineer or architect.

- (6) Pier and pier components are to be undamaged and installed in a workmanlike manner to accomplish the purpose intended.
- (7) When the support or blocking system installed is based upon a design certified by a registered professional engineer or architect, a brief description of the system and a copy of the certification shall be furnished to the mobile home owner.
- (8) Perimeter pier construction.
 - a. Piers shall be installed to provide support at designated locations.
 - b. The long dimension of concrete blocks may be placed in any direction at the support locations.
 - c. The piers must support the intersection of the interior joist and perimeter joist or a four-inch by four-inch wood brace must be provided across two or more transverse interior joint intervals supported by two piers. The brace shall be within one foot of the perimeter joist.

(Ord. No. 98-6, § 10, 9-21-1998)

Sec. 22-12. Fire safety standards.

(a) No liquified petroleum gas or flammable liquid shall be stored, handled, or dispensed inside a manufactured home that is used as a residence, except as provided in this chapter.

(b) Approaches to manufactured homes/mobile homes shall be kept clear for firefighting purposes, and shall be kept in a neat and orderly condition, free of dry brush, weeds and leaves.

(Ord. No. 98-6, § 11, 9-21-1998)

Sec. 22-13. Water supply.

(a) Individual water riser pipes shall be located within the confined area of the outside perimeter walls of the manufactured home/mobile home, and the water connection pipe shall approximate a vertical position. The water piping size shall be at least three-quarters of an inch and shall be capped when no home occupies the space. A shut-off valve above ground grade shall be provided in each water riser pipe.

(b) Adequate provisions shall be made to prevent freezing of service lines, valves, and riser pipes, and to protect risers from heaving and thawing actions of the ground during any freezing weather. Surface drainage shall be diverted from the location of the riser pipe.

(Ord. No. 98-6, § 12, 9-21-1998)

Sec. 22-14. Sewage disposal.

(a) Liquid and other wastes from showers, iceboxes, freezers, refrigerators, lavatories, toilets, bathtubs, slop sinks and other plumbing fixtures in manufactured homes, and all structures therein shall be deposited in a lawful state-approved disposal plant or septic tank system.

(b) Each manufactured home/mobile home site shall be provided with at least a four-inch diameter sewer riser pipe, which shall be so located that the home drain outlet approximates a vertical position. The sewer line from the home shall consist of only one line without any branch fittings, and shall be watertight, and shall have a minimum inside diameter of at least three inches. The slope of any portion thereof shall be at least one-fourth inch per foot to the sewer riser.

(c) Any sewer riser pipe shall be plugged when no manufactured home/mobile home occupies the site.

(Ord. No. 98-6, § 13, 9-21-1998)

Sec. 22-15. Electrical.

(a) Each manufactured home/mobile home shall be provided with a property approved minimum electrical service of 100-amp, 110/220 volts.

(b) All exposed, non-current, metal parts of each manufactured home/mobile home and all other equipment shall be grounded by means of an approved grounding conductor.

(c) No aluminum wiring of any kind shall be allowed in the city except for utility companies that service their wiring.

(Ord. No. 98-6, § 14, 9-21-1998)

Sec. 22-16. Fuel supply.

(a) Each manufactured home or mobile home with any natural gas supply shall have an approved manual shutoff valve installed upstream from the gas meter four inches above ground grade, and shall be equipped with an approved cap to prevent accidental discharge of gas when the outlet is not in use.

(b) Any individual liquefied petroleum gas containers installed on an individual manufactured home/mobile home site shall serve only that home and shall be securely fastened to prevent accidental overturning, and shall have a gross capacity of no more than 250 WS gallons. All liquefied petroleum gas piping outside of a manufactured

home/mobile home shall be installed underground and protected against mechanical injury. Undiluted liquefied petroleum gas in liquid form shall not be conveyed through piping equipment and systems in a manufactured home.

(Ord. No. 98-6, § 15, 9-21-1998)

Sec. 22-17. Temporary construction use.

Manufactured homes may be used temporarily during the construction of a permitted or otherwise authorized improvement, if the manufactured home is used in the construction of the improvement. This section includes a manufactured home used as a sales office for the property where such manufactured home is located, but not during construction. Manufactured homes in place under this provision shall not be used as residences or sleeping quarters.

(Ord. No. 98-6, § 16, 9-21-1998)

Secs. 22-18—22-37. Reserved.

ARTICLE II. MANUFACTURED HOME AND TRAILER PARKS

Sec. 22-38. 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:

Dependent mobile home or travel trailer means a mobile home or travel trailer which does not have a flush toilet and a bath or shower.

Mobile home or travel trailer means any vehicle or similar portable structure having no foundation other than wheels, jacks, blocks, or skirtings, and so designed or constructed as to permit occupancy for dwelling or sleeping purposes.

Mobile home and/or travel trailer lot means a plot of ground within a mobile home and/or travel trailer park designed for the accommodation of one mobile home or travel trailer.

Mobile home and/or travel trailer park means any plot of ground upon which one or more mobile homes or travel trailers, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.

Natural or artificial barrier means any river, pond, canal, railroad, levee, embankment, brick wall or hedge.

Park means any mobile home and/or travel trailer park.

Person means any natural individual, firm, trust, partnership, association or corporation.

(Ord. No. 81-A, art. I, 7-20-1981)

Sec. 22-39. Licenses.

(a) *License required.* It shall be unlawful for any person to maintain or operate, within the limits of the city, any mobile home and/or travel trailer park unless such person shall first obtain a license therefor.

(b) *License fee.* The annual license fee for each mobile home and/or travel trailer park shall be in accordance with the city's fee schedule, as it may be amended from time to time by city council, per mobile home and/or travel trailer lot of record per year or fraction thereof, based on 95 percent of the lots on filed plat. License fees may be paid in advance on a quarterly basis, and the fee for transfer of such license, as provided for herein, shall be in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(c) *Application for license.*

- (1) Applications for mobile home and/or travel trailer park license shall be filed with the city council, and upon approval by the city council, the city secretary shall issue the license. Applications shall be in writing, signed by the applicant, and shall contain the following:
 - a. The name and address of the applicant.
 - b. The location and legal description of the mobile home and/or travel trailer park.
 - c. A complete plan of the park showing compliance with section 22-40.
 - d. Plans and specifications of all buildings and other improvements constructed, or to be constructed with the mobile home and/or travel trailer park.
 - e. Such further information as may be requested by the city council to enable it to determine if the mobile home and/or travel trailer park will comply with all other requirements.
- (2) The application and all accompanying plans and specifications shall be filed in triplicate. The city building inspector shall investigate the application, and inspect the proposed plans and specifications. He shall then make a report to the

city council concerning such application and include therein his recommendations relative to the issuance of a license. If the mobile home and/or travel trailer park will be in compliance with all provisions of this section and all other applicable ordinances or statutes, the city council may approve the application, 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. The city secretary, at the direction of the city council, shall issue the license.

(d) *Revocation of license.* The city council may revoke any license issued under this section in case any of the provisions hereof are violated. However, before said license may be revoked, the city council must give ten days' notice to the holder of said license and hold a hearing thereon. After said license has been revoked, the license may be reissued if the reasons for said revocation have been duly corrected.

(e) *Transfer and duration.* Upon application for a transfer of the license, the city council may issue a transfer upon payment of transfer fee. Such original license and transfer thereof, may be granted at any time during the year and shall expire at the end of the fiscal year of the city, unless previously revoked or terminated.

(f) *Posting of license.* The license certificate shall be conspicuously posted in the office of or on the premises of the mobile home and/or travel trailer park at all times. (Ord. No. 81-A, art. II, 7-20-1981)

Sec. 22-40. Physical requirements of mobile home and/or travel trailer parks.

(a) *Mobile home and/or travel trailer park plan.* The mobile home 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.
- (2) Mobile home 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. Mobile homes or travel trailers shall be so harbored on each lot that there shall be at least a 25-foot clearance between mobile homes or travel trailers; provided, however, that with respect to mobile homes or travel trailers parked end to end, the end-to-end clearance between mobile homes or travel trailers may be more than 25 feet, but not less than ten feet. No mobile home 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 mobile home and/or travel trailer lots shall abut upon a public street of not less than 28 feet in width which shall have unobstructed access to another public street, alley or highway. All streets shall be hard surfaced, well-marked in the daytime, and lighted at night. All streets shall meet the following minimum specifications:
- a. Four inches of hot mixed, hot laid asphaltic concrete laid on one of the following bases:
 1. Seven inches of compacted cement stabilized pug mill shell using 1½ sacks of Portland cement per ton.
 2. Eight inches of compacted sand, stabilized shell, road gravel or crushed limestone.
 - b. Shoulder widths shall be a minimum of ten feet wider than the roadway slab (five feet on each side), with side and back slopes not steeper than ½:1 from the edge to the shoulder to the bottom of the roadway ditch.
 - c. Ditch sections and grades will follow county minimum specifications.
- (4) Walkways not less than two feet wide shall be provided from the mobile home and/or travel trailer lots to the service buildings. The walkway shall be hard surfaced, as provided for in subsection (a)(3) of this section, well-marked in the daytime and lighted at night.

(b) *Maintenance.* Every person owning or operating a mobile home and/or travel trailer park shall maintain such part, and any facilities, fixtures, and permanent equipment in connection therewith, in a clean and sanitary condition and shall maintain said equipment in a state of good repair.

(c) *Additional construction.* It shall be unlawful for any person operating a mobile home and/or travel trailer park or occupying a mobile home or travel trailer to construct or permit to be constructed in such park, or in connection with such mobile home or travel trailer park any additional structure, building or shelter in connection with or attached to a mobile home or travel trailer, except, however, awnings of canvas or metal, suitably constructed, may be attached to said mobile homes or travel trailers, as well as portable, prefabricated, temporary rooms, for the express purpose of increasing mobile home or travel trailer living area, commonly called "cabana," which meet the following requirements:

- (1) Of metal only, fire resistive, double wall, mechanical joint panels (no welded joints between panels permitted);

- (2) Strength of materials and structure to meet minimum standards of the city building code;
- (3) Capable of being dismantled when moved;
- (4) Such rooms shall be completely dismantled and removed from the site at the time the mobile home or travel trailer to which it is accessory is moved;
- (5) Finish and appearance to be as near the same as possible to the mobile home or travel trailer to which it is accessory;
- (6) The length must not exceed the length of the mobile home or travel trailer to which it is accessory; and
- (7) Only one such room per mobile home or travel trailer shall be permitted.

(d) *Office building.* Each mobile home 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, and such records, rules and regulations to be available for inspection officials whose duties necessitate acquisition of the information contained therein.

(Ord. No. 81-A, art. III, 7-20-1981)

Sec. 22-41. Operating a mobile home and/or travel trailer park.

It shall be the duty of the owner, his agent, representative or manager to prescribe rules and regulations for the management of the mobile home and/or travel trailer park and to make adequate provisions for the 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 council. In addition thereto, it shall be the duty of the owner, his 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) Prohibit the placing or storage of unsightly material or vehicles of any kind.

(Ord. No. 81-A, art. IV, 7-20-1981)

Sec. 22-42. Facilities and services.

All mobile homes shall be properly connected to approved water, natural gas, sewer and electrical systems in accordance with existing state, county, and city minimum standards.

(Ord. No. 81-A, art. V, 7-20-1981)

Chapter 23

RESERVED

Chapter 24

OFFENSES AND MISCELLANEOUS PROVISIONS

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Secs. 24-1—24-18. Reserved.

Article II. Sexual Offenders

- Sec. 24-19. Title.
- Sec. 24-20. Findings and intent.
- Sec. 24-21. Definitions.
- Sec. 24-22. Residence prohibited; measurement.
- Sec. 24-23. Procedures to obtain an exemption for preexisting residency.
- Sec. 24-24. Affirmative defenses.
- Sec. 24-25. Multiple residences.
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Article III. Smoking Regulations

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Article IV. Discharge of Weapons

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- Sec. 24-111. Exception for lawful shooting ranges.

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- Sec. 24-112. Exception for charity or non-profit events.
- Sec. 24-113. No expansion of right to shoot.

ARTICLE I. IN GENERAL

Secs. 24-1—24-18. Reserved.

ARTICLE II. SEXUAL OFFENDERS

Sec. 24-19. Title.

This article shall be known and may be cited as the "Sexual Offender Ordinance of the City of Iowa Colony, Texas."

(Ord. No. 2019-19, § 1, 5-20-2019)

Sec. 24-20. Findings and intent.

The city council makes the following findings and expresses the following intent:

- (1) Repeat sexual offenders, sexual offenders that use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat offenses, and most commit many offenses.
- (2) The cost of sexual offender victimization to society at large, while incalculable, is clearly exorbitant.
- (3) It is the intent of this article to serve the city's compelling interest to promote, protect, and improve the health, safety and welfare of the citizens of the city by creating areas around premises where children commonly gather, wherein certain sexual offenders are prohibited from establishing temporary or permanent residences.
- (4) The city council hereby finds and declares that sexual offenders residing in places prohibited by this article constitute a nuisance, and any conduct prohibited by this article constitutes a nuisance, and any violation of this article constitutes a nuisance.
- (5) The city council hereby finds that all statements of fact in the preamble or any other portion of the ordinance from which this article is derived are true.

(Ord. No. 2019-19, § 2, 5-20-2019)

Sec. 24-21. Definitions.

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

Abandon. A permanent or temporary residence shall be deemed abandoned if the sexual offender does not reside overnight at such residence for any nights during any 180-day period. The abandonment of a residence shall not excuse any violations of this article occurring before such abandonment.

Child safety zone means any premises where children commonly gather. The term "child safety zone" includes a school, day care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The terms used in this definition shall have the definitions given in V.T.C.A., Health and Safety Code § 481.134. The term "child safety zone" does not include a church, as defined by V.A.T.S. Insurance Code, § 544.251.

Permanent residence means a place where the person abides, lodges, or resides for 14 or more consecutive days.

Premises where children commonly gather. See *Child safety zone*.

Sexual offender or *sex offender* means an individual who is required to register as a sex offender under Vernon's Ann. C.C.P. ch. 62 for an offense in which the victim was less than 17 years of age.

- (1) The fact that a person appears on the state department of public safety sex offender database shall be prima facie proof that the person is required to register as a sex offender under Vernon's Ann. C.C.P. ch. 62, for any purposes concerning this article.
- (2) A printout from the internet website of the state department of public safety sex offender database shall be prima facie proof that all contents of that printout are contents of that database and are true, for any purposes concerning this article. This subsection includes, but is not limited to, the age of the victim and the risk level of the registered sex offender under Vernon's Ann. C.C.P. ch. 62.

Temporary residence means a place where the person abides, lodges or resides for a period of 14 or more days, in the aggregate, during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, resides or lodges for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(Ord. No. 2019-19, § 3, 5-20-2019)

Sec. 24-22. Residence prohibited; measurement.

(a) *Residence prohibited within 1,000 feet of where children commonly gather.* It shall be unlawful for any person who is a sexual offender to establish a permanent residence or a temporary residence within 1,000 feet of any premises where children commonly gather, as herein defined.

(b) *Method of measurement.* For purposes of this article, the distance between the residence of a sexual offender and a place where children commonly gather shall be measured in a straight line between the nearest points on the property line of the sexual offender's residence and the property line of the place where children commonly gather. (Ord. No. 2019-19, § 4, 5-20-2019)

Sec. 24-23. Procedures to obtain an exemption for preexisting residency.

(a) *Exemption available for certain preexisting residences.* A registered sex offender may apply for an exemption from this article as to a residence where the registered sex offender established residency before the adoption of the ordinance from which this article is derived. This exemption is not automatic; rather, it applies only while a certificate of exemption from the police chief is in effect.

(b) *Application required; procedures.* The application for an exemption must be in writing, signed by the registered sex offender, and filed with the police chief. The application must include any documents, information, and evidence on which the registered sex offender relies to establish this exemption. The registered sex offender must provide any additional documents, information, evidence, and witnesses that the police chief reasonably requests for purposes of determining the validity of the requested exemption.

(c) *Certificate of exemption.* If the police chief determines that the application and all matters considered by the police chief show to his or her reasonable satisfaction that the application is valid, then the police chief shall sign and issue to the registered sex offender a written certificate of exemption, which shall identify the residence to which it applies.

(d) *Duration of exemption; automatic expiration.* The exemption under this section shall apply only to the period the registered sex offender maintains residency in the residence in the certificate of exemption. This exemption shall automatically expire and shall no longer be valid upon the sooner of:

- (1) The registered sex offender abandons the residence, as defined herein; or

- (2) The registered sex offender ceases to maintain residency in that residence in any other manner.

(e) *Exemption for certain landlords.* A landlord is automatically exempt from all requirements of this article concerning renting to a registered sex offender a residence for which the registered sex offender has a valid certificate of exemption under this article. This landlord's exemption also applies to the requirements for checking the state department of public safety sex offender database concerning a tenant who is exempt as to the residence in question. The landlord is not required to obtain a certificate of exemption for such a lease, although the tenant/registered sex offender must obtain a valid certificate of exemption for that residency.

(Ord. No. 2019-19, § 5, 5-20-2019)

Sec. 24-24. Affirmative defenses.

(a) *Affirmative defenses separate from exemptions.* The exemption for a preexisting residency under section 24-23 is cumulative of the affirmative defenses in this article, and each of those matters applies separately according to its own terms.

(b) *Minors; preexisting residencies.* The following are affirmative defenses to a prosecution for a violation of section 24-22:

- (1) The defendant is a minor.
- (2) The defendant was a minor at the time of the offense and was not convicted as an adult.
- (3) The permanent or temporary residence in question of the defendant was established before the effective date of the ordinance from which this article is derived in compliance with all applicable sex offender registration laws of the state and has not been abandoned as the sexual offender's residence. See also the exemption in section 24-23.
- (4) The premises where children commonly gather, as specified herein, within 1,000 feet of the permanent or temporary residence of the defendant was established after the defendant established that person's permanent or temporary residence in compliance with all applicable sexual offender registration laws of the state, and such residence has not been abandoned as the sexual offender's residence. See also the exemption in section 24-23.

(Ord. No. 2019-19, § 6, 5-20-2019)

Sec. 24-25. Multiple residences.

The establishment of a permanent or temporary residence shall not prevent the simultaneous existence of any other residence. It is possible for a person to have multiple permanent residences, multiple temporary residences, or one or more permanent residences and one or more temporary residences. This section shall not be construed to authorize any residence prohibited by this article.

(Ord. No. 2019-19, § 7, 5-20-2019)

Sec. 24-26. Landlord must check database for permanent resident; prohibition against renting; affirmative defense.

(a) *Landlord must check database before renting.* Before renting property for use as a permanent residence as defined herein, the landlord shall either:

- (1) Search the state department of public safety sexual offender database for the prospective tenant's name; or
- (2) Make a written request for the police department of the city to do so and receive written notice from the police department of the results of such search.

The search required by this section shall not be required before renting property for use as a temporary residence, as defined herein. For purposes of this section, a landlord shall not be required to anticipate whether a person will renew a short-term rental agreement enough times to establish a permanent residence. However, regardless of any other provision, after a tenant has leased a property for 14 consecutive days, regardless whether the lease was renewed on one or more occasions in order to total at least 14 consecutive days, the landlord shall search the database or have the police department do so as required by this section, before renewing the lease after the 14th day for any length of time. See also the exemption in section 24-23.

(b) *Certain renting by landlord prohibited.* No person shall rent any real or personal property to a sexual offender for use as a temporary or permanent residence, if such landlord knows that such residency constitutes a violation of this article by the sexual offender. The exemption in section 24-23 does not apply to this subsection.

(c) *Affirmative defense for certain preexisting leases.* It shall be an affirmative defense to prosecution for a violation of subsection (b) of this section that the lease became binding before the effective date of the ordinance from which this article is derived and the landlord has not voluntarily extended the lease after the effective date of the ordinance from which this article is derived. See also the exemption in section 24-23.

(Ord. No. 2019-19, § 8, 5-20-2019)

Sec. 24-27. Halloween requirements.

(a) *Signs provided by police department.* The police department shall provide to each sexual offender white signs stating, "Sexual Offender Residence" in at least two-inch-high black block lettering with strokes at least one-quarter inch wide for posting as required by this section, to each sexual offender rated as risk level two (moderate) or three (high) under Vernon's Ann. C.C.P. ch. 62.

(b) *Required posting of signs.* Every sexual offender rated as risk level two (moderate) or three (high) under Vernon's Ann. C.C.P. ch. 62 shall display the sexual offender signs provided by the police department at the following places:

- (1) On all exterior entrances to his or her residence;
- (2) On each sidewalk leading into the residence at the point on such sidewalk nearest to a property line of the residence; and
- (3) For each entrance without a sidewalk, at the property line directly in front of such entrance.

The sexual offender shall keep those signs posted from 4:00 p.m. each October 31 until 7:00 a.m. each November 1.

(c) *Halloween decorations and porch lights prohibited for all sex offenders.* Every sexual offender shall ensure that no porch lights or other lights that can be seen outdoors are on, and that no Halloween decorations that can be seen outdoors are displayed at his or her residence or the lot or tract on which that residence is located, from 4:00 p.m. each October 31 until 7:00 a.m. each November 1.

(Ord. No. 2019-19, § 9, 5-20-2019; Ord. No. 2019-38, § 9, 11-18-2019)

Sec. 24-28. Notification from police department to neighbors.

(a) *Risk level two and three sex offenders only.* This section authorizes notice from the police department of the city to the public concerning a sex offender only when the police department receives notice under Vernon's Ann. C.C.P. ch. 62 that a person subject to registration under said chapter 62 is required to register or verify registration with a local law enforcement authority and has been assigned a numeric risk level of two (moderate) or three (high) under that statute.

(b) *Written notice to neighbors within 200 feet.* The police department shall give written notice of a risk level two or three sexual offender's residence, of which the police department actually knows, to the premises of each occupied property within 200 feet of the property where a sexual offender's residence is located. This section also includes sexual offenders' residences that do not violate this section.

(c) *Measurement of distance.* The distance in this section shall be measured in a straight line between the nearest points of the property lines of the two properties.

(d) *Contents of notice.* The notice required by this section shall include the sexual offender's name, the sexual offender's residence address within 200 feet of the recipient's address, a statement that a sexual offender resides permanently or temporarily at that address, and a copy of the public information, as defined under Vernon's Ann. C.C.P. art. 62.005, concerning the sexual offender on the state department of public safety sexual offender database.

(e) *Times for notice.* The notice required by this section shall be given at the following times:

- (1) Within two weeks after the ordinance from which this article is derived is passed;
- (2) For a sexual offender's residence established after the effective date of the ordinance from which this article is derived, within 14 days after the police department actually learns that the property is a sexual offender's residence; and
- (3) For a residence of a person who becomes a sexual offender after the effective date of the ordinance from which this article is derived, within 14 days after the police department actually learns that such property is a sexual offender's residence.

(Ord. No. 2019-19, § 10, 5-20-2019; Ord. No. 2019-38, § 10, 11-18-2019)

Secs. 24-29—24-58. Reserved.

ARTICLE III. SMOKING REGULATIONS

Sec. 24-59. Title.

This article shall be known as the "City of Iowa Colony, Texas, Smokefree Air Ordinance."

(Ord. No. 2007-12, § 1, 8-20-2007)

Sec. 24-60. Findings and intent.

- (a) The city council hereby finds as follows:
- (1) Smoking results in the presence in the atmosphere of one or more air contaminants or a combination of air contaminants in such concentration and of such duration that they:
 - a. Are or may tend to be injurious to and to adversely affect human health and welfare, animal life, vegetation, and property; and

b. Interfere with the normal use and enjoyment of life and property.

(2) Smoking is a public nuisance.

(3) Smoking is a danger to the health and welfare of smokers and nonsmokers in the city.

(4) This article is authorized by V.T.C.A., Health and Safety Code § 382.113, V.T.C.A., Local Government Code ch. 217, and all other applicable laws.

(b) Accordingly, the city council finds and declares that the purposes of this article are:

(1) Protecting the public health and welfare by prohibiting smoking in enclosed public places and certain other places; and

(2) Guaranteeing the right of nonsmokers to breathe smokefree air, and recognizing that the need to breathe the smokefree air shall have priority over the desire to smoke.

(Ord. No. 2007-12, § 2, 8-20-2007)

Sec. 24-61. 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:

City means the City of Iowa Colony, Texas, and its officers, employees, agents, and representatives.

Enclosed place means any space with a floor, a ceiling or roof, and at least two walls, regardless whether the space has windows or doors, and regardless how the space is ventilated. The term "enclosed place" also includes porches that meet the foregoing definition.

Person means any individual, sole proprietorship, partnership, corporation, any other legal entity, and any unincorporated association.

Public place means a place where the public goes or is allowed to go. A private residence is not a public place unless it is used as a child care, adult day care, or health care facility.

Smoking means inhaling, exhaling, lighting, burning, carrying, or possessing any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or in any form.

(Ord. No. 2007-12, § 3, 8-20-2007)

Sec. 24-62. Prohibition of smoking in certain places.

No person shall smoke, as that term is defined herein, in any of the following places in the city:

- (1) Any enclosed public place;
- (2) Any place declared an additional non-smoking area under section 24-64, with signs as provided in section 24-63; or
- (3) Any place within 15 feet of any door, operable window, or other opening to an enclosed area where smoking is prohibited, regardless whether such door, window, or opening is open or closed at that time.

(Ord. No. 2007-12, § 4, 8-20-2007)

Sec. 24-63. Posting of signs.

(a) The owner, operator, manager, or other person in control of a place where smoking is prohibited by this article shall cause signs saying "No Smoking, By City Ordinance" or bearing the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) and the phrase "By City Ordinance" to be clearly and conspicuously posted and maintained between four and six feet above the ground or floor on or beside each public entry to the place.

(b) The signs shall be no smaller than five inches by eight inches, white with black lettering and symbols, and the letters and symbols thereon shall be not less than three-fourths of an inch tall with strokes or lines not less than $\frac{3}{16}$ of an inch thick. Arial Black font, 72 point size meets this requirement but is not the only type that does so. Attached to the ordinance from which this article is derived is a sign that complies with this article, and that attachment may be photocopied without being shrunken.

(c) Any person required by this article to post signs may obtain those signs at no charge from the city secretary, during normal business hours upon reasonable request. However, an inability to obtain such signs from the city secretary shall not be a defense to prosecution under this article.

(d) The absence of a sign required by this section shall be a defense to a prosecution for smoking in an area where smoking would be lawful except for a declaration of such place as an additional non-smoking area under section 24-64; and the absence of a sign

under this section shall not be a defense to a prosecution for smoking in any other area (an enclosed public place or any place within 15 feet of an opening to an enclosed public place).

(Ord. No. 2007-12, § 5, 8-20-2007)

Sec. 24-64. Declaration of additional place as non-smoking.

An owner, operator, manager, or other person in control of any place may designate that place as a non-smoking area. Such person may cause No Smoking signs to be posted and maintained at that place as provided in section 24-63. This article prohibits smoking in any area in which such person has caused such signs to be posted and maintained. This section allows a person to create additional non-smoking areas that this article does not otherwise create. This section does not allow a person to establish smoking areas where this article prohibits smoking.

(Ord. No. 2007-12, § 6, 8-20-2007)

Sec. 24-65. Removal of ashtrays.

The owner, operator, manager, or other person having control of any area where smoking is prohibited by this article shall cause all ashtrays to be removed from that area. However, this section does not prohibit the sale of ashtrays by any retail store, even if smoking in the store is prohibited.

(Ord. No. 2007-12, § 7, 8-20-2007)

Sec. 24-66. Nonretaliation.

No person shall discharge, refuse to hire, or in any manner retaliate against any person for exercising or attempting to exercise any rights afforded by this article or for reporting, attempting to report, prosecuting, or attempting to prosecute a violation of this article.

(Ord. No. 2007-12, § 8, 8-20-2007)

Sec. 24-67. Enforcement.

(a) Notice of the existence of this article shall be given to all applicants for a certificate of occupancy for a business in the city.

(b) Any person who desires to make a complaint under this article may do so to the chief of police or in any other manner provided by law.

(c) The building or code enforcement department, fire marshal, or their designees shall, while an establishment is undergoing any other inspection, also inspect for compliance with this article.

(d) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof. However, the failure of such person to give such notice shall not be a defense to a prosecution for smoking in violation of this article.

(e) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action against any person other than the city to enforce this article.

(Ord. No. 2007-12, § 9, 8-20-2007)

Sec. 24-68. Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.

(Ord. No. 2007-12, § 13, 8-20-2007)

Sec. 24-69. Liberal construction.

This article shall be liberally construed to promote its purposes.

(Ord. No. 2007-12, § 14, 8-20-2007)

Secs. 24-70—24-102. Reserved.

ARTICLE IV. DISCHARGE OF WEAPONS*

Sec. 24-103. Findings of fact.

The city council hereby finds the following facts to be true:

- (1) This article is authorized by V.T.C.A., Local Government Code §§ 217.002, 217.003, and 229.001 and all applicable law.
- (2) A violation of this article is a public nuisance.
- (3) This article promotes the public health, safety, and welfare.

(Ord. No. 2008-7, § 1, 7-21-2008)

***Editor’s note**—Readers are also directed to see the Parks and Recreation chapter concerning firearms.

State law reference—Municipal authority to regulate discharge of firearms in city limits, V.T.C.A., Local Government Code § 229.001.

Sec. 24-104. 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:

Air gun means any device designed, made, or adapted to expel one or more projectiles (with an amount of force that would be more likely than not to harm a person if the person were struck by the projectile immediately after the projectile left the device) through a barrel by using the energy generated by compressed gas or a spring or any device readily convertible to that use.

Bow means any device designed, made, or adapted to expel one or more projectiles (with an amount of force that would be more likely than not to harm a person if the person were struck by the projectile immediately after the projectile left the device) from a taut string or line, by the energy generated by the unbending of one or more bent limbs. The term "bow" herein shall also include any crossbow that meets the foregoing definition.

Firearm means any device designed, made, or adapted to expel one or more projectiles through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

(b) The definitions of the terms "air gun" and "bow" in this article do not require that any person actually be struck by a projectile; rather, those definitions merely define the amount of force.

(Ord. No. 2008-7, § 2, 7-21-2008)

Sec. 24-105. Prohibition of shooting.

(a) *Shooting a firearm.* No person shall shoot a firearm from a location within the city limits.

(b) *Shooting an air gun.* No person shall shoot an air gun in the city limits from, onto, or across the property of another person without the consent of the other person, or from, onto, or across a public street right-of-way or easement. It is not a defense to this subsection that the property of the other person or the public street right-of-way or easement is located outside the city limits, provided that the discharge of the air gun occurs within the city limits.

(c) *Shooting a bow.* No person shall shoot a bow in the city limits from, onto, or across the property of another person without the consent of the other person, or from, onto, or across a public street right-of-way or easement. It is not a defense to this

subsection that the property of the other person or the public street right-of-way or easement is located outside the city limits, provided that the discharge of the bow occurs within the city limits.

Sec. 24-106. Adult responsibility for violation by minor.

No person shall intentionally, knowingly, or with criminal negligence cause or allow any minor who is under that person's lawful custody or control to shoot or discharge a firearm or air gun in violation of this article.

(Ord. No. 2008-7, § 4, 7-21-2008)

Sec. 24-107. Actions outside scope of article.

This article shall not regulate the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, ammunition, or firearm supplies.

(Ord. No. 2008-7, § 5, 7-21-2008)

Sec. 24-108. Justifications under state penal code.

(a) Self-defense, defense of another person, protection of property, and any other justification provided under V.T.C.A., Penal Code ch. 9 shall apply to an offense under this section to the same extent and in the same manner provided by V.T.C.A., Penal Code ch. 9.

(b) The following is a partial list of justifications from V.T.C.A., Penal Code ch. 9 and is stated here for the sole purpose of convenience of reference. This list shall not restrict, expand, or change the scope of the justifications stated in V.T.C.A., Penal Code ch. 9 and incorporated into this article by subsection (a) of this section:

- (1) V.T.C.A., Penal Code § 9.03, Confinement as justifiable force.
- (2) V.T.C.A., Penal Code § 9.04, Threats as justifiable force.
- (3) V.T.C.A., Penal Code § 9.21, Public duty.
- (4) V.T.C.A., Penal Code § 9.22, Necessity.
- (5) V.T.C.A., Penal Code § 9.31, Self-defense.
- (6) V.T.C.A., Penal Code § 9.32, Deadly force in defense of person.
- (7) V.T.C.A., Penal Code § 9.33, Defense of third person.
- (8) V.T.C.A., Penal Code § 9.34, Protection of life or health.
- (9) V.T.C.A., Penal Code § 9.41, Protection of one's own property.
- (10) V.T.C.A., Penal Code § 9.42, Deadly force to protect property.

- (11) V.T.C.A., Penal Code § 9.43, Protection of third person's property.
- (12) V.T.C.A., Penal Code § 9.51, Arrest and search.
- (13) V.T.C.A., Penal Code § 9.52, Prevention of escape from custody.
- (14) V.T.C.A., Penal Code § 9.53, Maintaining security in correctional facility.
(Ord. No. 2008-7, § 6, 7-21-2008)

Sec. 24-109. Exception for law enforcement duties.

This article shall not apply to any law enforcement officer who discharges a firearm or air gun in the exercise of his or her official duties.
(Ord. No. 2008-7, § 7, 7-21-2008)

Sec. 24-110. Exceptions for certain large tracts of land.

This article shall not apply 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.
- (Ord. No. 2008-7, § 8, 7-21-2008)

Sec. 24-111. Exception for lawful shooting ranges.

This article shall not apply to the discharge of a firearm or air gun at a shooting range, if:

- (1) The shooting range is then in compliance with a specific use permit for that shooting range issued under the zoning ordinance;
- (2) The shooting range is in compliance with all other provisions of the zoning ordinance and all other applicable law; and

- (3) The discharge of the firearm or air gun does not violate any law other than this article.

(Ord. No. 2008-7, § 9, 7-21-2008)

Sec. 24-112. Exception for charity or non-profit events.

(a) This article shall not apply to the discharge of a firearm or air gun at a charity or non-profit event being conducted in compliance with all the terms of a valid, unexpired permit from the city.

(b) An applicant for a permit under this section shall submit the following to the police chief:

- (1) A signed, written application on a form acceptable to the city or provided by the city and containing:
 - a. The name, address, and telephone number of the individual or entity to receive the permit;
 - b. The name, address, and telephone number of the charitable or non-profit cause that will benefit from the event;
 - c. The exact times and dates of the event, including the times within which shooting will occur;
 - d. The exact location of the event, including a map (which may be handwritten) showing the dimensions of that tract and the locations and types of all structures located within 600 yards of the firing line for the event;
 - e. A description of all safety precautions to be observed;
 - f. Any other information that the police chief or mayor deems pertinent to the application.
- (2) An affidavit, signed and sworn by the applicant for the permit, stating that the applicant will pay the larger of the following amounts to the charity or non-profit recipient designated in the application for the permit:
 - a. 60 percent of the gross proceeds of the event; or
 - b. All proceeds of the event that are not spent on direct costs of the event.
- (3) A non-refundable fee in accordance with the city's fee schedule, as it may be amended from time to time by city council.

(c) The police chief shall present the application to the city manager and shall, upon request, consult with the city manager concerning the application. If the city manager determines in his or her discretion that the issuance of the permit would not endanger

the public health or safety, then the city manager shall issue a permit for the event, subject to any restrictions or conditions that the city manager in his or her discretion deems beneficial to health or safety.

(d) The city manager shall notify the police chief and city secretary of the issuance of a permit, at the time the permit is issued.

- (1) The applicant for the permit shall, within ten days after the permitted event, pay the larger of the following amounts to the charity or non-profit recipient designated in the application for the permit:
 - a. 60 percent of the gross proceeds of the event; or
 - b. All proceeds of the event that are not spent on direct costs of the event.
- (2) The applicant shall, within ten days after the permitted event, deliver to the police chief a written statement signed by the applicant and stating the gross revenues of the event, the itemized costs of the event, and the amount of the proceeds of the event that were paid to the charitable or non-profit recipient designated in the application.

(Ord. No. 2008-7, § 10, 7-21-2008)

Sec. 24-113. No expansion of right to shoot.

This article does not create or expand any right to discharge a firearm or air gun, and this article does not legalize any discharge of a firearm or air gun that would otherwise be unlawful. Rather, this article restricts the discharge of firearms and air guns.

(Ord. No. 2008-7, § 12, 7-21-2008)

Chapter 25

RESERVED

Chapter 26

PARKS AND RECREATION

Sec. 26-1. Park rules and regulations.

Sec. 26-1. Park rules and regulations.

(a) The city hereby adopts and ordains the following, which is attached to the ordinance from which this section is derived and incorporated herein in full: Rules and Regulations for Parks and Recreation Facilities (the "park rules" or the "policy").

(b) No person shall participate in using a facility in violation of the policy.

(c) Ordinance No. 2021-14 also adopted the Policy and Procedures on Athletic Facility and Field Usage (the field use rules), and this section does not change the field use rules.

(Ord. No. 2021-22, §§ 1—4, 7-19-2021)

Chapter 27

RESERVED

Chapter 28

PIPELINES*

- Sec. 28-1. Findings.
- Sec. 28-2. Definitions.
- Sec. 28-3. Proximity of structures to pipelines and mineral wells.
- Sec. 28-4. Registration required.
- Sec. 28-5. Permit.
- Sec. 28-6. Construction regulations.
- Sec. 28-7. Facility signs.
- Sec. 28-8. Relocation or removal of facilities.
- Sec. 28-9. Obsolete facilities.
- Sec. 28-10. Tree trimming.
- Sec. 28-11. Erosion and stormwater measures.
- Sec. 28-12. Placement and depth of facilities.
- Sec. 28-13. Line location and identification.
- Sec. 28-14. Planning for capital improvement projects.
- Sec. 28-15. Liabilities and cash deposits.
- Sec. 28-16. Insurance and indemnity.
- Sec. 28-17. Revocation or denial of construction permits.
- Sec. 28-18. Appeal from denial or revocation of permit.
- Sec. 28-19. Other laws.
- Sec. 28-20. Notice.
- Sec. 28-21. Performance by city when another person fails to perform.
- Sec. 28-22. Variance.
- Sec. 28-23. City's right to require franchise.

***State law reference**—Municipal authority concerning pipelines in or on public streets and alleys, V.T.C.A., Natural Resources Code § 117.101.

Sec. 28-1. Findings.

The facts and matters set forth in the preamble of the ordinance from which this chapter is derived are hereby found to be true and correct.

(Ord. No. 2016-14, § 1, 6-20-2016)

Sec. 28-2. 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:

City means the City of Iowa Colony, Texas, a general law municipal corporation of the State of Texas, and shall include the officers, agents, employees, and representatives of said city.

City council means the governing body of the city.

Commodity means any substance capable of being transmitted through a pipeline which is, or may become, flammable, toxic or otherwise hazardous to human, animal or plant health or life.

Construction means placement, construction, installation, connection, operation, alteration, maintenance, or removal of any facility.

Director of public works means not only the city director of public works, but also the city superintendent of public works, the city building official, the city code enforcement officer, and any other person designated as such from time to time by the city council.

Emergency means a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety, and/or welfare.

Facilities means and includes, but shall not be limited to, pipelines, line pipe, and any related valves, switches, vaults, pipe compressors, pumping units, metering and delivery equipment, breakout tanks, and appliances, attachments, equipment, structures, fixtures, appurtenances, and such other objects, devices, or other items of tangible property, which are designed, constructed, installed, placed, used or operated in, upon, over, across, above, or below public rights-of-way and in any way related to any pipe or pipeline. However, a private, individually owned connection and/or attendant downstream service line or device, through which a utility service is received by the end user owning same, for which required permits have been issued under applicable building, plumbing, electrical, or other codes of the city, shall not be deemed as facilities hereunder.

Low pressure means a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.

Main means a distribution line that serves as a common source of supply for more than one service line.

Mineral well means any hole or bore to any sand, horizon, formation, strata or depth for the purpose of producing any oil, gas, liquid hydrocarbon, brine water, sulphur water or use as an injection well for secondary recovery, or any of them.

Permit means a permit granted by the city pursuant to this chapter, authorizing certain construction of a facility.

Person means an individual, corporation, association, partnership, joint venture, firm, limited liability partnership, joint stock company, association, governmental entity other than city, or any other public or private entity.

Pipeline means a line of pipe and any affiliated pumps, valves, control devices, and other facilities for conveying a commodity.

Public right-of-way means the surface, air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property within the corporation limits of the city, and in which the city holds a property interest (fee title, easement or otherwise), or over which the city holds and exercises a right of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of facilities.

Shut-off valve means any device installed in a pipeline and used to stop the conveyance of a commodity through a pipeline.

User means a person having, owning, leasing, using, or operating facilities within a public right-of-way.

(Ord. No. 2016-14, § 2, 6-20-2016)

Sec. 28-3. Proximity of structures to pipelines and mineral wells.

(a) *Restriction of structures.*

- (1) No residential, commercial, or industrial structure, other than structures necessary to operate the facility or pipeline, shall be erected at or moved to a location nearer than 50 feet to any facility or pipeline other than a low-pressure distribution system pipeline as defined herein.

- (2) No residential, commercial, or industrial structure shall be erected nearer than 150 feet to any mineral well or related facility other than structures necessary to operate the mineral well or facility.
- (3) This subsection (a) shall not apply to any structures existing before the ordinance from which this chapter is derived is passed.
- (b) *Restriction of pipelines and facilities.*
 - (1) No facility or pipeline, other than a low-pressure distribution system pipeline as defined herein, shall be erected at or moved to a location nearer than 50 feet to any residential, commercial, or industrial structure, other than structures necessary to operate the facility or pipeline.
 - (2) Exceptions to restriction of pipeline and facilities.
 - a. This subsection (b) shall not apply to any facility or pipeline existing before the ordinance from which this chapter is derived is passed.
 - b. This subsection (b) shall not apply to any facility or pipeline that meets all of the following criteria:
 1. The facility or pipeline is now or hereafter placed at a location in a pipeline right-of-way or pipeline easement that exists before the ordinance from which this chapter is derived is passed;
 2. Without this subsection (b), the facility or pipeline could be lawfully placed at said location;
 3. Due to the width of the pipeline right-of-way or easement, the other pipelines in the right-of-way or easement, or any other factor except this subsection (b), the facility or pipeline in question could not lawfully be placed at a location within the right-of-way or easement that complies with this subsection (b); and
 4. This subsection (b) would restrict the placement of the facility or pipeline, without this grandfather clause (subsection (b)(2)b of this section).

(Ord. No. 2016-14, § 3, 6-20-2016)

Sec. 28-4. Registration required.

(a) *Application for registration.* The user of every facility now located or hereafter constructed in the city, including, but not limited to, the owner of any pipeline constructed or replaced under a permit, shall prepare and file with the city secretary three copies of the following:

- (1) The name and legal status of the user;

- (2) The name, address, telephone number, e-mail address, and fax number of the individuals who will be contacts for the user;
- (3) The name, address, telephone number, e-mail address, and fax number of the individuals who will be the contacts for the field location of the facilities;
- (4) The name, address, telephone number, e-mail address and fax number of an emergency contact who shall be available for 24 hours every day, and who shall furnish immediately upon request information concerning the common name of the commodity carried by the pipeline and the pressure in the pipeline;
- (5) The commodity transported through the facility and the maximum pressure and temperature under which the commodity will be transported;
- (6) A scale drawing accurately showing the location, course, alignment, and depth of the pipeline;
- (7) An alignment map showing the location of all existing and proposed streets, as designated on the master plan of the city or on the official map of the city, across, along, or under which the pipeline is located;
- (8) A written description of the construction, including construction drawings;
- (9) The manner, means, and methods of the construction and the types, sizes, and specifications of the materials used;
- (10) Proof of insurance and a guarantee of performance, as required herein by this chapter;
- (11) A written certification signed by the registrant, stating that the information in the application is true and complete; and
- (12) The registration fee required by this chapter.

(b) *Registration fee.* An applicant for registration shall pay a non-refundable fee, in accordance with the city's fee schedule, as it may be amended from time to time by city council, to the city at the time the application for registration is filed.

(c) *Registration procedure.* Immediately upon receipt of such registration, the city secretary shall transmit one copy to the city engineer and one copy to the fire department, and shall retain one copy in her files. The city secretary shall issue a receipt for each registration filed.

- (1) The city secretary shall issue a registration certificate to each person successfully completing and filing such registration. Each registration certificate shall be issued in the name of the user.

(2) This registration is a mandatory step, but it is not sufficient to authorize any construction; rather compliance with all provisions of this chapter and applicable law is also required.

(d) *Amendment and renewal of registration.*

(1) When information provided in an application for a registration certificate is no longer correct, the user shall inform the city secretary, in writing, within 30 days following the date of such change, but changes in information concerning the emergency contact person shall be reported to the city secretary in writing immediately.

(2) A registration hereunder shall expire five years after the date the registration certificate is issued. A registrant must renew the registration before it expires. A renewal shall be done in the same manner as the original registration.

(e) *Permit as a registration.* The issuance of a notice to proceed pursuant to a permit under this chapter shall constitute a certificate of registration hereunder. Thus, a person who receives such a notice to proceed pursuant to a permit hereunder is not required to register the same facility, in addition to the permit procedure; however, the automatic registration resulting from the notice to proceed shall expire in five years and must be renewed within that time in the same manner as any other registration. Registration pursuant to this subsection applies only to the facilities for which the permit and notice to proceed are granted.

(Ord. No. 2016-14, § 4, 6-20-2016)

Sec. 28-5. Permit.

(a) *Summary of permit procedure.* The procedure for obtaining a permit is generally as follows:

(1) The applicant shall file an application for a permit pursuant to subsection (d) of this section and pay the fees and deposits required by subsection (c) of this section.

(2) The city engineer reviews the application and makes recommendations to the city.

(3) If the application is complete and appears to be correct, and if the proposed facility appears to be in compliance with this chapter, then the city secretary shall issue the permit.

(4) The user shall file with the city the insurance policies, guaranty of performance, and other prerequisites required this chapter or any applicable law.

- (5) The city manager, in consultation with the superintendent of public works, city engineer, and city attorney, issues a notice to proceed with the construction under the permit, but only after all prerequisites have been satisfied.
- (6) The user shall perform the construction under the permit within the time specified in the permit.
- (7) The user shall file as-built drawings of the facilities with the city secretary pursuant to this chapter.

Nothing in this subsection shall be construed to excuse the applicant user, or any other person from any other or more detailed requirement in any other part of this chapter or any applicable law.

(b) *Permit required.* It shall be unlawful for any person to cause, permit, or participate in the construction of any facility within public rights-of-way, except in compliance with a permit granted by the city in accordance with this chapter.

(c) *Permit fees.*

- (1) An applicant for a permit hereunder shall pay the following to the city at the time of applying for the permit:
 - a. A non-refundable administrative fee in accordance with the city's fee schedule, as it may be amended from time to time by city council; and
 - b. A deposit for legal, engineering, inspection, and other consulting fees as provided in this section.
- (2) The applicant for a permit hereunder shall reimburse the city for all engineering, legal, inspection, and other consulting fees incurred by the city in connection with evaluating and/or administering any aspect of a permit or application hereunder.
- (3) Deposit for legal, engineering, inspection, and other consulting fees.
 - a. The applicant shall pay the city a deposit for legal, engineering, inspection, and other consulting fees. The deposit must be paid upon filing the application for a permit hereunder. Any additional deposit must be paid upon request by the city.
 - b. The city manager may set the amount of the deposit at the amount he estimates the city will incur in legal, engineering, inspection, and other consulting fees. Unless the city manager sets a different deposit for the subdivision or development in question, the deposit for engineering, legal, inspection, and other consulting fees shall be in accordance with the city's

fee schedule, as it may be amended from time to time by city council. Applications and facilities vary greatly in many ways, and the city manager may set a deposit that varies greatly from the foregoing amount. The mayor may do so at any time, before or after the payment of a deposit.

- c. If the fees actually incurred by the city turn out to be less than the amount of the deposit, then the city shall return the unused balance of the deposit to the applicant (or to any other person that pays the deposit) upon completion of all legal, engineering, inspection, and other consulting services concerning the application. Before refunding the unused balance of the deposit, the city shall deduct all amounts of any nature (whether related to the application or not) due to the city from the applicant. If, on the other hand, it appears to the mayor that the deposit will be insufficient to cover the legal, engineering, inspection, and other consulting fees incurred by the city, then the applicant shall deposit an additional amount as determined by the mayor. The additional deposit shall be paid upon request from the city, even if the previous deposit has not been consumed.
 - d. The city shall not under any circumstances be considered a fiduciary to the applicant or any other person in connection with any deposit under any provision of this chapter or any other law.
- (4) The city may halt the evaluation and processing of a request for a permit or any other action by the city while any initial amounts or additional amounts hereunder are due and unpaid to the city.
 - (5) The refund of any deposit shall never be construed as a waiver of any amounts due or that may become due to the city, and such refund shall never impair the city's right to payment of any such amount.

(d) *Application for permit; contents.* An applicant for a permit hereunder shall file nine copies of the application with the city secretary. The application shall include the following:

- (1) The name and legal status of the user;
- (2) The name, address, telephone number, e-mail address, and fax number of the individuals who will be contacts for the user;
- (3) The name, address, telephone number, e-mail address, and fax number of the individuals who will be the contacts for the field location of the facilities;

- (4) The name, address, telephone number, e-mail address and fax number of an emergency contact who shall be available for 24 hours every day, and who shall furnish immediately upon request information concerning the common name of the commodity carried by the pipeline and the pressure in the pipeline;
- (5) The commodity proposed to be transported through the facility and the maximum pressure and temperature under which the commodity will be transported;
- (6) A scale drawing accurately showing the proposed location, course, alignment, and depth of the proposed pipeline and the location of all shut-off valves;
- (7) An alignment map, showing the precise location of all existing and proposed streets, as designated on the master plan of the city or on the official map of the city, across, along, or under which the pipeline is proposed;
- (8) A written description of the proposed construction, including construction drawings;
- (9) The manner, means, and methods of the proposed construction and the types, sizes, and specifications of the materials to be used;
- (10) The proposed schedule for the construction, including, but not limited to, the proposed dates for commencement and completion of the construction and the proposed dates for any street closures;
- (11) Proof of insurance and a guaranty of performance, as required by this chapter;
- (12) A written certification signed by the applicant, stating that the information in the application is true and complete; and
- (13) The application fee and deposits as required by this chapter.

(e) *Review and recommendations by city engineer.* The city engineer shall examine the application and accompanying documents. He shall make recommendations to the city concerning the granting or denying of the application and any conditions or requirements for such action. The engineer shall report to the city as to whether the proposed facility is consistent with the probable future development of the areas where it will be located, and with the location or probable location of existing and future streets and utilities.

(f) *Granting of permit.*

- (1) If the application is complete and appears to be correct, and if the proposed facility appears to be in compliance with this chapter, and if the city engineer recommends approval, then the city secretary shall issue the permit.

- (2) The permit shall be subject to all provisions of this chapter, regardless whether the permit so states.
- (3) The permit shall specify the date by which the construction of the facility must be completed.
- (4) The permit shall specify the points at which the facility may cross a public right-of-way.
- (5) A permit hereunder shall not be effective unless the permittee accepts and agrees to the terms of the permit, as shown by the permittee's authorized signature thereon, within 30 days after the city issues the permit.

(g) *Notice to proceed.* No person shall commence construction on a facility until such person has received a written notice to proceed from the mayor, even though a permit has been granted. The notice to proceed shall not be issued until the user has satisfied all insurance, guaranties of performance, fee payments, and other preconditions required by this chapter or by the permit.

(h) *Effect of actions by city.* Review and approval by the city of an application hereunder, the granting of a permit or certificate of registration hereunder, or the issuance of a notice to proceed hereunder shall not constitute any representation or warranty regarding the sufficiency of design or construction of such facilities.

(Ord. No. 2016-14, § 5, 6-20-2016)

Sec. 28-6. Construction regulations.

(a) *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal, and city regulations.

(b) *Construction standards.*

- (1) Technical specifications for pipe thickness and all other aspects of the construction must meet the highest safety standards.
- (2) Pipes in public street rights-of-way must be placed in casing, sleeves, concrete, or other protective measures acceptable to the city engineer.
- (3) However, this subsection (b) shall not apply to pipelines transporting hazardous liquids or carbon dioxide that are subject to regulation by federal or state law, nor to gas pipelines regulated by V.T.C.A., Utilities Code ch. 121, other state law or federal law.

(c) *Interference with use of property.* All construction within public rights-of-way shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.

(d) *Construction, hours, and duration.*

- (1) All excavations and other construction in the public rights-of-way shall be in conformance with the approved permit.
- (2) Work for which a permit is required may be performed at any time; provided, however, any such permitted work performed within 500 feet of any residential structure may only be performed between the hours of 7:00 a.m. and 8:00 p.m. Any permitted work performed outside of the above working hours must be approved in advance by the mayor or his or her designee.
- (3) All such construction and/or installation work shall be completed in the time specified in the permit. If the work cannot be completed within the specified time period, the user may request an extension from the mayor, or his/her designee, which extension shall not be unreasonably withheld.

(e) *Emergency repairs; restoration of service.* Notwithstanding subsection (d) of this section, during an emergency when, in the good faith judgment of the user, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, such user may perform repairs to facilities within public rights-of-way, which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to, or acquisition of, a construction permit from the city. In such cases, the user shall notify the mayor, or his or her designee, as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The user shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with then applicable city standards shall be corrected upon notice thereof from the city.

(f) *Restoration of public property.* Users shall not excavate public rights-of-way except as specifically authorized in a permit issued hereunder. Upon completion of work the user shall promptly restore the surface and all other points of the affected public right-of-way to a condition that equals or exceeds its condition prior to such construction. To such end, the restoration shall comply with the following requirements, but shall not be limited to those requirements:

- (1) Replacing all ground cover equal to or better than the type of ground cover damaged during work, either by sodding or seeding, or natural growth;

- (2) Installation of all manholes and handholes as required;
- (3) All bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the mayor or his or her designee;
- (4) Leveling of all trenches and backhoe lines;
- (5) Restoration of excavation site to city specifications;
- (6) Restoration of all landscaping and other affected structures such as sprinkler systems and mailboxes;
- (7) Where settlement occurs, returning and repairing or refilling the settled areas as often as necessary; and
- (8) In all other ways restore the property to its condition before the work in question.

All of such work of restoration shall be done pursuant to plans and specifications approved by the city engineer. The city engineer shall inspect all such restoration and report any deficiencies therein to the city and the user. The user shall correct those deficiencies immediately upon receipt of such report.

(g) *Maintenance period; delay in construction.* All restoration work shall be maintained by the user to the satisfaction of city for a period of one year from the date of completion of such restoration work. no public right-of-way shall be encumbered by construction, maintenance, removal, restoration, or repair work for a longer period than shall be necessary to execute such work. If there is an unreasonable delay by the user in restoring and maintaining the public right-of-way or restoring such public right-of-way after such excavations, construction, installation or repairs have been made, the city shall notify the user in writing that if such restoration or maintenance is not performed within five days of receipt of such notice, the city shall have the right to restore or repair the same and to require the user to pay the reasonable cost of such restoration or repair, including any and all required indirect administrative expenses incurred by the city, including salary, benefits, and proportionate office expense. Furthermore, if restoration is not satisfactory and performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete.

(h) *Routine maintenance.* Routine maintenance on facilities located within public rights-of-way shall be conducted in a manner that is consistent with applicable city regulations governing such work, if any.

(i) *Obstructions to traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities to facilities, other than for emergency repairs, shall require prior written notification to the city. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a user performs or causes to be performed any work over or across public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the user shall provide construction and maintenance signs and sufficient barricades and flagmen at such sites as are reasonably necessary to protect the public and the user's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest edition of the Texas Manual on Uniform Traffic Control Devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

(j) *Closing of streets.* The user shall not close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided, however, in cases of an emergency, the mayor or his or her designee may authorize the temporary closing of a public street or sidewalk to allow the user to complete such emergency repairs if, in the opinion of the mayor or his or her designee, such closing is necessary to protect the safety of the general public.

(k) *As-built construction drawings.* Within 120 days following completion of construction, or within 120 days following any material alteration or modification thereto, the user shall supply the city with a complete set of as-built construction drawings for the work, or for the material alteration or modification thereof, unless the user certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to this chapter, in which case such construction plans shall be marked accordingly by the city and filed as the permanent construction drawings. For the purposes of this section, a material alteration or modification of a facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the facilities with reasonable accuracy. In lieu of print documents, a user may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provide the city has the capability to access such information.

(l) *Inspector required during construction.* No person shall participate in any manner in any construction of a pipeline or facility unless a city inspector is present to monitor the operation for compliance with this chapter. The applicant or holder of a permit hereunder shall be responsible for the actual fees of the city inspector, and the fee deposit under this chapter shall apply to the inspector's fees, at the city's cost. (Ord. No. 2016-14, § 6, 6-20-2016)

Sec. 28-7. Facility signs.

(a) The user of every facility, new or existing, shall mark the facility with permanent signs in plain indelible lettering, showing the name of the user of the pipeline and the commodity being transported therein. Such signs shall be located in the pipeline right-of-way at each place where the pipeline intersects a public right-of-way and in addition along the pipeline right-of-way at intervals of no more than one-quarter of a mile.

(b) No person, except the owner or user of the pipeline or the duly authorized agent thereof, shall tamper with or remove any such sign. (Ord. No. 2016-14, § 7, 6-20-2016)

Sec. 28-8. Relocation or removal of facilities.

(a) To the extent authorized by law, the city may require a user to lower, bury, cover, relocate, or remove any facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any publicly funded city project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights, and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a user may be allowed to pay the additional costs incurred for the design and/or construction of any such publicly funded city project in a manner that would avoid the necessity of relocation or removal of the facilities. A user shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others.

(b) In the event of any such requirement for lowering, burying, covering, relocating, or removing facilities as herein provided, the user shall complete same as soon as is reasonably practicable following written notice thereof by the city. (Ord. No. 2016-14, § 8, 6-20-2016)

Sec. 28-9. Obsolete facilities.

User shall remove facilities from the public rights-of-way when such facilities are obsolete, are no longer in service, and create either visual blight or a nuisance to the public; provided, however, a user shall not be required to remove any facility for which renovation or restoration is planned by the user, and which renovation or restoration is completed within a reasonable period of time. When permanent structures in public rights-of-way are removed, the city shall be notified in writing of such removal.

(Ord. No. 2016-14, § 9, 6-20-2016)

Sec. 28-10. Tree trimming.

Users shall comply with all applicable rules and regulations of the city governing the trimming, grooming, or removal of trees or other similar vegetative matter.

(Ord. No. 2016-14, § 10, 6-20-2016)

Sec. 28-11. Erosion and stormwater measures.

Erosion control measures shall be implemented prior to commencement of any work. The user shall comply with stormwater management erosion control that complies with the city, state and federal laws, regulations, and guidelines. Requirements may include, but shall not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, and barricade fencing around open holes. High erosion areas shall require wire-backed silt fencing.

(Ord. No. 2016-14, § 11, 6-20-2016)

Sec. 28-12. Placement and depth of facilities.

(a) All pipelines constructed or installed on or after the effective date of the ordinance from which this chapter is derived shall be buried underground. Except as otherwise provided by applicable state, federal, or city regulations, all underground facilities shall be installed a minimum of whichever of the following is deepest:

- (1) With no less than six feet of cover; or
- (2) Such greater depth as the city engineer determines is prudent for the safety of persons or property.

(b) Except as otherwise provided hereinafter, no facilities shall be constructed or installed above ground unless approved in advance by the city. Pedestals, junction boxes, metering facilities and similar appurtenances may be placed above ground. Users shall not place facilities within public rights-of-way in such a manner as to

unreasonably interfere with existing electrical, cable, or telecommunications fixtures, water hydrants or mains, or drainage or sanitary sewer facilities, or other fixtures or personal property, and all such facilities shall be placed in such manner as not to interfere with usual travel or public and/or municipal use of the public rights-of-way. The city shall have the right to direct the location of facilities in the public rights-of-way. The installation, repair, construction, maintenance, and replacement of facilities in the rights-of-way shall be subject to inspection and approval by the city. Users shall cooperate fully with the city in conducting inspections. Users shall promptly perform remedial action required by the city pursuant to such inspection.

(Ord. No. 2016-14, § 12, 6-20-2016)

Sec. 28-13. Line location and identification.

User shall be responsible for obtaining line locations from the state one-call system, the city, and all affected utilities and others with facilities in public right-of-way, prior to any excavation. Use of the geographic information system (GIS) or plans of record shall not satisfy this requirement. The user shall be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the mayor or his or her designee, a user shall verify locations of potential conflicts with existing facilities by potholing, hand digging, or other similar method, prior to any excavation or boring. A user must obtain approval in advance from the mayor or his or her designee for the placement of all manholes, hand holes, or other devices or structures leading to underground facilities. Hand holes or manholes shall not be located in sidewalks unless approved by the mayor or his or her designee. Location flags shall not be removed while facilities are being constructed. All location flags shall be removed during the cleanup process by the user at completion of the work. The user, or his agent, contractor, or subcontractor, shall notify the mayor or his or her designee immediately of any damage to other utilities.

(Ord. No. 2016-14, § 13, 6-20-2016)

Sec. 28-14. Planning for capital improvement projects.

Users shall notify the city of existing and planned construction, maintenance, and other activities of the user within public rights-of-way. Except for emergencies, users shall coordinate all installations and construction within the public rights-of-way with the city's capital improvement programs. The city shall notify user within 60 days of the date city will demand relocation or removal of user's facilities to facilitate city's capital improvements program. Within 60 days following receipt of the city's notice thereof, each user shall provide a written report to the city identifying and describing generally

the existing facilities that are within or cross through the boundaries of each project identified by the city. The city and the user shall provide to each other the names of their respective designated officials who will serve as representatives for coordination of the exchange of information and planning on any such project. Users shall field locate their facilities, and identify same with surface markings within 15 working days following the city's request therefor.

(Ord. No. 2016-14, § 14, 6-20-2016)

Sec. 28-15. Liabilities and cash deposits.

(a) *Findings of fact.*

- (1) The city council finds and determines that the city is at risk of having to repair its streets and other city property, at significant expense, where pipelines cross city streets and on the routes to and from such sites, if users hereunder do not perform such repairs. Furthermore, the city council finds and determines that pipeline installations commonly involve intensive travel on city streets by heavy vehicles and equipment, resulting in significant wear and damage to city streets and other city property. The purpose of the cash deposit required by this chapter is to provide a fund to be applied toward all of the above costs and damages and toward all liabilities to the city hereunder, in order to avoid loss to the city. This section explains the reasons for the cash deposit required by this chapter only in general terms, and this section shall not be construed to limit the use of the deposit or the liability of any person to the city, as provided in this chapter.
- (2) The city council finds and determines that the cash deposit required by this section is necessary to protect the city concerning a permit for construction hereunder, but not for registration of an existing facility hereunder, because registration of existing facilities does not involve construction, disruption of city streets, or intensive use of city streets, as construction of facilities commonly do.

(b) *Liability for damages to any and all city property.*

- (1) A user shall be liable for the cost of repairing all damage to all property of any nature of the city, wherever located, directly or indirectly caused by the installation, construction, modification, maintenance, use, renovation, operation, repair, replacement, or removal of that user's facility within a public right-of-way. The liability under this section is not limited to city property at the site of the user's facility; rather, such liability includes, but is not limited to, such

damage to city roads going to and from the site of the facility, and to culverts, bridges, roadside ditches, signs, and any other fixtures, equipment, or facilities directly or indirectly associated with those roads.

- (2) The user's liability under this section applies regardless whether the damage to city property is caused by the user, a contractor or subcontractor of the user, or any other person.
- (3) The user's liability under this section applies regardless of whether the user has a permit, registration, or franchise under this section or any other ordinance or is required to have one.
- (4) The civil liability provided by this section applies regardless of whether a violation of this chapter occurs or whether any person is ever charged or convicted of the crime of violating this chapter.
- (5) The liability provided by this section is joint and several among all persons liable for the damage in question.

(c) *Additional obligations.* This subsection applies not only to any permit for construction hereunder, but also to any registration of an existing Facility hereunder. In addition to any other obligations, each user shall be liable to the city for all loss or damage to any city property of any nature whatsoever, resulting directly or indirectly from any of the following, regardless whether a cash deposit is paid or required:

- (1) Any permit or registration hereunder directly or indirectly related to that user;
- (2) Any facilities directly or indirectly related thereto;
- (3) Any facilities of that user;
- (4) Any act or omission by any user, its contractor, its subcontractor, or any of their respective subcontractors or the personnel of any of them, wholly or partly concerning any of the foregoing; or
- (5) Any condition of any property of any nature whatsoever wholly or partly concerning any of the foregoing.

(d) *Performance of obligations.* If the user fails to perform any obligation to the city in any way wholly or partly, directly or indirectly, related to this chapter, then the city may choose to take that action, but the city shall not be obligated to do so. If the city performs such obligation, then the user shall reimburse the city for the cost of doing so. In taking any such action, the city shall never be considered an agent or fiduciary of the user or any other person, and the city may act entirely or its own benefit and in its own self-interest.

(e) *Cash deposit for permit but not for registration alone.* An applicant for a permit hereunder shall deliver to the city, before the city issues a notice to proceed under the permit, a cash deposit be applied to any obligations of any nature of the permittee or applicant to the city hereunder, whether to be performed by the permittee or applicant, or by any contractor or subcontractor on behalf of the permittee or applicant, including, but not limited to, all costs of collection, defense, or litigation, attorney's fees, and interest related thereto.

(f) *Amount of cash deposit.* The amount of the cash deposit shall be the sum of the following:

- (1) A sum in accordance with the city's fee schedule, as it may be amended from time to time by city council; plus
- (2) An amount in accordance with the city's fee schedule, as it may be amended from time to time by city council, per each road crossing by a pipeline pursuant hereto for the following types of roads:
 - a. Two-lane asphalt (based on a road segment 22 feet wide and 60 feet long);
 - b. Four-lane asphalt (based on a road segment 44 feet wide and 60 feet long);
 - c. Two-lane concrete (based on a road segment 25 feet wide and 60 feet long, with lime stabilized subgrade and seven inches of concrete thickness);
 - d. Four-lane concrete (based on two road ways with widths of 25 feet each and 60 feet of length each, with lime stabilized subgrade and seven inches of concrete thickness); and
 - e. For other types of roads, the amount per crossing estimated by the city engineer to be the cost of repairing the road and related facilities for any damage that may be caused by a failure of the user to restore the road and related facilities at any stage of the work pursuant hereto; plus
- (3) The city manager is authorized to set an additional amount of the cash deposit required by this chapter, if it reasonably appears to the mayor, after consultation with the city engineer, that the foregoing amounts will not be adequate to compensate the city for the amounts to which the deposit is authorized to be applied, based on the site conditions, nature of the expected damages or costs, and the amounts of those damages or costs, and any other relevant factors. If at any time the mayor so determines that an additional deposit is necessary, for the reasons discussed in this subsection, then the mayor may increase the deposit required hereunder, and the permittee shall pay the additional cash deposit, even if the previous deposit has not been consumed.

(g) *Management of cash deposit.*

- (1) The city shall have the right to apply the cash deposit to any cost, damage, or loss of any nature whatsoever incurred by the city as a result, wholly or partly, directly or indirectly, of the user's failure to perform any obligation to the city, regardless whether such obligation is to be performed by the user or any contractor or subcontractor on behalf of the user, including, but not limited to, all of the city's costs of collection, defense, or litigation, all attorney's fees, and interest.
- (2) When the user believes that the construction authorized by the permit has been fully completed, the user shall so notify the city in writing. Within 30 days after receiving such notice, the city engineer shall inspect the construction to determine whether it has been completed, and to determine whether any city property requires repairs to which the cash deposit hereunder may be applied.
- (3) The city shall refund any unused portion of the cash deposit under this section to the person who paid it to the city, within 60 days after both of the following have occurred:
 - a. The city engineer has determined that all construction pursuant to the permit has been completed or finally abandoned; and
 - b. All obligations to which the deposit may be applied have been fully satisfied.
- (4) Before refunding any cash deposit hereunder, the city shall deduct all amounts to which that deposit may be applied. The refund of any deposit shall never be construed as a waiver of any amounts due or that may become due to the city, and such refund shall never impair the city's right to payment of any such amount.
- (5) The city shall under no circumstances be a fiduciary to any person as a result of the cash deposit. The cash deposit is solely for the benefit of the city, and the city shall have the right to act only in its own self-interest in dealing with the deposit.
- (6) The city shall not be obligated to pay interest on the deposit.
- (7) Delivering the deposit to the city shall not relieve the user of any obligation or limit the amount of any user of any obligation.
- (8) The cash deposit under this section is separate from the cash deposit for professional fees under other sections of this chapter. The provisions of this section shall also apply to the separate deposit for professional fees, but in the

event of a conflict of terms, this section shall apply to the cash deposit required by this section, and section 28-5 shall apply to the cash deposit required by section 28-5 for professional fees.

(Ord. No. 2016-14, § 15, 6-20-2016)

Sec. 28-16. Insurance and indemnity.

(a) *Insurance.* A user shall procure and maintain insurance in full force and effect at all times while its facilities are located in the public rights-of-way. The insurance shall cover all risks associated with the use and occupancy of such rights-of-way. Coverages shall be on an occurrence basis. The insurance requirements applicable to a user under this chapter shall be applicable to all persons performing work within public rights-of-way on behalf of such user unless such person is covered, or named as an additional insured, under the policies of insurance supplied by the user pursuant hereto. If any person other than a user is required to provide such insurance, the provisions referring to a user herein below shall be construed to mean such person.

- (1) *Risks and limits of liability.* The insurance, at a minimum, must include the following coverages and limits of liability:

<i>Coverage</i>	<i>Limit of Liability</i>
Worker's compensation and employer's liability	Statutory
Employer's liability	Bodily injury \$1,000,000.00 (each occurrence)
Commercial general liability:	
All premises/operations Independent contractors Products/completed operations Personal and advertising injury Contractual liability Explosion, collapse and underground hazards	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate
Comprehensive automobile liability, including coverage for loading and unloading hazards for:	
Owned/leased vehicles Non-owned vehicles Hired automobiles	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence
Excess coverage	\$5,000,000.00 per occurrence/combined aggregate in excess of limits specified for employer's liability, commercial general liability, and automobile liability

Note—Aggregate limits are for a 12-month policy period, unless otherwise indicated.

- (2) *Form of policies.* The insurance may be in one or more policies of insurance, the form of which must be approved by the state insurance commission.
- (3) *Issuers of policies.* The issuer of any policy shall be authorized to transact insurance business in the state.
- (4) *Insured parties.* Each policy shall name the user and the city (and the officers, agents, employees, and representatives of the city) as insured parties.
- (5) *Deductibles.* The user shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claims it may ever have for the deductible amounts against the city, its officers, agents, employees, and representatives.
- (6) *Cancellation.* Each policy shall expressly state that it may not be canceled or non-renewed unless 30 days advance notice of cancellation or non-renewal is given in writing to the city.
- (7) *Subrogation.* Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents, employees, or representatives.
- (8) *Liability for premium.* If any of the policies referred to above do not have a flat premium rate, and such premium has not been paid in full, such policy shall have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the user for any further premium payment and has no right to recover any premiums from the city.
- (9) *Other insurance clause.* The insurance policies shall provide that the other insurance clause does not apply to the city where the city is shown on the policy as an additional insured.
- (10) *Delivery of policies.* The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the user with the city secretary prior to the issuance by the city of a notice to proceed and prior to commencement of any work. Failure on the part of the user to furnish a new policy or certified copy thereof before the expiration date of any such policy, or failure to obtain a new policy before the date fixed for cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, shall constitute a violation hereunder.
- (11) *Liability of user.* The city's approval, disapproval, or failure to act regarding any insurance supplied by a user shall not relieve such person from full responsibility or liability for damages and accidents arising out of use or occupancy of public right-of-way. Neither bankruptcy, insolvency nor denial of liability by the insurance company shall exonerate the user from liability.

- (12) *Self-insurance.* A user may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection, provided the user submits to the city copies of its certificates of self-insurance from the state department of insurance, and its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A user shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a user's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If a user's self-insurance program ceases, or a user's assets or reserves are no longer sufficient to comply with the above coverage requirements, the user shall immediately notify the city of such lapse of coverage, and the user shall obtain commercial insurance, in accordance with the above requirements, within 30 days following such notice.
- (b) *Indemnity.*
- (1) To the extent permitted by law, each user, and each person performing work within a public right-of-way as a contractor on behalf of a user, shall indemnify and hold the city harmless as set forth below. If any person other than a user is required to provide such indemnity, the provisions referring to a user herein below shall be construed to mean such person.
 - (2) The user shall promptly defend, indemnify, and hold the city harmless against any and all claims, damages, losses of any nature whatsoever, costs, attorney's fees, and costs of defense, that are indemnified losses or indemnified claims. The term "indemnified losses" herein means:
 - a. Any losses arising wholly or partly, directly or indirectly, from user's facilities or from any act or omission of the user in any way connected with the facilities or any with any activities of user pursuant to this chapter;
 - b. Any claim, demand, suit, or judgment from any person against the city for any indemnified loss.
 - (3) For purposes of this indemnity, the acts or omissions of any contractor of the user, or of any officer, agent, employee, or representative, of the user or of any such contractor, shall be considered the acts and omissions of the user.
 - (4) This indemnity provision also includes liability arising from the city's negligence or alleged negligence, but only to the extent such liability arises out of a claim

that the city was negligent in authorizing the user to use or occupy the public rights-of-way, in regulating the conduct of the user, or in failing to prevent the user from acting in a negligent or wrongful manner.

- (5) The indemnity provision set forth above is solely for the benefit of the city and the user and is not intended to create or grant any rights, contractual or otherwise, to any other person.

(Ord. No. 2016-14, § 16, 6-20-2016)

Sec. 28-17. Revocation or denial of construction permits.

If any provision of this chapter is not followed, a building permit for the construction of facilities or a permit hereunder may be revoked. If a person has not followed the terms and conditions of this chapter with respect to work done pursuant to a prior permit, new permits may be denied or additional terms may be required.

(Ord. No. 2016-14, § 17, 6-20-2016)

Sec. 28-18. Appeal from denial or revocation of permit.

Appeals from denials or revocations of permits shall be to the city council. Appeals shall be filed with the city secretary within 15 days from the date of the denial or revocation. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

(Ord. No. 2016-14, § 18, 6-20-2016)

Sec. 28-19. Other laws.

(a) *Conflicts in terms.* In the event of conflict between the provisions of this chapter, any permit or other written authorization heretofore or hereafter approved by city, and any other ordinance or other law, the provisions of the stricter provision that provides more protection to the city and the city's assets shall control. However, any condition imposed pursuant to a zoning specific use permit shall be in addition to the requirements hereof.

(b) *Compliance with all applicable law.* Any permittee, user, and each person causing or participating in any construction of any facility shall comply with all applicable law concerning such permit, construction, and/or facility.

(Ord. No. 2016-14, § 19, 6-20-2016)

Sec. 28-20. Notice.

(a) Any notice required or permitted by this chapter shall be written and shall be deemed effective upon the earlier of:

- (1) Actual receipt regardless of the delivery method; or
- (2) Being deposited in the United States mail, postage prepaid, by certified or registered mail to the recipient party, addressed as stated in this section.

(b) The user's address for the notice shall be the address stated on user's registration or application for a permit hereunder. The city's address for the notice shall be: 12003 County Road 65, Iowa Colony, Texas 77583. A user may change its address for notice hereunder by giving notice of such change in the manner herein provided.

(Ord. No. 2016-14, § 20, 6-20-2016)

Sec. 28-21. Performance by city when another person fails to perform.

If any person other than the city fails or refuses to promptly perform any obligation pursuant to this chapter or to a permit granted under this chapter, then the city may perform such obligation at the expense of that person, but the city shall not be required to do so. The person whose obligation the city performed shall reimburse the city for the cost of doing so immediately upon request by the city, together with all attorney's fees and costs incurred in connection with such nonperformance by the person, performance by the city, or collection of any amount hereunder. Nothing herein shall be construed to make the city an agent or fiduciary of any other person.

(Ord. No. 2016-14, § 21, 6-20-2016)

Sec. 28-22. Variance.

The city council may grant a variance to any requirement of this chapter, if the council finds that, through no fault of the user or applicant, a strict enforcement of the requirements of this chapter would impose an undue hardship on the user or applicant, and that the variance will not unduly impair the purposes of this chapter.

(Ord. No. 2016-14, § 22, 6-20-2016)

Sec. 28-23. City's right to require franchise.

Regardless of any other provision from any source whatsoever, the city's right to require a franchise issued by the city and the payment of a percentage of gross revenue or any other amount as a franchise fee from any person, as a condition of using the city's streets or other property to carry on any trade or business, shall never be impaired

by this chapter, by any prior pipeline ordinance of the city, or by any registration, permit, or franchise previously or hereafter granted under this chapter or any prior pipeline ordinance of the city.

(Ord. No. 2016-14, § 23, 6-20-2016)

Chapter 29

RESERVED

Chapter 30

SIGNS

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ARTICLE I. IN GENERAL**Sec. 30-1. Purpose.**

The ordinance from which this chapter is derived is enacted to provide uniform standards for the location, spacing, height, lighting, and other regulation of signs within the city and its extraterritorial jurisdiction. The purpose of this chapter is to protect the health, safety, welfare, and enjoyment of the general public and to protect the public from injury that may be caused by the unregulated construction of signs. The regulations in this chapter intend to:

- (1) Enhance the economic value of the landscape by avoiding visual clutter, which is potentially harmful to property values and business opportunities;
- (2) Promote the safety of persons and property by providing that signs do not create a hazard, due to collapse, fire, collision, weather or decay;
- (3) Protect the safety and efficiency of the city's transportation network by reducing the confusion or distraction to motorists and enhancing motorists' ability to see pedestrians, obstacles, other vehicles and traffic signs;
- (4) Protect adjacent and nearby properties from the impact of lighting, size, height and location of signs; and
- (5) Preserve, protect and enhance areas of historical, architectural, scenic and aesthetic value.

(Ord. No. 2016-19, § 1, 8-15-2016)

Sec. 30-2. Applicability of chapter.

This chapter applies to all signs within the city's corporate limits and within the city's extraterritorial jurisdiction, including both on-premises and off-premises signs.

(Ord. No. 2016-19, § 2, 8-15-2016)

Sec. 30-3. 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:

Agricultural activity signs means any temporary sign indicating an agricultural related activity that occurs on an agricultural use property, such as sale of agricultural products produced on site.

Balloon sign means an inflatable bag made of nonporous material that is filled with air or gas and when inflated exceeds 24 inches in diameter. Balloon signs are a type of wind device sign.

Banner sign means a sign with or without characters, letters, illustrations, or ornamentations applied to cloth, paper, flexible plastic, or fabric of any kind with only such material for backing. banner signs are a type of wind device sign and includes pennants and streamers.

Billboard sign or *billboard* means a freestanding sign that meets at least one of the following criteria:

- (1) The sign contains more effective sign area than this chapter would allow for a monument sign at the same location (either 96 or 120 square feet, depending on the circumstances, as herein provided; without limiting the generality of the foregoing, see section 30-62);
- (2) The sign is greater than ten feet high from the natural ground to the top of the sign at any point; or
- (3) There is more than six inches of space between the bottom of the sign and the natural ground at any point.

Celebratory sign means any temporary sign announcing personal or family celebrations, such as a personal birthday, wedding anniversary, birth of a child relating to the property owner or the property owner family and would be considered an on-premises sign without any commercial advertising.

Construction sign means a temporary sign announcing new buildings or projects, erected after the commencement of building construction or site development.

Construction site means a tract or parcel of land under the same ownership where construction activity relating to a single building or structure or an associated group of buildings or structures occurs. Each individual building or structure can be considered a construction site when multiple buildings or structures are under construction on a single combined site.

Curbline means an imaginary line drawn along and parallel to the back of curb edge of the pavement of a street, public or private, that provides primary access to a property.

Effective area means the surface area of a sign face or panel, but does not include the supporting structure of a sign. Other provisions of this chapter provide additional specifications for measuring the effective area.

Electronic sign means a sign with the ability to have a fixed or changing display or message composed of a series of lights that may be changed through electronic means. The term "electronic sign" is also referred to as a digital sign and is not considered an illuminated sign.

Flag sign means a flexible fabric material, usually rectangular in shape, that is specifically designed for display by attaching it to the lanyard of a flagpole.

Flagpole means a freestanding pole with an attached lanyard that is permanently affixed to the ground or a building and is designed for and is intended to be used for the display of one or more flags.

Freestanding sign means a detached sign anchored in or attached to the ground. The term "freestanding signs" includes monument signs, temporary freestanding signs, and temporary freestanding special activity signs.

Human sign means a sign held by or attached to a human or living being for the purposes of advertising or otherwise drawing attention to a business, commodity, service or product. The term "human sign" may also include a person dressed in costume for the purpose of advertising or drawing attention to a business, commodity, service or product.

Illuminated sign means a sign internally lighted by any electrical light source behind the sign face. illuminated signs do not include signs illuminated by an exterior light source shining upon the sign.

Monument sign means a freestanding sign, generally having a low profile with a horizontal length exceeding the vertical height where the base of the sign structure is on the ground or a maximum of six inches above the lowest point of the ground adjacent to the sign such that the sign has the appearance of a solid base. The effective sign area shall cover no more than 60 percent of the total sign area.

Nonresidential district means, within the city limit, any area within a zoning district designated as an MU mixed-use zoning district; an MH manufactured housing zoning district; or a BR, business retail zoning district which are not considered a residential zone in this chapter or any nonresidential area within a planned unit development overlay zone.

Nonresidential use means, within the extraterritorial jurisdiction of the city, any area, property, or tract that is not vacant and does not include a single family detached residential use or any area, property or tract that is vacant with no definable structural use. The term "vacant" includes any land used for agricultural purposes.

Off-premises sign means any sign that pertains to any business, commercial transaction or activity, or any commercial or noncommercial good, product, service, entity, organization, or activity not located on the same premises where the sign is located, or which directs persons to any premises other than where the sign is located. In addition, any sign that is not an on-premises sign is an off-premises sign.

On-premises sign means any sign which pertains only to any of the following located on the same premises as the sign: any business, commercial transaction or activity, or any commercial or noncommercial good, product, service, entity, organization, or activity, other than the sign itself.

Pennant sign means any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, string, stake or temporary pole, usually in a series, designed to move in the wind. Pennants also include streamers and are a type of banner sign.

Personal property activity sign means a sign which pertains to restrictions of personal use on a private property, such as no hunting or no trespassing, posted so that it does not exceed two square feet in area.

Portable sign means a sign whose principal supporting structure is intended, by design, use or construction to be used by resting upon the ground for support and which may be easily moved or relocated or reused. The term "portable signs" includes, but shall not be limited to, signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier or other non-motorized mobile structure, with or without wheels, and A-frame and other similar signs, resting or leaning on the ground or other structures, but not permanently attached thereto.

Premises means:

- (1) For any developed property, the area of real property which encompasses all the buildings, structures, appurtenances and contiguous land devoted to a common use and not separated by a public street, such as a shopping center; or
- (2) For undeveloped property, the area of real property designated as a lot on a plat approved in accordance with law and filed with the county clerk's office, or an un-platted tract of land as conveyed by deed or operation of law and recorded in the deed records of the county.

Residential district means, within the city limits, any area within a zoning district designated as SFR single-family residential dwelling and includes those residential

areas within a planned unit development overlay zone. Within this chapter, an MU mixed-use zoning district, an MH manufactured housing zoning district, and a BR business retail zoning district are not considered residential zones.

Residential use means, within the extraterritorial jurisdiction of the city, any area, property, or tract that includes a single family detached residential use or any area, property or tract that is vacant with no definable structural use. The term "vacant" includes any land used for agricultural purposes.

Right-of-way (ROW) means a strip of land that allows for the passage of people or goods. The term "right-of-way" includes passageways such as freeways, streets, bike paths, alleys, and walkways. A public right-of-way is dedicated or deeded to the public for public use.

Setback means the amount of space required between a property line and a point where a structure or sign can be built.

Sign means any surface, material, structure, or device used for visually advertising, visually publicizing, visually displaying information about, or visually communicating about a business, commercial transaction or activity, or any commercial or noncommercial good, product, service, entity, organization, or activity, with or without the display of letters, words, characters, designs, pictures, symbols, or other information.

Sign base means the area of the sign that does not contain letters, words, characters, designs, pictures or other information and serves as the structure or support for the sign face. A sign base on a permanent sign must be a solid form; poles are a permitted sign base for temporary freestanding signs and temporary freestanding special activity signs.

Sign face means the display area of a sign that includes the effective area of the sign.

Special exception means a city council approved adjustment to a requirement of this chapter that is issued under section 30-36.

Stake sign means a sign whose supporting structure is so designed and shaped, usually by making one end pointed, so as to be erected and used by pushing, pounding, hammering or forcing it into the ground so as to allow quick and easy placement, removal or relocation. Examples of stake signs include real estate, contractor services, and event signs.

Subdivision entrance sign means a sign identifying an entrance or exit of a neighborhood or subdivision. subdivision entrance signs are only allowed to be located at entrances/exits along portions of streets that do not have adjacent single-family resi-

dential use with direct driveway access between the single-family residential lot and the street and would be allowed along major arterials, minor arterials and collectors designated on the city major thoroughfare plan and as otherwise designated major thoroughfares or collectors within an approved PUD plan.

Temporary freestanding sign means a freestanding sign located on a property temporarily. Temporary freestanding signs are classified as either temporary freestanding signs or temporary freestanding special activity signs as defined in this chapter.

Wall sign means any sign wholly affixed to, supported by or painted upon the exterior wall or window of any building. Signs on permanent awnings attached to buildings are classified as wall signs.

Wind device sign means any banner, pennant, balloon or similar sign made of cloth, canvas, plastic or other flexible material, with or without a frame or other supporting structure, that moves or is designed or intended to move or blow in the wind.

Window and door sign means a sign affixed to or mounted behind the interior surface of a window or door or placed immediately behind a window pane.
(Ord. No. 2016-19, § 1, 8-15-2016)

Sec. 30-4. Exemptions and affirmative defenses.

(a) *Exemptions.* Except for the prohibitions in section 30-5, this chapter does not apply to the following types of signs, which may be erected or constructed without a sign permit:

- (1) Governmental signs. Any sign that is:
 - a. Erected or maintained pursuant to and in discharge of any governmental function;
 - b. Required by law, ordinance or governmental regulation; or
 - c. Located on property owned, leased or under the control of a governmental entity.
- (2) Private traffic control. Signs on private property, containing no advertising, that include directional information and use information (i.e., amenities area with directional arrow) including parking, entrance and exit signs. The maximum effective area for private traffic control signs shall be three square feet and the maximum overall height above the ground shall not exceed four feet.
- (3) Railways signs. Any sign on railway property placed or maintained in reference to the operation of the railway.

- (4) Utility and hazard signs. Signs marking utility or underground communication or transmission lines and hazards.
- (5) Plaques. Historical and commemorative plaques of recognized historical societies and organizations, if the signs are less than 15 square feet in effective area.
- (6) Mailboxes and addresses. Addresses, address markers, and names located on mailboxes.
- (7) Vehicle signs. Signs displayed or used upon vehicles and trailers, unless the vehicle or trailer is permanently stationed or regularly used at a fixed location to serve the same or similar purpose of a permanent or portable sign.
- (8) Athletic field signs. Signs located on the field side of scoreboards and fences of athletic fields no taller than the height of the fence.
- (9) Signs not visible from street. Any sign not visible from a public street.
- (10) Holiday signs. Temporary signs, including holiday lights, containing only holiday messages and no commercial advertising.
- (11) Unused signs. Signs being manufactured or transported and not used for advertising.
- (12) Signs on outdoor machines, devices, and equipment. Signs located on outdoor machines, devices or equipment which display the trademark, trade name, manufacturer, cost, or operating or service instructions or similar information but do not advertise the business where located. This exemption includes signs on coin-operated vending machines, fuel-dispensing pumps, telephone facilities, automatic teller machines, automotive vacuum cleaners, amusement rides, and similar machines, devices, or equipment.
- (13) Political signs. Signs that contain only a political message and that are located either:
 - a.
 1. On public or private real property with the consent of the property owner; but
 2. Unless the city consents, not in the right-of-way of a city street or highway, and not on the portion of any other real property subject to an easement or other encumbrance that allows the city to use the property for a public purpose; or
 - b. During the early voting period or the voting period, on property of the city used as a polling place, provided that:
 1. No such sign shall be located closer than 100 feet to an outside door through which a voter may enter the building in which a polling place is located;

2. No such sign shall be placed where it significantly blocks the public's view of another sign that was already lawfully in place before the sign doing the blocking; and
 3. There shall not be more than two signs under this subsection on the same premises on the same side (whether for or against) of the same candidate or proposition. See also V.T.C.A., Election Code §§ 61.003 and 85.036, concerning signs on premises of polling places.
- c. For purposes of this exemption:
1. A political sign may not:
 - (i) Have an effective area greater than 36 square feet, including the surface area of a sign face or panel, but not the supporting structure of the sign;
 - (ii) Be more than eight feet high;
 - (iii) Be illuminated or electronic; or
 - (iv) Have any moving element.
 2. The term "early voting period" as used herein shall be defined by V.T.C.A., Election Code § 85.001.
 3. The term "voting period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.
 4. Signs advertising for or against the passage of any measure or the election of any candidate in a then scheduled election must be removed within 14 days after the election to which they relate. However, such signs may remain in place between a primary election and general election, and between an election and a run-off, provided that the measure or candidate will be on the general or run-off election ballot, as applicable; and such signs must be removed within 14 days after such general election or run-off.
- (14) Electronic signs operated by a public agency that communicate a public service or public announcement, such as, but not limited to, state department of public safety and state department of transportation electronic message signs.
- (15) Signs permitted by court order.
- (16) Agricultural activity signs, celebratory signs, and personal property activity signs, as defined in this chapter.

(b) *Affirmative defenses; antique signs.* It is an affirmative defense to prosecution under this chapter that the sign is an antique sign. The term "antique sign" means a sign that is all of the following:

- (1) At least 35 years old;
 - (2) Not displayed for commercial purposes;
 - (3) Generally acknowledged and understood to have value as an antique to dealers and collectors of antiques;
 - (4) Not taller than eight feet; and
 - (5) Not larger than 64 square feet.
- (Ord. No. 2016-19, § 4, 8-15-2016)

Sec. 30-5. Prohibited signs.

It is unlawful for any person to erect, install, construct, display, maintain, reconstruct, place, locate, relocate or make use of any of the following signs, and the prohibitions in this section govern and control over the exemptions and affirmative defenses in section 30-4:

- (1) Revolving or moving signs including any sign that has parts that are caused to physically move by a motor or any other means, and the movement is visible from the exterior of the sign.
- (2) Portable signs.
- (3) Signs located on a roof or attached to a building and projecting above the highest point of the façade or parapet.
- (4) Signs that are deteriorated, dilapidated, or unsafe as determined by the building official or his assigns.
- (5) Signs located on or attached to a street light, utility pole, hydrant, bridge, traffic-control device, street sign, or other city-owned building, facility, structure, or equipment, without the consent of the city. This subsection is not intended to discourage the city from consenting to banners on street light poles that were originally designed and installed with integral brackets intended to support banners, but nothing in this section shall be construed to waive or impair the city's right to grant or withhold such consent.
- (6) Signs that do not comply with any city ordinance or other applicable law.
- (7) Signs located on any tree or shrub.

- (8) Signs located or illuminated so that they obscure or interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the view of approaching, emerging or intersecting traffic, or prevent any traveler on any street from obtaining a clear view of approaching vehicles as determined by the building official or his assigns.
- (9) Signs, illuminated from within or without, which:
 - a. Are illuminated to such intensity or without proper shielding so as to constitute a hazard to the operation of motor vehicles upon a public street or substantially interfere with the reasonable enjoyment of residential property as determined by the building official or the city engineer using the criteria indicated in section 30-68 as a point of reference; or
 - b. Have any type of intermittent illumination, including flashing, fading, revolving or blinking lights, or any type of moving, traveling or changing message by means of lights or illumination.
- (10) Any sign that violates any sight visibility regulations of the city.
- (11) Off-premises wall signs.
- (12) A freestanding sign located on any railroad right-of-way that is not used for or related to railroad operations.
- (13) Any sign which is located on or is part of an awning if the awning is translucent and contains any form of interior illumination that is intended to or has the effect of making the sign more readily visible from a public street.
- (14) Human signs.
- (15) Billboard signs.
- (16) Any sign or type of sign not expressly authorized by this chapter.
(Ord. No. 2016-19, § 5, 8-15-2016; Ord. No. 2017-11-1, § 1, 5-30-2017)

Sec. 30-6. Conflicts.

When any regulation governing signs contained in the zoning or subdivision platting regulations conflict with provisions contained in this chapter, the more restrictive regulation will apply.

(Ord. No. 2016-19, § 6, 8-15-2016)

Sec. 30-7. Findings of fact.

The city council hereby finds the following facts:

- (1) All statements of fact in the preamble or any other part of the ordinance from which this chapter is derived are true;
 - (2) This chapter promotes public health and safety by, among other methods, reducing distractions of drivers of motor vehicles;
 - (3) This chapter promotes the public welfare; and
 - (4) A sign that violates this chapter is a public and private nuisance.
- (Ord. No. 2016-19, § 7, 8-15-2016)

Secs. 30-8—30-32. Reserved.**ARTICLE II. ADMINISTRATION AND ENFORCEMENT****Sec. 30-33. Application and permits.**

(a) The application for a sign permit and the applicable fee, as identified in the fee schedule adopted by the city, must be submitted on such forms provided by the city and must be accompanied by the information, drawings and descriptive data required by the building official or his assigns to ensure proper regulation of the sign and to ensure compliance with this chapter.

(b) Except as otherwise provided by this chapter, no sign shall be constructed, erected, placed, installed, altered except for the message thereon, relocated within the city or its extraterritorial jurisdiction, or used, without a valid sign permit issued by the city under this chapter.

(Ord. No. 2016-19, § 11, 8-15-2016)

Sec. 30-34. Issuance of permits.

If the plans and specifications for a sign set forth in any application for a permit conform to all of the requirements of this chapter and other city regulations, the building official or his assigns will issue the appropriate permit. The city shall review and respond to a completed sign permit application within 30 days.

(Ord. No. 2016-19, § 12, 8-15-2016)

Sec. 30-35. Revocation.

A sign permit may be revoked for a violation of this chapter. The building official or his assigns shall give prior written notice of a proposed revocation to the permittee and an opportunity to respond to the reasons for revocation prior to making a decision thereon.

(Ord. No. 2016-19, § 13, 8-15-2016)

Sec. 30-36. Appeals; variances; special exceptions.

(a) *Appeals.* Any person aggrieved by a decision of the building official or his assigns in the application of this chapter may appeal the decision to the planning commission of the city, who, after due deliberation, will forward a recommendation to the city council for final determination by the city council. The aggrieved person appealing shall have the opportunity to be heard by the planning commission before it makes its recommendation to the city council, and the opportunity to be heard by the city council before it makes its decision. The city secretary shall notify the appealing person, in writing, of the times, dates, and places of the consideration of the appeal by the planning commission and the city council.

(b) *Variances.* The planning commission may also hear a variance request and make a recommendation to city council following these criteria if a variance recommendation is requested directly from the planning commission without a decision by the building official or his assigns:

- (1) The planning commission shall have the authority to recommend a variance from the provisions of this chapter if:
 - a. The granting of the variance would not in any way be materially detrimental to the subject property where the proposed sign is to be located, to any other property or improvements, or to the integrity, soundness, or safeness of the sign;
 - b. The granting of the variance would not be materially detrimental to the public health, safety, or well-being;
 - c. The literal enforcement of this chapter would create an undue hardship in the case in question; and
 - d. The granting of the variance would not in any way be contrary to the purpose or intent of this chapter.
- (2) The planning commission may recommend appropriate conditions to the granting of a variance, in order to safeguard the character of the area, to protect

property owners, and to protect the public, and such other conditions as the planning commission deems appropriate for the public health, safety, and welfare. Those conditions shall be expressed in the recommendation of the planning commission concerning the variance. Violation of any such condition, if approved by city council, shall be a violation of this chapter.

- (3) The planning commission may also recommend to the city council to reverse, affirm, or modify, in whole or in part, an order, requirement, decision, or determination of the building official or his assigns, or other person enforcing this chapter, provided that an appeal from such action of the enforcing official is filed with the city secretary no later than 30 days after such action.
- (4) An applicant for a variance must be an owner of an interest in the sign or subject property to be affected by the variance or must have a contractual interest in such sign or property.
- (5) An applicant for a variance must provide all information requested by the planning commission, the building official or his assigns, the city manager, city attorney, or any other person enforcing this chapter. An applicant for a variance may provide other relevant information, but the planning commission shall have discretion to determine what information is relevant and to limit the quantity of information.
- (6) The city council will review the recommendation of the planning commission and render a final decision that agrees with, disagrees with, or agrees with conditions the recommendation of the planning commission using the same review criteria as indicated in subsections (b)(1) through (4) of this section, inclusive.
- (7) The applicant for a variance shall have the opportunity to be heard by the planning commission before it makes its recommendation to the city council, and the opportunity to be heard by the city council before it makes its decision. The city secretary shall notify the applicant in writing of the times, dates, and places of the consideration of the application by the planning commission and the city council.

(c) *Special exceptions.*

- (1) The planning commission shall have the authority to consider and recommend a special exception from the provisions of this chapter, other than those in section 30-5, when the planning commission finds that each of the following conditions exist:
 - a. Special circumstances exist that are unique to the land or the proposed development and that are not generally applicable to all other land or developments in the city or its extraterritorial jurisdiction that justify modification to the standards that otherwise apply;
 - b. The proposed special exception will achieve a result contemplated by the standards criteria of this chapter;
 - c. The modification of the standard requested is not disproportionate to the requirement of the standard; provided, however, that the planning commission cannot consider a special exception if the modification of the standard is 33 percent or greater. A modification of a measurable standard by ten percent or less shall be presumed to be not disproportionate;
 - d. The intent and general purposes of this chapter will be preserved and maintained; and
 - e. The granting of the special exception would not in any way be injurious to the public health, safety, or welfare.
- (2) The planning commission may recommend appropriate conditions to the granting of a special exception, in order to safeguard the character of the area, to protect property owners, and to protect the public, and such other conditions as the planning commission deems appropriate for the public health, safety, and welfare. Those conditions shall be expressed in the recommendation of the planning commission concerning the special exception. Violation of any such condition, if approved by city council, shall be a violation of this chapter.
- (3) An applicant for a special exception must be an owner of an interest in the sign or subject property to be affected by the special exception or must have a contractual interest in such sign or property.
- (4) An applicant for a special exception must provide all information requested by the planning commission, the building official or his assigns, the city manager, city attorney, or any other person enforcing this chapter. An applicant for a

special exception may provide other relevant information, but the planning commission shall have discretion to determine what information is relevant and to limit the quantity of information.

- (5) The city council will review the recommendation of the planning commission and render a final decision that agrees with, disagrees with, or agrees with conditions the recommendation of the planning commission using the same review criteria as indicated above in this subsection (c).
- (6) The applicant for a special exception shall have the opportunity to be heard by the planning commission before it makes its recommendation to the city council, and the opportunity to be heard by the city council before it makes its decision. The city secretary shall notify the applicant in writing of the times, dates, and places of the consideration of the application by the planning commission and the city council.

(Ord. No. 2016-19, § 14, 8-15-2016)

Secs. 30-37—30-60. Reserved.

ARTICLE III. REGULATIONS

Sec. 30-61. Classification of signs.

For purposes of applying these regulations, all signs are defined and classified as follows:

- (1) Freestanding signs. This article allows only the following three types of freestanding signs and, regardless of any other provision, all other freestanding signs are hereby prohibited:
 - a. Monument signs;
 - b. Temporary freestanding signs (not including temporary freestanding special activity signs); and
 - c. Temporary freestanding special activity signs.
- (2) Wall signs.
- (3) Window and door signs.
- (4) Stake signs.

- (5) Wind device signs.
 - a. Banner signs; and
 - b. Balloon signs.
 - (6) Flags and flagpoles.
- (Ord. No. 2017-11-1, § 4, 5-30-2017)

Sec. 30-62. Freestanding signs.

(a) *Manner of measurement.*

- (1) *Size.* The size of a sign is determined by its effective area.
 - a. For monument signs, the effective area includes the entire structure on which the sign is placed or mounted, but not including the portion of the sign base that extends directly below the sign face (see Figure 30-62A).

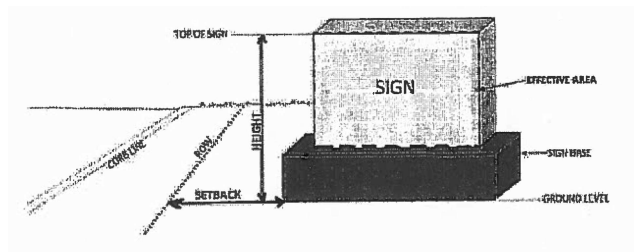


Figure 30-62A

- b. Temporary freestanding signs, temporary freestanding special activity signs and subdivision entrance signs are measured by the length and height of the sign face or display area only, not including the measurements of the support structure (see Figures 30-62B and 30-62C).

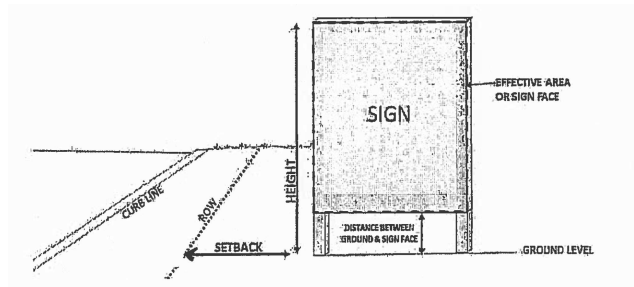


Figure 30-62B

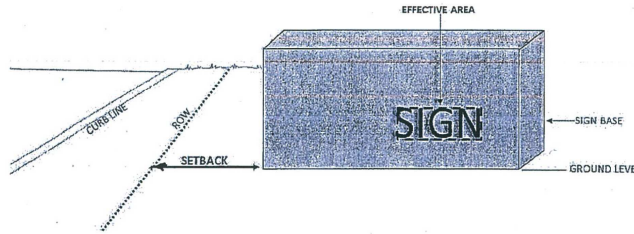


Figure 30-62C

- (2) *Setback.* The setback is measured perpendicularly from the property line to the closest point of the sign.
 - (3) *Height.* The height of a freestanding sign is measured from the natural ground level at the base of the sign to the highest point of the sign.
 - (4) *Width.* The width of a freestanding sign is measured along a line drawn from the outermost edges of the sign, parallel to the ground.
- (b) *Monument signs.* Except as otherwise provided in this section, monument signs must comply with the following requirements:
- (1) *Size.* The following table details size requirements for monument signs:

Table 30-62. Requirements for Monument Signs

<i>Requirements</i>	<i>Residential Zoning District or Residential Use</i>	<i>Nonresidential Zoning District or Nonresidential Use Not Having Frontage on State Highway 288 or Having Frontage on State Highway 6</i>	<i>Nonresidential Zoning District or Nonresidential Use with Frontage on State Highway 288</i>
Maximum effective area (sq. ft.)	36	60	96
Maximum height (ft.)	4	6	8
Minimum setback (ft.)	3	0	0
Number per feet of frontage	1/500	1 for the first 250, 1 for each additional 250, maximum 2 per tract	1 for the first 250, 1 for each additional 500

- (2) *Location; additional spacing requirements.*
 - a. A monument sign may not be located within 50 feet of another freestanding sign on another premises.

- b. A monument sign may not be located within 125 feet of another freestanding sign on the same premises.
 - c. A monument sign may not be placed or located within the public right-of-way unless the city gives its written consent to the encroachment.
- (3) *Materials.* All monument signs must be designed and constructed to substantially appear as a solid mass, such as a cinderblock, rectangle, or square, from ground level to the highest portion of the sign. All monument signs must be made of masonry, metal, routed wood planks or beams, or durable plastic, with durable surface ornamentation such as ceramic tile or such.
- (4) *Number.* All signs with one common supporting structure are counted together as one sign for purposes of applying the regulations on the number of monument signs allowed on any one premises.
- (5) *Permit.*
- a. It is unlawful for any person to place, locate, relocate, erect, construct, replace or alter the size or shape of any part of a monument sign, including the face or other integral part, or to thereafter make use of a sign without having first secured a sign permit from the city as required, except as otherwise provided in this article.
 - b. A sign permit is not required to repaint a sign or to restore a conforming sign to its original condition if the sign otherwise complies with this article, or to periodically change only the letters, numbers or message portion of a conforming sign.
 - c. Unless earlier revoked, a sign permit to construct, erect or place a monument sign is valid for 180 days from the date of issuance.
- (6) *Additional regulations.*
- a. Size exception for monument signs in nonresidential districts or nonresidential uses with State Highway 288 frontage. Any real property located in a nonresidential district or nonresidential use with State Highway 288 frontage that would be allowed to have three or more monument signs under Table 30-62 may choose to have one monument sign with a maximum effective area of 120 square feet and a maximum height of ten feet and another monument sign with a maximum effective area of 96 square feet and a maximum height of eight feet, in lieu of all other monument signs allowed under Table 30-62.

- b. Off-premises signs and on-premises signs in the ETJ. The regulations of Table 30-62 applicable to nonresidential zoning districts apply to all off-premises and on-premises monument signs located in the city's extraterritorial jurisdiction based on land use.
 - c. Subdivision entrance signs must meet the requirements for monument signs in this article but have a different method of calculating the maximum effective area, see subsection (a) of this section.
 - d. A monument sign shall not contain off-premises advertising.
- (c) *Temporary freestanding sign.*
- (1) *Size.* A temporary freestanding sign must have a maximum effective area of 32 square feet and a maximum height of eight feet.
 - (2) *Location.* A temporary freestanding sign must comply with the following spacing requirements:
 - a. For properties in residential zoning districts or residential uses, spacing requirements are one per 500 feet.
 - b. For properties in nonresidential zoning districts or nonresidential uses, spacing requirements are one per the first 125 feet and one per each additional 250 feet.
 - c. A temporary freestanding sign may not be located within 50 feet of any freestanding sign on other premises.
 - d. A temporary freestanding sign may not be located within 125 feet of any freestanding sign on the same premises.
 - e. A temporary freestanding sign may not be placed or located within the public right-of-way unless the city gives its written consent to the encroachment.
 - (3) *Materials.* A temporary freestanding sign must be made of plywood, fiber cement board, or durable plastic. Temporary freestanding signs may not be lighted or illuminated and may not be an electronic sign.
 - (4) *Permit.*
 - a. It is unlawful for any person to place, locate, relocate, erect, construct, or alter the size or shape of any part of a temporary freestanding sign, including the face or other integral part, or to thereafter make use of a sign without having first secured a sign permit from the city as required, except as otherwise provided in this article.

- b. A new sign permit is not required to repaint or maintain a temporary freestanding sign or to restore a conforming and permitted temporary freestanding sign to its original condition if the sign otherwise complies with this article, or to periodically change only the letters, numbers or message portion of a conforming temporary freestanding sign.
 - c. A temporary freestanding sign permit is valid on any one temporary freestanding sign on one premises for a maximum of 75 days in any one calendar year. If locating a temporary freestanding sign for more than 75 days, the temporary freestanding sign permit must be renewed prior to the expiration of the then valid sign permit.
- (5) *Additional regulations.* A temporary freestanding sign shall not contain off-premises advertising.
- (d) *Temporary freestanding special activity signs.*
- (1) *Types of temporary freestanding special activity signs.*
- a. *Temporary special events signs.* Signs announcing special events, including, but not limited to, auction, grand opening, new management, going out of business, and events sponsored by religious, charitable, or public service groups and organizations. Businesses, individuals, or organizations may display up to six times in a 12-month period, a maximum of two signs for up to seven continuous days prior to a special event. Such signs shall not exceed 16 square feet in area, and shall be removed immediately following the end of the event.
 - b. *Temporary farm products signs.* Temporary on-premises signs announcing the availability of seasonal farm products for 60 days which may be renewed on a case-by-case basis. The number of signs shall not exceed two and the total area of all such signs shall not exceed 20 square feet, nor shall any sign exceed six feet in height.
 - c. *Temporary business occupation signs.* Temporary on-premises signs identifying a business in shopping centers, multiple establishment on the same lot, or office and/or industrial centers until the completion of the signs of the shopping center, office and/or industrial center. The length of time for displaying a temporary business occupation sign shall not exceed 90 days.
 - d. *Temporary construction signs.* Temporary construction signs announcing new buildings or projects, temporary geographical directional signs, erected after the commencement of building construction or site development

shall be limited to two construction signs per construction site, each sign not to exceed 24 square feet in area and eight feet in height. The temporary sign shall be removed by the time a permanent sign is erected or a certificate of occupancy for the building is issued, whichever occurs first. Temporary geographical directional signs shall be removed when the initial development of the subdivision is complete.

- (2) *Size.* If not indicated otherwise in this section, a temporary freestanding special activity sign must have dimensions of four feet in width and eight feet six inches in height. The plywood face of the sign must be four feet by eight feet where no part of the frame or posts extend beyond the sign faces at the sides or top of the sign. The face of the sign must extend down to within six inches of the ground.
- (3) *Location.* If not indicated otherwise in this section, a temporary freestanding special activity sign shall comply with the following setback and spacing requirements:
 - a. For properties in residential zoning districts or residential use, spacing requirements are one sign per 500 feet of frontage.
 - b. For properties in nonresidential zoning districts or nonresidential use, spacing requirements are one sign for the first 125 feet of frontage and one sign for each additional 125 feet of frontage.
 - c. A temporary freestanding special activity sign may not be located within 50 feet of any freestanding sign on another premises.
 - d. A temporary freestanding special activity sign may not be located within 125 feet of any temporary freestanding special activity sign on the same premises.
 - e. An off-premises temporary freestanding special activity sign may not be located within 2,000 feet of another off-premises temporary freestanding activity sign.
 - f. A temporary freestanding special activity sign may not be placed or located within the public right-of-way unless the city gives its written consent to the encroachment.
 - g. Temporary freestanding special activity signs located on sites with State Highway 288 frontage shall be allowed a maximum area and height of two times the standard required herein, but spaced twice the minimum distance indicated.

- (4) *Materials.* If not indicated otherwise in this section, a temporary freestanding special activity sign shall be constructed as follows:
- a. The sign face must be fabricated of one-half inch thick medium density overlay plywood or treated wood or fiber cement board mounted on both sides of a frame if the sign is placed perpendicular to the property line;
 - b. A temporary freestanding special activity sign may not be electronic, lighted or illuminated;
 - c. A temporary freestanding special activity sign must be anchored by two- to four-inch by four-inch treated wood posts or steel posts anchored in sand or concrete filled holes extending down at least two feet in the ground; and
 - d. The plywood face must be securely held to the frame by galvanized nails or screws installed with the heads flush to the surface, all seams are tight, all holes are filled and sanded smooth, and all surfaces are coated with primer and painted with good quality exterior-grade paint.
- (5) *Permit.* Unless indicated otherwise in this section:
- a. It is unlawful for any person to place, locate, relocate, erect, construct, replace or alter the size or shape of any part of a temporary freestanding special activity sign including the face or other integral part, or to thereafter make use of a temporary freestanding special activity sign without having first secured a sign permit from the city as required, except as otherwise provided in this article.
 - b. A sign permit, valid for one year and renewable for one additional year, may be issued for one temporary freestanding special activity sign on any one premises.
 - c. Unless earlier revoked, a sign permit to construct, erect or place a temporary freestanding special activity sign is valid for 180 days from the date of issuance.
- (6) *Master signage plan.* An overall master plan signage plan if submitted for recommendation by the planning commission will substitute for the requirements of this section with only one sign permit required for all signs indicated in the approved master signage plan.

(Ord. No. 2016-19, § 24, 8-15-2016)

Sec. 30-63. Wall signs.

- (a) *Manner of measurement.*
- (1) *Size.* The size of a sign is determined by its effective area. For wall signs, the effective area includes the entire area enclosing the extreme limits of the sign display, excluding any adjacent parts of the sign structure (see Figure 30-63A).

- (2) *Height.* The height of a wall sign is measured between the lowest and highest vertical extremes of the sign display.
- (3) *Width.* The width of a wall sign is measured between the right-most and left-most horizontal extremes of the sign display.
- (4) *Illustration.*

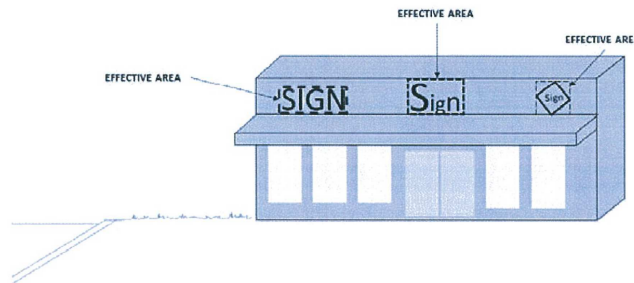


Figure 30-63A

(b) *Sign requirements and regulations.*

(1) *Size.* The following effective area and size regulations apply:

a. *Maximum effective area.*

1. *Principal buildings.* The effective area of all wall signs located on a principal building devoted to a residential use may not exceed one percent of the area of the wall or façade upon which they are located. The effective area of all wall signs located on a principal building serving as a nonresidential use may not exceed 15 percent of the area of the wall or façade upon which they are located, or 300 square feet, whichever is less.
2. *Accessory buildings and structures.* Wall signs are prohibited on accessory buildings serving a single-family or two-family residential use. The effective area of all wall signs located on an accessory building or structure serving a nonresidential use may not exceed five percent of the area of the wall or façade upon which they are located, or 100 square feet, whichever is less.
3. *Measurements.* In measuring the area of the wall or façade of a principal building or an accessory building or structure in this section, the area of all doors and windows are included. In measuring the area of a wall or façade of an accessory structure that contains open space (i.e., not occupied by walls, glass, or other material used to perma-

nently enclose the interior space) such as a canopy or porte cochere, the area of the open space is not included (see Figures 30-63B and 30-63C).

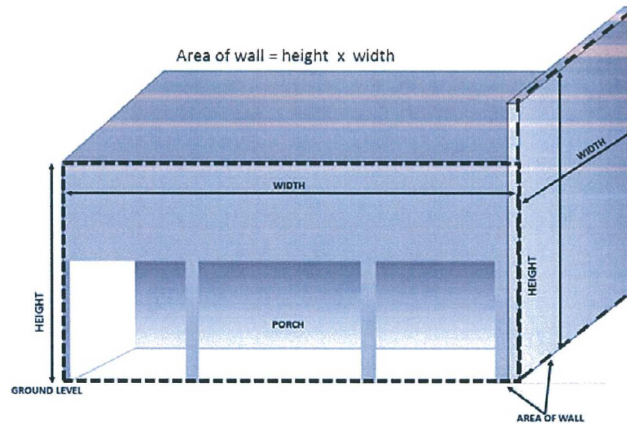


Figure 30-63B

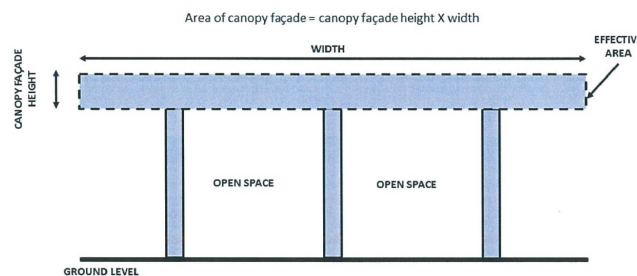


Figure 30-63C

- b. *Multi-tenant buildings.* For multi-tenant buildings, the effective area regulations apply to that portion of the building façade leased by each tenant.
- (2) *Height.*
- a. For buildings containing 10,000 square feet or more of floor space, the maximum height of the wall sign is two inches in height for every one foot of height of the wall to which it is attached.
 - b. For buildings containing less than 10,000 square feet in floor area, the maximum height of the wall sign is 1½ inches for every one foot of height of the wall to which it is attached. Under this provision, the height of the wall is measured from the base of the wall vertically to the highest point of the wall to which the sign is affixed.

- c. For wall signs on motor vehicle canopies, such as drive-thrus or gas sales, the maximum height of the sign shall be two inches in height for every one foot of height of the canopy. Under this provision, the height of the canopy is measured from ground level to the top of the vertical canopy façade. In no case shall the sign extend below or above the vertical façade of the canopy (see Figure 30-63D).

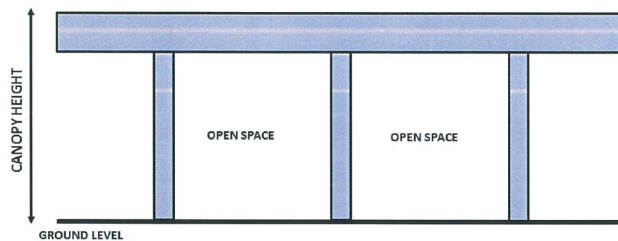


Figure 30-63D

(3) *Location.*

- a. A wall sign may not extend more than 12 inches beyond the perimeter of any part of the wall to which it is attached. A wall sign may be placed on a canopy or roof if there is a solid wall of the same building visible behind the entire sign.
- b. Wall signs may be illuminated; however, illuminated wall signs on rear building façades shall be prohibited if facing a residential zoning district or use.

(4) *Materials.*

- a. Wall signs should be constructed of durable, weather-resistant materials such as metal, plastic, or other durable materials approved by the building official or his assigns.
- b. Wall signs must be attached to the wall of a building in accordance with current building code.

(5) *Permit.*

- a. It is unlawful for any person to place, locate, relocate, erect, construct, replace or alter the size or shape of any part of a wall sign, including the face or other integral part, or to thereafter make use of a sign without having first secured a sign permit from the city, except as otherwise provided in this article.

- b. Unless earlier revoked, a wall sign permit to construct, erect or place a wall sign is valid for 180 days from the date of issuance.

(Ord. No. 2016-19, § 25, 8-15-2016)

Sec. 30-64. Window and door signs.

(a) *Manner of measurement.*

- (1) *Size.* The size of a sign is determined by its effective area. for window and door signs, the effective area includes the entire area enclosing the extreme limits of the sign display, excluding any adjacent parts of the sign structure (see Figure 30-64).
- (2) *Height.* The height of a window and door sign is measured between the lowest and highest vertical extremes of the sign display.
- (3) *Width.* The width of a window and door sign is measured between the right-most and left-most horizontal extremes of the sign display.
- (4) *Illustration.*

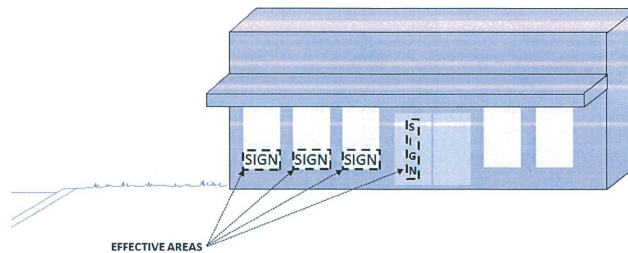


Figure 30-64

(b) *Sign requirements and regulations.*

- (1) *Size.* The total area of window and door signs shall not exceed 25 percent of the total window and door area of the building elevation identified for placement of the sign.
- (2) *Location.* window and door signs are limited to the ground floor of a building. Window and door signs must be affixed to the interior face of the window surface. signs affixed to the exterior face of a window or door are wall signs.
- (3) *Materials.* Window and door signs include any material painted, etched, or affixed to the interior side of a window or door. Window and door signs include electronic and illuminated signs hanging within the interior space and viewable from the public street through the window or door.

- (4) *Permits.* A sign permit is not required for the placement or use of window and door signs.

(Ord. No. 2016-19, § 26, 8-15-2016)

Sec. 30-65. Stake signs.

(a) *Manner of measurement.*

- (1) *Size.* The size of a sign is determined by its effective area. For stake signs, the effective area includes the entire structure on which signs are placed or mounted (see Figure 30-65).
- (2) *Setback.* The setback is measured perpendicularly from the curblines to the closest point of the sign.
- (3) *Height.* The height of a sign is measured from the natural ground level at the base of the sign to the highest point of the sign.
- (4) *Width.* The width of a sign is measured along a line drawn from the outermost edges of the sign, parallel to the ground.
- (5) *Illustrations.*

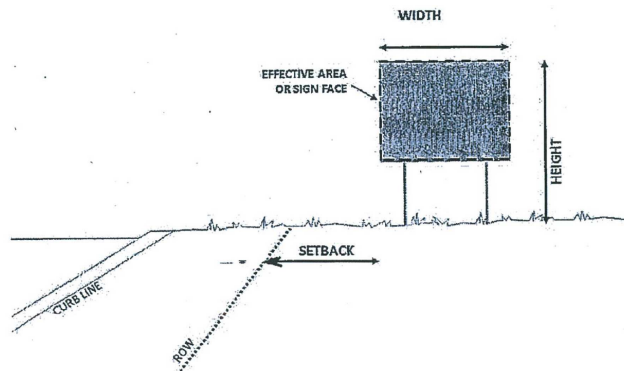


Figure 30-65

(b) *Sign requirements and regulations.*

- (1) *Size.* A stake sign may not have an effective area in excess of nine square feet or a height in excess of four feet.
- (2) *Location.* A stake sign may not be located within the right-of-way of a public street or within a railroad right-of-way and a minimum of 20 feet from the curblines. A stake sign may not be located on State Highway 288 frontage.

- (3) *Materials.* Stake signs may include materials such as wood or metal stakes with a wood, plastic or metal sign face.
 - (4) *Number.* No more than two stake signs are allowed on a nonresidential property at any time. Stake signs may not be located within 25 feet of another sign on the same premises or on an adjacent premises. However, every property is allowed at least one stake sign.
 - (5) *Permit.* A sign permit is not required for the placement or use of a stake sign. A stake sign that advertises a particular event or happening must be removed within three days after the conclusion of the event by the owner of the premises on which it is located.
- (Ord. No. 2016-19, § 27, 8-15-2016)

Sec. 30-66. Wind device signs.

- (a) *Manner of measurement.*
 - (1) *Size.* The size of a sign is determined by its effective area. For wind device signs, the effective area includes the entire sign display area or sign face, excluding the structure on which signs are placed (see Figure 30-66).
 - (2) *Setback.* The setback is measured perpendicularly from the curbline to the closest point of the sign.
 - (3) *Height.* The height of a wind device sign is measured from the natural ground level below the sign to the highest point of the sign.
 - (4) *Width.* The width of a sign is measured along a line drawn from the outermost edges of the sign, parallel to the ground.
 - (5) *Illustrations.*

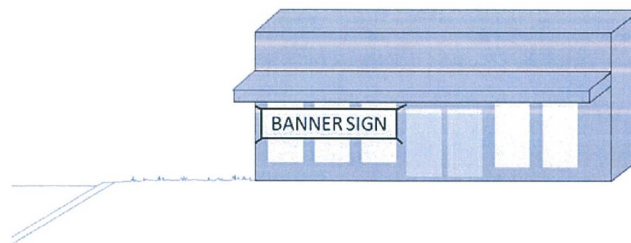


Figure 30-66

(b) *Banner signs.* Banner signs are a type of wind device sign and include pennant signs. The following regulations apply to banner signs:

- (1) *Size.* A banner sign may not project above the roofline or parapet walls of a building. Banner signs may not extend to a greater height than the maximum height of the building on the premises. Banner signs on vacant premises may not exceed ten feet in height.
- (2) *Location.* Banner signs may not extend beyond the property lines of the premises where located or over any public highway, street or sidewalk.
- (3) *Materials.* A banner sign must be constructed of weather-resistant materials, be unlighted, and may not be an illuminated sign or electronic sign.
- (4) *Permit.*
 - a. It is unlawful for any person to place, erect or make use of a banner sign on a premises devoted to a nonresidential use without having first secured a sign permit from the city. For buildings leased to multiple tenants, the permit applies to each leased premises.
 - b. A permit to make use of one or more wind device signs on a premises devoted to a nonresidential use may not exceed a period of use of 28 consecutive days in one calendar year or two periods of use in 14 consecutive days in on calendar year.

(c) *Balloon signs.* Balloon signs are a type of wind device sign and the following regulations apply:

- (1) *Size.* A balloon sign may not project above the roofline or parapet walls of a building. Balloon signs may not exceed or be a greater height than the maximum height of the building on the premises. Balloon signs on vacant properties may not exceed ten feet in height.
- (2) *Location.* Balloon signs may not extend beyond the property lines of the premises where located, or over any public highway, street or sidewalk.
- (3) *Permit.*
 - a. It is unlawful for any person to place, erect or make use of a balloon sign on a premises devoted to a nonresidential use without having first secured a sign permit from the city. For buildings leased to multiple tenants, the permit applies to each leased premises.

- b. A permit to make use of one or more balloon signs on a premises devoted to a nonresidential use may not exceed a period of use of 28 consecutive days in one calendar year or two periods of use of 14 consecutive days in one calendar year.
- c. A permit is not required for up to three balloon signs less than 24 inches in diameter displayed for less than three days.

(Ord. No. 2016-19, § 28, 8-15-2016)

Sec. 30-67. Flags and flagpoles.

(a) *Flags.*

(1) *Location; applicability.* A flag sign may be located in any zoning district or use. Governmental flag signs only include: the flag of the United States of America, the flag of the state, any flag of a governmental entity, foreign or domestic, or an official or replica flag of any branch of the United States Armed Forces.

(2) *Manner of measurement.*

a. *Size.*

- 1. *In a nonresidential district or use.* A flag's effective area may not exceed 60 square feet. No portion of a flag shall encroach in a minimum seven-foot-high area above the ground when displayed at the half-mast location.
- 2. *In a residential district or use.* A flag's effective area may not exceed 40 square feet. No portion of a flag shall encroach in a minimum seven-foot-high area above the ground when displayed at the half-mast location.

b. *Type in a nonresidential district or use.* Flag signs in nonresidential zoning districts or uses may only consist of governmental flag signs or flag signs containing commercial messages which may only consist of registered or unregistered logos, trademarks, or service marks and must be located on the premises of the businesses or commercial enterprises which the signs advertise.

c. *Display in a nonresidential district or use.* All flag signs located in nonresidential zoning districts or use shall be displayed in accordance with the rules of etiquette for the display of United States of America flags contained in the United States Flag Code (4 USC 1 et seq.), including specific rules for the flag of the United States to be displayed in accordance with 4

USC 5 through 10. The state flag shall be displayed in accordance with V.T.C.A., Government Code ch. 3100. Flag signs shall not be displayed on or from roofs.

d. *Number.*

1. *In a nonresidential district or use.* No more than one flag sign per flagpole.
2. *In a residential district or use.* No more than two flag signs per flagpole.

(b) *Flagpoles.*

(1) *Height.*

- a. *In a nonresidential district or use.* Freestanding flagpoles shall be no more than 50 feet in height. The lowest component of a flag sign on a flagpole shall be a minimum of seven feet above the ground when measured at ground level at the half-mast location.
- b. *In a residential district or use.* Freestanding flagpoles shall be no more than 25 feet in height. The lowest component of a flag sign on a flagpole shall be a minimum of seven feet above the ground when measured at ground level at the half-mast location.

(2) *Location.*

- a. A flagpole may be placed adjacent to the public right-of-way provided it does not encroach on the sight visibility triangle as identified in this Code and is set back a minimum of ten feet from the curb.
- b. Flagpoles mounted on the walls of buildings shall not extend more than ten feet above the wall on which they are mounted and shall be no more than 35 feet in height.
- c. The display of a flag, or the location and construction of the supporting flagpole shall comply with all applicable zoning ordinances, easements, and setbacks of record. Flagpoles shall not be mounted on roofs.

(3) *Construction.* Flagpoles shall be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the primary structure and permanently mounted.

(4) *Number.*

- a. The maximum number of individual flag poles allowed within single-family residential zones or single-family residential use area is three per lot or contiguous tract of land.

- b. The maximum number of individual flag poles allowed within non-single-family residential zones or non-single-family residential use area is three per contiguous tract of land.
- (5) *Permits.* It is unlawful for any person to place, erect or make use of flagpoles on a premises located in a nonresidential zone or use without first securing a sign permit from the city. For buildings leased to multiple tenants, the permit applies to each leased premises. Flags mounted to a permitted flagpole do not require a permit. No permit is required for flagpoles located in a residential district or use. (Ord. No. 2016-19, § 1, 8-15-2016)

Sec. 30-68. Electronic signs.

(a) *Permitted sign type; criteria.* Electronic signs, as defined herein, are only allowed as freestanding monument (on-premises use only) signs and do not qualify for any other sign type, using the following criteria:

- (1) *Size in a nonresidential district or nonresidential use (including vacant use).* The electronic portion of a freestanding monument sign may not exceed two-thirds of the total effective area and in no case may exceed the total effective area as allowed for monument signs.
- (2) *Location.* An electronic sign may be placed adjacent to the public right-of-way, but not within the public right-of-way, provided it does not encroach on the sight visibility triangle as identified in other ordinances and is setback a minimum of 20 feet from the curb.
- (3) *Maintenance.* Electronic sign lighting must be maintained. When more than one-fourth of the total electronic sign area is not properly functioning, the entire electronic sign must be turned off until the electronic sign can be repaired.
- (4) *Number in a nonresidential district or nonresidential use.* The total number of allowed monument signs with an electronic sign component is the same as the total number of monument signs allowed.
- (5) *Illumination level.* No automatic changeable copy sign shall exceed a brightness level of 0.3 footcandle above ambient light as measured using a footcandle (Lux) meter at a pre-set distance in accordance with the following procedure:
 - a. At least 30 minutes past sunset, record the ambient light while the sign is off or displaying all black copy, or with the sign's illumination blocked.
 - b. The light meter shall be held five feet above the finished grade in front of the sign.

- c. The meter shall be aimed toward the center of the automatic changeable copy sign.
 - d. From the same location, a second reading shall be recorded while the sign is on and not blocked.
- (6) *Compliance.* If the difference between the measurements is 0.3 footcandle or less, the brightness is properly adjusted; otherwise, the brightness must be adjusted to comply with the brightness adjustment standard set forth above.
- (7) *Measuring.* The measurement distance shall be determined as shown in Table 30-68, which is derived and generalized from the formula shown for 180 square feet in the table; (the square root of) (the automatic changeable copy area times 100):

Table 30-68. Distances from Which to Measure the Brightness of On-Premises Automatic Changeable Copy Graphics

<i>Area of Automatic Changeable Copy in Square Feet</i>	<i>Measurement Distance in Linear Feet</i>
10	32
20	45
30	55
40	63
50	71
60	77
70	84
80	89
90	95
100	100
120	110
140	118
160	126
180*	134
200	141
220	148
240	155
260	161
280	167
300	173
350	187
400	200
450	212

<i>Area of Automatic Changeable Copy in Square Feet</i>	<i>Measurement Distance in Linear Feet</i>
500	224
550	234
600	245
650 and greater	254

*180 x 100 = 18,000; $\sqrt{18,000} = 134$

(8) *Image timing.* The electronic image on an electronic sign must remain constant for a minimum time period of 15 seconds at those locations that do not have frontage on State Highway 288 or State Highway 6 and a minimum time period of seven seconds for those locations that have frontage on State Highway 288 or State Highway 6.

(b) *Permit.* It is unlawful for any person to place, erect or make use of an electronic sign on a premises devoted to a nonresidential use without having first secured a sign permit from the city. For locations leased to multiple tenants, the permit applies to each leased premises. Electronic signs are not allowed in residential districts and are not allowed on a premises either vacant or containing a residential use.

(Ord. No. 2016-19, § 30, 8-15-2016)

Sec. 30-69. Abandoned on-premises signs.

(a) Except as otherwise provided in this article, an on-premises sign must be removed on the first anniversary of the date the business, person, entity, organization, or other matter advertised or identified in the sign ceases to operate or be located on the premises where the sign is located.

(b) Except as otherwise provided in this article, if the premises containing an on-premises sign are leased, then the sign must be removed on the second anniversary after the date the most recent tenant ceases to operate on the premises.

(c) This section also applies to nonconforming signs. A nonconforming sign that is required to be removed under this section loses its nonconforming status.

(Ord. No. 2016-19, § 31, 8-15-2016)

Sec. 30-70. All signs; building codes and other laws.

Except as otherwise provided herein for nonconforming signs, each sign of any type shall comply with all applicable building codes and other applicable ordinances and

laws of any nature. The building official or his assigns shall be designated as the person responsible for interpretation and execution of all regulations contained in this article. (Ord. No. 2016-19, § 32, 8-15-2016)

Secs. 30-71—30-98. Reserved.

ARTICLE IV. NONCONFORMING SIGNS

Sec. 30-99. Definitions.

A sign is nonconforming if it does not comply with a regulation of this article, but either:

- (1) Was erected in compliance with all local ordinances, laws, and regulations applicable at the time of its erection; or
- (2) Was lawfully in place on the effective date of the ordinance from which this article is derived or the effective date of any amendment of this article with which the sign fails to comply.

(Ord. No. 2016-19, § 33, 8-15-2016)

Sec. 30-100. Registration.

The owner of a nonconforming sign must register the sign with the city by completing a form provided for that purpose by the city.

(Ord. No. 2016-19, § 34, 8-15-2016)

Sec. 30-101. Portable signs.

A nonconforming portable sign that is removed from a premises loses its nonconforming status.

(Ord. No. 2016-19, § 35, 8-15-2016)

Sec. 30-102. Destruction; repair.

(a) If a nonconforming sign or a substantial part of it is blown down, dilapidated, deteriorated, or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign, and if replacement, repair or renovation thereof would cost more than 60 percent of the cost of erecting a new sign of the same type at the same location, then each owner of any interest in the sign must either:

- (1) Remove the sign; or

- (2) Bring the sign into full compliance with this article, without relying on the exceptions for nonconforming signs.

Any reference in this section to a sign shall also include the support structure of the sign. A person may not repair, renovate or alter a nonconforming sign without first receiving a sign permit. A permit is not required to repaint a sign.

(b) The building official or his assigns may, whenever he or she deems necessary to reasonably determine the applicability of subsection (a) of this section, require the owner of the nonconforming sign to submit two or more independent estimates from established sign companies of the cost of replacing, repairing or renovating, in whole or in part, the existing nonconforming sign and two or more independent estimates from established sign companies of the reproduction cost of a new sign, including its supporting structure, which is substantially the same or similar to the nonconforming sign destroyed, damaged, dilapidated or deteriorated.

(c) Any part of a sign or the supporting structure of a sign that is a nonconforming use may be repaired or renovated only by the use of the types of materials and dimensions of materials that are the same as the parts of the sign or supporting structure being repaired or renovated.

(Ord. No. 2016-19, § 36, 8-15-2016)

Sec. 30-103. Relocation.

The state may relocate a nonconforming freestanding sign, including its supporting structure, that is located within a proposed right-of-way to another location within the same right-of-way so that the state may widen, construct, or reconstruct a public roadway under the state's jurisdiction. The sign and its supporting structure, as relocated, must be placed within 250 feet of its original location and may not be increased in size or height or otherwise altered to increase or add any nonconforming characteristic to the sign.

(Ord. No. 2016-19, § 37, 8-15-2016)

Secs. 30-104—30-134. Reserved.

ARTICLE V. GENERAL CONDITIONS AND COMPLIANCE PROVISIONS**Sec. 30-135. Protection of First Amendment rights.**

Although this chapter regulates the manner and location of communications by signs, for example by regulating the size, dimensions, location, spacing, illumination, and other aspects of signs, nothing herein shall be construed to regulate the substantive content of a message on a sign.

(Ord. No. 2016-19, § 38, 8-15-2016)

Sec. 30-136. Offenses.

No person shall participate in any way in causing or doing any of the following:

- (1) Violating any provision of this chapter;
- (2) Constructing, erecting, placing, installing, owning, renting, leasing, operating, or using a sign that violates this chapter in any way;
- (3) Repairing, renovating, or moving a sign that violates this chapter in any way, unless such action causes the sign to comply with this chapter;
- (4) Owning any interest of any nature in a sign or in real property where a sign that violates any provision of this chapter is located.

(Ord. No. 2016-19, § 39, 8-15-2016)

Sec. 30-137. Performance by city when another person fails to perform.

If any person other than the city fails or refuses to promptly perform any obligation pursuant to this chapter, then the city may perform such obligation at the expense of that person, but the city shall not be required to do so. The person whose obligation the city performed shall reimburse the city for the cost of doing so immediately upon request by the city, together with all attorney's fees and costs incurred in connection with such nonperformance by the person, performance by the city, or collection of any amount hereunder. Nothing herein shall be construed to make the city an agent or fiduciary of any other person.

(Ord. No. 2016-19, § 42, 8-15-2016)

Chapter 31

RESERVED

CD31:1

Chapter 32

SOLID WASTE

- Sec. 32-1. Dumping of garbage and trash generally.
- Sec. 32-2. Littering generally.
- Sec. 32-3. Illegal dumping from a motor vehicle.

Sec. 32-1. Dumping of garbage and trash generally.

It shall be unlawful for any person, corporation, firm, partnership, or political subdivision, to dump, unload, discharge, or in any manner place thereon or cause to be placed thereon, any garbage, trash or other waste materials on any lot, tract or parcel of land located within the city limits, except at garbage dumps or dumping grounds which are owned, maintained or operated by the city, or at such places as are designated for garbage disposal by the city or on property in the city, provided he has written permission from the owner of such property and has obtained a permit from the city. (Ord. No. 88-1, § I, 1-18-1988)

Sec. 32-2. Littering generally.

It shall be unlawful for any person to throw, drop, cast or deposit upon any street, alley, sidewalk on any yard or premises, public or private, any filth of any kind, or cans, paper, trash, paper container, rubbish, bottles or any other form of litter or waste matter.

(Ord. No. 88-1, § II, 1-18-1988)

Sec. 32-3. Illegal dumping from a motor vehicle.

It shall be unlawful for any person to illegally dump trash, refuse, waste, litter, or any other material upon any street, alley, sidewalk, on any yard, or premises, public or private, within the limits of such city, from a motor vehicle. The term "illegal dumping" means disposal of trash, refuse, waste, litter, or any other material as defined in this chapter. It is an exception to the application of this chapter that the person has a valid license with or contract from the state or a political subdivision thereof to dispose of the material in the manner and at the place in which it was disposed within the city limits.

(Ord. No. 88-1, § III, 1-18-1988)

Chapter 33

RESERVED

Chapter 34

STREETS, SIDEWALKS, AND OTHER PUBLIC PROPERTIES

Article I. In General

Secs. 34-1—34-18. Reserved.

Article II. Public Rights-of-Way

- Sec. 34-19. Definitions.
- Sec. 34-20. Unauthorized use prohibited.
- Sec. 34-21. Registration required.
- Sec. 34-22. Construction within public rights-of-way.
- Sec. 34-23. Construction regulations.
- Sec. 34-24. Conservation of public rights-of-way.
- Sec. 34-25. Relocation or removal of facilities.
- Sec. 34-26. Obsolete facilities.
- Sec. 34-27. Temporary rearrangement of aerial facilities.
- Sec. 34-28. Tree trimming.
- Sec. 34-29. Erosion and stormwater measures.
- Sec. 34-30. Placement and depth of facilities.
- Sec. 34-31. Line location and identification.
- Sec. 34-32. Planning for capital improvement projects.
- Sec. 34-33. Guarantee of performance.
- Sec. 34-34. Insurance and indemnity.
- Sec. 34-35. Revocation or denial of permits and registrations.
- Sec. 34-36. Appeal from denial or revocation of permit.
- Sec. 34-37. Notice.
- Sec. 34-38. Offenses and penalties.
- Secs. 34-39—34-61. Reserved.

Article III. City Hall Safety

- Sec. 34-62. Adoption of policy.
- Secs. 34-63—34-90. Reserved.

Article IV. Culverts

- Sec. 34-91. When required.
- Sec. 34-92. Permits and fees.
- Sec. 34-93. Summary of procedures.
- Sec. 34-94. Specifications.
- Sec. 34-95. Work by city.
- Sec. 34-96. Enforcement.

ARTICLE I. IN GENERAL

Secs. 34-1—34-18. Reserved.

ARTICLE II. PUBLIC RIGHTS-OF-WAY

Sec. 34-19. 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:

City means the City of Iowa Colony, Texas, a general law municipal corporation of the State of Texas.

City council means the governing body of the city.

City manager and *city administrator* mean the same thing, and each term includes any person holding either of those positions.

Emergency means a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety, and/or welfare.

Facilities includes, but shall not be limited to, pipes, conduits, wires, cables, towers, switches, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, fixtures, appurtenances, and such other objects, devices, or other items of tangible personal property, which are designed, constructed, installed, placed, used or operated in, upon, over, across, above, or below public rights-of-way. Notwithstanding the foregoing, structures designed and constructed for the support and passage of vehicular and pedestrian traffic, such as streets, alleys, highways, driveways, and sidewalks, whether at, below, or above grade, shall not be deemed to be facilities; provided further, a private, individually owned, connection and/or attendant downstream service line or device, through which a utility service is received by the end user owning same, for which required permits have been issued under applicable building, plumbing, electrical, or other codes of the city, shall not be deemed as facilities hereunder.

Person means an individual, corporation, association, partnership, joint venture, firm, limited liability partnership, joint stock company, association, governmental entity other than city, or any other public or private entity.

Public right-of-way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard,

drive, bridge, tunnel, easement, or similar property within the corporate limits of the city, and in which the city holds a property interest (fee title, easement or otherwise), or over which the city holds and exercises a right of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of facilities.

User means a person having facilities within a public right-of-way.
(Ord. No. 2015-22, § 1, 10-19-2015)

Sec. 34-20. Unauthorized use prohibited.

Except as otherwise specifically provided by this article, it shall be unlawful for any person to participate in any way in causing, permitting, or performing any placement, construction, operation or maintenance of any facility within a public right-of-way, unless authorization has been granted by the city in accordance herewith or in accordance with any other ordinance of the city applicable thereto; provided, further, that nothing herein shall be construed as superseding or preempting any provision of any ordinance applicable to wireless telecommunications facilities.

(Ord. No. 2015-22, § 2, 10-19-2015)

Sec. 34-21. Registration required.

It shall be unlawful for any person to participate in any way in causing, permitting, or performing the placement of a facility within a public right-of-way without having first obtained from the city an unexpired registration certificate therefor. A person (applicant) seeking a registration certificate hereunder shall file a complete and correct application therefor with the city secretary. The city secretary shall issue a registration certificate to each person properly completing and filing such application. Each registration certificate shall be issued in the name of the user. A registration certificate expires five years after it is issued, and each applicant or user must renew it in the same manner as obtaining an original registration certificate within six months before the expiration of the expiring registration certificate. When information provided in an application for a registration certificate is no longer correct, the user shall inform the city, in writing, within 30 days following the date of such change. Each application for registration shall include:

- (1) The name and legal status (individual, corporation, partnership, limited liability company, etc.) of the user;
- (2) The name, address, telephone number, e-mail address, and fax number of the individual who will be the contact for the user;

- (3) The name, address, telephone number, e-mail address, and fax number of the individual who will be the contact for field location of facilities;
 - (4) The name, address, telephone number, email address and fax number of an emergency contact who shall be available 24 hours a day; and
 - (5) Proof of insurance and bonding, as required herein.
- (Ord. No. 2015-22, § 3, 10-19-2015)

Sec. 34-22. Construction within public rights-of-way.

It shall be unlawful for any person to participate in any way in causing, permitting, or performing the construction or installation of a facility within a public right-of-way, except as provided by this chapter and any other ordinance or other law.

(Ord. No. 2015-22, § 4, 10-19-2015)

Sec. 34-23. Construction regulations.

(a) *Excavations.* All excavations and other construction in a public right-of-way shall be performed in accordance with all applicable state, federal, and city laws and regulations.

(b) *Construction permits.* It shall be unlawful for any person to participate in any way in causing, permitting, or performing any work which involves the construction, installation, expansion, repair, removal, or maintenance of a facility within a public right-of-way without having first applied for and obtained from the city a construction permit therefor; provided, however, acquisition of construction permits shall not be required for any such work that does not involve the alteration or disturbance of the surface of the right-of-way. Each construction permit application shall include a written work description, including construction drawings, showing the facility location (or proposed location) and the estimated depth of the facility (existing and proposed) in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city and, if disapproved, returned with comments setting forth the reasons for such disapproval. Approvals shall not be unreasonably withheld. Except as otherwise specifically provided herein, work shall not commence until applicable construction permits have been approved therefor. Review and approval by the city of construction permits as provided herein shall not constitute any representation or warranty regarding the sufficiency of design or construction of such facilities. All such work shall be in conformance with the approved construction permit.

- (1) Work for which a permit is required may be performed at any time; provided, however, any such permitted work performed within 500 feet of any residential

structure may only be performed between the hours of 7:00 a.m. and 8:00 p.m. Any permitted work performed outside of the above working hours must be approved in advance by the mayor or his or her designee.

- (2) Provided, further, that all such construction and/or installation work shall be completed in the time specified in the construction permit. If the work cannot be completed within the specified time period, the user may request an extension from the mayor, or his/her designee, which extension shall not be unreasonably withheld.

(c) *Emergency repairs; restoration of service.* Notwithstanding the foregoing subsection (b) of this section, during an emergency where, in the good faith judgment of the user, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, such user may perform repairs to facilities within public rights-of-way, which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to, or acquisition of, a construction permit from, the city. In such cases, the user shall notify the mayor, or his or her designee, as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The user shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with the applicable city standards shall be corrected upon notice thereof from the city.

(d) *Restoration of surface.* A user may excavate a public right-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its facilities. Upon completion of work, the user shall promptly restore the surface of the affected public right-of-way to a condition that equals or exceeds its condition prior to such construction. To such end, the restoration shall comply with the following requirements:

- (1) Replacing all ground cover equal to or better than the type of ground cover damaged during work, either by sodding or seeding, or natural growth;
- (2) Installation of all manholes and handholes as required;
- (3) All bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the mayor or his or her designee;
- (4) Leveling of all trenches and backhoe lines;
- (5) Restoration of excavation site to city specifications; and

(6) Restoration of all landscaping and other affected structures such as sprinkler systems and mailboxes.

(e) *Routine maintenance.* Routine maintenance on facilities located within public rights-of-way shall be conducted in a manner that is consistent with applicable city regulations governing such work, if any.

(Ord. No. 2015-22, § 5, 10-19-2015)

Sec. 34-24. Conservation of public rights-of-way.

(a) To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a user to attach portions of its facilities to other facilities within the public rights-of-way owned and maintained by other persons. A user shall not be required to attach its facilities to the facilities of such other persons if it is shown that such user would be subjected thereby to increased risks of interruption to its service, to increased liability for accidents, or to unreasonable delays in construction or availability of service, or if the facilities of such other person are not of the character, design, or construction required by, or are not being maintained in accordance with, current practice, or are not available to the user on reasonable terms, including, without limitation, reasonable fees.

(b) Insofar as is practical to do so, users shall use existing facilities in the provision of their services; provided, however, nothing contained herein shall be construed as limiting a user from expanding its facilities to accommodate future growth and development. Users shall provide information to the city relating to the location and/or operation of their facilities or services as may be reasonably necessary for municipal planning purposes.

(Ord. No. 2015-22, § 6, 10-19-2015)

Sec. 34-25. Relocation or removal of facilities.

(a) To the extent the city may be authorized by law to do so, the city may require a user to lower, place underground, relocate, or remove any facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any publicly funded city project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights, and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a user may be allowed to

pay the additional costs incurred for the design and/or construction of any such publicly funded city project in a manner that would avoid the necessity of relocation or removal of the facilities. A user shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others.

(b) In the event of any such requirement for lowering, placing underground, relocating, or removing facilities as herein provided, the user shall complete same as soon as is reasonably practicable following written notice thereof by the city.

(Ord. No. 2015-22, § 7, 10-19-2015)

Sec. 34-26. Obsolete facilities.

A user shall remove a facility from a public right-of-way when such facility is obsolete, is no longer in service, and creates either visual blight or a nuisance or potential hazard to the public; provided, however, a user shall not be required to remove any facility for which renovation or restoration is planned by the user, and which renovation or restoration is begun within six months after this section would otherwise apply to that facility, and is completed within one year of the date that such restoration or renovation is begun. When permanent structures in public rights-of-way are removed, the user shall notify the city in writing of such removal.

(Ord. No. 2015-22, § 8, 10-19-2015)

Sec. 34-27. Temporary rearrangement of aerial facilities.

Upon request, a user shall remove or raise or lower its aerial facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting same, excluding requests by the city. The user may require payment in advance. The user shall be given a reasonable amount of advance notice to provide for such rearrangement.

(Ord. No. 2015-22, § 9, 10-19-2015)

Sec. 34-28. Tree trimming.

A user shall comply with all applicable rules and regulations of the city governing the trimming, grooming, or removal of tress or other similar vegetative matter.

(Ord. No. 2015-22, § 10, 10-19-2015)

Sec. 34-29. Erosion and stormwater measures.

Erosion control measures shall be implemented prior to commencement of any work. The user shall comply with stormwater management erosion control that complies with the city, state and federal laws, regulations, and guidelines. Requirements may include, but shall not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established and barricade fencing around open holes. High erosion areas shall require wire-backed silt fencing.

(Ord. No. 2015-22, § 11, 10-19-2015)

Sec. 34-30. Placement and depth of facilities.

All facilities constructed or installed on or after the effective date of the ordinance from which this article is derived shall be buried underground where possible, other than those lines carrying more than 600 volts. Except as otherwise provided by applicable state, federal, or city regulations, all underground pipelines and other devices for the conveyance of oil, gas, or minerals shall be installed such that the top of such pipeline or other device is a minimum of 72 inches below the natural surface elevation; all other underground facilities shall be installed such that the top of such facility is a minimum of 24 inches below the natural surface elevation. Except as otherwise provided hereinafter, all facilities constructed or installed above ground shall be approved by the city. Pedestals, junction boxes, metering facilities and similar appurtenances may be placed above ground. Users shall not place facilities within public rights-of-way in such a manner as to unreasonably interfere with existing electrical, cable, or telecommunications fixtures, water hydrants or mains, or drainage or sanitary sewer facilities, and all such facilities shall be placed in such manner as not to interfere with usual travel or public and/or municipal use of the public rights-of-way and in a manner that does not create any potential hazard. The city shall have the right to direct the location of facilities in the public rights-of-way. The installation, repair, construction, maintenance, and replacement of facilities in the rights-of-way shall be subject to inspection and approval by the city. users shall cooperate fully with the city in conducting inspections. Users shall promptly perform remedial action required by the city pursuant to such inspection.

(Ord. No. 2015-22, § 12, 10-19-2015)

Sec. 34-31. Line location and identification.

Users shall be responsible for obtaining line locations from the state one-call system, the city, and all affected utilities and others with facilities in public right-of-way, prior

to any excavation. Use of the geographic information system (GIS) or plans of record shall not satisfy this requirement. The user shall be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the mayor or his or her designee, a user shall verify locations of potential conflicts with existing facilities by pot holing, hand digging, or other similar method, prior to any mechanical excavation or boring. Placement of all manholes and/or handholes must be approved in advance by the mayor or his or her designee. Handholes or manholes shall not be located in sidewalks unless approved by the mayor or his or her designee. Location flags shall not be removed while facilities are being constructed. All location flags shall be removed during the cleanup process by the user at completion of the work. The user, or his agent, contractor, or subcontractor, shall notify the mayor or his or her designee immediately of any damage to other utilities.

(Ord. No. 2015-22, § 13, 10-19-2015)

Sec. 34-32. Planning for capital improvement projects.

Users shall apprise the city of existing and planned construction, maintenance, and other activities of the user within public rights-of-way. Except for emergencies, users shall coordinate all installations and construction within the public rights-of-way with the city's capital improvement programs. The city shall notify the user within 60 days of the date the city will demand relocation or removal of the users' facilities to facilitate the city's capital program. Within 60 days following receipt of the city's notice thereof, each user shall provide a written report to the city identifying and describing generally the existing facilities that are within or cross through the boundaries of each project identified by the city. The city and the user shall provide to each other the names of their respective designated officials who will serve as representatives for coordination of the exchange of information and planning on any such project. Users shall field locate their facilities, and identify the same with surface markings, within 15 working days following the city's request therefor.

(Ord. No. 2015-22, § 14, 10-19-2015)

Sec. 34-33. Guarantee of performance.

(a) *General compliance.* All users other than governmental units shall comply with this section and all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.

(b) *Filing guarantee to complete installation of facilities within public rights-of-way; supplemental guarantee for additional reconstruction costs.* Except as provided in subsection (a) of this section, each user, at the time of submission of its initial and each

renewal registration application, shall file with the city a guarantee of performance of the user's obligations hereunder, whether to be performed by the user or any contractor or subcontractor on behalf of the user, to complete the installation of its facilities within the public rights-of-way in accordance with the permits and approved plans and specifications therefor and all applicable law. Such guarantee shall be payable to the city, in the amount of \$50,000.00; provided, however, in the event a user, or a contractor or subcontractor performing work on behalf of a user, applies for a permit for work in which the estimated cost of restoration will exceed \$50,000.00, such user shall file a supplemental guarantee for such additional reconstruction costs. Such guarantee may take the form of a bond, an irrevocable letter of credit, or a statement of fiscal responsibility, as set forth below:

- (1) *Bond.* A corporate surety bond, acceptable to the city administrator and city attorney, issued by a corporate surety authorized to do business in the state. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety, nor may any intention not to renew be exercised by the surety until 60 days after receipt by the city, by registered or certified mail or written notice, of such intent to cancel or to not renew."

The rights reserved to the city with respect to the bond are in addition to all other rights of the city and no action, proceeding, or exercise of a right with respect to such bond shall affect any other rights of the city.

- (2) *Letter of credit.*

- a. An irrevocable letter of credit, satisfactory to the city administrator and the city attorney, issued by a federally insured commercial lending institution with a credit rating of BAA or BBB+ or higher. The federally insured commercial institution on which the irrevocable letter of credit is to be drawn shall be acceptable to the city. The irrevocable letter of credit shall contain the following endorsement:

"At least 60 days' prior written notice shall be given to the city administrator by the financial institution of any intention to cancel, replace, fail to renew, or materially alter this irrevocable letter of credit. Such notice shall be given by certified mail to the city administrator and city attorney. The City of Iowa Colony, Texas, may draw upon this irrevocable letter of credit by presentation of a draft at sight, accompanied by a written certificate signed by the city administrator of the city, certifying that

_____ (User) has failed to comply with provisions of ordinances applicable to _____ (User's) use of public rights-of-way within the City of Iowa Colony, Texas."

- b. After providing a user with 30 days' advance written notice of any amount due and owing, and the user's failure to pay such amounts, the city may draw upon the irrevocable letter of credit by presentation of a draft at sight, on the lending institution, accompanied by a written certificate signed by the city administrator certifying that the user has failed to comply with the provisions of this article.
 - c. The user shall structure the irrevocable letter of credit in such a manner that if the city draws upon the irrevocable letter of credit and reduces the amount of available credit to an amount below \$50,000.00, the user shall replenish the irrevocable letter of credit to a minimum of \$50,000.00 within five calendar days after the available credit is reduced to an amount below \$50,000.00. The intent of this section is to ensure that the credit available to the city shall at no time fall below \$50,000.00.
- (3) *Statement of fiscal responsibility.* Written evidence, in the form of the user's most recent audited financial statement and satisfactory to the city administrator and city attorney, showing assets or reserves sufficient to cover the amount of the guarantee required by this section. If the user's assets or reserves are no longer adequate to comply with the amounts required by this section, the user shall immediately notify the city and shall obtain a bond or letter of credit as set forth above.
- (c) *Rights reserved to city in addition to other rights.* The rights reserved to the city with respect to the financial guarantees provided for in this section are in addition to all other rights of the city, whether reserved by this article or otherwise authorized by law, and no action, proceeding, or right with respect to the guarantee shall affect any other right of the city.
- (Ord. No. 2015-22, § 15, 10-19-2015)

Sec. 34-34. Insurance and indemnity.

(a) *Insurance.* A user shall procure and maintain liability insurance in full force and effect at all times while its facilities are located in the public rights-of-way. The insurance shall cover all risks associated with the use and occupancy of such rights-of-way. Coverages shall be on an occurrence basis. The insurance requirements applicable to a user under this section, shall be applicable to all persons performing work within

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public rights-of-way on behalf of such user unless such person is covered, or named as an additional insured, under the policies of insurance supplied by the user pursuant hereto. If any person other than a user is required to provide such insurance, the provisions referring to a user herein below shall be construed to mean such person.

- (1) *Risks and limits of liability.* The insurance, at a minimum, must include the following coverages and limits of liability:

<i>Coverage</i>	<i>Limit of Liability</i>
Workers' compensation and employer's liability	Statutory
Employer's liability	Bodily injury \$1,000,000.00 (each occurrence)
Commercial general liability:	
All premises/operations independent contractors Products/completed operations Personal and advertising injury Contractual liability Explosion, collapse and underground hazards	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate.
Comprehensive automobile including coverage for loading, unloading hazards for:	
Owned/leased vehicles Non-owned vehicles Hired automobiles	Combined single limit for liability bodily injury and property damage of \$1,000,000.00 per occurrence.
Excess coverage	\$5,000,000.00 per occurrence/combined aggregate in excess of limits specified for employer's liability, commercial general liability, and automobile liability.

Note: Aggregate limits are for a 12-month policy period, unless otherwise indicated.

- (2) *Form of policies.* The insurance may be in one or more policies of insurance, the form of which must be approved by the state insurance commission.
- (3) *Issuers of policies.* The issuer of any policy shall be authorized to transact insurance business in the state and acceptable to the city administrator and city attorney.
- (4) *Insured parties.* Each policy shall name the user and the city (and the officers, agents, employees, and representatives of the city) as additional insured parties.
- (5) *Deductibles.* The user shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claims it may ever have for the deductible amounts against the city, its officers, agents or employees.

- (6) *Cancellation.* Each policy shall expressly state that it may not be canceled or nonrenewed unless 30 days' advance notice of cancellation or nonrenewal is given in writing to the city.
- (7) *Subrogation.* Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents, employees, and representatives.
- (8) *Liability for premium.* If any of the policies referred to above do not have a flat premium rate, and such premium has not been paid in full, such policy shall have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the user for any further premium payment and has no right to recover any premiums from the city.
- (9) *"Other insurance" clause.* The insurance policy shall provide that the "other insurance" clause does not apply to the city where the city is shown on the policy as an additional insured.
- (10) *Delivery of policies.* The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the user with the city secretary prior to commencement of any work. Failure on the part of the user to furnish a new policy or certified copy thereof before the expiration date of any such policy, or failure to obtain a new policy before the date fixed for the cancellation of an existing policy, so that the insurance referred to shall be continuously in effect, shall constitute a violation hereunder.
- (11) *Liability of user.* The city's approval, disapproval, or failure to act regarding any insurance supplied by a user shall not relieve such person from full responsibility or liability for damages and accidents arising out of use or occupancy of public right-of-way. Neither bankruptcy, insolvency nor denial of liability by the insurance company shall exonerate the user from liability.
- (12) *Self-insurance.* A user may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection, provided the user submits to the city copies of its certificates of self-insurance from the state department of insurance, and its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A user shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a user's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If a user's self-insurance

program ceases, or a user's assets or reserves are no longer sufficient to comply with the above coverage requirements, the user shall immediately notify the city of such lapse of coverage, and the user shall obtain commercial insurance, in accordance with the above requirements, within 30 days following such notice.

(b) *Indemnity.*

- (1) To the extent permitted by law, each user, and each person performing work within a public right-of-way as a contractor on behalf of a user, shall indemnify and hold the city harmless as set forth below. If any person other than a user is required to provide such indemnity, the provisions referring to a user hereinbelow shall be construed to mean such person. The user shall promptly defend, indemnify, and hold the city harmless from and against all damages, costs, losses, or expenses:
 - a. For the repair, replacement, or restoration of city's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective solely as a result of the user's acts or omissions; and
 - b. From and against any and all claims, demands, suits, causes of action, and judgments for:
 1. Damage to or loss of the property of any person (including, but not limited to, the user, its agents, officers, employees, and subcontractors, and the city, its agents, officers, and employees, and third parties); and/or
 2. Death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the officers, agents, and employees of the user, the user's contractors, and the city's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from, the negligent or willful acts or omissions of the user, its officers, agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.
- (2) This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in authorizing the user to use or occupy the public rights-of-way, in regulating the conduct of the user, or in failing to prevent the user from acting in a negligent or wrongful manner.
- (3) For purposes of this indemnification provision, acts or omissions of the officer, agents, employees and contractors of the user shall be considered the acts and omissions of the user.

- (4) The indemnity provision set forth above is solely for the benefit of the city and the user and is not intended to create or grant any rights, contractual or otherwise, to any other person.

(Ord. No. 2015-22, § 16, 10-19-2015)

Sec. 34-35. Revocation or denial of permits and registrations.

A violation of this article concerning a facility shall be grounds for any or all of the following:

- (1) Revocation of any construction permit for that facility and/or any related facility;
- (2) Revocation of any registration certificate for that facility and/or any related facility; and/or
- (3) Denial of additional permits or registration certificates hereunder or the imposition of additional requirements for such permits or registration certificates.

(Ord. No. 2015-22, § 17, 10-19-2015)

Sec. 34-36. Appeal from denial or revocation of permit.

Appeals from denials or revocations of permits shall be to the city council. Appeals shall be filed with the city secretary within 15 days after the date of the denial or revocation. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

(Ord. No. 2015-22, § 18, 10-19-2015)

Sec. 34-37. Notice.

Any notice required to be given to city hereunder shall be given in writing, and may be affected by:

- (1) Personal delivery if delivered to the mayor or his designee;
- (2) By facsimile or electronic mail, if delivered to the said mayor or his designee and to the city secretary; or
- (3) By United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the mayor or his designee and the city secretary. No notice shall be deemed given until actual receipt by city as hereinabove set forth.

(Ord. No. 2015-22, § 19, 10-19-2015)

Sec. 34-38. Offenses and penalties.

Any violation of any portion of this chapter shall be a misdemeanor punishable upon conviction by a fine not to exceed \$500.00. Each day or portion of a day that a violation continues, occurs, or recurs shall be a separate offense.

(Ord. No. 2015-22, § 20, 10-19-2015)

Secs. 34-39—34-61. Reserved.

ARTICLE III. CITY HALL SAFETY

Sec. 34-62. Adoption of policy.

The city hall safety and security policy attached to the ordinance from which this section is derived is hereby adopted, ordained, and incorporated herein in full. Upon passage and approval of the ordinance from which this article is derived, the city secretary is authorized and directed to fill in the number of this article in section 8 of that policy.

(Ord. No. 2018-22, § A, 10-15-2018)

Secs. 34-63—34-90. Reserved.

ARTICLE IV. CULVERTS

Sec. 34-91. When required.

Any person desiring access to any property from any street, street right-of-way, or street easement in the city, regardless whether any street or other improvement on such easement or right-of-way has been accepted for public maintenance, is hereby required to obtain a culvert and have it installed in accordance with this article.

(Ord. No. 2012-13, § 1, 8-20-2012)

Sec. 34-92. Permits and fees.

(a) No culvert shall be placed in any public easement or right-of-way in the city without a valid and unexpired culvert permit, also known as a driveway permit, from the city, regardless whether any street or other improvement on such easement or right-of-way has been accepted for public maintenance.

(b) A permit application must be on a form provided by the city and shall be accompanied by the permit fees.

(c) The fees for culvert permits shall be as stated in the city's fee schedule and are nonrefundable.

(Ord. No. 2012-13, § 2, 8-20-2012)

Sec. 34-93. Summary of procedures.

(a) *First step.* The applicant must first apply for and obtain a culvert permit from the city.

(b) *Second step.* If the culvert is to be installed by the permittee, the permittee shall provide to the city the proposed size, elevation, and grade for the culvert. The city shall review the plan and either approve or make changes to the proposed plan. Upon approval, the city shall issue a permit stating the approved requirements. The culvert shall not be placed until the city has provided a permit with the specific information.

(c) *Third step.* If the culvert is to be installed by the county road and bridge department, then the city shall inform the permittee of the size of the culvert. The permittee must purchase the culvert and arrange to have the culvert, backfill and bedding material on site in advance, because the county road and bridge department will not return to an installation in order to backfill it.

(d) *Fourth step.* The culvert is to be installed and backfilled to the required specifications. The installation may be done by the permittee, the permittee's private contractor, or the county road and bridge department.

(e) *Fifth step.* The city shall inspect the culvert, regardless of who installs it, and inform the permittee of any changes required.

(f) *Sixth step.* The permittee shall make the changes required by the city, and the city shall reinspect the culvert after the changes. This step six is repeated until no further changes are required.

(Ord. No. 2012-13, § 3, 8-20-2012)

Sec. 34-94. Specifications.

(a) *Priority of criteria.* Each culvert must be installed in compliance with this article and the city's design criteria manual. If any of those sources contradict each other, then the city engineer shall make the final determination.

(b) *Future change of grade.* A culvert shall be set to the grade necessary for drainage at the time the culvert is set, as specified by the city. If the grade at the culvert site is later changed, due to street construction, drainage improvements, or other work by the city not due to any fault of permittee or the property owner or occupant, then the city will change the grade of the culvert at its expense as provided in section 34-95.

(c) *Driveway paving requirements.* Driveways shall be asphalt or reinforced concrete, and shall be installed from the existing pavement to the right-of-way line (property line), minimum. This applies to all types of new construction. It does not apply to property being actively used for agricultural purposes and designated with the agricultural use exemption.

(Ord. No. 2012-13, § 4, 8-20-2012)

Sec. 34-95. Work by city.

(a) When drainage or street projects are undertaken by the city, culverts may be enlarged when necessary and replaced with reinforced concrete at the city's expense. Installation will be completed as follows:

- (1) Culverts covered with base material will be recovered with base material.
- (2) Asphalt or concrete removed will be replaced with asphalt.

(b) When the city undertakes projects to resurface roads with asphalt, turn-outs for existing driveways constructed of asphalt or concrete will be overlaid to the centerline of the culvert pipe.

(c) The city does not patch potholes in driveways.

(d) The city cannot set culverts in rights-of-way for state roads.

(Ord. No. 2012-13, § 5, 8-20-2012)

Sec. 34-96. Enforcement.

The city engineer and his designees are hereby authorized to conduct inspections under this article, and to act on behalf of the city in all matters concerning this article. This section shall not be construed to limit any authority of any person.

(Ord. No. 2012-13, § 6, 8-20-2012)

Chapter 35

RESERVED

Chapter 36

TAXATION

Article I. In General

- Sec. 36-1. Penalty for delinquent tax collections.
- Secs. 36-2—36-20. Reserved.

Article II. Hotel Occupancy Tax

- Sec. 36-21. Findings of fact.
- Sec. 36-22. Authority.
- Sec. 36-23. Scope.
- Sec. 36-24. Definitions.
- Sec. 36-25. Tax levied.
- Sec. 36-26. Exceptions.
- Sec. 36-27. Collection and payment to city.
- Sec. 36-28. Recordkeeping, reports to city, and inspection of records.
- Sec. 36-29. Penalty and interest.
- Sec. 36-30. Use of revenues.
- Sec. 36-31. Penalty and continuing offenses.
- Sec. 36-32. Other remedies.
- Sec. 36-33. Cumulative obligations and remedies; no election of obligations or remedies.
- Sec. 36-34. Conflicts in terms.
- Sec. 36-35. Nonwaiver of immunity.
- Sec. 36-36. Nonwaiver by nonenforcement.

ARTICLE I. IN GENERAL**Sec. 36-1. Penalty for delinquent tax collections.**

(a) The city adopts the additional 20 percent penalty to defray the costs of collection of delinquent taxes by the city as authorized by the Texas Property Tax Code (V.T.C.A., Tax Code §§ 33.07, 33.08, and 33.11, as amended). This penalty shall be in addition to any penalty and interest owed the city for the delinquent taxes pursuant to V.T.C.A., Tax Code § 33.01, as amended.

(b) The city's tax assessor and collector shall deliver a notice of delinquency and of the penalty imposed in accordance with this section to the property owner in accordance with the requirements of V.T.C.A., Tax Code §§ 33.07, 33.08, and 33.11, as amended.

(c) This constitutes official action of the city council to impose an additional penalty for tax collection costs as provided in V.T.C.A., Tax Code §§ 33.07, 33.08, and 33.11, as amended.

(Ord. No. 2014-23, §§ 1—3, 12-15-2014)

Secs. 36-2—36-20. Reserved.**ARTICLE II. HOTEL OCCUPANCY TAX****Sec. 36-21. Findings of fact.**

The city council finds that all statements of fact in any part of this article are true.
(Ord. No. 2021-34, § 1, 11-15-2021)

Sec. 36-22. Authority.

This article is authorized by V.T.C.A., Tax Code ch. 351, the Home Rule Charter of the city, and all other applicable laws.
(Ord. No. 2021-34, § 2, 11-15-2021)

Sec. 36-23. Scope.

This article applies throughout the city limits and the extraterritorial jurisdiction of the city.
(Ord. No. 2021-34, § 3, 11-15-2021)

Sec. 36-24. Definitions.

(a) The definitions in V.T.C.A., Tax Code ch. 351 shall apply in this article.

(b) The following words, terms and phrases, when used in this article and not defined in V.T.C.A., Tax Code ch. 351, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Consideration mean the amount paid for occupancy of a room that is ordinarily used for sleeping in a hotel.

Hotel means any building in which the public may, for a consideration, obtain sleeping accommodations. The term "hotel" shall include hotels, motels, tourist homes, houses or courts, lodginghouses, inns, roominghouses or any other permanent building or structure where rooms are furnished for a consideration, but the term "hotel" shall not include hospitals, sanitariums, or nursing homes.

Hotel keeper means a person owning, operating, managing, or controlling any hotel in the city or the extraterritorial jurisdiction of the city.

Occupancy means the use or possession, or the right to the use or possession, of any room in a hotel.

Occupant means any person who, for a consideration, uses, possesses or has a right to use or possess any room ordinarily used for sleeping in a hotel.

Permanent resident means any occupant who has a right to use or possess, for a period of 30 or more consecutive days, any room ordinarily used for sleeping in a hotel. (Ord. No. 2021-34, § 4, 11-15-2021)

Sec. 36-25. Tax levied.

(a) The city hereby levies a tax on any person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2.00 or more each day, and is ordinarily used for sleeping.

(b) This tax shall be equal to seven percent of the consideration paid by or on behalf of the occupant for the occupancy, excluding:

- (1) The cost of any food served or personal services performed by the hotel for the occupant of the room not related to the cleaning and readying of the room for use or possession; and

- (2) Any tax levied upon that occupancy by any other governmental entity. This exception does not apply to the income taxes of the hotel, so those income taxes are not subtracted from the consideration that is subject to the city hotel tax under this article.

(Ord. No. 2021-34, § 5, 11-15-2021)

Sec. 36-26. Exceptions.

The tax under this article shall not apply to occupancy by:

- (1) A permanent resident of the hotel; or
- (2) A governmental agency or unit using the room on government business.

(Ord. No. 2021-34, § 6, 11-15-2021)

Sec. 36-27. Collection and payment to city.

(a) Each hotel keeper shall collect, for and on behalf of the city, the tax imposed by this article upon any taxable occupancy in that hotel and shall hold that revenue in trust for the city until paying it to the city.

(b) On or before the last business day of the month (e.g., August) following each month of collection or required collection (e.g., July), the hotel keeper shall pay to the city all amounts collected or required to be collected for the preceding month (e.g., July) under this article.

(Ord. No. 2021-34, § 7, 11-15-2021)

Sec. 36-28. Recordkeeping, reports to city, and inspection of records.

(a) *Recordkeeping.* Each hotel keeper shall contemporaneously create and keep complete, true, and accurate records of each occupancy, the consideration for each occupancy, each exempt occupancy hereunder, the consideration for each exempt occupancy, and the monthly totals of each of those categories. The hotel keeper shall preserve those records for three years after the end of the month to which those records apply.

(b) *Reports to city.* On the last business day of the month (e.g., August) following each month of collection or required collection (e.g., July), a hotel keeper shall file a report with the assessor and collector of taxes of the city showing the information required by subsection (a) of this section for that month (e.g., July).

(c) *Inspection of records.* A hotel keeper shall provide to the assessor and collector of taxes of the city any books, records, and information the assessor and collector of taxes may request for the purpose of determining and verifying the amounts due under this article. The hotel keeper shall provide those records as promptly as reasonably possible, but in any event within five business days after the tax assessor and collector requests those records in writing. The hotel keeper shall, upon request, provide copies of those records to the tax assessor and collector, allow the tax assessor to examine the originals, or both.

(Ord. No. 2021-34, § 8, 11-15-2021)

Sec. 36-29. Penalty and interest.

(a) Any person who either:

- (1) Fails to timely file a report to the city in compliance with this article; or
- (2) Fails to pay to the city any amount when due hereunder;

shall be liable for a civil penalty and interest in addition to any tax owed under this article.

(b) The amount of the civil penalty under this section is 15 percent of the total principal amount of the tax owed. If the tax is timely paid, but a report is not timely and properly filed, then the civil penalty is still due. In that event, the amount of the civil penalty is 15 percent of the principal amount of the tax obligation, even though paid, for the month required to be shown on the report (e.g., the tax obligation due in August for collections by the hotel keeper in July). This civil penalty shall not be collected more than once on the same delinquent amount or report.

(c) The amount of interest under this section is six percent per year of the principal amount of the tax owed. If a suit is instituted for the recovery of the taxes, the person shall also be liable for the city's reasonable attorney fees and costs incurred for the recovery of the tax, penalty, and interest.

(Ord. No. 2021-34, § 9, 11-15-2021)

Sec. 36-30. Use of revenues.

The revenues derived from this tax shall be used only for purposes authorized by V.T.C.A., Tax Code § 351.101 or any other applicable law.

(Ord. No. 2021-34, § 10, 11-15-2021)

Sec. 36-31. Penalty and continuing offenses.

Any person violating any provision of this article other than a failure to pay money shall be guilty of a misdemeanor and, upon conviction thereof, shall be assessed a fine of not more than \$500.00. Each calendar day or portion of a calendar day a violation continues or recurs shall constitute a separate offense. No culpable mental state shall be required for a violation of this article.

(Ord. No. 2021-34, § 11, 11-15-2021)

Sec. 36-32. Other remedies.

(a) Any and/or all of the following civil remedies may be imposed for violation of any provision of this article: injunctive relief, declaratory relief, monetary damages, attorney fees and all other expenses incurred in enforcing the city's rights or the violator's obligations or liabilities, costs of court, interest as provided by law, and all other remedies at law or in equity.

(b) Some of the other remedies for a violation of this article are provided by V.T.C.A., Tax Code § 351.004.

(Ord. No. 2021-34, § 12, 11-15-2021)

Sec. 36-33. Cumulative obligations and remedies; no election of obligations or remedies.

(a) All obligations, prohibitions, and offenses under this article or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.

(b) All remedies and penalties in favor of the city or against any person other than the city under this article, or under any other applicable laws are cumulative. The pursuit or receipt by the city of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the city from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.

(c) Without the limiting the generality of the foregoing, the city may pursue a criminal prosecution hereunder without pursuing civil remedies for a violation hereof; the city may pursue civil remedies without pursuing a criminal prosecution; or the city may do both.

(Ord. No. 2021-34, § 13, 11-15-2021)

Sec. 36-34. Conflicts in terms.

In the event of any conflict in the terms of this article, or between the terms of this article and any other ordinance, the more restrictive provision shall govern and control.

(Ord. No. 2021-34, § 14, 11-15-2021)

Sec. 36-35. Nonwaiver of immunity.

Nothing herein, in any document issued pursuant hereto, or in any action, omission, or condition pursuant hereto, shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the city or any of its agents, officers, attorneys, or employees.

(Ord. No. 2021-34, § 15, 11-15-2021)

Sec. 36-36. Nonwaiver by nonenforcement.

The failure or omission of the city, upon one or more occasions, to enforce any right, obligation, or remedy under this article or any other applicable laws shall never be construed as a waiver of the city's right to strictly enforce such right, obligation, or remedy, and the city may resume such strict enforcement without advance notice.

(Ord. No. 2021-34, § 16, 11-15-2021)

Chapter 37

RESERVED

Chapter 38

TRAFFIC AND VEHICLES

Article I. In General

- Sec. 38-1. Speed limits.
- Sec. 38-2. Stop signs.
- Sec. 38-3. School zones.
- Sec. 38-4. No through trucks permitted.
- Secs. 38-5—38-26. Reserved.

Article II. Parking

- Sec. 38-27. Definitions.
- Sec. 38-28. Parking prohibition in city parks.
- Sec. 38-29. Parking prohibition on other city property.
- Sec. 38-30. Exceptions.
- Secs. 38-31—38-52. Reserved.

Article III. Heavy Vehicles

- Sec. 38-53. Findings of fact.
- Sec. 38-54. Definitions.
- Sec. 38-55. Restriction of heavy vehicles; permits and other exceptions.
- Sec. 38-56. Maximum load limits.
- Sec. 38-57. Weight limits on specific streets.
- Sec. 38-58. Alternate and temporary truck routes.
- Sec. 38-59. No through trucks.
- Sec. 38-60. Direct route required.
- Sec. 38-61. Lugs, etc., prohibited.
- Sec. 38-62. Heavy vehicle permits and fees.
- Sec. 38-63. Surety bond.
- Sec. 38-64. Administration and enforcement.
- Sec. 38-65. Signs.
- Sec. 38-66. Liability for damages.
- Sec. 38-67. No de minimus violations.
- Sec. 38-68. Offenses.
- Sec. 38-69. Repeal and savings clause.

ARTICLE I. IN GENERAL**Sec. 38-1. Speed limits.**

(a) Speed limits and required signs are authorized and as established from time to time.

(b) Any previous order by the police chief authorizing such signs is hereby ratified. Any previous placement of said signs is hereby ratified.

(c) The phrase "former county road" is used in this chapter because the roads in question were county roads before the city limits included those roads. Those roads still exist and are still designated by the same numbers within the city limits. The abbreviation "CR" herein means county road and the abbreviation "FCR" herein means former county road.

(d) The operator of a vehicle shall not operate said vehicle at a speed in excess of the maximum prima facie speed limits set by this chapter.

(e) A violation of this section shall be a misdemeanor punishable upon conviction by a fine not to exceed \$200.00.

(Ord. No. 2001-3, § 1, 2-19-2001; Ord. No. 2004-4, § 1, 10-18-2004; Ord. No. 2012-02, §§ 1—8, 1-23-2012)

Sec. 38-2. Stop signs.

(a) Stop signs shall be authorized and placed as established from time to time, including, but not limited to, locations on exhibits to the ordinance from which this section is derived and other ordinances.

(b) Any previous order by the police chief authorizing such stop signs is hereby ratified. Any previous placement of said stop signs is hereby ratified.

(c) The term "former county road" is used in city ordinances because the roads in question were county roads before the city limits of the city included those roads. Those roads still exist and are still designated by the same numbers within the city limits.

(d) The operator of a vehicle approaching any stop sign authorized by this chapter shall stop as provided by state law.

(e) A violation of this section shall be a misdemeanor punishable upon conviction by a fine not to exceed \$200.00.

(Ord. No. 2015-11, §§ 1—5, 4-15-2015; Ord. No. 2018-31, §§ 1—5, 12-17-2018; Ord. No. 2019-29, §§ 1—5, 8-19-2019; Ord. No. 2021-27, §§ 1—5, 8-16-2021)

Sec. 38-3. School zones.

(a) School zones shall be as designated from time to time at locations throughout the city, with required markings and signs.

(b) Any of the signs authorized by this chapter may be of the type herein specified or any other type in compliance with the Texas Manual on Uniform Traffic Control Devices for the same purpose or application.

(c) Any previous order by the police chief authorizing any signs and markings described in the ordinance from which this section is derived is hereby ratified. Any previous placement of said signs is hereby ratified.

(d) The operator of a vehicle shall comply with the signs and markings authorized by this section.

(e) A violation of this section shall be a misdemeanor punishable upon conviction by a fine not to exceed \$200.00, but if state law sets a higher fine or a higher maximum fine, then the state law shall govern and control.

(f) (1) To the extent of any conflict between the terms of this section and any prior ordinance, this section shall govern and control.

(2) However, nothing in this section shall impair any other ordinance or other authority for any traffic regulation, sign, or marking other than the ones specified in the ordinance from which this section is derived.

(3) Without limiting the generality of the foregoing, this section shall not impair the validity or authorization for any traffic sign authorized by Ordinance No. 2019-22, which provides for traffic enforcement in Sterling Lakes Subdivision. (Ord. No. 2021-23, §§ 1—13, 9-20-2021)

Sec. 38-4. No through trucks permitted.

(a) Traffic signs with the term "No Trucks" are hereby authorized and shall be placed at locations as established from time to time

(b) Traffic signs with the term "No Through Trucks" are hereby authorized and shall be placed at locations as established from time to time.

(c) Any previous order by the police chief authorizing any of such signs is hereby ratified. Any previous placement of said signs is hereby ratified.

(d) The phrase "former county road" is used in the ordinance from which this section is derived because the roads in question were county roads before the city limits of the city included those roads. Those roads still exist and are still designated by the same numbers within the city limits.

(e) Compliance with the signs authorized by this section shall be as provided by Ordinance No. 2004-2.

(Ord. No. 2004-2, § 12, 6-21-2004; Ord. No. 2008-11, §§ 1—5, 10-20-2008)

Secs. 38-5—38-26. Reserved.

ARTICLE II. PARKING

Sec. 38-27. 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:

City property means any real estate owned or leased by the city.

Vehicle means any motorized or unmotorized vehicle, including, but not limited to, trailers.

(Ord. No. 2018-17, § 1, 8-20-2018)

Sec. 38-28. Parking prohibition in city parks.

(a) No person shall park any vehicle or cause any vehicle to be parked at a city park at any time while the park is closed, except as provided by section 38-30.

(b) No person shall allow or suffer any vehicle owned or leased by that person to be parked at a city park at any time while the park is closed, except as provided in section 38-30.

(Ord. No. 2018-17, § 2, 8-20-2018)

Sec. 38-29. Parking prohibition on other city property.

(a) No person shall park any vehicle or cause any vehicle to be parked on city property at any time between the hours of 12:00 midnight and 5:00 a.m., except as provided by section 38-30.

(b) No person shall allow or suffer any vehicle owned or leased by that person to be parked on city property at any time between the hours of 12:00 midnight and 5:00 a.m., except as provided in section 38-30.

(Ord. No. 2018-17, § 3, 8-20-2018)

Sec. 38-30. Exceptions.

The following are exceptions to this article:

- (1) An emergency vehicle while on an emergency call or work;
- (2) A vehicle owned or leased by the city or any other governmental entity, parked for the purposes of the city or governmental entity;
- (3) Any vehicle parked by a city officer, employee, or contractor for city purposes;
- (4) Any utility vehicle performing utility work; or
- (5) A vehicle parked at that place and time with the express written consent of the mayor, police chief, city administrator, or superintendent of public works for:
 - a. A public purpose; or
 - b. The purpose of a special event at that location.

Regardless of any provision, this subsection (5) is an affirmative defense, not an exception.

(Ord. No. 2018-17, § 4, 8-20-2018)

Secs. 38-31—38-52. Reserved.

ARTICLE III. HEAVY VEHICLES

Sec. 38-53. Findings of fact.

The city council hereby makes the following findings of fact, each based upon good and sufficient evidence:

- (1) All statements in any portion of this article are true and correct.
- (2) Heavy vehicles are less maneuverable than lighter vehicles, and heavy vehicles cannot stop as quickly. Heavy vehicles tend to cause more damage in a collision than lighter vehicles. Therefore, heavy vehicles are more dangerous than lighter vehicles and constitute a public and private nuisance, when operated in a manner that violates this article.
- (3) The costs of building and maintaining streets is a major burden upon the public.

- (4) The city has no legal assurance that the county will continue to assist the city with road maintenance.
 - (5) Heavy vehicles cause significant damage to streets and result in considerable costs for street maintenance and construction.
 - (6) Such costs should, in fairness, be borne by the persons operating such vehicles, because those are the persons who benefit from the street use causing the damage and expense.
 - (7) The permit fees in this article place the costs of such street damage upon the persons benefiting from the use and causing the damage.
 - (8) The permit fees hereunder are necessary, in order for the city to have quality streets.
 - (9) A network of quality streets is essential to business, economic activity and development, police and fire services, ambulance and medical services, to the general health, safety, and welfare of the people of the city.
 - (10) This article and the permit fees hereunder promote the public health, safety, and welfare.
 - (11) Due to the large numbers of light vehicles, such as passenger cars and light pickup trucks, and due to the minimal street damage caused thereby, the costs of administering permits for such light vehicles would exceed the benefits to the taxpayers.
 - (12) It is more efficient and economical not to damage the streets with heavy vehicles in the first place, rather than to damage the streets and to repair them. Therefore, it is fair and reasonable to restrict vehicles as herein provided, and to provide only the exceptions herein provided, and to restrict the availability of permits as herein provided.
 - (13) The exceptions in this article, under which certain types of vehicles or permits are allowed, are fair, reasonable, and necessary, and are factually and legally different than the circumstances under which certain types of vehicles or permits are not allowed.
 - (14) Such differences include, but are not limited to, the degree of damage caused to the streets, public convenience, practicability of administration, public need for the use, whether public funds would be used to pay such permit fee anyway, and other facts and reasons stated in other parts of this article or not stated herein.
- (Ord. No. 2019-09, § 1, 4-8-2019)

Sec. 38-54. 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:

City means the city and its officers, employees, representatives, attorneys, agents, and personnel of any nature.

City property means all roads, bridges, curbs, gutters, sidewalks, culverts, drainage structures and improvements, signs, and all other real or personal property of any nature in which the city has any interest.

Commercial purpose means for a purpose of a business, trade, revenue, gain, or other commercial purpose, alone or in combination with any other purpose. An agricultural or educational purpose is also a commercial purpose under this article.

Construction includes not only construction, but also reconstruction, repair, expansion, and maintenance.

Damage includes all types of damage or loss of any nature and, without limiting the generality of the foregoing, the term "damage" also includes ordinary wear and tear caused by an overweight vehicle.

Fleet means any number of vehicles that are:

- (1) Wholly or partly owned by the same person or entity;
- (2) Wholly or partly used in or for the same commercial enterprise; or
- (3) Wholly or partly used in or for the same project or undertaking or related projects or undertakings.

Guaranty of performance means the surety bond required by this article, or any other type of guaranty, financial surety, deposit, or other security as may be specifically allowed by this article.

Heavy vehicle or overweight vehicle means either:

- (1) A vehicle or combination of vehicles that has:
 - a. A single axle weight heavier than 20,000 pounds, including all enforcement tolerances;
 - b. A tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances;

- c. An overall gross weight on a group of two or more consecutive axles heavier than the weight computed using the following formula and rounding the result to the nearest 500 pounds:

$$W = 500 (LN/N-1) + 12N + 36$$

Where:

1. W is maximum overall gross weight on the group;
 2. L is distance in feet between the axles of the group that are the farthest apart; and
 3. N is number of axles in the group; or
- d. Tires that carry a weight heavier than the weight specified and marked on the sidewall of the tire, unless the vehicle is being operated under the terms of a special permit.

Notwithstanding subsection (1)c of this definition, two consecutive sets of tandem axles may carry a gross load of not more than 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets is 36 feet or more. The overall gross weight on a group of two or more consecutive axles may not be heavier than 80,000 pounds, including all enforcement tolerances, regardless of tire ratings, axle spacing (bridge), and number of axles.

- (2) A ready-mixed concrete truck with a tandem axle weight heavier than 46,000 pounds or a single axle weight heavier than 23,000 pounds; provided, however, that a ready-mixed concrete truck may exceed the weight limits in this section by not more than ten percent if the gross weight is not heavier than 69,000 pounds and the city or the state has issued a permit that authorizes the operation of the vehicle under this article.

Heavy vehicle ordinance, overweight vehicle ordinance, or trucking ordinance means this article, as it may be amended from time to time. As to violations occurring before the effective date of the ordinance from which this article is derived, the term "heavy vehicle ordinance," "overweight vehicle ordinance," or "trucking ordinance" means Ordinance No. 2004-2, as previously amended by Ordinance Nos. 2014-14 and 2017-24.

Heavy vehicle route means a truck route, as herein defined.

Load or trip means a journey or passage from either a truck route or the city limits to a point within the city that is not on a truck route, and back to a truck route or to the city limits. One trip of a vehicle, regardless whether the vehicle delivers or picks up any

material or item. A load or trip under this article means a round trip, or if the vehicle exits by a different route than it entered, then the entry and exit together still constitute one load or trip. Nothing in this definition shall be construed to impair the requirement of a permit hereunder or the requirement to stay on a truck route, alternate truck route, temporary truck route, or other route specified in a permit hereunder.

Own or operate includes lease or rent, and any person leasing or renting a vehicle or project as a lessee or renter shall be an owner and operator for purposes of this article, in addition to any other owner or operator. The term "own" shall include owning all or any part of the vehicle, project, or other item in question.

Project means all phases and parts of any construction project or other project, in the broadest sense of the term, by or for a single owner or group of affiliated owners, in which one or more heavy vehicles are used. Some examples, but not a complete list, of projects are: the construction of a subdivision or any public infrastructure; the development of a tract of land or a group of related tracts of land; and any other type of construction or other activity in which one or more heavy vehicles is used.

Small project means any of the following:

- (1) Construction of the infrastructure of a single subdivision on a single plat, such as a single section of a larger development, and having no more than ten lots on that plat;
- (2) Construction of one or more structures on a single tract or parcel of land, either at substantially the same time or consecutively without a pause of over one month between construction of the structures, also including one or more ditches, roads, pipelines, or utility lines of any nature located entirely on one tract or parcel of land and serving only that tract or parcel (for example, a private driveway on one tract or an individual utility spur on one tract, but not a private road serving multiple tracts or a utility line serving multiple tracts); or
- (3) Construction of a ditch, road, pipeline, or utility line of any nature, regardless of the number of tracts upon which it is located, but if it falls within the definition under subsection (2) of this definition, then it is part of the small project under that subsection (2), not a different small project under this subsection.

Truck route means any of the following:

- (1) State Highway 6 or 288; and

- (2) Any alternate truck route or temporary truck route designated by the police chief.

(Ord. No. 2019-09, § 2, 4-8-2019)

Sec. 38-55. Restriction of heavy vehicles; permits and other exceptions.

No person shall operate, participate in the operation of, cause to be operated, or participate in causing the operation of a heavy vehicle upon a public street for a commercial purpose, except as follows:

- (1) *Truck route.* The vehicle is then and there being operated upon a truck route, as herein defined.
- (2) *Heavy vehicle permit.* The vehicle is then and there being operated pursuant to, and on the route specified, in and in compliance with a valid, unexpired, and unrevoked permit issued for that vehicle under this article. The city council finds that this exception is fair, reasonable, and necessary because, among other reasons, such permits provide for compensation to the public for street damage.
- (3) *City vehicle.* The vehicle is then and there owned or operated by the city. The city council hereby finds that this exception is fair, reasonable, and necessary because, among other reasons, the city's funds will be used to pay for the street damage caused by such use, regardless whether a permit is required. Furthermore, the vehicles owned or operated by the city are used for the public benefit.
- (4) *Franchise vehicle.* The vehicle is owned by a person to whom a franchise has been heretofore or is hereafter granted by the city council, and the vehicle in question is being used in connection with the business authorized by such franchise, and such franchise has not expired or been revoked or terminated, and the franchisee is not delinquent in the payment of franchise tax or any other taxes, assessments or lawful charges owed to the municipality. The city council finds that this exception is fair, reasonable, and necessary because, among other reasons, such franchises promote the public good and generally require the payment of a franchise fee.
- (5) *Garbage truck.* The vehicle is then and there collecting garbage. The city council finds that this exception is fair, reasonable, and necessary, because among other reasons, garbage trucks promote public health and sanitation, and the benefits to the public outweigh the damage to streets.
- (6) *Emergency vehicle or school bus.* The vehicle is an emergency vehicle or school bus. The city council finds that this exception is fair, reasonable and necessary, because among other reasons, such vehicles are for the public good and are generally operated at public expense.

- (7) *State or county vehicle.* The vehicle is being operated by the state or county. The city council finds that this exception is fair, reasonable and necessary, because among other reasons, such vehicles are for the public good and are generally operated at public expense.
- (8) *School vehicles for certain purposes.* The vehicle is being operated by a public school district for purposes of:
 - a. Construction, repair, or maintenance of school facilities as part of a small project costing less than \$30,000.00, whether such cost is in kind work by the school district or is purchased from others; or
 - b. Operation of school facilities, for example deliveries of food or books.

The city council finds that this exception is fair, reasonable and necessary, because among other reasons, such vehicles are for the public good and are generally operated at public expense; and because unlike the county and state, a school district is subject to the city's regulatory ordinances and fees. The city further finds that it is fair, reasonable, and necessary to exempt the everyday operations of the school district to the extent so provided in this subsection, but not construction projects of the school district.

- (9) *Small project exception.* The vehicle complies with both of the following:
 - a. The small project of which the vehicle and its load are a part involves less than 15 loads that would require a permit under this article, if not for this section; and
 - b. Regardless of the number of loads, the vehicle is under all of the following weight limits, which are 150 percent of the weight limits in the overweight vehicle ordinance:
 - 1. A single axle weight heavier than 30,000 pounds, including all enforcement tolerances;
 - 2. A tandem axle weight heavier than 51,000 pounds, including all enforcement tolerances; and
 - 3. An overall gross weight on a group of two or more consecutive axles heavier than the weight computed using the following formula and rounding the result to the nearest 500 pounds:

$$W = 1.5 \times 500 (LN/N-1) + 12N + 36$$

Where:

- (i) W is maximum overall gross weight on the group;

- (ii) L is distance in feet between the axles of the group that are the farthest apart; and
- (iii) N is the number of axles in the group.

(10) *Clarity required for exception.* If for any reason the applicability of any exception under this section is unclear or cannot be readily determined, then the exception does not apply, and this section requires a permit according to the terms of this article.

(Ord. No. 2019-09, § 3, 4-8-2019)

Sec. 38-56. Maximum load limits.

The weight limits stated in V.T.C.A., Transportation Code ch. 621, subch. B (V.T.C.A., Transportation Code § 621.101 et seq.) are hereby adopted as the maximum weight limits for purposes of this article. See also the definition of "heavy vehicle."

(Ord. No. 2019-09, § 4, 4-8-2019)

Sec. 38-57. Weight limits on specific streets.

When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on such signs at any time upon any of the streets or parts of streets so signed.

(Ord. No. 2019-09, § 5, 4-8-2019)

Sec. 38-58. Alternate and temporary truck routes.

(a) Whenever a truck route designated by this article is under repair, or otherwise temporarily out of use, the police chief is hereby authorized to designate alternate truck routes.

(b) If no truck route provides access to the destination in the city of a heavy vehicle, then the police chief is hereby authorized to designate a temporary truck route.

(c) If an alternate or temporary truck route is designated specifically for a certain permit or project, then that route must be stated on each permit for which it is designated, but a failure to do so shall not be a defense to a violation of this article.

(Ord. No. 2019-09, § 6, 4-8-2019)

Sec. 38-59. No through trucks.

When signs are erected stating "No Through Trucks," no person shall operate any commercial vehicle exceeding 6,000 pounds gross weight any time upon any of the streets or parts of streets so signed, except that such vehicles may be operated thereon

for the purpose of delivering or picking up materials or merchandise or for vehicle storage, and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no further than the next intersection thereafter. The restriction in this section is in addition to all other requirements of this article and does not excuse compliance with any other requirement of this article, as all requirements of this article are cumulative.

(Ord. No. 2019-09, § 7, 4-8-2019)

Sec. 38-60. Direct route required.

(a) Regardless whether this article requires a permit, the operator of a heavy vehicle must use the most direct route between:

- (1) Either the city limits or a truck route designated in this article; and
- (2) The destination of the vehicle for its business in the city, except to the extent that a different route is specified in a permit under this article.

(b) This section shall not be construed to impair any requirement for a permit.
(Ord. No. 2019-09, § 8, 4-8-2019)

Sec. 38-61. Lugs, etc., prohibited.

No person shall operate, participate in the operation of, or cause to be operated, or participate in causing to be operated, upon a city street, any vehicle which has lugs, studs, cleats, ridges, beads, or any other protuberance of metal which projects more than one-fourth inch beyond the tread or traction surface of such vehicle's tires or tracks, unless bands, wooden blocks, skids, or other devices are provided which are sufficient to protect the street surface from damage by reason thereof.

(Ord. No. 2019-09, § 9, 4-8-2019)

Sec. 38-62. Heavy vehicle permits and fees.

(a) *Types of permits.* A permit under this article may be either:

- (1) For an individual vehicle or group of less than ten vehicles, at a fee per vehicle under the city's fee ordinance; or
- (2) A fleet permit obtained by the owner of a project for all vehicles involved in that project, at a fee per permit under the city's fee schedule.

(b) *Permit application.* An application for a permit under this article shall be dated, signed, and sworn by the applicant and shall contain the following on a form provided by the city:

- (1) The name, mailing address, and telephone number of the applicant for the permit.
- (2) Whether the permit is to be for:
 - a. A specific vehicle or group of vehicles; or
 - b. A fleet permit for all vehicles in the project.
- (3) The name, mailing address, and telephone number of the owner of each vehicle to be covered by the permit. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (4) If the applicant is different than the owner of the vehicle, an affidavit by the owner, appointing the applicant as the agent of the owner concerning this permit. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (5) The name of the person or company for which each vehicle will be working while under the requested permit (e.g., the person, subcontractor, contractor, or project owner hiring the vehicle for the project). However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (6) The name of the owner of the project on which each vehicle will be working while under the requested permit, regardless whether the permit is a fleet permit or otherwise.
- (7) A description and the location of the project on which each vehicle will be working while under the requested permit.
- (8) The serial number and license plate number of each vehicle, and a description of each vehicle. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (9) The weight of each vehicle when unloaded and when fully loaded. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (10) The number of axles on each vehicle. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (11) The exact routes for which the permit is sought.

- (12) The estimated number of trips that each vehicle will make over such routes during the permit period, with an explanation of the method of calculation. However, this subsection does not apply to an application by a project owner for a fleet permit for all vehicles on the project.
- (13) The length of time for which the permit is requested, which shall not exceed one year.
- (14) Any other information concerning said permit and reasonably deemed necessary or helpful by a person charged with administering or enforcing this article.
- (15) The application must be accompanied by a nonrefundable application fee in the amount set by the fee ordinance of the city, as it may be amended from time to time. This is separate from the guaranty of performance that must be provided before the permit is issued.

(c) *Vehicles must be listed on permit application.* Any vehicle not listed on the application for a permit that is approved and issued hereunder is not covered by that permit. However, this subsection does not apply to a fleet permit.

(d) *Expiration.* A permit hereunder shall expire on the date therein stated, which shall not be longer than one year from the date of issuance. If a permit fails to state an expiration date then it shall expire one year from the date of issuance.

(e) *Renewals and renewal fees.* Renewal of a permit shall require the same application procedure and fee as the initial permit.

(f) *Permit to be carried and displayed.* A permit issued hereunder shall be carried at all times in the permitted vehicle and, upon request of any peace officer or any person administering or enforcing this article, it shall be displayed to that person.

(g) *Nontransferability.* Permits hereunder are nontransferable.

(h) *Revocation or denial of permits and registrations.*

- (1) Any violation of this article or of any permit hereunder shall be grounds for any or all of the following:
 - a. Revocation of any permit of that permittee; and/or
 - b. Denial of additional permits hereunder to that permittee or the imposition of additional requirements for such permits or registration certificates.

- (2) Appeals from denials or revocations of permits shall be to the city council. Appeals shall be filed with the city secretary within 15 days after the date of the denial or revocation. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

(Ord. No. 2019-09, § 10, 4-8-2019)

Sec. 38-63. Surety bond.

(a) Before a permit may be issued under this article, the proposed permittee shall file with the city a surety bond. The bond shall be on a form provided by the city and shall be by a surety licensed to do business as such in the state and acceptable to the city.

(b) All vehicles covered by the same permit under this article, must be covered by a single bond covering the same vehicles. The amount of the bond shall be as provided in (b)(1) or (2) of this section, except as provided by subsection (b)(3) of this section:

- (1) The lesser of subsection (b)(1)a or b of this section:
 - a. \$500,000.00 for the group or fleet of vehicles;
 - b. The sum of the following amounts:
 1. \$100,000.00 for each vehicle of more than 80,000 pounds gross vehicle weight;
 2. \$50,000.00 for each vehicle of less than 80,000 pounds of gross vehicle weight, but still a heavy vehicle, as defined in this article; and
 3. \$15,000.00 for each ready-mixed concrete truck; or
- (2) Such higher amount as the city engineer determines in his sole, good faith discretion is reasonably necessary to cover any damage that may be caused by any bonded vehicle to any road, equipment, or other property of any nature of the city.
- (3) However, the amount of the bond must be double the amount that would otherwise apply, if the permittee or the proposed principal on the bond has, within 365 days before the bond is required:
 - a. Failed to timely post a required bond under this article;
 - b. Failed to timely obtain a required permit under this article; or
 - c. Otherwise violated this article, whether any of the foregoing were on the same project to which the double bond amount applies or another project.
- (4) The bond must be kept in effect from issuance through at least one year after the permit expires, or for such lesser time as the city engineer may determine in

writing, in his sole, good faith discretion. A reduction of the effective life of the bond shall never be implied, and it may be done only by a writing signed by the city engineer and expressly, specifically stating that it shortens the effective life of the bond. However, nothing herein shall be construed to shorten the time for a claim or suit as stated herein or in the bond. The permit shall terminate immediately and automatically upon the termination or expiration of the bond for any reason.

- (5) The surety bond must include a condition that the owners of the project shall jointly and severally pay to the city any damage to a highway, road, or any other property or equipment of any nature of the city caused by any of the bonded vehicles. The city shall not be required to establish which bonded vehicle caused which damage or amount of damage; rather, all owners of the project and all persons participating in any way in the operation, or participating in any way in causing the operation, of any vehicles covered by the bond shall be jointly and severally liable to the city for all damage caused by any of the bonded vehicles to any highway, road, equipment, or other property of the city of any nature whatsoever. This section shall not be construed to reduce any liability of any person under any other provision of this article or any other source.

(Ord. No. 2019-09, § 11, 4-8-2019)

Sec. 38-64. Administration and enforcement.

(a) The building official, the city engineer, and any peace officer with jurisdiction in the city are authorized to administer and enforce this article. Any person administering or enforcing this article shall have the authority to require an applicant or any person operating a permitted vehicle, to submit the vehicle to being weighed at any reasonable times, as a condition of granting a permit hereunder, and at any times thereafter.

(b) In the absence of the building official or city engineer or during a vacancy in the office of building official or city engineer, the mayor shall have the authority of the building official or city engineer.

(c) In addition to any other authorized persons, the mayor is hereby authorized to take any action or make any decision on behalf of the city pursuant to this article, unless this article specifies another city official or body.

(Ord. No. 2019-09, § 12, 4-8-2019)

Sec. 38-65. Signs.

The police chief is authorized and directed to cause signs to be placed upon city streets concerning the restrictions in this article.

(Ord. No. 2019-09, § 13, 4-8-2019)

Sec. 38-66. Liability for damages.

(a) For purposes of all parts of this article, persons participating in any way in a violation of this article are hereby defined to include, but are not limited to:

- (1) Each driver, owner, lessor, lessee, trucking company, subcontractor, contractor, and owner of a vehicle involved in the violation; and
- (2) Each owner of the project on which that vehicle was working at the time of the violation.

(b) Each person participating in any way in any violation of any provision of this article shall be jointly and severally liable for damage to city property of any nature caused by any vehicle that the person operated, participated in the operation of, caused the operation of, or participated in causing the operation of, in violation of this article.

(c) For purposes of all parts of this article, persons operating, participating in the operation of, causing the operation of, or participating in causing the operation of a vehicle are hereby defined to include, but are not limited to:

- (1) Each driver, owner, lessor, lessee, trucking company, subcontractor, and contractor of the vehicle for use in the project on which the vehicle was working at the time in question; and
- (2) Each owner of the project on which that vehicle was working at the time in question.
- (d) (1) Each person operating, participating in the operation of, causing the operation of, or participating in causing the operation of any vehicle for which a permit is required hereunder, whether such permit has been granted or not;
- (2) Each permittee hereunder of such vehicle; and
- (3) Each owner of the project in which such vehicle is used;

shall be jointly and severally liable to the city for any damage to city property of any nature caused by the operation of that vehicle in that project, regardless whether there is a violation of this article.

(e) The civil liability provided by this section applies regardless of whether the person is ever charged or convicted of a crime of violating this article.

(f) The liability provided by this article is joint and several among all persons liable for the damage in question.

(Ord. No. 2019-09, § 14, 4-8-2019)

Sec. 38-67. No de minimus violations.

No violation of this article shall be considered de minimus.

(Ord. No. 2019-09, § 15, 4-8-2019)

Sec. 38-68. Offenses.

(a) No person shall operate, participate in the operation of, cause to be operated, or participate in causing to be operated any vehicle in violation of any provision of this article.

(b) No person shall participate in any way in violating any provision of this article.

(Ord. No. 2019-09, § 16, 4-8-2019)

Sec. 38-69. Repeal and savings clause.

(a) This article replaces Ordinance Nos. 2002-4, 2014-14, 2017-24, and 2019-08, but those ordinances shall remain in full force and effect as to any violations thereof occurring before the effective date of the ordinance from which this article is derived. All other ordinances and portions of ordinances of the city shall remain in full force and effect.

(b) Any permit application filed under Ordinance No. 2019-08 and any permit granted under that ordinance shall be deemed an application or permit, respectively, under this article.

(Ord. No. 2019-09, § 23, 4-8-2019)

Chapter 39

RESERVED

Chapter 40

UTILITIES

Sec. 40-1. TNRCC jurisdiction over utility rates and operations.

Sec. 40-1. TNRCC jurisdiction over utility rates and operations.

The city council hereby elects to have the Texas Natural Resource Conservation Commission (TNRCC) exercise exclusive original jurisdiction over water and sewer utility rates, operations and services within the incorporated limits of the city, as allowed by V.T.C.A., Water Code § 13.042. This election is subject to the provisions of the state water code allowing reinstatement of the city's jurisdiction after two years. Nothing in this section applies to rates, operations and services of the city, which shall remain subject to the control of the city council as provided by law.
(Ord. No. 2002-5, § 1, 7-15-2002)

Chapter 41

RESERVED

CD41:1

Chapter 42

VEHICLES FOR HIRE

Article I. In General

Secs. 42-1—42-18. Reserved.

Article II. Wreckers

Division 1. Generally

Secs. 42-19—42-39. Reserved.

Division 2. Police Rotation Call List

- Sec. 42-40. Application and requirements.
- Sec. 42-41. Operational provisions.
- Sec. 42-42. Suspension or revocation.

ARTICLE I. IN GENERAL

Secs. 42-1—42-18. Reserved.

ARTICLE II. WRECKERS***DIVISION 1. GENERALLY**

Secs. 42-19—42-39. Reserved.

DIVISION 2. POLICE ROTATION CALL LIST

Sec. 42-40. Application and requirements.

(a) *Application.* A wrecker business desiring to be placed upon the city's wrecker rotation list shall make written application as prescribed by this division to the city council. This application is attached to the ordinance from which this division is derived as exhibit A.

(b) *Hearing.* Upon the filing of an application with the city secretary, the city council shall fix a time and place for a public hearing thereon. Notice shall be given to the applicant and the general public by the posting of same in the city hall.

(c) *Documents required.* Each applicant shall file with and as a part of his application:

- (1) An insurance policy and/or certificate of insurance evidencing coverage for public liability insurance with limits of not less than:
 - a. \$150,000.00 bodily injury to each person;
 - b. \$300,000.00 bodily injury each occurrence;
 - c. \$50,000.00 property damage.
- (2) The applicant's proposed fees to be charged for all types of towing and storage.
- (3) Applicant's certificate of registration issued by the state commission pursuant to state law.
- (4) Applicant's license issued by the state commission of licensing and regulation for operation of a vehicle storage facility.

***State law references**—Texas Towing and Booting Act, V.T.C.A. Occupations Code, § 2308.001 et seq.; local regulation of towing and booting, V.T.C.A., Occupations Code § 2308.201 et seq.; Vehicle Storage Act, V.T.C.A., Occupations Code § 2303.001 et seq.

(d) *Findings; decision.* After hearing and investigation, the city council shall determine if the applicant shall be added to the police department's wrecker rotation list. If the applicant is accepted for addition to the list, the company shall be notified of same in writing by the city secretary.

(e) *Denial; rehearing.* Denial of placement shall be given by notice in writing in the same manner. The findings of the city council and reasons for denial shall be stated. After the city council has made its decision and given notice of its decision to the applicant, the applicant shall have the right to request a rehearing before the city council. The request shall be perfected by a letter addressed to the mayor and city council and delivered to the city secretary within ten days of the notice of the city council's decision, stating that a rehearing before the city council is desired, and the reasons for the request for a rehearing. The city council, as soon as practicable after receiving such request, and after a rehearing, shall either sustain, modify, or reverse the prior decision, and shall so notify the person who requested the rehearing of its findings and decisions. The findings and decisions of the city council after a rehearing shall be final. An applicant who has been denied placement on the wrecker rotation list by the city council shall not be permitted to submit another application for a permit within a period of one year from the date of the prior application.

(Ord. No. 95-2, § I, 6-19-1995)

Sec. 42-41. Operational provisions.

(a) *Licenses and insurance.* All licenses and insurance shall be kept current and copies shall be filed with the city secretary as they renew. It is the duty of the wrecker operator to file such documents. Failure to keep current licenses and insurance on file may result in suspension or revocation of operator's privileges.

(b) *Solicitation prohibited.* No person shall, in any manner, directly or indirectly attempt to obtain any emergency wrecker business in the city, at or near the scene of a wreck, accident, or collision. No person should use a police monitor to pull wrecked, stuck, or disabled vehicles unless dispatched by the city dispatcher.

(c) *Police not to solicit.* No police officer investigating or present at the scene of any wreck, accident, or collision in the city shall, directly or indirectly, either by word, gesture, sign or otherwise, recommend to any person the name of any particular person engaged in the wrecker services or repair business, nor shall any such police officer influence in any manner the decision of any person choosing or selecting a wrecker or repair service, provided that any police officer, in the exercise of his discretion as a police officer, may direct that any vehicle (whether towed by a wrecker selected by the

owner of the vehicle or from the wrecker rotation list) shall be taken by the driver of the wrecker towing the vehicle directly to the police station and there held by the city for any lawful purpose. At no time will the police department move a vehicle from the scene of an accident or remove a vehicle whose driver is under arrest without calling the "next out" wrecker to move said vehicle. The next out rotation list will be kept in an orderly manner, subject to inspection by any wrecker owner at any reasonable time and when not interfering with the performance of the police department's regular duties. The driver of the wrecked auto or the arrested driver of an auto has the right to request, through the investigating officer, a particular wrecker service in the city rotation. The owner's name should appear on the dispatcher's log.

(d) *Hours.* Each wrecker company shall maintain 24-hour wrecker service and shall have an employee available to take telephone calls and release stored vehicles 24 hours per day, seven days per week.

(e) *Compliance with state law.*

- (1) Each wrecker company and its employees will abide by all state and local traffic and non-traffic laws, while answering calls for the police department.
- (2) Each wrecker company shall conform to all rules and regulations promulgated pursuant to the Texas Towing and Booting Act (V.T.C.A., Occupations Code § 2308.001 et seq.) and the Vehicle Storage Facility Act (V.T.C.A., Occupations Code § 2303.001 et seq.).

(f) *Response to calls.*

- (1) Failure of the wrecker service called to respond with an appropriate wrecker at the scene within a reasonable length of time without justification acceptable to the police department shall cause the wrecker service to forfeit that call to the next wrecker service on the rotation list. Failure to respond to two successive rotation list duty calls without justification acceptable to the police department during a six-month period shall be cause for the wrecker service to be passed over for a 30-day period at rotation list duty. A wrecker service which has been passed over two times within a one-year period shall be removed from the list for a period of six months.
- (2) When a wrecker service is given a rotation call by the police department and cannot make the call, it goes to the bottom of the rotation list. If a pickup is made on an abandoned vehicle and it is not salvageable, it is still a rotation call. If a wrecker service answers a rotation call, but is disregarded or not used, the wrecker will be put back up on the top of the rotation list.

(g) *Release of vehicles.* The owner of a vehicle impounded as a result of a police-initiated tow may obtain the immediate release of his vehicle by paying the amount of towing and storage charges against the vehicle to the appropriate towing service. Upon receipt of the cash by the wrecker business, the department shall require that the wrecker business holding the vehicle to release it to the owner. The department/county shall not be responsible for damages to the towed vehicle or loss of property from such vehicle. Such claims shall be the responsibility of the wrecker business conducting the tow and storage of the vehicle. This section shall not apply to vehicles held by the department under authority of state and federal laws.

(Ord. No. 95-2, § II, 6-19-1995)

Sec. 42-42. Suspension or revocation.

Upon complaint being filed by any person with the city council of a violation of any of the terms or provisions of this division, the chief of police may recommend that a hearing be conducted before the city council, or the city council may, upon its own motion, order an investigation of such complaint, and may after 15 days written notice to the holder of a permit under this division of the grounds of such complaint conduct a hearing to hear evidence with reference to such complaint or motion. Should such hearing reveal a violation of any of the terms of this division or other applicable laws or ordinances, the city council may suspend, cancel or revoke the calling of such wrecker company for such period and under such terms and conditions as the city council may determine. After the city council has held the hearing and investigation upon the complaint of motion for the suspension, cancellation or revocation of the wrecker company's place on rotation, the council shall make its findings and declare the same in writing to the owner or operator of such wrecker company, within 15 days after such hearing.

(Ord. No. 95-2, § III, 6-19-1995)

Appendix A

ZONING ORDINANCE*

Article I. General Provisions

- Sec. 1. Short title.
- Sec. 2. Authority and purpose.
- Sec. 3. Newly annexed areas.
- Sec. 4. Land use policies.
- Sec. 5. Definitions and interpretation.
- Secs. 6—19. Reserved.

Article II. Establishment of Districts and Boundaries

- Sec. 20. Establishment of districts.
- Sec. 21. Zoning district map.
- Sec. 22. Identification of zoning district map.
- Sec. 23. Changes in zoning district map.
- Sec. 24. Location of zoning district map.
- Sec. 25. Interpretation of zoning district boundaries.
- Secs. 26—29. Reserved.

Article III. Compliance with Regulations

- Sec. 30. Applicability.
- Sec. 31. Nonconforming uses of structures.
- Sec. 32. Authority for continued existence of nonconforming structures.
- Sec. 33. Nonconforming status.
- Sec. 34. Change in ownership.
- Sec. 35. Nonconforming mobile homes, manufactured homes, HUD Code manufactured homes, industrialized homes, and modular homes.
- Secs. 36—39. Reserved.

Article IV. Reserved

- Secs. 40—49. Reserved.

Article V. Performance Standards

- Sec. 50. Compliance required.

***Editor's note**—Printed herein is the comprehensive zoning ordinance of the city, Ordinance No. 2000-08, adopted October 4, 2000, and as later amended through and by Ord. of 4-16-2012 (adopted April 16, 2012). Amendments adopted after April 16, 2012, 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.

IOWA COLONY CODE

- Sec. 51. Reserved.
- Sec. 52. Vibration.
- Secs. 53, 54. Reserved.
- Sec. 55. Fences.
- Sec. 56. Off-street parking and loading.
- Sec. 57. Vehicle storage.
- Sec. 58. Businesses in mobile units.
- Sec. 59. Reserved.

Article VI. Supplemental District Regulations

- Sec. 60. Applicability.
- Sec. 61. Visibility at intersections.
- Sec. 62. Yard requirements.
- Sec. 63. Reserved.
- Sec. 64. Swimming pools.
- Sec. 65. Home office and home-based business.
- Sec. 66. Reserved.
- Sec. 67. Accessory uses and structures.
- Sec. 68. Temporary uses during construction.
- Sec. 69. Coordination with other ordinances.

Article VII. Zoning District Regulations

- Sec. 70. District SFR (Single-Family Residential Dwelling District).
- Sec. 71. District MU (Mixed Use District).
- Sec. 72. District MH (Manufactured Housing District).
- Sec. 73. District BR (Business and Retail Use).
- Sec. 74. Planned unit developments.
- Secs. 75—79. Reserved.

Article VIII. Amendments to Zoning Ordinance

- Sec. 80. Purpose.
- Sec. 81. General standards applicable to regulatory amendments.
- Sec. 82. Special standards applicable to specific use permits.
- Sec. 83. Application for an amendment to regulations or the official zoning district map.
- Sec. 84. Application for a specific use permit.
- Sec. 85. Public hearing.
- Sec. 86. Limitation on resubmission of petition.
- Secs. 87—89. Reserved.

Article IX. Board of Adjustment

- Sec. 90. Creation.
- Sec. 91. Membership.
- Sec. 92. Selection of officers.
- Sec. 93. Meetings.
- Sec. 94. Rules and regulations.
- Sec. 95. Authority of the board of adjustment.

APPENDIX A—ZONING ORDINANCE

- Sec. 96. Decisions of the board.
- Sec. 97. Applications to the board.
- Sec. 98. Time limits on appeals.
- Sec. 99. Hearing process.

Article X. Administration and Enforcement

- Sec. 100. Zoning administrator.
- Sec. 101. Offenses and penalties.
- Sec. 102. Civil enforcement and cumulative remedies.
- Secs. 103—109. Reserved.

Article XI. Miscellaneous Provisions

- Sec. 110. Inspections.
- Sec. 111. Requirements for building permit.
- Sec. 112. Review of permit application.
- Sec. 113. Existing permits and private agreements.
- Sec. 114. Preserving rights in pending litigation and violations under existing ordinances.
- Sec. 115. Certificates of occupancy.
- Sec. 116. Severance clause.

ARTICLE I. GENERAL PROVISIONS**Sec. 1. Short title.**

This ordinance shall be known and may be cited as "The City of Iowa Colony Zoning Ordinance."

Sec. 2. Authority and purpose.

This ordinance is adopted for the purpose of promoting and protecting the health, safety and general welfare of the residents, citizens and inhabitants of the city, and to promote the purposes and goals of zoning authorized by V.T.C.A., Local Government Code ch. 211.

Sec. 3. Newly annexed areas.

(a) *Zoning annexed areas.* Within 60 days following the annexation of territory into the city, the city council shall initiate proceedings to establish permanent zoning classifications for all such newly annexed territory. Pending completion of such proceedings, such territory shall be classified as District SFR Single-Family Residential. Such temporary zoning classification shall remain in effect only until such time as the city council establishes the permanent zoning classification, following procedures required by V.T.C.A., Local Government Code ch. 211, and article VIII of this ordinance.

(b) *Permits in temporarily zoned areas.* In newly annexed areas temporarily classified as District SFR Single-Family Residential, no permit for the construction of a building, or certificate for the use of land, other than for a building or use allowed in said district, shall be issued by the zoning administrator.

(c) *Unplatted property.* The city's planning commission and the city council shall not approve plats for the subdivision of land until all newly annexed area within the proposed subdivision shall have received a permanent zoning classification by the city council.

Sec. 4. Land use policies.

(a) *Purpose.* The land use policy statements set forth in this section have been developed as part of the city's ongoing comprehensive planning process and were designed to provide guidance in developing the zoning regulations contained in this ordinance. Said policies are hereby adopted as a part of this ordinance to provide guidelines for considering future amendments to these zoning regulations.

(b) *Land use goals, citywide.*

- (1) Provide for orderly growth, development and redevelopment by adopting a comprehensive zoning ordinance for the city.
- (2) Accommodate a mixture of new commercial and residential development that will strengthen the city's diverse land uses, but restrictive enough to eliminate, over time, incompatible uses that destabilize adjoining and area property values.
- (3) Promote a healthy balance between residential and nonresidential land uses designed to maintain and enhance property values and revenue streams by providing a zoning plan that accommodates unforeseen future markets for quality residential and/or commercial development.
- (4) Provide for the elimination of buildings and/or uses which are visually or functionally incompatible with adjacent or area buildings and/or uses, by implementation of zoning which, while fair in relation to existing uses at the time of its adoption, will result in greater integrity of the city's long-term development.
- (5) Support private and public initiatives which encourage investment in beautification programs, and stimulate such programs by providing for adequate open space through zoning.
- (6) Develop and maintain a zoning ordinance that is organized, fair, straight forward and easy to interpret by citizens, property owners, developers, city officials, and other interested parties.

(c) *Objectives.* Objectives sought to be implemented through adoption of zoning regulations include the health, safety, and general welfare of the people of Iowa Colony, including, but not limited to, the following objectives:

- (1) *Single-family residential areas.* Zoning regulations applicable to single-family residential areas are intended to protect the integrity, safety, and aesthetic characteristics of existing and future neighborhoods throughout the city, and shall be implemented by:
 - a. Providing a residential zoning district that limits uses to single-family residential purposes, having maximum densities compatible with densities currently found in the city's existing single-family residential subdivisions; and
 - b. Imposing performance standards.

- (2) *Mixed use areas.* The mixed-use area enjoys good access to and visibility from major thoroughfares. Thus, zoning regulations applicable to the mixed-use area are intended to:
- a. Encourage economic development, redevelopment and revitalization;
 - b. Provide a review procedure for developments which, while ensuring compliance with the general purpose and intent of this ordinance, will allow some deviation from the general standards otherwise applicable to District MU, will promote and permit innovation and flexibility in land use and site design, and support relatively small scale and economically viable mixed-use development; and
 - c. Provide performance standards that are specifically designed to stabilize and enhance commercial and residential property values within such a mixed-use district by limiting or prohibiting the continuation of incompatible land uses that negatively impact adjoining properties and detract from the visual image of the city.
- (3) *Manufactured housing areas.* This area provides a place in the city for HUD Code manufactured homes, mobile homes, and manufactured homes.
- (d) *Comprehensive plan.* The comprehensive plan of the city is incorporated herein in full, and said plan shall be deemed amended, if and to the extent necessary, so that this ordinance is consistent with that plan.

Sec. 5. Definitions and interpretation.

(a) *Interpretation, conflict.* This ordinance shall be construed liberally to effect the purposes hereof. In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the protection and promotion of public health, safety, convenience, comfort, prosperity, and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, when this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of a building, or requires larger open spaces that are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this ordinance shall prevail.

(b) *Definitions.* For the purposes of this ordinance, certain words and terms are hereby defined. Words used in the present tense shall include the future tense; the singular number shall include the plural number, and the plural number shall include the singular number. The word "building" shall include the meaning of the word

"structure." The word "lot" shall include the meaning of the words "plot," "parcel," or "tract"; and the term "used for" shall include the meaning of the terms "designed for" or "intended for." The word "shall" is mandatory. Words, phrases, and terms not defined herein but defined in the building code of the city shall be construed as defined in said code. Words, phrases, and terms not defined herein nor defined in the building code of the city shall be given their usual and customary meanings except where the context clearly indicates a different meaning. The following definitions shall apply in the interpretation and enforcement of this ordinance:

Accessory structure means a detached structure which is:

- (a) Incidental, auxiliary, and subordinate to the principal building;
- (b) Subordinate in area, extent, or purpose to the principal building;
- (c) Reasonably useful (regardless of whether actually so used) for the comfort, convenience and necessity of occupants of the principal building; and
- (d) Located on the same lot as the principal building.

Accessory use means a subordinate use customarily incident to and located on the same lot occupied by the principal building or use.

Agricultural uses shall be broadly defined to include farming, gardening, truck farming, orchards, ranching, animal husbandry, and other agricultural uses, whether similar or dissimilar. The term "agricultural uses" shall also include barns, storage and maintenance of equipment, supplies, and agricultural products, and other ancillary or accessory uses and activities. However, the term "agricultural uses" shall not include any use or activity that violates any law.

All-weather surface means a covering for driveways and parking spaces that is dust free, not adversely affected by inclement weather, and paved over a minimum of six inches of limestone base with two inches of asphalt topping, or its equivalent.

Alley means a public right-of-way which affords a secondary means of access to abutting property.

Assisted living means the business of providing long-term residential care for persons needing less intense assistance than those residing at a rest home, which, if provided, enables them to maintain a degree of independent living.

Automobile (car) wash means a business which provides for the washing of automobiles, sometimes using production line methods with a chain conveyor, blower, steam cleaning device, or mechanical devices, sometimes involving manual means only, and sometimes involving self-washing utilizing pressurized water devices.

Automobile service stations means a business which provides for the sale of automobile fuel at retail direct to the customer, including the supplying of incidental products, accessories, and replacement parts, and also including incidental repair services essential to the normal operation of automobiles, but not including body or fender work, painting, or major motor repairs.

Automobile/vehicle paint and body shop means a business which provides for the painting of automobiles and other motor vehicles, the repair or reconstruction of the bodies thereof, and the related incidental temporary storage thereof.

Automobile/vehicle repair and service garage means a business which provides major repair and maintenance of automobiles and other motor vehicles, including the repair and/or installation of motors, tail pipes, mufflers, brakes, radiators, electrical systems, and other component automotive or vehicle parts, whether mechanical or electrical, but not including the painting, repair, or reconstruction of the body or body parts thereof.

Automobile/vehicle sales and rentals means a business which provides for the sale or rental of new or used automobiles or other vehicles, including automobiles, trucks, recreational vehicles, travel trailers, motorcycles, watercraft, and other similar land or water-borne motor vehicles, but shall not include automobile or motor vehicle repair work, except for minor reconditioning of automobiles or motor vehicles to be displayed, sold or rented on the premises; provided, however, such term shall not include the sale or rental of salvaged parts, nor shall it include the storage of either new or used automobiles or motor vehicles that are not on display or for sale or rent.

Automobile/vehicle wrecking or salvage yard means a business which purchases, sells, exchanges, stores, packs, disassembles, or handles body or engine parts, batteries, scrap iron and other metals, rubber tires, and other used or discarded automobile or motor vehicle accessories. Such term shall include the operation of wrecking lots upon which automobile or motor vehicle parts are bought and sold, exchanged, stored, packed, disassembled, or handled.

Block means a group of lots bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, or corporate boundary lines, or other natural or geographic boundaries. If the term "block" is used as a term of measurement, it means the distance along the side of a street or other boundary line between two intersecting streets or, if the street is of a dead end type, between the nearest intersecting street and the end of such dead-end street.

Boarding house means a building other than a hotel, motel, or apartment house, where for compensation meals and lodging are provided for three or more persons.

Buffer yards means a land area required under the provisions of this ordinance to separate different classifications of land uses for each other. A buffer yard is in addition to the required front, side or rear yards, but may where applicable and otherwise required, be included in and as a part of required common areas for residential, commercial, or industrial subdivisions or developments.

Building means any structure designed or built for the support, shelter, protection, housing, or enclosure of persons, animals, chattels, or property of any kind.

Building area means the maximum portion of a lot over which buildings and structures may be constructed.

Building code means and refer to any rule, regulation, ordinance, or law of the city governing the design, construction, and maintenance of any building or structure, or part thereof.

Building height means the vertical distance from grade to the highest finished roof surface in the case of float roofs or to a point at the average height of the highest roof having a pitch.

Building line means a line parallel to the lot line and beyond or outward of which no building or structure shall be erected or constructed except where specifically authorized herein.

Building official means the officer or other designated authority, or his duly authorized representative, charged with the administration and enforcement of the building code of the city.

Building, main, means the building in which the main or principal use of the lot on which it is located is conducted.

Building, residential, means a building which is arranged, designed, used, or intended to be used for residential occupancy by one or more families or lodgers.

Business means any isolated or continuous activity of commercial enterprise conducted for compensation or profit.

Carport means a roofed structure open on a least two sides when attached to a building and open on three sides when detached from a building, and covered with a roof supported by structural steel, wood columns, or masonry piers.

City means the City of Iowa Colony, Texas.

Clinic, medical, means a business which provides medical care by one or more medical doctors who may or may not be associated in the practice of their professions.

Comprehensive plan means the most recently adopted comprehensive plan of the city, and any related support documents and updated components that may be approved by the council, including but not limited to the land use policies contained in section 4 of this ordinance and all regulations, zones, and other parts of this ordinance or the zoning map.

Concertina wire means any type of barbed wire or razor wire that is installed or placed in coils, loops, or any loose manner, rather than in a straight line between fence posts or other supports.

Convenience store means a business which provides for the sale of food products and other incidental items, and which is designed and located to provide ease of access and reduction of time necessary to purchase such goods and products, and may include the sale of automobile fuel only if through self-service and incidental to the sale of food products.

Council means the governing body of the City of Iowa Colony, Texas.

Court means an open, unoccupied space, bound on more than two sides by the walls of a building. An inner court is a court entirely surrounded by the exterior walls of a building. An outer court is a court having one side open to a street, alley, yard, or other permanent open space.

Development means newly constructed or erected buildings or structures to a lot, relocated buildings or structures onto another lot, or the use of open land for a new or different use. To "develop" is to create a development.

Dwelling means a building or portion thereof designed and used exclusively for residential occupancy, including single-family dwellings and multiple-family dwellings, but not including hotels, motels or boardinghouses.

Dwelling, detached, means a single-family dwelling located on a lot which contains no other dwelling units and which contains a front, rear, and two side yards.

Dwelling, multifamily, means a building or portion thereof which contains three or more separate dwelling units which may share means of egress and other essential facilities.

Dwelling, single-family, means a building containing only one dwelling unit and/or occupied by only one family, but not including a manufactured home.

Dwelling, two-family (duplex), means a building containing two dwelling units and/or occupied by two families.

Dwelling unit means a single unit designed and constructed to provide complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Family means one or more individuals, of which not more than two are unrelated by blood, marriage, or adoption living as a single housekeeping unit, exclusive of servants or caretakers.

Fence means a structure designed or constructed to provide protection from intrusion (both physical and visual), to prevent escape, mark a boundary, or provide decoration; provided, however, dikes and retaining walls erected or constructed for the purpose of diverting water and retaining soil shall not be deemed a fence, nor shall backdrops erected for tennis courts or similar sports/recreational uses.

Floor area, gross, means the area within the inside perimeter of exterior walls of a building, with no deduction for corridors, stairs, closets, thickness of walls, columns, or other features, but exclusive of areas open and unobstructed to the sky.

Floor area, gross leasable or useable, means the area within the inside perimeter of the exterior walls of a building, with deductions for common areas not leased by individual tenants, such as common corridors, stairs, maintenance areas, and other such common areas.

Garage apartment means a room, suite of rooms, or dwelling unit within or upon a private garage that is accessory to a detached dwelling and which is designed, built, rented, leased, or let for occupancy as a dwelling.

Garage, commercial, means a building, or portion thereof, within which temporary parking of automobiles or other motor vehicles by the general public is allowed for a fee.

Garage, private, means an accessory building to a residential or nonresidential building designed or used for the storage of automobiles or other motor vehicles owned or used by the occupants of the building to which it is accessory.

Grocery store means a business which provides for the same of meats, fruits, vegetables, baker products, dairy products, and other food stuff, for off-premises human consumption.

Home office means an accessory use, including telecommuting, within a primary residential structure in which work for compensation is undertaken, including, but not

limited to, receiving or initiating correspondence, such as phone calls, mail, faxes, or e-mail; preparing or maintaining business records; words and data processing; and telephone, mail order, and off-premises sales. No tangible product is produced or sold. No customers or clients visit the residence for the purpose of conducting business. This does not preclude management from visiting the residence on a limited basis for evaluation or oversight.

Home-based business means any business conducted through the sale of goods online which are then shipped from the residence. Goods may be crafted on site for sale. Such online sales are permissible provided it does not require the delivery or shipment of merchandise, goods, or equipment to or from the residence by means other than passenger motor vehicles, three-quarter ton step-up vans, or similar sized trucks. Sales tax for online sales is required. A home-based business also includes a professional service business, occupation, or activity undertaken for gain where the resident provides a skilled service for or to a customer or client at the residence. Sales tax for professional service may apply. Online sales or a professional service may occur within a primary residential structure if they are incidental and secondary to the use of that structure as a dwelling unit or within a permitted residential accessory structure.

Hospital means an institutional facility which provides full health care, including the diagnosis, treatment, and prolonged care of the physically or mentally ill.

Hotel means a business establishment which offers lodging to the transient public for compensation. A hotel is distinguished from a motel in that access to the majority of the guest rooms in a hotel is through a common entrance and lobby. A hotel is a nonresidential use.

HUD Code manufactured home or *HUD Code manufactured housing* means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 CFR 3282.8(g).

Industrialized housing or *industrialized home* means a residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a

permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air conditioning, and electrical systems. The term does not include any residential structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. The term shall not mean nor apply to:

- (i) Housing constructed of sectional or panelized systems not utilizing modular components; or
- (ii) Any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location.

Kindergarten/nursery school means a pre-school or day care center which provides care for pre-public school age children and for which a child care license is required by state law. This term shall not include public institutions providing child care within a public building.

Landscaping means decorative vegetative material such as grass, ground covers, shrubs, vines, hedges, trees or palms, and non-living durable material commonly used in conjunction with plant materials such a rock, pebbles, sand, walls or fences, which are used to improve the aesthetic appearance of open spaces.

Loading space means an area within a main building, or an all-weather surface on the same lot therewith, for the standing or loading of trucks or other transport vehicles.

Lot means a lot, tract, or parcel of land designated, or required to be designated, on a subdivision plat duly filed with the county clerk in which such lot is located, or any lot, tract, or parcel of land, for which no recorded plat is required.

Lot area means the area of a horizontal plane intercepted by the vertical projections of the front, side, and rear lines of a building lot.

Lot area per dwelling unit means the lot area required for each dwelling unit located on a building lot.

Lot depth means the horizontal distance between the front lot line and the rear lot line of a lot measured within the lot boundary. In the event a lot has more than four sides, the "front" or the "rear" lot line shall be established by taking into account street frontage, alignment of front and rear yards of adjacent properties, and logical configuration to maintain continuity of yards in the block in which such lot is located.

Lot line means the boundary line of a lot; provided, however, no lot line, whether front, side, or rear, shall extend beyond an adjacent street line.

Lot line, front, means the boundary line of a lot which is adjacent to the street upon which a lot fronts.

Lot line, side, means the boundary line of a lot which is not a front lot line or a rear lot line.

Lot line, rear, means the boundary line of a lot which is opposite the front lot line. In the event a lot has more than four sides, the lot line farthest removed from the front lot line shall be deemed the rear lot line.

Lot of record means a tract of land designated as a "lot," "tract," or "reserve" on a subdivision plat duly recorded, pursuant to applicable law, in the county clerk's office of the county in which the lot is located.

Lot, corner, means a lot situated at the intersection of two streets.

Lot, interior, means a lot other than a corner lot.

Lot width means the horizontal distance between the side lot lines.

Maneuvering space means an all-weather surface located entirely on private property as would be required to maneuver vehicle in such a manner as to preclude the necessity of backing a vehicle into any street right-of-way.

Manufactured home park shall have the meaning defined in the manufactured housing ordinance, Ordinance No. 98-5.

Manufactured home subdivision means a subdivision of land containing lots which meet the requirements for single-family residential use, and upon each such lot not more than one manufactured home may be placed or occupied.

Manufactured housing or *manufactured home* means a HUD Code manufactured home or a mobile home and collectively means and refers to both.

Marquee, awning, or canopy means a roof-like structure of a permanent nature which projects from the wall of a building or overhangs a private or public accessway.

Mobile housing or *mobile home* means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be

used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems.

Mobile unit or *mobile business unit* means any of the following: a HUD Code manufactured home, manufactured home, or mobile home, regardless whether such item is used as a home, and any travel trailer, motor vehicle, trailer, or other equipment that either is mobile or was designed or adapted to be mobile, regardless whether it is actually mobile at the time in question.

Modular housing or *modular home* means industrialized housing or industrialized home.

Motel or *motor hotel* means an establishment providing to the transient public the use of guest rooms or sleeping accommodations for compensation, consisting of a group of attached or detached guest rooms or sleeping accommodations, the majority of which have private and direct access from parking areas and not through a common entrance and lobby. For the purposes hereof, a motel is a nonresidential use.

Motor freight terminal or *truck terminal* means a building or area in which freight brought by motor truck is assembled and/or temporarily stored pending shipping in interstate or intrastate commerce by motor truck.

Nonconforming structure means a building or structure which was lawful prior to the adoption of this ordinance or amendment hereto, but which, following the adoption of this ordinance or amendment hereto, is prohibited.

Nonconforming use means a use of a building or land which was lawful prior to the adoption of this ordinance or amendment hereto, but which, following the adoption of this ordinance or amendment hereto, is prohibited.

Noxious matter means a substance or material which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the physical or economic comfort or well-being of humans.

Open space means areas which are open and unobstructed from grade to the sky, and which are accessible to all occupants of a lot.

Open storage means the storage of equipment, machinery, products, commodities, or semi-finished materials, and building materials, at locations not within buildings; but not including building materials, to be used for construction on the same lot, stored during construction for which applicable permits have been obtained.

Owner means, as to particular property, any person, agent, firm, association, or corporation having a legal or equitable interest therein or possession thereof, alone or with others.

Parking space means an all-weather surface built within the boundaries of the lot to which it pertains in accordance with applicable standards, of a sufficient size to store one automobile, and designed and constructed for vehicular storage and not as a street or vehicular way.

Patio home means a single-family dwelling unit constructed so as to have one side only directly abutting the side lot line.

Recreational vehicle or *travel trailer* means a vehicular, portable structure, built on a chassis and designed for use as a temporary dwelling for travel, recreational and vacation purposes, permanently identified as a travel trailer or recreational vehicle by its manufacturer and, when factory-equipped for the road, having a body width not exceeding eight feet.

Rest home means the business of providing long-term residential care for persons recovering from illness or suffering from infirmities of old age or chronic illness.

Screening wall means a barrier of wood, stone, brick, masonry block, or other similar permanent materials of equal character, density, and design, at least six feet in height.

Servants' quarters means an accessory building or portion of a main building located on the same lot as the main building, occupied only by such persons and their families are employed full-time in the main building by the occupants of the main building.

Shopping center means a development that provides facilities for a group of business establishments, and that is managed as a unit.

Sign shall have the meaning as defined in any ordinance of the city.

Story means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Story, half, [or] attic story means any story situated wholly or partly in the roof, so designed, arranged or built to be used for storage or habitation.

Street means any public or private roadway right-of-way which affords a primary means of access to abutting property. A driveway or alley which provides only secondary vehicular access to a lot or to an accessory parking or loading facility, or to allow vehicles to take on or discharge passengers at the entrance of a building, shall not be considered a street.

Street line means the boundary line of the roadway right-of-way or roadway easement which divides a lot from a street.

Structure means anything constructed or erected below, at, or above grade, which requires location on the ground or is attached to something having a location on the ground, and which, out of necessity or precaution, includes or reasonably should include support, bracing, tying, anchoring, or other protection against the pressure of the elements.

This ordinance, the comprehensive zoning ordinance, the zoning ordinance, or words to that effect, means Ordinance No. 2000-08 of the city, as amended from time to time.

Townhouse means a single-family dwelling constructed in a series or group of contiguous units, separated by exterior walls having a fire resistance rating of not less than two hours, and being one of a group of not less than four nor more than eight contiguous single-family dwelling units.

Toxic materials means materials which are capable of causing injury to living organisms by chemical means when present in relatively small amounts.

Travel trailer means a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle.

Truck camper means a portable unit designed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides, and designed to be loaded onto and unloaded from the bed of a pickup.

Use means the purpose or activity for which land, or the buildings or structures thereon, are occupied, maintained, or committed.

Use category means a general grouping of uses, such as single-family residential, multifamily residential, retail, office, light industrial, or heavy industrial, within which particular uses may be categorized in order to have uniform area regulations or performance standards applicable to groups of uses within the zoning district to which they are assigned.

Use, main, means the principal use of land or buildings as distinguished from a subordinate or accessory use.

Utility trailer means a vehicular unit, mounted on wheels, and designed for towing by another vehicle to haul material or animals of any sort.

Vehicle means an instrument of conveyance, such as an automobile, bus, truck, or motor-driven cycle, for carrying or transporting persons or goods on land. The term shall also include, for the purposes of regulating parking as herein provided, camper trailers, travel trailers, truck campers, watercraft, and utility trailers.

Veterinary or animal clinic means a facility in which animals receive medical care from a licensed veterinarian.

Watercraft means a boat, houseboat, canoe, raft, or other similar apparatus designed for use on water, and including trailers therefor, and motors or engines designed to propel such craft or apparatus.

Yard means an open space on a lot, at a 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 specifically permitted by this ordinance. In measuring a yard for the purpose of determining the width of a side yard, the depth of a rear yard, and the depth of a front yard, the minimum horizontal distance between the pertinent lot line and the edge of the main building, inclusive of all roof overhangs, eaves, or any other protrusions beyond the walls thereof, shall be used. A yard shall extend along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations of the zoning district in which such lot is located.

Yard, front, means an area extending along the whole length of the front lot line between the side lot lines, and being the minimum horizontal distance between the front lot line and front of the main building or any projection thereof other than steps or unenclosed porches.

Yard, rear, means an area extending along the whole length of the rear lot line between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or any projection thereof other than steps or unenclosed porches.

Yard, side, means an area extending along the side lot line from the front yard to the rear yard, and being the minimum horizontal distance between the applicable side lot line and any building or projection thereof other than steps or unenclosed porches.

Zoning administrator means the official of the city appointed by the city council as such, and whose duties include enforcement of this ordinance.

(Ord. No. 2014-16, § 2, 8-15-2014; Ord. No. 2019-27, §§ 3, 4, 7-22-2019; Ord. No. 2021-13, § 2, 4-19-2021)

Secs. 6—19. Reserved.

ARTICLE II. ESTABLISHMENT OF DISTRICTS AND BOUNDARIES

Sec. 20. Establishment of districts.

For the purposes of this ordinance, the city is hereby divided into four districts, which shall be known and described, respectively as follows:

- District SFR, Single-Family Residential Dwelling District.
- District MU, Mixed Use District.
- District MH, Manufactured Housing District.
- District BR, Business and Retail District.

Sec. 21. Zoning district map.

The location and boundaries of the three [four] districts of the city shall be shown on the map kept on file in the office of the city secretary, a copy of which is attached hereto, which map is designated as the "Official Zoning District Map" of the city. Said map and all notations, references, and other information shown thereon and all amendments thereto are made a part of this ordinance as if fully set forth and described herein.

Sec. 22. Identification of zoning district map.

The zoning district map shall be identified by the signature of the mayor, attested by the city secretary, and the seal of the city under the following words: "This is to certify that this is the official zoning district map referred to in the City of Iowa Colony Zoning Ordinance," together with the number and the date of the adoption of this ordinance.

Sec. 23. Changes in zoning district map.

If, in accordance with the provisions of this ordinance, V.T.C.A., Local Government Code ch. 211, or any other applicable law, changes are made in district boundaries or other matters portrayed on the official zoning district map, such changes shall be entered on such map promptly after the amendment has been approved by the city council, with an entry on the official zoning district map as follows: "On _____ (date), by Ordinance No. ____ (number), the following changes were made in the Official Zoning District Map: _____ (brief description of nature of changes)," which entry shall be signed by the mayor and attested by the city secretary.

Sec. 24. Location of zoning district map.

Regardless of the existence of purported copies of the official zoning district map which may be made or published from time to time, the official zoning district map shall be located in the office of the city secretary, and it shall be the final authority as to the current zoning status of land areas, buildings, and other structures in the city.

Sec. 25. Interpretation of zoning district boundaries.

Where uncertainty exists as to the boundaries of districts as shown on the official zoning district map, the following rules shall apply:

- (a) *Street lines.* Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
- (b) *Lot lines.* Boundaries indicated as approximately following platted lot lines shall be construed to follow such lot lines.
- (c) *City limits.* Boundaries indicated as approximately following city limits shall be construed as following such city limits.
- (d) *Waterway lines.* Boundaries indicated as approximately following the centerlines of streams, canals, drainageways, or other bodies of water shall be construed to follow such centerlines.
- (e) *Extensions.* Boundaries indicated as parallel to or extensions of features indicated in subsections (a) through (d) above shall be thus construed.
- (f) *Distances.* Distances not specifically indicated on the official zoning district map shall be determined by the scale of the map.
- (g) *Interpretation by board of adjustment.* Where physical features existing on the ground are at variance with those shown on the official zoning district map, or in any other circumstances not covered by subsections (a) through (f) above, the board of adjustment shall interpret the district boundaries.

Secs. 26—29. Reserved.

ARTICLE III. COMPLIANCE WITH REGULATIONS**Sec. 30. Applicability.**

Except as specifically authorized to the contrary in this ordinance, the following regulations apply in all districts:

- (a) *Use of land and buildings.* No land, or any building thereon, shall be used except for a purpose permitted in the district in which such land is located.
- (b) *Height of building.* No building or structure, or any part thereof, shall be erected, constructed, reconstructed, converted, enlarged, moved, or structurally altered to exceed the height limits herein established for the district in which such building or structure is located.

- (c) *Building construction.* No building or structure, or any part thereof, shall be erected, constructed, reconstructed, converted, enlarged, moved, or structurally altered except in conformity with the area regulations of the district in which such building or structure is located.
- (d) *Off-street parking.* No building shall be erected, converted, enlarged, moved, or structurally altered except in conformity with the off-street parking and loading regulations of the district in which such building is located.
- (e) *No encroachment on yard area.* No part of any lot area, yard, open space, or off-street parking or loading space required by this ordinance shall be encroached upon or reduced below the minimum requirements of this ordinance for the district in which such lot is located.
- (f) *No reduction in lot or yard area below requirements.* No lot or yard existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein for lots and yards in the district in which such lot or yard is located. Any lot or yard created after the effective date of this ordinance shall equal or exceed the minimum dimension and area requirement so this ordinance for lots and yards in the district in which such lot or yard is located.
- (g) *General.* No structure shall be constructed or altered, and no land or structure shall be used, contrary to the terms of this ordinance, except as specifically authorized by section 31, 32, 33, or 34.

Sec. 31. Nonconforming uses of structures.

(a) *Authority to continue nonconforming uses.* The use of land, buildings, or structures which was lawful upon the effective date of this ordinance, although not conforming to the provisions hereof, may be continued subject to the terms hereof. No nonconforming use of land, a building, or a structure may be extended or expanded; provided, however, extension of a nonconforming use wholly within an existing building or arrangement of buildings designed and constructed for such use shall be permitted provided no structural alteration of such building or buildings is required, and the use of additional land is not required. If the nonconforming use of a structure, building, or land is discontinued for 90 consecutive days or more, the future use of such structure, building, or land shall be in conformity with the provisions of this ordinance. For the purposes hereof, a use is discontinued when the land or a building or structure becomes devoted to a different main use, or the land, structure, or building is no longer used for any purpose.

(b) *Nonconforming accessory uses.* No accessory use to a nonconforming use shall continue after termination of the nonconforming use unless such accessory use otherwise complies with the provisions of this ordinance.

Sec. 32. Authority for continued existence of nonconforming structures.

A structure lawfully existing on the effective date of this ordinance, although not conforming to the provisions hereof, shall be allowed to continue in existence subject to the following:

- (a) Nonconforming structures shall not be extended or enlarged, nor shall they be structurally altered, unless the extension, enlargement, or alternation complies with this ordinance and all applicable law; provided, however, routine repairs and nonstructural alterations shall be permitted if not extending or enlarging the nonconforming characteristics thereof; provided, further, nonconforming single-family dwelling main buildings may be extended or enlarged if the extension or enlargement does not increase the nature or degree of the nonconformity and the building is nonconforming due to lot size or the depth of the required front, side or rear yard.
- (b) Nonconforming structures shall not be rebuilt in the case of total destruction, or partial destruction exceeding 50 percent of its fair market value. If any such structure is damaged or destroyed to the extent of more than 50 percent of its fair market value, such structure shall not be rebuilt except in conformity with this ordinance. If such structure is accidentally damaged to the extent 50 percent or less of its fair market value, it may be repaired, restored, or renovated to its previous nonconforming status provided actual restoration, renovation, or repair is commenced within six months following the date the damage is incurred and pursued diligently to completion without unreasonable interruption.
- (c) Notwithstanding the minimum requirements for lot size within the various zoning districts, structures may be constructed, built, expanded, reconstructed, occupied, or used on a nonconforming lot of record that existed prior to the enactment of this ordinance, or any amendment hereto, provided, all such structures shall meet all other applicable requirements of this ordinance.

Sec. 33. Nonconforming status.

The following are hereby declared to be lawfully existing nonconforming uses or structures, subject to section 31 or 32, as applicable:

- (a) Any existing use or structure not in conformance with the regulations of the zoning district in which it is located but lawfully existing at the time of the adoption of this ordinance;

- (b) Any existing use or structure not in conformance with the regulations of the zoning district in which it is located but lawfully existing at the time of the adoption of any amendment to this ordinance, the result of which amendment renders such use or structure nonconforming; and
- (c) Any existing use or structure not in conformance with the regulations of the zoning district in which it is located at the time of annexation into the city.

Sec. 34. Change in ownership.

The status of nonconforming uses and nonconforming structures is not affected by a change in ownership and/or occupancy, except as otherwise provided herein.

Sec. 35. Nonconforming mobile homes, manufactured homes, HUD Code manufactured homes, industrialized homes, and modular homes.

(a) Modular homes and industrialized homes shall be treated the same as site-built homes for purposes of this ordinance.

(b) A mobile home, manufactured home, or HUD Code manufactured home lawfully in place upon the effective date of this ordinance, but which does not conform to the terms hereof, may be repaired, renovated, restored, or rebuilt for any reason, unless either:

- (1) Such home is abandoned for six months or more after the date this ordinance is passed; or
- (2) Such home is replaced with a site-built home.

(c) A mobile home lawfully in place and lawfully used as a dwelling upon the effective date of this ordinance, although not conforming to the terms of this ordinance, may be replaced by a HUD Code manufactured home. Otherwise, a mobile home, manufactured home, or HUD Code manufactured home lawfully in place upon the date of this ordinance, but which does not conform to the terms hereof, shall not be replaced by a mobile home, manufactured home, or HUD Code manufactured home.

Secs. 36—39. Reserved.

ARTICLE IV. RESERVED

Secs. 40—49. Reserved.

ARTICLE V. PERFORMANCE STANDARDS

Sec. 50. Compliance required.

It shall be unlawful for any person to use or permit the use of any land or structure within the city in a manner which violates any applicable state or federal law, or creates a nuisance, due to any dangerous, injurious, noxious, or other similar condition, including, but not limited to, the emitting of noise, vibration, air pollution, dust, smoke, fumes, glare, or odorous matter, or the storage of explosive, hazardous, toxic, or noxious matter or materials, which adversely affects other property, or which creates a nuisance in any other manner; regardless whether such action violates any specifically quantified standard herein.

Permitted uses set forth in this ordinance shall be subject to compliance with the applicable performance standards contained in this article.

The standards set forth in this article shall apply in the various zoning districts as set forth herein.

Sec. 51. Reserved.

Table 1 [is] reserved.

Sec. 52. Vibration.

No use within any district shall create earthborn vibration, when measured at any residential property line within any district, which exceeds the limit of displacement set forth in Table 2 below in the frequency ranges specified. Notwithstanding the foregoing, the vibration level limits set forth in Table 2 below shall not apply to vibration emanating from lawful construction activities. Separately, no person shall cause or allow any earthborn or other vibration to emanate from land in the city so as to constitute a nuisance, regardless whether such vibration violates Table 2.

Table 2. Limiting Vibration at Specified Frequency Levels

<i>Frequency Cycles Per Second</i>	<i>Displacement in Inches</i>
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and over	0.0003

Secs. 53, 54. Reserved.

Sec. 55. Fences.

a. *General fence regulations.*

1. *Height restrictions.*

- (a) The following portions of a fence shall not exceed four feet in height:
 - i. The portion of the fence in front of the front wall of the main building, if any, on the lot, tract, or parcel of land, if there is any building larger than 300 square feet thereon; and
 - ii. The portion of the fence that is closer to any street right-of-way than the applicable yard requirement or building setback line under the zoning ordinance, subdivision ordinance, or any other applicable law.
- (b) A portion of a fence not subject to the four-foot height limit under this subsection [subsection a.1(a)] (height restrictions) shall not exceed eight feet in height.
- (c) Agricultural exception. The fence height regulations under subsection a.1[(a)] (height restrictions) shall not apply to an otherwise lawful fence that is both:
 - (i) Lawfully placed or used to turn, halt, or contain livestock, regardless whether livestock is temporarily absent from the property; and
 - (ii) Constructed of barbed wire, hog wire, or similar materials that make the completed fence about as transparent as a barbed wire or hog wire fence, but not chicken wire, cyclone fence wire, or similar materials that make a completed fence about as much of a visual obstruction as a cyclone fence or chicken wire fence, due to having a mesh size generally similar to a cyclone fence or chicken wire.
- (d) Lawful junkyard exception. The fence height regulations under [this] subsection a.1 (height restrictions) shall not apply to an otherwise lawful fence around a lawful junkyard or lawful salvage yard.

2. *Fencing materials.*

- i. Without a specific use permit granted by the city council, no fence shall be wholly or partly constructed of concertina wire.
- ii. No sharp or broken glass shall protrude from any surface of any fence. This paragraph does not prohibit the decorative use of unbroken glass that is not sharp enough to cut human flesh.

3. *Grandfather exception for lawful nonconforming uses.*

- i. Except as otherwise provided herein, fences are subject to the same regulations as other structures concerning nonconforming uses. This subsection 55.a (general fence regulations) is enacted on August 18, 2014.
- ii. However, if a fence or portion of a fence is built after August 18, 2014, and if the existence or location of a structure on that property is later changed so that the fence then becomes unlawful, then the fence is not a lawful nonconforming use, and the fence must be modified or removed as necessary to comply with this ordinance, within 30 days after it becomes unlawful.

b. *[Screening fences required.]* When there is a common side or rear lot line or lot lines between land being used in a manner that would be prohibited in a SFR zone (herein called the "nonresidential land," regardless how zoned), and land being used for a single family residence (herein called "the residential land," regardless how zoned), the owner of said nonresidential land shall erect a fence that properly screens adjacent residential land from adverse influences such as noise, vehicular lights, trespass, and other adverse influences. However, if the nonresidential use is in place before the single-family residential use, such fence is not required. Such fence shall be at least eight feet but not more than ten feet in height and shall form a solid continuous screen between the residential and nonresidential land. The fence required by this paragraph shall extend along the entire boundary line between the residential and nonresidential land, except for the portion of that boundary that is closer to any street right-of-way than the applicable yard requirement or building setback line under the zoning ordinance, subdivision ordinance, or any other applicable law. Each such screening fence shall be maintained in good condition by the person required to provide the fence. The obligation to provide and maintain the fence shall run with the land. This subsection applies according to how the land is actually used, not according to how the land is zoned, and not to unused land.

(Ord. No. 2014-16, § 3, 8-15-2014)

Sec. 56. Off-street parking and loading.

(a) [*Loading space required.*] Every building or part thereof erected or occupied for retail business, service, manufacturing, storage, warehousing, hotel, mortuary, or any other use involving the receipt or distribution by vehicle, rail, or other carrier, of material or merchandise, shall provide on the same lot as the main building loading space in accordance with the following:

- (1) The location of required loading space shall be within a building or on the same lot as the main building, in accordance with Table 4 below, titled Schedule of Minimum Off-Street Loading Standards.
- (2) No portion of a loading space may extend into a public right-of-way or into a required off-street parking area.
- (3) Each loading space shall be designated as such and shall only be used for loading purposes.
- (4) Where loading facilities are required for a development adjacent to an existing single-family residential use or adjacent to the boundary of District SFR, the loading spaces must be located so as to be visually screened from the adjacent residential use or District SFR by an intervening building or by a screening fence or hedge of sufficient height to fully screen the loading facility from view from any lot upon which a single-family residential is located or from any lot within District SFR.
- (5) The regulations applicable to loading facilities as provided in this subsection shall apply equally to spaces reserved for dumpsters that are repositories for solid waste collection.
- (6) Off-street loading spaces (or truck berths) shall have the following minimum dimensions:
 - (a) At least one-half of such spaces or berths shall be not less than ten feet by 40 feet.
 - (b) The remainder shall be not less than ten feet by 20 feet.

Table 4. Minimum Off-Street Loading Requirements

<i>Use</i>	<i>Gross Leasable or Useable Floor Area in square feet</i>	<i>Minimum Number of Loading Berths</i>
Retail and commercial	Less than 25,000	1
	25,000 to 84,000	2

<i>Use</i>	<i>Gross Leasable or Useable Floor Area in square feet</i>	<i>Minimum Number of Loading Berths</i>
	84,001 to 156,000	3
	156,001 to 236,000	4
	236,001 to 325,000	5
	Each additional 100,000	1
Hotels, office buildings, restaurants, and similar uses	Less than 150,000	1
	150,001 to 300,000	2
	300,001 to 500,000	3
	500,001 to 1 million	4
	Each additional 200,000 or portion thereof	1

- (b) *Parking requirements applicable to all zoning districts within the city.*
 - (1) *General provisions.* Required parking shall be comprised of all-weather surface, off-street parking spaces and shall have direct access to a public street or alley by an all-weather surface driveway not less than 12 feet in width if a one-way driveway, and not less than 24 feet in width if a two-way driveway. Notwithstanding the foregoing, required off-street parking spaces for single-family dwellings, including attached townhouses, detached dwellings, and duplexes, may be connected to a public street or alley by an all-weather surface driveway that would comply with the subdivision ordinance if the property were being subdivided, regardless whether the property is actually being subdivided; provided, further, if a segment of said driveway of such a single-family dwelling contains a width of nine feet or more and a length of 18 feet or more, and is completely within the lot lines of the lot, it may be counted as a required parking space.
 - (2) *Calculating the parking requirement.* When calculating the required number of off-street parking spaces, fractions of less than one-half shall be disregarded, and fractions of one-half or more shall be counted as one space. Where parking requirements are based on building floor area, the floor area calculations shall be based on the gross leasable or useable floor area.
 - (3) *Dimensions.* Required parking spaces shall be provided in accordance with the following standards:
 - a. Standard automobile parking spaces shall be a minimum of nine feet wide by 18 feet long.

- b. Compact automobile parking spaces shall be a minimum of eight feet wide by 16 feet long.
- c. Up to 30 percent of the required parking spaces may be designated for use by compact automobiles.
- d. Handicapped parking shall be provided in accordance with the Americans with Disabilities Act and may be credited to the required parking ratios provided herein.

(4) *Location of nonresidential parking spaces.*

1. In Districts MU and MH, required off-street parking may be provided on a separate lot from the lot upon which the main use is conducted, provided such lot is within 300 feet of the main building(s) for which such parking is intended, and provided said lot is dedicated to parking use by an instrument filed with the zoning administrator and consolidated with the main use under one certificate of occupancy. Two or more owners may join together in the provision of required parking hereunder, provided such joined parking meets the requirements for both individual uses.
2. Notwithstanding the foregoing, the board of adjustment shall be authorized to grant special exceptions from the terms of this subsection to allow the joint use by two or more property owners of parking areas for a mixed use development with a total number of spaces that is less than that required for both individual uses, if it can be established by the applicants therefor that:
 - (i) Differences of uses by the applicants dictate that the hours of peak parking for each such use are significantly varied so as not to impede availability of parking;
 - (ii) The permanent nature of the development supporting each such use would not reasonably be anticipated to alter the hours of each such use's period of peak parking demand;
 - (iii) Such special exception would not be contrary to public interest; and
 - (iv) The spirit of the ordinance would be observed and substantial justice done.
3. No off-street parking or loading space shall be located, either in whole or in part, within any fire lane required by any ordinance of the city or within aisles, driveways, or maneuvering areas necessary to provide reasonable access to any parking space.

- (5) *Enlargement of uses.* Whenever a use which is in existence on the date of enactment of this ordinance, or any amendment hereto, is changed by enlarging the gross leasable or useable floor area, the number of employees, number of dwelling units, seating capacity, or otherwise changed to create a need for an increase of ten percent or more in the number of existing parking spaces based upon the applicable parking standards or standards provided herein, such spaces shall be provided on the basis of the enlargement or change. Notwithstanding the foregoing, whenever a building or use existing prior to the effective date of this ordinance, or amendment hereto, is enlarged by 50 percent or more in gross leasable or useable floor area, parking shall be provided as set forth herein for the totality of the use or structure.
- (6) *Parking prohibitions in District SFR.* In District SFR, no truck exceeding 1½-ton capacity, no bus, recreational vehicle, trailer, watercraft, motor home, HUD Code manufactured home, or manufactured home shall be parked or stored on a lot in front of the main building or on an abutting street or alley for more than 48 hours during any given week, from Monday through the following Sunday.
- (7) *Schedule of parking regulations.* The minimum number of off-street parking spaces required hereby for uses in the various zoning districts shall be in accordance with the schedule provided in Table 5 below, but shall be not less than five parking spaces for any nonresidential use.

Table 5. Schedule of Parking Regulations

<i>Use</i>	<i>Unit</i>	<i>Minimum Number of Spaces: Unit</i>
General office (includes banks and savings & loans)	1,000 sq. ft. of GLA	4:1,000 sq. ft.
General retail (under 400,000)	1,000 sq. ft. of GLA	4:1,000 sq. ft.
General retail (400,000 & over)	1,000 sq. ft. of GLA	5:1,000 sq. ft.
Restaurants and cafeterias (sit-down eating)	Dining/bar area	1:45 sq. ft.
	Remaining area	4:100 sq. ft.
Churches, cinemas, meeting rooms, and places of public assembly (with fixed seating)	Seats	1:4
Places of public assembly (without fixed seating)	Areas of assembly	1:45 sq. ft.

<i>Use</i>	<i>Unit</i>	<i>Minimum Number of Spaces: Unit</i>
Places of assembly for children age 15 and under (without fixed seating)	Areas of assembly	1:650 sq. ft.
Hospitals (acute care)	Beds	1:1
Hospitals, nursing homes, assisted living (chronic care)	Beds	1:3
Light manufacturing	1,000 sq. ft. of GLA	2:1,000 sq. ft.
Wholesaling, warehousing, and distribution	1,500 sq. ft. of inside storage area	1:1,500 sq. ft.
Bowling alley	Lanes	5:1 lane
Funeral home	Seats	1:3 seats
Medical/dental clinic	1,000 sq. ft. of GLA	6:1,000 sq. ft.
Hotel/motel	Rooms	1:1 room
Single family and duplex dwelling	Dwelling	2:1 dwelling
Auto repair, painting, or body repair	1,000 sq. ft. of GLA	3:1 sq. ft. of office area + 4 spaces per each service bay, or one space per 600 sq. ft. of other gross floor area
Auto part sales	1,000 sq. ft. of GLA	3:1 sq. ft. of office area + 4 spaces per each service bay, or one space per 600 sq. ft. of other gross floor area
Auto service station		2 spaces per bay + two queuing spaces per gas pump
Automobile/vehicle sales: for showroom/office/outside lot	1,000 sq. ft. of GLA	4:1,000 sq. ft. but in no event less than 8 spaces

"GLA" means "floor area, gross leasable or usable," as defined in article I above.

For uses not mentioned above or for which the category of use is uncertain, the city council shall determine the most appropriate equivalent from the preceding table.

- (8) *Maintenance of required spaces.* It shall be unlawful for any person to fail to maintain parking facilities required to be provided by this ordinance.

Sec. 57. Vehicle storage.

Automobile/vehicle paint and body shops, and automobile/vehicle repair and service garages, may include automobile/vehicle storage as an accessory use only if such storage occurs on an all-weather surface area.

Sec. 58. Businesses in mobile units.

No person shall conduct any business, in whole or in part, in or from a mobile unit in any district, except:

- a. In compliance with the food truck ordinance, Ordinance No. 2021-02, as it may be amended from time to time;
- b. In compliance with a permit or authorization under any ordinance specifically authorizing that business in or from a mobile unit;
- c. As a lawful accessory use, home occupation, home-based business, or home office, but in any of those cases only within a mobile unit lawfully used as the main structure of a residence; or
- d. In compliance with a specific use permit for that use.
(Ord. No. 2021-13, § 3(59), 4-19-2021)

Sec. 59. Reserved.**ARTICLE VI. SUPPLEMENTAL DISTRICT REGULATIONS****Sec. 60. Applicability.**

The regulations set forth in this article shall apply to all districts and permitted uses in the city.

Sec. 61. Visibility at intersections.

On a corner lot, no structure shall be erected or constructed, and no vegetation shall be planted and allowed to grow, in such a manner as to impede vision between a height of two feet and eight feet above the centerline grades of the intersecting streets, in the triangular area bounded by the intersection street lines and a line joining points along said street lines 20 feet from the point of their intersection.

Sec. 62. Yard requirements.

(a) Minimum front and side building setback lines shall be as set forth in the city's subdivision ordinance, unless a more restrictive requirement is contained herein, in which case the more restrictive requirement shall control.

(b) On a double frontage interior lot, or a comer lot, the depth of the required yard adjacent to the side or rear street, as applicable, shall not be less than the required front yard on the same side of such street between intersecting streets; provided, however, the buildable width of a lot of record shall not be reduced to less than 30 feet.

(c) No building shall project into or over a required yard adjacent to a street.

(d) For the purpose of side yard regulations, a two-family dwelling or multifamily dwelling shall be considered as one building occupying one lot.

(e) The area required in a yard shall be open to the sky, unobstructed except for the ordinary projections of window sills, belt courses, cornices or other ornamental features.

(f) A roof overhang, an open fire escape or an outside stairway may project not more than three feet (3') into a required yard, but no closer than three feet to a lot line.

(g) In District SFR, an accessory building not exceeding 20 feet in height may occupy a maximum of 25 percent of the required rear yard, and unenclosed parking spaces may occupy a maximum of 80 percent of the area of a required rear yard provided that the total lot coverage shall not exceed the maximum allowable for the district in which the lot is located. No accessory building shall be closer to any rear or side lot line than applicable zoning district regulations allow.

Sec. 63. Reserved.

Sec. 64. Swimming pools.

Private swimming pools shall be enclosed by a wall or fence at least six feet in height with automatically locking gates. This section shall apply to all swimming pools, regardless whether existing before this ordinance was passed, and regardless of any section otherwise allowing nonconforming uses.

Sec. 65. Home office and home-based business.

(a) *General.*

(1) *Intent/purpose.* The City of Iowa Colony recognizes the desire and/or need of some citizens to use a portion of their residence for business activities in order to reduce trip generation and to provide another economic development tool, but it also recognizes the need to protect the surrounding areas from adverse impacts generated by these business activities.

- (2) *Aggregate totals of multiple home-based businesses.* The quantitative limits and all other requirements in this section apply to the aggregate total from all home-based businesses located partly or wholly on the premises. For example, there may be multiple home-based businesses on the premises, but they must share the total, aggregate limit of 25 percent of the area of all permitted structures, as more specifically stated in subsection (d), and the total, aggregate limit of two additional vehicles and 22 additional vehicle trips per day (subsection (g)(2)).
- (b) *Administration.*
 - (1) *Registration.* Type A home office and Type B home-based business use shall not require registration. All Type C home-based businesses with one or more customers or prospective customers coming or invited to the premises shall require registration with the City of Iowa Colony by using a home-based business registration form provided by the city.
 - (2) *Permit.* Type A home office and Type B home-based business use shall not require a business permit. All Type C home-based businesses with one or more customers or prospective customers coming or invited to the premises shall require a business permit with the City of Iowa Colony by using a home-based business permit form provided by the city. Permits shall be valid for two years.
 - (3) *Permit renewal.* Required permits for Type C home-based business shall be renewed prior to the expiration of a then valid permit so that a valid permit shall be in effect at all times while the Type C home-based business is in operation. Permit renewals shall be valid for two years.
 - (4) *Inspections.* Type C home-based business permit holders shall grant the City of Iowa Colony the right to inspect the home-based business residence for compliance with home-based business regulations.
- (c) *Enforcement.* Home-based businesses shall be divided into types as follows:
 - (1) Type A, telecommuters and home-office use: No business permit is required.
 - (2) Type B, online sales: No business permit is required.
 - (3) Type C, professional services: No Type C home-based business with one or more customers or prospective customers coming or invited to the premises shall be conducted until a home-based business permit application has been approved by the City of Iowa Colony. The application shall include the following:
 - a. The address of the property;

- b. The resident's name;
- c. The owner's name (if different than resident);
- d. The type of business and business activities;
- e. The number of employees;
- f. The location and area of the home-based business within the premises;
- g. The vehicles used in the home-based business;
- h. The number of expected customer visits per day;
- i. The home-based business tax ID number or EIN.

The building official or his/her designee shall issue the Type C home-based business permit for the following Type C home-business uses permitted herein or provide the applicant reasons for denial in the event that the application is not approved, within three business days. The applicant may appeal the building official's or his/her designee's decision to deny a Type C home-based business permit to the Zoning board of adjustment.

The Type C home-based business permit is valid for a two-year period and must be renewed if the residence continues to be used for business activities. The building official has the right to inspect the Type C home-based business and premises to check for compliance with the Type C home-based business regulations.

The zoning board of adjustment shall conduct a public hearing for any type C home-based business use that is not included in the herein listed type C permitted home-based business uses. The applicant shall post a sign on the property at least ten days prior to the public hearing in a format stated by the city. The city shall notify all property owners within 200 feet of the applicant's property regarding the purpose, date, time, and place of the public hearing.

Fees for Type C home-based business permits shall be specified in the city schedule of fees and charges.

(d) *Use of the residence.* The home-based business must be conducted within, and any associated storage must be contained within, the principal residential structure and/or one permitted accessory structure that is also reasonably useful for a common residential purpose, regardless whether actually so used, and shall not use more than 25 percent of the total gross floor area of all the permitted structures.

(e) *Permitted home-based businesses.*

- (1) Type A, telecommuters and home-office use.

- (2) Type B, online sales.
- (3) Type C, professional services.
 - a. Offices for such professionals, such as, but not limited to, architects, brokers, counselors, clergy, dentists, doctors, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, contract management, graphic design, construction contractors, landscape design, surveyors, cleaning services, salespersons and manufacturer's representatives, and travel agents;
 - b. Personal services, including barbershops, beauty parlors, manicure and pedicure shops, pet grooming, catering and chauffeuring services;
 - c. Instructional services, including music, dance, art and craft classes, and tutoring;
 - d. Babysitting services and home day care;
 - e. Studios for artists, sculptors, musicians, photographers, and authors;
 - f. Workrooms for tailors, dressmakers, milliners, and craft persons, including weaving, lapidary, jewelry making, cabinetry, and woodworking;
 - g. Repair services, including watches and clocks, small appliances, computers, and electronic devices; and
 - h. Agricultural sales of products grown or produced on site is a permitted Type C home-based business, and such sales do not require registration and do not require a Type C home-business permit;

It is recognized that this list may not be totally inclusive. The building official shall make the determination of whether an unlisted business is similar to a listed permitted use and issue or deny a Type C home-based business permit. The building official or his/her designee shall issue the Type C home-based business permit for the Type C home-business occupations permitted herein or determined to be similar or provide the applicant reasons for denial in the event that the application is not approved, within three business days. The applicant may appeal the building official's or his/her designee's decision to deny a Type C home-based business permit to the zoning board of adjustment.

(f) *Prohibited home-based businesses.*

- (1) Prohibited home-based businesses include:
 - a. Boarding kennels and veterinarian clinics or hospitals;
 - b. Medical and dental clinics, and hospitals;

- c. Restaurants, clubs, and drinking establishments;
- d. Motor vehicle/small engine repair;
- e. Undertaker and funeral parlors;
- f. Retail sales of goods not made on the premises; and
- g. Sexually oriented businesses.

(g) *Operational standards.* The following operational standards apply to all home-based businesses, including Type A, Type B, and Type C, unless noted otherwise:

- (1) Authorization. Home-based businesses shall be permitted on property used for residential purposes, regardless how zoned, provided such home occupation is incidental and subordinate to the use of the premises for residential purposes and in compliance with all the provisions herein.
- (2) No home-based business shall result in the increase by more than two additional vehicles at any time in the number of motor vehicles parked on-site or result in the increase of the number of vehicles traveling to and from the applicable dwelling over 22 vehicle trips per day (24-hour period) (a trip to and a trip from the site is considered two vehicle trips).
- (3) The home-based business shall be conducted in such a way that it does not create parking or traffic congestion or otherwise place an undue burden on the abutting or adjoining property or streets in the immediate neighborhood. In no case shall the customers or clients of the home-based business be allowed to park on any public street or right-of-way.
- (4) No stock in trade shall be stored, displayed or sold outdoors on the premises except for agricultural goods produced on the premises.
- (5) Only members of the family residing on the premises shall be employed in the home-based business.
- (6) No noxious or offensive noise, fumes, smoke, electrical or magnetic interference, vibration, heat, glare or other nuisance shall be emitted onto any other property. This and all other requirements for any type of home-based business are in addition to those performance standards indicated elsewhere in the City of Iowa Colony Zoning Ordinance.
- (7) The home-based business shall be conducted entirely within the main dwelling unit and/or within one permitted accessory structure.
- (8) The conduct of the home-based business shall not be easily visible from any street or adjacent property, public or private.

- (9) No external alterations, special construction, or other similar feature shall be added to the exterior of the main dwelling unit or accessory structure thereto to facilitate the home-based business.
 - (10) No sign relating to the home-based business of any type shall be permitted on the premises except as allowed in the sign ordinance.
 - (11) No repair or servicing of vehicles, internal combustion engines, large equipment or large appliances shall be allowed.
 - (12) No permitted accessory building used for a permitted home-based business may be located within 200 feet of any other off-site residence.
 - (13) No separate vehicular entrance or driveway may be constructed to facilitate the home-based business.
 - (14) The hours of operation open to non-employees for Type C home-based business shall be limited to no earlier than 8:00 a.m. and no later than 9:00 p.m., but the hours of operation for a babysitting service or home day care shall be as provided by law.
 - (15) The Type C home-based business use and permit is designated for the home-based business permit applicant only. A home-based business permit cannot be owned, given, sold, or granted to any person other than the original home-based business permit applicant. Any transfer or change in ownership or use immediately invalidates the home-based business permit.
- (Ord. No. 2019-27, § 5, 7-22-2019)

Sec. 66. Reserved.

Sec. 67. Accessory uses and structures.

Accessory uses and structures are permitted in any zoning district in connection with any main use lawfully existing within such district provided that all accessory structures shall comply with applicable regulations for the district in which the structure is located.

Sec. 68. Temporary uses during construction.

Temporary uses incidental to construction, but not otherwise lawful within a district, shall be authorized during periods of construction of buildings or structures otherwise permitted in such district.

Sec. 69. Coordination with other ordinances.

(a) This ordinance shall not impair any of the provisions of Ordinance 98-5 (the manufactured home park ordinance), Ordinance 98-6 (the manufactured home ordinance) or Ordinance 2006-06 (the subdivision ordinance), as any of those ordinances may be amended from time to time. In the event of any conflict between the terms of this ordinance and the terms of said ordinances or any other ordinances of the city, then the provision with the most restrictive terms shall govern and control.

(b) Any reference in the zoning ordinance to the zoning ordinance or to any other ordinance shall mean such ordinance as amended from time to time.

ARTICLE VII. ZONING DISTRICT REGULATIONS**Sec. 70. District SFR (Single-Family Residential Dwelling District).**

District SFR is a low density single-family residential dwelling district and is subject to the city's most restrictive regulations in order to prevent the encroachment of incompatible uses. No building or land shall be used and no building or structure shall be erected, constructed, reconstructed, converted, enlarged, or structurally altered within District SFR except in accordance with the provisions of this Section.

(a) *Permitted uses.*

Single-family dwellings;

Accessory residential uses;

Governmental facilities;

Home occupations;

Private recreational facilities owned and operated for or on behalf of a residential subdivision;

Public primary and secondary educational facilities;

Servants' or caretakers' quarters;

Construction offices relating to developments of permitted structures during such construction;

Sales offices and model homes related to single-family residential subdivision development;

Agricultural uses;

Public and private parks;

However, HUD Code manufactured homes, manufactured homes, and mobile homes are prohibited in District SFR.

- (b) *Specific uses.* The following uses are permitted with District SFR subject to the granting of a specific use permit as prescribed in article VIII of this ordinance;

Churches or other places of religious worship;

Private or public educational institutions, including:

Accredited elementary and secondary schools;

Kindergartens and nursery schools; and

Religious institutions.

- (c) *Lot size requirements.*

- (1) Minimum lot area:

(i) One acre for lots served by neither public sewage treatment nor public water supply; or

(ii) One-half acre for lots served by either public sewage treatment or public water supply.

(2) Minimum lot width: As would be required by the subdivision ordinance, if the property were being subdivided, regardless whether the property actually is being subdivided.

(3) Minimum lot depth: As would be required by the subdivision ordinance if the property were being subdivided, regardless whether the property actually is being subdivided.

(Ord. No. 2014-01, § 1, 1-27-2014)

- (d) *Yard requirements.*

(1) Required front yard: 50 feet.

(2) Required side yard: 25 feet for interior side lots. Side yards adjacent to side streets shall be not less than 50 feet, except that side yards adjacent to the turn-around portion of a cul-de-sac street shall be not less than 25 feet.

(3) Required rear yard: 50 feet; provided, however, a rear yard of at least 100 feet shall be maintained where adjacent to a street.

(4) Maximum lot coverage: Not more than 50 percent of the lot area, including the main building, accessory buildings, and other impervious surfaces, but not including swimming pools.

- (e) *Maximum height.* Two stories. Cooling towers, roof gables, chimneys, and vent stacks may extend to a height not to exceed 35 feet above the average level of the base of the foundation of the building. Height regulations prescribed herein shall not apply to satellite earth station antennas or any personal communication electronic facilities protected by the federal Telecommunications Act of 1996.

Sec. 71. District MU (Mixed Use District).

District MU is established to accommodate mixed uses through the strict enforcement of performance standards that will encourage quality development and redevelopment of small-scale mixed commercial and residential uses.

- (a) *Permitted uses.* In the MU district, no buildings or land shall be used and no building shall be erected or converted to any use other than the following; provided however, that any sales of goods or merchandise included in the following list shall be retail only, not wholesale:
 - (1) Abstract or title company;
 - (2) Accountant;
 - (3) Advertising agency;
 - (4) Agricultural uses;
 - (5) Animal feed store;
 - (6) Antique store;
 - (7) Appraisers;
 - (8) Architect;
 - (9) Art gallery;
 - (10) Arts and craft store;
 - (11) Automatic laundry;
 - (12) Automobile parking lots;
 - (13) Automobile parts store;
 - (14) Bakery, employing no more than five persons;
 - (15) Bank;
 - (16) Barber and beauty shop;
 - (17) Bookkeeper;
 - (18) Bookstore;

- (19) Cafeteria;
- (20) Candy store;
- (21) Catering;
- (22) Child care center;
- (23) Clinic for treatment of humans;
- (24) Clothes store;
- (25) Collection agency;
- (26) Commercial billboard or advertising signs not to exceed 32 square feet in area per sign;
- (27) Computer store and repairs;
- (28) Convenience store;
- (29) Credit counselor;
- (30) Dance studio;
- (31) Delivery service;
- (32) Dental clinic;
- (33) Department store;
- (34) Doctor;
- (35) Drafting service;
- (36) Drug store;
- (37) Engineer;
- (38) Filling station or service station, but without a wrecker service;
- (39) Financial consultant;
- (40) Flea market, maximum one acre including parking;
- (41) Florist shop;
- (42) Furniture store;
- (43) Gift shop;
- (44) Gun shop;
- (45) Grocery store;
- (46) Hardware store;
- (47) Home appliance store;

- (48) Ice retail distributing, but not manufacturing;
- (49) Insurance agency;
- (50) Jewelry store;
- (51) Laundry storefront, dry cleaning storefront, or laundry plant, but not dry cleaning plant;
- (52) Lawyer;
- (53) Locksmith;
- (54) Medical supply store;
- (55) Mortgage company;
- (56) Motels, hotels, and tourists courts;
- (57) Moving picture (motion picture) theater, but not drive-in theater;
- (58) Musical instrument store;
- (59) Notary public;
- (60) Office supply and machinery store and repairs;
- (61) Optician or optometrist;
- (62) Pawnshops that have been duly licensed to transact business by the consumer credit commissioner under the Texas Pawnshop Act ([Vernon's Ann. Civ. St. art.] 5069-51.01 et seq. [now V.T.C.A., Finance Code § 371.001 et seq.]);
- (63) Plant nursery;
- (64) Radio repair and sales;
- (65) Radio studio (excluding tower);
- (66) Real estate agent;
- (67) Record and tape store;
- (68) Restaurants and taverns;
- (69) Shoe store and repair shop;
- (70) Sporting goods store;
- (71) Stockbroker;
- (72) Studio (art, music or photo);
- (73) Taxidermist;
- (74) Tailor;

- (75) Toy store;
- (76) Travel agency;
- (77) Video arcade;
- (78) Washateria;
- (79) Any use permitted in District SFR;
- (80) Public and private parks.

No store or use shall be open for business at any time between midnight and 5:00 a.m. on any day of the week, except any store or use may apply for a specific use permit to be open for business at any time on any day of the week, if the store or use complies with all of the following conditions:

1. The store or use is located and has property frontage on a super arterial or major arterial, as designated on the adopted City of Iowa Colony major thoroughfare plan;
2. The store or use is located within 600 feet of the right-of-way line of a super arterial, as designated on the adopted City of Iowa Colony major thoroughfare plan;
3. The store or use is located within the high-density mixed-use (HDMU) area, as designated on the City of Iowa Colony comprehensive plan;
4. The store or use is generally associated with an urgency of need to operate between midnight and 5:00 a.m.;
5. The store or use will not create a disturbance of the general area around the location of the store or use;
6. The store or use is not located on property that shares a boundary line or is adjacent to single-family residential use either as an existing single-family use or as a proposed single-family use, as indicated by either an adopted plan of development or by an adopted general plan indicating future land uses; and
7. The store or use is not one of the following uses:
 - a. A game room or video arcade;
 - b. A tattoo parlor;
 - c. A sexually oriented business;
 - d. A bar, tavern, restaurant or other place of business serving alcoholic beverages for consumption on site;

- e. A gun shop;
- f. A motel, hotel, or tourist court with room rentals for less than daily use;
- g. A pawnshop; or
- h. A freestanding, not mixed-use, restaurant, with either sit-down dining and/or drive-thru fast food pick-up.

The city council shall have discretion to grant or deny any specific use permit under this ordinance.

- (b) *Specific uses and permits.* Any other commercial or nonresidential use may be allowed, but only if the city council exercises its discretion to grant a specific use permit. However, regardless of any other provision, no specific use permit shall be available for the following uses, and such uses are hereby prohibited in MU districts: any use that is noxious or offensive by reason of emission of odors, soot, dust, gas, fumes, vibrations, electrical or magnetic emissions, noise, or other emissions onto the land of another person.
- (c) Regardless of subsections (a) and (b), HUD Code manufactured homes, manufactured homes, and mobile homes are prohibited in MU districts, regardless whether used as a home or otherwise.
- (d) *Reserved.*
- (e) *Area regulations, residential.*
 - (1) Single-family dwellings: Same as District SFR regulations.
- (f) *Area regulations, nonresidential.*
 - (1) Lot size requirements.
 - a. Minimum lot area: 8,000 square feet;
 - b. Minimum lot width: 80 feet;
 - c. Minimum lot depth: 100 feet.
- (g) *Yard requirements.*
 - (1) Required front yard: 25 feet.
 - a. Required side yard: Ten feet for side yards; provided, however, a side yard adjacent to a side street shall have a yard of not less than 20 feet;
 - b. Required rear yard: 20 feet; provided, however, a rear yard adjacent to a street shall have a yard of not less than 30 feet.

- (h) *Maximum lot coverage.* As required to implement the applicable yard requirements and any other requirements of this ordinance or other applicable law.
- (i) *Maximum height.* Two stories, except that cooling towers, roof gables, chimneys, vent stacks and other projections from the roof may extend to a height not to exceed 35 feet above the average level of the base of the foundation of the building. Height regulations prescribed herein shall not apply to satellite earth station antennas or any communication electronic facilities protected by the federal Telecommunications Act of 1996.
- (j) *Floor area maximum.* 60 percent of site area.
(Ord. No. 2021-12, § 3, 3-15-2021; Ord. No. 2021-13, § 4, 4-19-2021)

Sec. 72. District MH (Manufactured Housing District).

District Manufactured Housing is created to provide a place in the city for various types for housing.

- (a) *Permitted uses.*
 - HUD Code manufactured homes;
 - Industrialized homes;
 - Manufactured homes;
 - Mobile homes;
 - Modular homes;
 - Public and private parks.
- (b) *Area regulations.*
 - (1) Lot size requirements:
 - a. In a manufactured home park: same as in the manufactured home park ordinance, Ordinance No. 98-5.
 - b. Not in a manufactured home park: same as in District MU.
 - (2) Yard requirements:
 - a. In a manufactured home park: same as in the manufactured home park ordinance, Ordinance No. 98-5.
 - b. Not in a manufactured home park: same as in District MU.
 - (3) Maximum lot coverage. As required to comply with applicable yard requirements of this ordinance.

- (4) Height regulations, two stories. Cooling towers, roof gables, chimneys, and vent stacks may extend to a height not to exceed 35 feet above the average level of the base of the frame, chassis, or foundation of the structure. Height regulations prescribed herein shall not apply to satellite earth station antennas or any personal communication electronic facilities protected by the federal Telecommunications Act of 1996.

Sec. 73. District BR (Business and Retail Use).

District BR is established to accommodate business and retail uses through the strict enforcement of performance standards that will encourage quality development and redevelopment of commercial properties.

- (a) *Permitted uses.* In the BR district, no buildings or land shall be used and no building shall be erected or converted to any use other than the following; provided, however, that any sales of goods or merchandise included in the following list shall be retail only, not wholesale:
 - (1) Abstract or title company;
 - (2) Accountant;
 - (3) Advertising agency;
 - (4) Agricultural uses;
 - (5) Animal feed store;
 - (6) Antique store;
 - (7) Appraisers;
 - (8) Architect;
 - (9) Art gallery;
 - (10) Arts and craft store;
 - (11) Automatic laundry;
 - (12) Automobile parking lots;
 - (13) Automobile parts store;
 - (14) Bakery, employing no more than five persons;
 - (15) Bank;
 - (16) Barber and beauty shop;
 - (17) Bookkeeper;
 - (18) Bookstore;

- (19) Cafeteria;
- (20) Candy store;
- (21) Catering;
- (22) Child care center;
- (23) Clinic for treatment of humans;
- (24) Clothes store;
- (25) Collection agency;
- (26) Commercial billboard or advertising signs not to exceed 32 square feet in area per sign;
- (27) Computer store and repairs;
- (28) Convenience store;
- (29) Credit counselor;
- (30) Dance studio;
- (31) Delivery service;
- (32) Dental clinic;
- (33) Department store;
- (34) Doctor;
- (35) Drafting service;
- (36) Drug store;
- (37) Engineer;
- (38) Filling station or service station, but without a wrecker service;
- (39) Financial consultant;
- (40) Flea market, maximum one acre including parking;
- (41) Florist shop;
- (42) Furniture store;
- (43) Gift shop;
- (44) Gun shop;
- (45) Grocery store;
- (46) Hardware store;
- (47) Home appliance store;

- (48) Ice retail distributing, but not manufacturing;
- (49) Insurance agency;
- (50) Jewelry store;
- (51) Laundry storefront, dry cleaning storefront, or laundry plant, but not dry cleaning plant;
- (52) Lawyer;
- (53) Locksmith;
- (54) Medical supply store;
- (55) Mortgage company;
- (56) Motels and tourists courts;
- (57) Motion picture theater, but not drive-in theater;
- (58) Musical instrument store;
- (59) Notary public;
- (60) Office supply and machinery store and repairs;
- (61) Optician or optometrist;
- (62) Pawnshops that have been duly licensed to transact business by the consumer credit commissioner under the Texas Pawnshop Act (Vernon's Ann. Civ. St. art. 5069-51.01 et seq. [now V.T.C.A., Finance Code § 371.001 et seq.]);
- (63) Plant nursery;
- (64) Radio repair and sales;
- (65) Radio studio (excluding tower);
- (66) Real estate agent;
- (67) Record and tape store;
- (68) Restaurants and taverns;
- (69) Shoe store and repair shop;
- (70) Sporting goods store;
- (71) Stockbroker;
- (72) Studio (art, music or photo);
- (73) Taxidermist;
- (74) Tailor;

- (75) Toy store;
- (76) Travel agency;
- (77) Video arcade; and
- (78) Washateria.

No store or use shall be open for business at any time between midnight and 5:00 a.m. on any day of the week, except any store or use may apply for a specific use permit to be open for business at any time on any day of the week, if the store or use complies with all of the following conditions:

1. The store or use is located and has property frontage on a super arterial or major arterial, as designated on the adopted City of Iowa Colony major thoroughfare plan;
2. The store or use is located within 600 feet of the right-of-way line of a super arterial, as designated on the adopted City of Iowa Colony major thoroughfare plan;
3. The store or use is located within the High-Density Mixed-Use (HDMU) area, as designated on the City of Iowa Colony comprehensive plan;
4. The store or use is generally associated with an urgency of need to operate between midnight and 5:00 a.m.;
5. The store or use will not create a disturbance of the general area around the location of the store or use;
6. The store or use is not located on property that shares a boundary line or is adjacent to single-family residential use either as an existing single-family use or as a proposed single-family use, as indicated by either an adopted plan of development or by an adopted general plan indicating future land uses; and
7. The store or use is not one of the following uses:
 - a. A game room or video arcade;
 - b. A tattoo parlor;
 - c. A sexually oriented business;
 - d. A bar, tavern, restaurant or other place of business serving alcoholic beverages for consumption on site;
 - e. A gun shop;
 - f. A motel, hotel, or tourist court with room rentals for less than daily use;

- g. A pawn shop; or
- h. A freestanding, not mixed-use, restaurant, with either sit-down dining and/or drive-thru fast food pick-up.

The city council shall have discretion to grant or deny any specific use permit under this ordinance.

- (b) *Specific uses and permits.* Any other commercial, nonresidential, or public or private park use may be allowed, but only if the city council exercises its discretion to grant a specific use permit. However, regardless of any other provision, no specific use permit shall be available for the following uses, and such uses are hereby prohibited in the BR district: any use that is noxious or offensive by reason of emission of odors, soot, dust, gas, fumes, vibrations, electrical or magnetic emissions, noise, or other emissions onto the land of another person.
- (c) *Reserved.*
- (d) *Area regulations, nonresidential.* Lot size requirements:
 - (1) Minimum lot area: 8,000 square feet;
 - (2) Minimum lot width: 80 feet; and
 - (3) Minimum lot depth: 100 feet.
- (e) *Yard requirements.*
 - (1) Required front yard: 25 feet;
 - (2) Required side yard: Ten feet for side yards; provided, however, a side yard adjacent to a side street shall have a yard of not less than 20 feet; and
 - (3) Required rear yard: 20 feet; provided, however, a rear yard adjacent to a street shall have a yard of not less than 30 feet.
- (f) *Maximum lot coverage.* As required to implement the applicable yard requirements and any other requirements of this ordinance or other applicable law.
- (g) *Maximum height.* No building located in the BR district, including anything attached thereto, except a parapet not to exceed four feet in height, nor anything constructed for use therewith nor any other structure or device of any sort, shall exceed the following height:
 - (1) 42 feet above natural grade within 200 feet of the nearest point of any residential lot;

- (2) 56 feet above natural grade at distances greater than 200 feet but less than 300 feet from the nearest point of any residential lot; and
 - (3) 70 feet above natural grade at distances greater than 300 feet from the nearest point of any residential lot.
- (h) [*Height regulation exemptions.*] Height regulations prescribed herein shall not apply to satellite earth station antennas or any communication electronic facilities protected by the federal Telecommunications Act of 1996.
(Ord. No. 2021-12, § 3, 3-15-2021; Ord. No. 2021-13, § 5, 4-19-2021)

Sec. 74. Planned unit developments.

(a) *Purpose and objectives.* The purpose and intent of the planned unit development 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 ordinance and accepted urban planning with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. The 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 developments.

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 ordinance, and to that end, the PUD plan must be prepared and approved in accordance with the provisions of this ordinance.

(b) *Mixed-use development.* The PUD shall include and allow for compatible mixed uses such as compatible residential, commercial and/or industrial, within a single project within the boundaries of 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 of the other zoning districts provided for in this ordinance.

(c) *Flexible planning.* When considering a PUD, the unique nature of each proposal for a PUD may require, under property 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, setbacks, 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 district, 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. The flexibility permitted for a PUD does not imply that any standard or requirement will be varied or decreased.

(d) *Rules applicable.* The city council, after public hearing and proper notice to all parties affected and after recommendation from the commission, may attach a planned unit development designation to any tract of land equal to or greater than 20 acres for any planned unit development composed of only non-single-family uses and equal to or greater than 50 acres for any planned unit development with any single-family lots. Under the planned unit development designation, the following rules apply:

- (i) 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.
- (ii) Permitted uses are those listed under the applicable zoning district for the base zoning to be applied to the PUD (for example, the permitted uses in a PUD proposed to be developed as a retail, commercial and office development are the respective uses listed for the business and retail district). In addition, a planned

unit development 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.

(iii) 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) Lot size along with front, side and rear setbacks; provided, however, that no modification will be allowed that would be inconsistent with the city's subdivision ordinance except as follows:

(1) Single-family residential lot area.

(a) The minimum lot area for a single-family residential lot with wastewater collection service shall be 6,600 square feet, except that;

(b) The lot area for a single-family residential lot with wastewater collection service may be less than the minimum lot area provided by subsection [(d)(iii)(A)(1)](a) if the subdivision plat containing the reduced lot area meets all the following performance standards:

(i) Compensating open space. A subdivision may contain a single-family residential lot of less than minimum lot area required by subsection (a) of section 74 of this ordinance, if compensating open space for lots less than 6,600 square feet in area is provided within the boundaries of the subdivision plat that includes single-family residential lots less than 6,600 square feet in area in accordance with the following schedule and in conformance with additional performance standards of this section as follows:

<i>Single-Family Residential Lot Area May Be Reduced To Between</i>	<i>Upon Providing This Amount of Compensating Open Space Per Single-Family Residential Lot (Square Feet)</i>
6,000—6,599	150

IOWA COLONY CODE

<i>Single-Family Residential Lot Area May Be Reduced To Between</i>	<i>Upon Providing This Amount of Compensating Open Space Per Single-Family Residential Lot (Square Feet)</i>
5,500—5,999	300
5,000—5,499	450
4,500—4,999	600
4,000—4,499	750
3,500—3,999	900

Single-family residential lots less than 3,500 square feet in lot area are not allowed.

The provided compensating open space must conform to all of the following minimum performance standards:

- (1) Compensating open space areas must be reasonably dry and flat with no more than 25 percent of the total required compensating open space to located within the 100-year floodplain and/or within a non-permanent wet location of a drainage detention area;
- (2) The minimum size of any area used for compensating open space shall be 1,000 square feet, with minimum dimensions of 20 feet with the aggregate total amount of open space being not less than one-fourth acre or 10,890 square feet for the subdivision containing single-family residential lots less than 6,600 square feet in lot area;
- (3) Any area used for compensating open space shall be restricted for the use of owners of property in and residents of the subdivision; shall be owned, managed and maintained under a binding agreement among the owners of the property in the subdivision in the form of a property management association (i.e., homeowners association) or municipal utility district maintained; and shall be accessible to all of the residents of the subdivision.

The following areas shall not be used for or considered compensating open space:

- (1) Areas designated or used as lots or building sites for dwelling units, utility or storage purposes, carports, or garages;

- (2) Driveways, private roadways, or streets;
 - (3) Street medians of any width within public or private street right-of-way;
 - (4) Detention ponds, drainageways, water areas including floodplains and floodways, or ravines, except that, up to a maximum of 25 percent of the required total compensating open space area may be designated for the portion of maintained detention ponds that do not contain permanent water areas.
 - (5) Any land dedicated as a public or private park that is used to satisfy the parkland dedication requirement of section 3.2.1.3 of the Unified Development Code (UDC).
- (ii) Minimum required improvements within dedicated parkland:
- (1) Any private or public dedicated parkland area greater than one-fourth acre in size but less than one acre in size within the area containing single-family residential lots less than 6,600 square feet in area shall be improved with a minimum one bench capable of seating three people side by side, and one bicycle rack capable of securing a minimum of three bicycles;
 - (2) Additionally, any private or public dedicated parkland area greater than one acre in size but less than five acres in size within the area containing single-family residential lots less than 6,600 square feet in lot area, shall be improved with the requirements in [this section] and a permanent covered shade structure, a minimum size of 625 square feet in area, at least one public water drinking fountain, plus one additional (for a minimum total of two) benches with each bench capable of seating three people side by side, plus one additional (for a minimum total of two) bicycle racks capable of securing a minimum of three bicycles in each rack; and a connected walking path also being connected to a street sidewalk or to the street curb if no street sidewalk is provided, a minimum width of five feet wide;

- (3) Additionally, any private or public dedicated parkland area greater than five acres but less than ten acres in size within the area containing single-family residential lots less than 6,600 square feet in lot area shall be improved with those improvements listed in [this section] plus one fully irrigated, regulation soccer practice field and one fully irrigated, regulation youth baseball practice field with backstop and detachable bases, or two fully irrigated, regulation soccer practice fields; plus an additional concrete on-site parking area with a minimum 20 car capacity and one additional (for a minimum total of three bicycle racks capable of securing a minimum of three bicycles each rack;
 - (4) Additionally, any private or public dedicated parkland area greater than ten acres is size within the area containing single-family residential lots less than 6,600 square feet in lot area shall be required to provide the improvements listed in [this section] and shall be reviewed and approved by city council regarding additional required improvements;
 - (5) When more than one acre of private or public dedicated parkland area is required in a single-family residential area with lots less than 6,600 square feet in lot area, section 3.2.1.4. [of the Unified Development Code] (money in lieu of land dedication for neighborhood parks) is not applicable as an option to parkland dedication.
- (iii) Any single-family residential area with single-family residential lots less than 6,600 square feet in lot area shall provide a property or homeowners association (HOA) to maintain the required compensating open space. Additionally, private deed restrictions that provide enforcement of design guidelines for sustainable, higher-quality development must be submitted to the city before final plat approval;
 - (iv) Any area with single-family residential lots less than 5,000 square feet in lot area shall provide a property owners association to maintain the front yard between the face of the

front of the house structure and the front property line of each lot for the area containing single-family residential lots less than 5,000 square feet in lot area;

- (v) Any single-family residential area with single-family residential lots less than 6,600 square feet in lot area shall include primary structures constructed of brick or masonry veneer exterior walls for 100 percent of the exterior wall surface (exclusive of windows and doors) for one story structures and a minimum of 60 percent of the exterior wall surface (exclusive of windows and doors) for two-story structures with the remaining maximum 40 percent being cementitious fiber board (also known as fiber cement board) material, or equal, for two-story structures. Secondary and accessory structures shall be cementitious fiber board or equal;
- (vi) A PUD having any single-family residential lots less than 6,600 square feet in lot area shall have at least 40 percent of the total PUD area with single-family lots equal to or greater than 6,600 square feet in lot area. The remaining 60 percent of the total PUD area may contain lots less than 6,600 square feet in lot area. However, no more than one-half of the PUD area with single-family residential lots less than 6,600 square feet in area shall contain single-family residential lots with less than 5,000 square feet in lot area;
- (vii) Any area with single-family residential lots less than 6,600 square feet in lot area shall have the primary residential structure constructed with the following minimum and maximum building floor area: Single-family lots, within a single-family residential lot area with lots less than 6,600 square feet in lot area, with a lot area between 5,000 square feet and 6,600 square feet require a minimum building floor area of 2,400 square feet (not including the attached garage area) and a maximum first floor building coverage of 50 percent of the single-family residential lot area; single-family residential lots, within a single-family residential lot area with lots less than 6,600 square feet in lot area, between 4,000 square feet and 5,000 square feet require a minimum building floor area of 2,500 square feet (not including the attached garage

area) and a maximum first floor building coverage of 50 percent of the single-family residential lot area; single-family residential lots, within a single-family residential lot area with lots less than 6,600 square feet in lot area, with a lot area between 3,500 square feet and 4,000 square feet require a minimum building floor are of 2,500 square feet and a maximum first floor building coverage of 45 percent;

(viii) Any single-family residential lot, within a single-family residential lot area with lots less than 6,600 square feet in lot area, with less than 6,600 square feet in lot area with rear loaded garages (alley on the rear of the lot with garage access to the alley) may be allowed with an additional 15 percent of first floor building coverage.

(2) Building setbacks.

(a) Rear building setback.

(i) Any single-family residential lot, within a single-family residential lot area with less than 6,600 square feet in lot area, with a lot area less than 6,600 square feet in lot area but at least 3,500 square feet in lot area shall have a minimum 20 feet building setback from the rear lot line unless the lot has rear alley access which shall require a minimum of 24 feet between the face of the garage door and the opposing alley paving edge line or any other fence or structure and a minimum of three feet rear building line for any other structure. If the driveway connection between the rear-loaded garage and the alley is to provide required on-site parking, the minimum rear building setback line for the garage is 20 feet.

(b) Side building setback.

(i) Any single-family residential lot, within a single-family residential lot area having lots less than 6,600 square feet in lot area, with a lot area less than 6,600 square feet in lot area shall have a minimum six feet between structures on adjacent lots. This six feet can be any combination that adds up to six feet from zero feet on one side and a minimum six feet side building setback between the adjacent structure and three feet side building setback from any side lot line and an

additional minimum three feet side building setback between the adjacent structure on an adjacent lot (for a total minimum of six feet between two houses).

- (c) Front building setback.
 - (i) The minimum front building setback from either a public or private street right-of-way for any single-family residential lot, within a single-family residential lot area with lots less than 6,600 square feet in lot area, with a lot area less than 6,600 square feet with driveway access to the front public or private street, shall be 20 feet.
 - (ii) The minimum front building setback from either a public or private street right-of-way for any single-family residential lot, within a single-family residential lot area with lots less than 6,600 square feet in lot area, with a lot area less than 6,600 square feet with driveway and garage access to a rear public or private alley, shall be ten. On-street parking for more than ten minutes along the front public or private street shall be prohibited except delivery vehicles for drop-off or pick-up. Additionally, the public or private street width shall be a minimum of 24 feet back-of-curb to back-of-curb. A minimum of one off-street/off-alley parking space per lot must be provided from the alley at the rear of the lot for on-site guest parking.
 - (iii) Single-family lots within a single-family lot area with lots less than 6,600 square feet in lot area will be allowed to have one-story covered porches encroach into the front building setback line, a maximum of ten feet for lots with front public or private street driveway access but in any case, the minimum front building setback line will be ten feet.
- (3) Lot width.
 - (a) The minimum lot width.
 - (i) The minimum lot width for single-family residential lots greater than 6,600 square feet in lot area, within a single-family residential lot area with lots less than 6,600 square feet in lot area, shall be 60 feet.
 - (ii) The minimum lot width for single-family residential lots less than 6,600 square feet in lot area shall be 3,500 square feet,

within a single-family residential lot area with lots less than 6,600 square feet in lot area, shall be 35 feet or a minimum lot width, in feet, of one percent of the lot area, in square feet, whichever is less, up to a maximum required minimum lot width of 60 feet.

- (iii) The minimum lot width shall be measured at all locations within the lot between the front building setback and the rear building setback with the location of the least lot width dimension being the minimum lot width.
- (B) Maximum height. Any single-family residential lot, regardless of lot area shall not have any structures on the lot greater than two stories or a maximum height of 35 feet unless approved by the City of Iowa Colony Fire Marshal.
- (C) Maximum lot coverage. Any single-family residential lot, within a single-family residential lot area with lots less than 6,600 square feet in lot area, less than 6,600 square feet in lot area shall provide a minimum of 300 square feet in permeable land surface on each lot below 6,600 square feet in lot area.
- (D) Floor area ratio.
- (E) Off-street parking requirements.
- (F) Special district requirements pertaining to the base zoning.
- (G) Number of dwelling units per acre. Any single-family residential development area containing lots less than 6,600 square feet in lot area shall have a maximum gross density no greater than five lots per acre. Single-family residential shall mean the use of a lot with one building designed for and containing not more than two separate units with facilities for living, sleeping, cooking and eating herein. A lot upon which is located a free-standing building containing one dwelling unit and a detached secondary dwelling unit of not more than 900 square feet also shall be considered single-family residential.
- (H) Accessory building regulations.
- (I) Spacing between developments.
 - (1) The perimeter boundary of a single-family residential development having single-family residential lots less than 6,600 square feet in area shall be located no closer than 1,320 feet to the perimeter boundary of

another single-family residential development having single-family residential lots less than 6,600 square feet in area. No single PUD area may contain more than 500 single-family residential lots with a lot area less than 6,600 square feet in lot area.

- (2) A single-family residential development having single-family lots less than 6,600 square feet in area shall be located to provide a minimum of two separate points of street access on a major thoroughfare or major collector as indicated by the latest adopted City of Iowa Colony major thoroughfare plan and shall not take primary access for any adjacent single family residential development having lots greater than 6,600 square feet in lot area. The minimum two separate points of street access shall have intersections with the adjacent major thoroughfare or major collector that are spaced a minimum of 250 feet apart.

(I)[(J)] Sign standards.

- (iv) In approving a planned unit development, the proposed PUD must comply with the requirements for a PUD as set forth in the city's subdivision ordinance and no standards may be modified unless such modification is expressly permitted by this ordinance, and in no case may standards be modified when such modifications are prohibited by this ordinance.
 - (v) 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.
 - (vi) This commission and city council, in approving modifications to standards and regulations, shall be guided by the purposes intended by the base zoning and general intent of this ordinance.
- (e) *Preliminary site plan.* A preliminary site plan of the entire property within the planned unit development will be considered by the commission prior to any recommendation to, or consideration by, the city council of the planned unit development ordinance.
- (i) A preliminary site plan may be approved for a portion of a planned unit development where the PUD is divided by a major thoroughfare, and the preliminary site plan includes all the property located on one side of the street.

- (ii) 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.
- (iii) The commission and/or city council may approve, conditionally approve, require 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 ordinance 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 firefighting 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:
 - (1) To provide adequate buffers to shield lights, noise, movement or activities from adjacent properties when necessary; and
 - (2) To 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.

(f) *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.

(g) [*Consideration of*] *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.

(h) *Expiration.* If development equal to at least 25 percent of the cost of installing streets, utilities and drainage in the PUD, 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 commission and city council to evaluate the appropriateness of the previously authorize 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.

(i) *Ordinance amendment.* Every planned unit development approved under the provisions of this ordinance is considered an amendment of this ordinance as to the property involved. All planned unit developments will be referenced on the zoning district map, and a list of such planned unit developments shall be maintained as an appendix to this ordinance.

(j) *Certificate of occupancy.* All planned unit developments 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, or, if applicable, the separate section or phase being developed.

(l)[(k)] *Minimum age developments.* Portions of total developments with single-family residential lots may be age-restricted if the following requirements are incorporated:

(1) All of section 74(d); section 74(d)(iii)(A), (B), (C), (G), and (I).
(Ord. No. 2019-14, 4-30-2019)

Secs. 75—79. Reserved.

ARTICLE VIII. AMENDMENTS TO ZONING ORDINANCE

Sec. 80. Purpose.

The purpose of this article is to establish uniform procedures for initiation of amendments to this ordinance, the notification process, public hearings and final action by city council. Nothing herein shall be construed to limit the city council from initiating consideration of amendments to this ordinance.

Sec. 81. General standards applicable to regulatory amendments.

Proposed amendments to this ordinance include amendments to the zoning regulations, boundaries of the various districts as depicted on the official zoning district map, or amendments which grant a specific use permit. Amendment of a district regulation, a district boundary, or the granting of a specific use permit should be consistent with the purposes, goals, objectives, and standards of the comprehensive plan of the city and the zoning policies set forth in this ordinance. Granting a specific use permit, rezoning, or amendment of zoning regulations shall not exempt the applicant from complying with the requirements of the building code and all other applicable ordinances of the city.

Sec. 82. Special standards applicable to specific use permits.

In addition to the certificate of zoning compliance called for in this ordinance, a specific use permit shall be required before any of the uses described in the respective district regulations as specific uses will be permitted within the applicable district. The zoning administrator shall not issue a certificate of zoning compliance for such specific uses as may be hereafter created, changed, converted, or enlarged, in whole or in part, until and unless a specific use permit has been obtained in accordance with the amendment procedures set forth in this ordinance.

In determining whether an ordinance granting a specific use permit should be adopted, the city council shall consider uses of abutting property and other property in the vicinity, the compatibility of such proposed specific use with abutting and area uses, giving due consideration to the preservation of the character of the neighborhoods, accessibility for vehicular and pedestrian traffic, including the condition of streets, alleys and sidewalks, and other means of ingress and egress to public streets, and the adequacy of drainage and off street parking.

Performance standards, protective screening, open space requirements, and the applicable underlying district regulations provided in this ordinance shall be applicable to specific use permits, except to the extent more stringent standards are imposed by the specific use permit ordinance.

In granting a specific use permit, the city council may impose such additional standards, conditions, and safeguards as may be deemed necessary and appropriate, and full compliance therewith shall be required before a certificate of occupancy is issued by the building inspector for use of property pursuant to such specific use permit; and such conditions shall be construed as conditions precedent to the granting of the certificate of occupancy.

Sec. 83. Application for an amendment to regulations or the official zoning district map.

Any person desiring to petition for an amendment to a regulation contained in this ordinance or a district boundary shall be required to file an application in writing with the zoning administrator, accompanied by a nonrefundable fee in such amount as may be established from time to time by the city council to defray the cost of notification and processing the application. The application shall include, but not be limited to, the following:

- (1) Each applicant's name and address.
- (2) A specific description of the amendment proposed.
- (3) A statement of the need or justification for said amendment, including its consistency with the zoning policies and purposes set forth in this ordinance and/or its consistency with the city's most current comprehensive planning document or documents.
- (4) In the event the proposed amendment is to change a district boundary:
 - (a) The legal description and address of the property affected and the proposed boundaries of said property;

- (b) The signed consent of the property owner or owners whose property would be affected by the proposed amendment;
- (c) The applicant's interest in the subject property if the applicant is not a property owner of all or a portion of the subject property;
- (d) The present zoning classification and existing uses of the property proposed to be reclassified; and
- (e) Such other information or documentation as the city council or zoning administrator may deem necessary.

Sec. 84. Application for a specific use permit.

Any person or group of persons desiring to petition for an amendment granting a specific use permit shall be required to file an application in writing with the zoning administrator, accompanied by a nonrefundable fee in such amounts as may be established from time to time by the city council to defray the cost of notification and processing the application. The application shall include, but not be limited to, the following:

1. Each applicant's name and address;
2. The legal description and the address of the property that is the subject of the application for a specific use permit;
3. A detailed description of the specific use permit that is proposed;
4. The zoning district in which the subject property is located;
5. The signed consent of the owner or owners of the subject property, if the applicant is not the owner of the property;
6. The applicant's interest in the subject property if the applicant is not an owner of all or part of the property; and
7. Such other information or documentation as the city council or zoning administrator may deem necessary.

Sec. 85. Public hearing.

A public hearing or hearings shall be held by the city council, to the extent required by state law, before adopting any ordinance amending, repealing, or otherwise changing a zoning regulation or a zoning district boundary established by this ordinance, including an ordinance granting a specific use permit.

- (a) *Notice of public hearing.* Notice of all public hearings shall be given in accordance with this section and applicable state law.
 - (1) *Content.* The public hearing notice shall set forth the time, date, and place of the hearing, a general description of the subject of the proposal under consideration, and identification of the city council as the body conducting the hearing.
 - (2) *Publication.* Notice of public hearings hereunder shall be given by publication in a paper of general circulation within the city, more than 15 days prior to the date of such hearing.
 - (3) *Personal notice to certain property owners.* This paragraph applies only to a change in zoning classification. Notice of such hearing shall also be sent to each owner, as indicated by the most recently approved city or county tax roll, of real property on which a change in zoning classification is proposed or real property within 200 feet thereof. Such notice, which shall be given more than ten days before the date of the public hearing, may be served by depositing same in the U. S. Mail, properly addressed with postage paid. The city council may not adopt a change in zoning classification until the expiration of 30 days following the publication of such notice.
- (b) *Record.* The city council shall cause a record to be made of each hearing which shall include, but not be limited to:
 - (1) The minutes of the hearing;
 - (2) Written protests or documents submitted by citizens in favor of or against the proposed amendment; if any; and
 - (3) The application, exhibits and papers submitted to city council, and any written reports of city staff.However, the failure to make or keep of all or part of such record shall not impair any action by the city council.
- (c) *Action by city council.* The city council may grant or deny an application for an amendment, or, if it deems necessary, take no action, or refer the proposal to such other official body as it may deem appropriate for further study and review.

- (d) [*Conflict in terms.*] In the event of any conflict in terms between this section and any other law, the less restrictive provision shall govern and control. This subsection governs and controls over any other provision of any ordinance concerning zoning, including any other provision concerning conflicting terms.

Sec. 86. Limitation on resubmission of petition.

In the event a proposed amendment is not approved by the city council, such amendment shall not be reconsidered prior to the expiration of six months from the date of the decision unless conditions pertaining to property considered in the original application and/or property in the area have, in the opinion of the city council, changed to such an extent to justify consideration of a subsequent application prior to the expiration of such six-month period.

Secs. 87—89. Reserved.

ARTICLE IX. BOARD OF ADJUSTMENT

Sec. 90. Creation.

See division 1.1.5 of the Unified Development Code, which is incorporated herein in full by reference.

(Ord. No. 2020-41, § 3, 12-21-2020; Ord. No. 2021-06, § 3, 1-25-2021)

Sec. 91. Membership.

See division 1.1.5 of the Unified Development Code, which is incorporated herein in full by reference.

(Ord. No. 2020-41, § 3, 12-21-2020; Ord. No. 2021-06, § 3, 1-25-2021)

Sec. 92. Selection of officers.

See division 1.1.5 of the Unified Development Code, which is incorporated herein in full by reference.

(Ord. No. 2020-41, § 3, 12-21-2020; Ord. No. 2021-06, § 3, 1-25-2021)

Sec. 93. Meetings.

See division 1.1.5 of the Unified Development Code, which is incorporated herein in full by reference.

(Ord. No. 2020-41, § 3, 12-21-2020; Ord. No. 2021-06, § 3, 1-25-2021)

Sec. 94. Rules and regulations.

The board shall keep minutes of its proceedings, showing the vote of each member upon each question, and shall keep records of its examinations and other official actions, all of which shall be filed immediately with the city secretary and shall be a public record. The board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this ordinance, and shall furnish a copy of the same to the zoning administrator. All of its resolutions and orders shall be in accordance therewith.

Sec. 95. Authority of the board of adjustment.

The board of adjustment shall have the authority to grant relief in the form of variances, special exceptions, and appeals to the provisions of this ordinance, subject to the standards established herein.

- (a) *Variances.* The board of adjustment shall have the authority to grant variances from the technical requirements of this ordinance, such as, for example but not by way of limitation, those relating to height, yard, and area regulations, if:
- (1) A variance is necessary to allow the reasonable use of a particular parcel of land that is restricted by attributes inherent in the land such as, for example, its area or shape and, when applying the standards of this ordinance, it cannot otherwise be appropriately or reasonably used;
 - (2) The granting of a variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, nor substantially increase the congestion in the public streets, nor increase the danger of fire, or in any way endanger the public health, safety and well-being of the neighborhood in which the subject property is located;
 - (3) The literal of (sic) enforcement of this ordinance would create an undue hardship;
 - (4) The need for the variance is not self-imposed by the applicant; and
 - (5) The granting of the variance would not be injurious to the public health, safety, and welfare not be contrary to the purpose and intent of this ordinance.

The board may establish and impose appropriate conditions to the granting of a variance to safeguard the character of the area and to protect adjacent

property owners, which conditions shall be expressed in the written order of the board relating thereto. Violation of any such condition shall be deemed a violation of this ordinance.

The board shall not be authorized to consider or grant a variance to allow a use not permitted in the district in which the applicable property is located, nor to change the zoning district designation of any land.

- (b) *Special exceptions.* The board of adjustment shall have the authority to grant special exceptions when required to do so under this ordinance.
- (c) *Administrative review.* The board of adjustment shall have the authority to hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by the zoning administrator in the interpretation or enforcement of this ordinance. Appeals may be taken to and before the board by any person aggrieved, or by any officer, department, or bureau of the city.

Sec. 96. Decisions of the board.

In exercising its authority under this ordinance, the board may reverse or affirm, in whole or in part, or modify an order, requirements, decision, or determination of the zoning administrator, and for that purpose the board shall have the same authority as the zoning administrator. The concurring vote of four members shall be necessary to:

- (a) Reverse an order, requirement, decision, or determination of the zoning administrator;
- (b) Decide in favor of an applicant on a matter on which the board is required to pass under this ordinance; or
- (c) Authorize a variance or special exception from the terms of this ordinance.

Sec. 97. Applications to the board.

An application for variance, special exception, or appeal shall be prepared in the prescribed form, to be furnished by the zoning administrator, and filed with the city secretary and with the zoning administrator. To apply for a variance or special exception under the provisions of this ordinance, the applicant must be an owner of the property to be affected by the variance or must have a contractual interest in the property to be affected by the variance or special exception.

Each application shall be accompanied by a nonrefundable application fee, in such amounts as may be established from time to time by city council, to defray the costs of processing such application and conducting necessary hearings relating thereto.

Sec. 98. Time limits on appeals.

Appeals shall be filed within 30 days of the decision, determination, or interpretation which is the subject of the appeal. Failure to file as required herein shall constitute a waiver of any rights under this ordinance to appeal any such decision, interpretation, or determination. Upon the filing of an application on an appeal the zoning administrator shall transmit to the board of adjustment all of the papers constituting the record upon which the action appealed from was taken. Filing a notice of appeal shall stay any proceedings in furtherance of the action appealed.

Sec. 99. Hearing process.

(a) *Notice of hearing.* The board shall fix a reasonable time for required hearings on all matters referred to it and, more than ten days prior to the date set for the hearing, shall mail notices of such hearing to the petitioner and to the owners of property lying within 200 feet of any point of the lot or portion thereof on which a variance is required, as listed in the most current tax rolls of the city.

(b) *Subpoena of witnesses.* The board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

(c) *Decision by board.* The board shall decide all matters within a reasonable time. The board may wholly or partly reverse or affirm, or wholly or partly modify the order, requirements, decisions, or determination as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer from whom the appeal is taken.

(d) *Successive applications.* No application for a variance, special exception or appeal which has been denied shall be again filed earlier than six months from the date that said application was denied.

ARTICLE X. ADMINISTRATION AND ENFORCEMENT**Sec. 100. Zoning administrator.**

If a zoning administrator is not appointed as herein provided, then the building official shall serve as the zoning administrator. The mayor may appoint, with the concurrence of the city council, a zoning administrator. The duties and responsibilities of the zoning administrator shall include, but not be limited to, the following:

- (a) Receive, review, and administratively process all applications for amendments to the zoning code, including specific use permits, and variances and special exceptions, that may from time to time be submitted to the city in accordance with the Texas Local Government Code and this ordinance;
- (b) Serve as staff support to the mayor and city council and the board of adjustment regarding development proposals and related zoning matters;
- (c) Appear on behalf of the city at all public hearings under this ordinance before the city council and the board of adjustment, and present facts and information as required by this ordinance and as requested by each of said bodies;
- (d) Establish administrative procedures and maintain all records related to zoning matters brought before the city council and the board of adjustment;
- (e) Assist the city secretary in maintaining the official zoning district map and maintain copies of all maps and plans that provide documentation for planning and zoning or that are otherwise required by this ordinance;
- (f) Serve as the enforcement officer to ensure compliance with this ordinance; and
- (g) Perform such other duties as are required or prescribed under this ordinance.

Sec. 101. Offenses and penalties.

No person shall use, construct, reconstruct, repair, renovate, or replace any real property or structure contrary to any provision of this ordinance. Any person who violates 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 or portion of a day in which a violation continues, occurs, or recurs shall constitute a separate offense.

Sec. 102. Civil enforcement and cumulative remedies.

a. The city may enforce this ordinance by an action in civil court for injunctive relief, declaratory relief, damages, costs, attorney's fees, and any other remedies provided at law, by equity, or otherwise.

b. All civil and criminal remedies herein provided are cumulative of each other and of any other remedies at law, by equity, or otherwise. The city may pursue any one, several, or all of such remedies and by doing so, the city shall not be deemed to have elected any remedy or remedies or excluded any remedy or remedies.

Secs. 103—109. Reserved.**ARTICLE XI. MISCELLANEOUS PROVISIONS****Sec. 110. Inspections.**

The zoning administrator, building official, and any other 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.

Whenever said official finds any construction work being done contrary to the provisions of this ordinance, said official may order the work stopped by serving notice in writing on the owner or contractor doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by such official to proceed with the work.

Sec. 111. Requirements for building permit.

All applications for building permits shall be accompanied by accurate plot plans, submitted in duplicate, drawn to scale, showing:

- (a) The actual shape and dimensions of the lot to be built upon;
- (b) The exact sizes and locations on the lot of the structures and accessory buildings then existing;
- (c) The lines within which the proposed structure shall be erected or altered;
- (d) The existing and intended use of each structure or part of a structure;
- (e) The number of families or dwelling units the structure is designed to accommodate; and

- (f) Such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this ordinance.

Sec. 112. Review of permit application.

Inspection of plans shall be done in a timely manner and a determination made as to compliance with applicable provisions of this ordinance prior to the issuance of a building permit. One copy of such plans shall be returned to the owner when such plans have been approved. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on an actual survey by a qualified registered surveyor and the lot shall be staked out on the ground before construction is started.

Sec. 113. Existing permits and private agreements.

This ordinance is not intended to abrogate or annul any permits issued before the effective date of this ordinance or any easement, covenant, or any other private agreement, to the extent that such effect would be unlawful.

Sec. 114. Preserving rights in pending litigation and violations under existing ordinances.

By adoption of this ordinance or any amendment hereto no existing illegal use shall be deemed to have been legalized. 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, incurred prior to the time this ordinance was adopted 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 and causes presently pending proceeded with in all respects.

Sec. 115. Certificates of occupancy.

- (a) *[Required.]* A certificate of occupancy shall be required for any of the following:
 - (1) Occupancy and use of a structure hereafter erected or structurally altered;
 - (2) Change in use of an existing structure to a use of a different classification;
 - (3) Occupancy and use of vacant land, beginning hereafter, except agricultural use;
 - (4) Change in the use of land to a use of a different classification; or
 - (5) Any change in the use of a nonconforming use.

(b) *Procedure for new or altered structures.* Written application for a certificate of occupancy for a new structure or for a structure which is to be altered, shall be made at the same time as the application for the structure permit for such building. Said certificate shall be issued upon written request to the zoning administrator within five working days after erection or alteration of such structure or part thereof has been completed in conformity with the provisions of this ordinance and all applicable law.

(c) *Procedure for vacant land or a 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 structure, shall be made to the zoning administrator. If the proposed use is in conformity with the provisions of this ordinance and all applicable law, the certificate of occupancy therefor shall be issued within five working days after the application for same has been made, or as soon thereafter as practicable.

(d) *Contents.* Every certificate of occupancy shall state that the structure or the proposed use of a structure or land complies with all provisions of law. A record of all certificates of occupancy shall be kept on file in the office of the zoning administrator and copies shall be furnished on request to any person having proprietary or tenancy interest in the structure or land affected.

(e) *Temporary certificate.* Pending the issuance of a regular certificate, a temporary certificate of occupancy may be issued by the zoning administrator of a period not to exceed six months, during the completion of alterations or during partial occupancy of a structure 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 ordinance.

(f) *Certificates of occupancy for nonconforming uses.* Certificates of occupancy for nonconforming uses shall be issued as provided in article III of this ordinance.

Sec. 116. Severance clause.

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

Appendix B

UNIFIED DEVELOPMENT CODE*

Chapter 0. Preliminary Provisions

- Sec. 0.1.1.1. Facts and recitations.
- Sec. 0.1.1.2. Reserved.
- Sec. 0.1.1.3. Definitions and meanings.
- Sec. 0.1.1.4. Special provisions.
- Sec. 0.1.1.5. Exemptions from platting.
- Sec. 0.1.1.6. Addition to building codes, subdivision ordinance, and zoning ordinance.

Chapter 1. General Provisions

Article 1. Authority of Decision Makers

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- Sec. 1.1.1.1. Source of authority.
- Sec. 1.1.1.2. Implied authority.
- Sec. 1.1.1.3. Limitation on authority.
- Sec. 1.1.1.4. Conflict in authority.

Division 2. City Staff

- Sec. 1.1.2.1. Responsible official.
- Sec. 1.1.2.2. City engineer.
- Sec. 1.1.2.3. Building official.
- Sec. 1.1.2.4. City manager (reserved).
- Sec. 1.1.2.5. Other city officials.

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- Sec. 1.1.3.1. Structure of commission.
- Sec. 1.1.3.2. Advisory capacity.

Division 4. City Council

- Sec. 1.1.4.1. Authority for amendments to the Unified Development Code (UDC).
- Sec. 1.1.4.2. Authority for deciding legislative applications.
- Sec. 1.1.4.3. Authority for deciding appeals and relief petitions.

***Editor's note**—Printed herein is the Unified Development Code of the city, Ordinance of 5-15-2017, as published with amendatory Ordinance Nos. 2017-21, 2017-22, 2017-25, and 2017-29. More recent 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.

IOWA COLONY CODE

Division 5. Zoning Board of Adjustment (ZBA)

- Sec. 1.1.5.1. Structure of the board.
- Sec. 1.1.5.2. Authority for deciding applications.
- Sec. 1.1.5.3. Rules governing proceedings.

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Division 1. Application Processing

- Sec. 1.2.1.1. Initiation of application.
- Sec. 1.2.1.2. Complete application.
- Sec. 1.2.1.3. Waiver.
- Sec. 1.2.1.4. Official filing date.
- Sec. 1.2.1.5. Conference post-submission conference.
- Sec. 1.2.1.6. Universal development application contents.
- Sec. 1.2.1.7. Application fees.
- Sec. 1.2.1.8. Modification of applications.
- Sec. 1.2.1.9. Action by responsible official.
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- Sec. 1.2.1.11. Action by advisory body.
- Sec. 1.2.1.12. Decision maker.
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Division 2. Notice Requirements

- Sec. 1.2.2.1. Initiation of application.
- Sec. 1.2.2.2. Published notice.
- Sec. 1.2.2.3. Personal notice.
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- Sec. 1.2.2.5. Notification following decision.
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Division 3. Public Hearings

- Sec. 1.2.3.1. Setting of the hearing.
- Sec. 1.2.3.2. Conduct of hearing.
- Sec. 1.2.3.3. Record of proceedings.
- Sec. 1.2.3.4. Continuance of proceedings.
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Division 4. Post-Decision Procedures

- Sec. 1.2.4.1. Re-application following denial.
- Sec. 1.2.4.2. Amendments and revisions to approval.

Division 5. Expiration, Extension, and Reinstatement

- Sec. 1.2.5.1. Time of expiration.
- Sec. 1.2.5.2. Effect of expiration.
- Sec. 1.2.5.3. Extension procedures—Initial request.
- Sec. 1.2.5.4. Extension procedures—Subsequent extension.
- Sec. 1.2.5.5. Conditions.

APPENDIX B—UNIFIED DEVELOPMENT CODE

- Sec. 1.2.5.6. Reinstatement.
- Sec. 1.2.5.7. Effect of decision on extension or reinstatement.
- Sec. 1.2.5.8. Expiration for projects commenced on or after effective date of ordinance.

Division 6. Enforcement and Revocation of Permits

- Sec. 1.2.6.1. Enforcement activities.
- Sec. 1.2.6.2. Right to enter.
- Sec. 1.2.6.3. General remedies.
- Sec. 1.2.6.4. Stop work orders.
- Sec. 1.2.6.5. Municipal court actions.
- Sec. 1.2.6.6. Civil court actions.
- Sec. 1.2.6.7. Reserved.
- Sec. 1.2.6.8. Fines and penalties.
- Secs. 1.2.6.9—1.2.6.11. Reserved.
- Sec. 1.2.6.12. Revocation proceedings.
- Sec. 1.2.6.13. Exemption.

Division 7. Text Amendments

- Sec. 1.2.7.1. Amendments to the Unified Development Code (UDC).
- Sec. 1.2.7.2. Hearing and notice.
- Sec. 1.2.7.3. Recommendation of advisory body.
- Sec. 1.2.7.4. Initiation of text amendments.

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- Sec. 1.3.1.1. Purpose, applicability and effect.
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- Sec. 1.3.1.3. Processing of appeal and decision.
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Division 2. Petition for Relief from Dedication or Construction Requirement

- Sec. 1.3.2.1. Purpose, applicability and effect.
- Sec. 1.3.2.2. Petition requirements.
- Sec. 1.3.2.3. Land in extraterritorial jurisdiction.
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- Sec. 1.3.3.1. Purpose, applicability and effect.
- Sec. 1.3.3.2. Petition requirements.
- Sec. 1.3.3.3. Processing of petitions and decision.
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IOWA COLONY CODE

- Sec. 1.3.3.7. Expiration and extension.
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- Sec. 1.3.4.1. Purpose, applicability and effect.
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Chapter 2. Reserved

Chapter 3. Site Development Design and Improvements

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- Sec. 3.1.1.1. Purpose.
- Sec. 3.1.1.2. Application/authority/jurisdiction.
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- Sec. 3.1.1.10. Single-family residential properties.
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Original Adoption Date: May 15, 2017

Amended By Ord. [No.] 2017-21 - Added Building Standards, October 16, 2017

Amended by Ord. [No.] 2017-22 - Added Street Lights, October 16, 2017

Amended By Ord. [No.] 2017-25 - Revised Building Standards, November 20, 2017

Amended By Ord. [No.] 2017-29 - Revised Landscape Standards, December 18, 2017

[CHAPTER 0. PRELIMINARY PROVISIONS]

Sec. 0.1.1.1. Facts and recitations.

The facts and recitations contained in the preamble to this Unified Development Code are hereby found to be true and correct and incorporated herein for all purposes.

- (a) *City limits.* All provisions of this ordinance shall apply throughout the incorporated limits of the city.
- (b) *ETJ.* The following provisions of this ordinance shall also apply throughout the extraterritorial jurisdiction of the city:
 - (1) Any provision applicable upon a subdivision of land; and
 - (2) Any provision, to the extent made applicable to the extraterritorial jurisdiction by a development agreement, strategic partnership agreement, or other agreement of any kind.
- (c) *Limited purpose annexation area.* An area annexed into the city for limited purposes shall be subject to this ordinance only to the extent, if any, provided by the limited purpose annexation, unless explicitly provided otherwise herein.

[Sec. 0.1.1.2. Reserved.]

Sec. 0.1.1.3. Definitions and meanings.

Words, terms, and phrases defined in chapter 5 shall have the meanings set forth therein, unless indicated otherwise, for the purposes of this ordinance.

Sec. 0.1.1.4. Special provisions.

- (a) *Plat approval required.* Unless a subdivision is specifically exempted from the requirements to obtain a plat by this ordinance or any other adopted ordinance of the City of Iowa Colony:
 - (1) It shall be unlawful for any person to subdivide any tract, lot, or parcel of land within the territorial limit of the City of Iowa Colony or within the extraterritorial jurisdiction of the City of Iowa Colony until an appropriate plat of such subdivision is approved and recorded in conformity with this ordinance.

- (2) It shall be unlawful for any person to construct, or cause, allow, or permit to be constructed any public or private street, utility service or facility, building, structure, or other improvement on any tract, lot, or parcel of land until each plat required by this ordinance or any other ordinance of the city has been approved and recorded in conformity with such ordinance.
- (3) It shall be unlawful for any person to connect or serve any utility service or facility to any tract, lot, or parcel of land until each plat required by this ordinance or any other ordinance of the city is approved and recorded in conformity with such ordinance.
- (4) No building, electrical, mechanical, plumbing, sign, certificate of occupancy, or any other permit issued by the City of Iowa Colony will be issued for the construction or repair of any improvement or the occupancy of any building or structure until each plat required by this ordinance or any other ordinance of the city is approved and recorded in conformity with such ordinance; and it shall be unlawful for any person to construct or repair any improvement, or occupy any building or structure, without first obtaining from the City of Iowa Colony each permit required by any ordinance of the city.

(b) *Improvements.* All improvements required by this ordinance, any other City of Iowa Colony ordinance, an adopted comprehensive plan of the City of Iowa Colony, a drainage district, a county, the state, or any other governmental entity having jurisdiction over the subdivision, or any improvement which, in the judgement of the planning commission or the city council is necessary for the adequate provision of streets, drainage, utilities, city services, and facilities to serve the subdivision shall:

- (1) Be constructed at the sole expense of the developer unless the city deems oversizing is necessary; and
- (2) Comply with the rules and regulations of any entity having jurisdiction over the subdivision. If there is a conflict between the regulations of jurisdictions, the city's regulations shall apply unless otherwise provided by law.

Sec. 0.1.1.5. Exemptions [from platting].

(a) Land used for agricultural purposes only. To qualify for this exemption, a tax designation that such land is used for agricultural purposes only must be submitted to the city.

(b) A subdivision of land into parts greater than five acres, where each part has access to a public road and no public improvements is being or is required to be dedicated.

(c) Any exemption provided by chapter 212 of the Texas Local Government Code [V.T.C.A., Local Government Code ch. 212].

Sec. 0.1.1.6. Addition to building codes, subdivision ordinance, and zoning ordinance.

(a) All portions of this ordinance shall be part of all building codes of any kind of the city, as they may be amended from time to time.

(b) All portions of this ordinance that apply upon the subdivision of land shall be part of the subdivision ordinance of the city, as it may be amended from time to time.

(c) A portion, if any, of this ordinance within the authority of statutes concerning zoning shall be a part of the zoning ordinance of the city, as it may be amended from time to time.

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. AUTHORITY OF DECISION MAKERS

Division 1. General Provisions

Sec. 1.1.1.1. Source of authority.

(a) Authority under this Unified Development Code shall be vested in and delegated to the officials and decision makers designated in this article 1, the constitution and laws of the state of Texas and the city Code. This authority shall be deemed supplemental to any other authority lawfully conferred upon the officials and decision makers. The omission of a citation in this Unified Development Code to any authority conferred upon the officials and decision makers under the constitution or laws of the state of Texas or the city Code, nor the failure to identify in this article authority conferred by other provisions of this Unified Development Code, shall not be construed as limiting the actions of such officials and decision makers taken in accordance with and in reliance upon such authority.

Sec. 1.1.1.2. Implied authority.

(a) The officials and decision makers shall have all implied authority necessary to carry out the duties and responsibilities expressly delegated by this Unified Development Code to the extent the implied authority is not in conflict with the expressly delegated authority.

Sec. 1.1.1.3. Limitation on authority.

(a) It is the policy of the city that the standards and procedures applicable to development of property within the city limits and within the city's extraterritorial jurisdiction are as stated in this Unified Development Code, notwithstanding any representation by any city official summarizing, paraphrasing or otherwise interpreting such standards to the contrary, whether generally or as applied to development of specific property.

(b) No city official, whether an employee of the city or a member of an appointed board or commission, or a member of the governing body of the city, shall have the authority to make representations to a property owner concerning the likelihood of an outcome of that official's decision or the decision of an appointed board or commission or the city council, on any development application or legislative action that has yet to be filed or is pending before the city for decision. An official may, however, upon request of a person, convey information concerning that official's position on a pending application in accordance with procedures established in this chapter 1. No person is entitled to rely upon any representation made by an official in contravention of this subsection, and each and every such representation shall be deemed in violation of the policy of the city, and is not binding on the city in any respect. No subsequent decision of the city shall be deemed a ratification of any representation made in contravention of this subsection.

(c) No city official, whether an employee of the city or a member of an appointed board or commission, or a member of the city council, shall have the authority to make binding representations to any person concerning the likelihood that a change in any legislative classification or a change in the text of this Unified Development Code as applied to a specific tract of land will be granted, or that an existing legislative classification or text provision will remain in effect, or that any petition for relief will be granted. No person is entitled to rely upon any representation made by an official in contravention of this subsection, and each and every such representation shall be deemed in violation of the policy of the city, and is not binding on the city in any respect. No subsequent decision of the city shall be deemed a ratification of any representation made in contravention of this subsection.

(d) The city's approval of a permit or plat application under the standards and procedures of this Unified Development Code does not guarantee or assure that development of the property in accordance with the standards will prevent, minimize or mitigate harm to adjoining property. A person who undertakes development activities shall not rely on the city's approval of a development application as ensuring that

the development activities will not result in harm to adjoining property. The regulations contained in this Unified Development Code constitute an exercise of the city's governmental authority, and approval of a development application shall not give rise to any liability on the part of the city or its officers, agents and employees, nor will an approval release the applicant from any liability for harm arising out of development of the property under applicable law.

(e) Except as expressly provided for in this Unified Development Code, no official, board, commission of the city, or the city council, shall have authority to waive any requirement or standard for an application. Any attempted waiver of a requirement or standard for an application in contravention of this subsection shall hereby be deemed null and void, and, upon discovery, shall be grounds for revocation of a permit or approval, or reconsideration of a legislative decision.

Sec. 1.1.1.4. Conflict in authority.

(a) In the event of a conflict between the terms of this ordinance, or between this ordinance and any other ordinance, the more restrictive provision shall govern and control.

(b) Whenever a specific standard or procedure of this Unified Development Code is incomplete when applied in isolation, such standard shall be supplemented by any general or specific provision of this code or the city Code in order to give effect to the incomplete provision.

Division 2. City Staff

Sec. 1.1.2.1. Responsible official.

(a) The responsible official shall be the building official or the city engineer who is assigned responsibility under this Unified Development Code for taking the following actions with regard to a particular type of application or relief petition authorized under this chapter 1:

- (1) Accepting the application or petition for filing and processing the application;
- (2) Reviewing and making recommendations concerning the application or petition;
- (3) Seeking advice of other city officials and coordinating any recommendations from such officials concerning the application or petition;
- (4) Initially deciding the application or petition, where so authorized;

- (5) Determining a request for exemption;
- (6) Preparing reports to and advising any board, commission or the city council that has responsibility for making recommendations on or deciding the application or petition;
- (7) Promulgating additional or modified policies, standards and administrative rules for adoption by the city council that apply to the application or petition;
- (8) Initiating enforcement actions concerning compliance with the standards applicable to the application or petition and the conditions imposed thereon; and
- (9) Taking all other actions necessary for administration of the provisions of this Unified Development Code with respect to the application or petition.

(b) The specific duties of the responsible official shall include those authorized under the universal procedures applicable to all types of development applications pursuant to article 2 of this chapter 1, those authorized under the provisions governing procedures for deciding particular applications under this chapter 1, and those authorized under relief procedures pursuant to article 3 of this chapter 1.

(c) The responsible official may delegate the official's authority under this code to subordinate officials, who shall thereupon be deemed the responsible official for purposes of carrying out the delegated duties.

Sec. 1.1.2.2. City engineer.

(a) The city engineer is the responsible official for the following types of development applications and relief petitions (except as provided):

- (1) Application for approval of construction plans, and all related construction management tasks, including without limitation, approval of contracts for public improvements;
- (2) Application for a development/grading permit for compliance with floodplain regulations;
- (3) Appeal of a decision on any application for which the city engineer is the responsible official;
- (4) Variance petition for any application for which the city engineer is the responsible official;
- (5) Vested rights petition for any decision where the city engineer is the responsible official for the application for which the vested rights petition is filed;
- (6) Petition for relief from a dedication or construction requirement;

(7) Application for a subdivision master plat, preliminary subdivision plat, preliminary development plat, final subdivision plat, final development plat, minor subdivision plat, amending plat, and replat.

(b) The city engineer is the initial decision maker for the following types of development applications and relief petitions, subject to appeal as provided in this chapter 1:

- (1) Application for approval of construction plans, and all related construction management tasks, including without limitation approval of a contract for public improvements;
- (2) Application for a development/grading permit for compliance with floodplain regulations;
- (3) Vested rights petition for any decision for which the city engineer is the initial decision maker;
- (4) Application for a subdivision master plat, preliminary subdivision plat, preliminary development plat, final subdivision plat, final development plat, minor subdivision plat, amending plat, and replat;
- (5) Application for a site preparation permit; and
- (6) Park dedication fee determination.

(c) The city engineer is the floodplain administrator for the city and shall carry out duties and responsibilities as authorized in flood hazard prevention ordinances.

Sec. 1.1.2.3. Building official.

(a) The building official is the responsible official for and shall initially decide the following types of applications:

- (1) Building permit;
- (2) Certificate of occupancy.

(b) The building official is the initial decision maker for appeals of the following application, subject to further appeal as provided for in this chapter 1:

- (1) Certificate of occupancy.

Sec. 1.1.2.4. City manager (reserved).

Sec. 1.1.2.5. Other city officials.

(a) The city attorney and any other official delegated responsibilities under this Unified Development Code are authorized to take all actions necessary to carry out their responsibilities in accordance with the requirements and limitations prescribed herein.

*Division 3. Planning Commission***Sec. 1.1.3.1. Structure of commission.**

(a) The members of the planning commission are appointed by the mayor and ratified by the city council and serve without compensation. In making appointments to the commission, the council shall seek to ensure broad representation and expertise among the membership. The commission shall establish bylaws to govern rules of procedure and the election of officers.

Sec. 1.1.3.2. Advisory capacity.

(a) The planning commission shall advise the city council on applications and petitions for legislative decisions as authorized by this Unified Development Code. In that capacity, the commission shall review, prepare reports upon and make recommendations concerning approval, conditional approval or denial of the following types of petitions and development applications, in accordance with the procedures and standards that apply to the petition or development application:

- (1) Subdivision plat review;
- (2) Petition for amending the comprehensive plan;
- (3) Petition for a zoning map amendment, including a petition for creation of an overlay district, special use permit (SUP), or planned development (PD) district;
- (4) Amendments to the text of the Unified Development Code (UDC); and
- (5) Other advisory duties as assigned by city council.

*Division 4. City Council***Sec. 1.1.4.1. Authority for amendments to the Unified Development Code (UDC).**

(a) The city council may from time to time amend, supplement or change by ordinance the text of this Unified Development Code on its own initiative or upon petition for a text amendment.

Sec. 1.1.4.2. Authority for deciding legislative applications.

(a) The city council shall finally decide all types of legislative applications authorized under this Unified Development Code.

Sec. 1.1.4.3. Authority for deciding appeals and relief petitions.

(a) The city council shall finally decide appeals on the following development applications and relief petitions:

- (1) A vested rights petition filed in conjunction with an application for which the city council is the final decision maker; and
- (2) A parkland dedication fee appeal that has been forwarded by the city engineer.

(b) The city council shall finally decide the following petitions for relief:

- (1) Petition for relief from a dedication or construction requirement.

Division 5. Zoning Board of Adjustment (ZBA)

Sec. 1.1.5.1. Structure of the board.

(a) *Establishment and members.*

- (1) A zoning board of adjustment ("ZBA") is hereby established in accordance with section 211.009 of the Texas Local Government Code [V.T.C.A., Local Government Code § 211.009].
- (2) The ZBA shall consist of five members, each to be appointed by the city council. Members shall be appointed for terms of two years, which terms shall run concurrently with that of the mayor. Vacancies shall be filled by the same procedures as for original appointments, and shall be for the unexpired term of the position vacated. The city council, may remove a ZBA member for cause, as found by the city council, on a written charge after a public hearing, unless the ZBA member waives those procedures.
- (3) The ZBA shall have four alternate members, appointed in the same manner and for the same terms as regular members. Alternate members shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager. Any reference herein to members of the ZBA shall also include alternate members when acting as members.

(b) *Officers.* At the first meeting after the appointment of members of the ZBA for a new term, the members shall elect one of the members as the chairperson and one of the members as the vice-chairperson. In the absence of the chairperson, the vice-chairperson shall act as chairperson and shall have all powers of the chairperson. The members of the ZBA may select as additional person to preside over meetings in the absence of the chairperson and the vice-chairperson.

(c) *Meetings.* Meetings of the ZBA shall be held at the call of the chairperson or vice-chairperson and at such times as the ZBA may determine. All meetings of the ZBA shall be open to the public, except that the ZBA may hold closed meetings as allowed by state law. Four members of the ZBA shall be necessary to constitute a quorum.

(d) *Minutes and rules.* The ZBA shall keep minutes of its proceedings, showing the vote of each member upon each question and noting the absence or failure of a member to vote. The ZBA shall keep records of its examinations and other official actions, all of which shall be filed immediately with the city secretary and shall be a public record. The ZBA shall from time to time adopt such rules and regulations as it may deem necessary to carry into effect the provisions of this ordinance, and shall furnish a copy of those rules to the zoning administrator and building official.

(e) *Quorum.* Each case before the ZBA must be heard by at least 75 percent of the members. The numerator of that fraction shall include the regular members participating in that case and any alternate members serving on that case in the absence of regular members. The denominator of that fraction shall be the number of regular members on the ZBA, whether participating in that case or not.

(Ord. No. 2020-41, § 4, 12-21-2020; Ord. No. 2021-06, § 4, 1-25-2021)

Sec. 1.1.5.2. Authority for deciding applications.

(a) The zoning board of adjustment shall finally decide the following types of applications:

- (1) An application for a special exception;
- (2) An application for a change in the status of a nonconformity; and
- (3) An application for a zoning variance.

(b) The zoning board of adjustment shall finally decide appeals on the following matters:

- (1) An appeal of a city official's decision on a zoning matter and not on a matter for which any building code or ordinance authorizes the building codes board of appeals to hear the appeal;
- (2) An appeal of a city official's interpretation of the requirements of this UDC, unless the appeal is to be heard by the building codes board of appeals under any ordinance of law, or unless a separate appeals process is otherwise defined within this UDC.

(Ord. No. 2021-20, pt. I(A), 5-17-2021)

Sec. 1.1.5.3. Rules governing proceedings.

(a) A super-majority 75 percent concurring vote of the members of the ZBA is necessary to reverse an order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on a matter upon which the ZBA is required to pass under this Unified Development Code, or to authorize a variance or special exception from the terms of a provision of this Unified Development Code.

(b) A quorum shall consist of a majority of the total members of the ZBA.

(c) The authority delegated to the zoning board of adjustment under this Unified Development Code shall not be construed to effect any of the following:

- (1) Approval of a petition for a zoning map amendment;
- (2) Approval of a special use permit;
- (3) Authorization of a use not authorized in the zoning district in which the applicant's property is located, except to the extent necessary to decide a special exception or a petition for a change in status of a nonconformity.

(d) The zoning board of adjustment shall not render any decision on an application, appeal or relief petition while a petition for a zoning amendment, application for a special use permit, or plat application for the same land is pending and until such petition or application has been finally decided pursuant to procedures in this chapter 1.

(e) Appeals shall be processed and decided in the manner provided in article 3, division 1 of this chapter 1.

(f) Any public hearing shall be preceded by published, personal and posted notice in the manner provided in article 2, division 2 of this chapter 1. Public hearings shall be conducted in the manner provided in article 2, division 3 of this chapter 1.

(g) Appeals of any decision of the ZBA may be taken to a state district court, county court, or county court-at-law by filing a verified petition stating that the decision of the ZBA is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed within ten days after the date the decision is filed with the city secretary.

ARTICLE 2. UNIVERSAL PROCEDURES

Division 1. Application Processing

Sec. 1.2.1.1. Initiation of application.

(a) Unless otherwise expressly provided by this Unified Development Code, a petition for legislative action affecting land, other than a petition for a text amendment or a zoning amendment, or an application for a permit, may be initiated only by a city official or body, the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

Sec. 1.2.1.2. Complete application.

(a) Every petition for a legislative action or application for a permit or approval (referred to in this section as an "application") authorized by this Unified Development Code shall be subject to a determination of completeness by the official responsible for processing the application.

- (1) No application shall be accepted by the responsible official for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this Unified Development Code.
- (2) The incompleteness of the application shall be grounds for denial or revocation of the application.
- (3) A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this code. A determination of completeness shall be made by the responsible official in writing to the applicant no later than the tenth business day after the official filing date that the application is submitted to the responsible official. The determination shall specify the documents or other information needed to complete the application and shall state the date the application will expire if the documents or other information is not provided. An application shall be deemed complete on the 11th business day after the application has been received if the applicant has not otherwise been notified that the application is incomplete.

- (4) The application shall expire on the 45th day after the date the application is filed if:
 - a. The applicant fails to provide documents or other information necessary to comply with the city's requirements relating to the permit application;
 - b. The city provides to the applicant, not later than the tenth business day after the date the application is filed, written notice that specifies the necessary documents or other information, and the date the application will expire if the documents or other information is not provided; and
 - c. The applicant fails to provide the specified documents or other information within the time provided in the notice.
- (5) If the application is not completed on the 45th day after the application is submitted to the responsible official, the application will be deemed to have expired and it will be returned to the applicant together with any accompanying applications.

Sec. 1.2.1.3. Waiver.

(a) Notwithstanding the requirements of section 1.2.1.2, the responsible official may initially waive the submission of any information in the application and accompanying materials that is not necessary due to the scope and nature of the proposed activity. The decision maker may withdraw a waiver of application requirements if the decision maker determines that meeting the previously waived requirements is necessary to determining compliance with applicable standards of approval.

Sec. 1.2.1.4. Official filing date.

(a) The time period established by state law or this Unified Development Code for processing or deciding an application shall commence on the official filing date. The official filing date is the date the applicant delivers the complete application or plan to the city or deposits the application or plan with the United States Postal Service by certified mail addressed to the city.

Sec. 1.2.1.5. Conference post-submission conference.

(a) An applicant is encouraged to request a post-submission conference with the responsible official after submittal of an application in order to determine whether the application is complete. The purposes of the post-submission conference are to ascertain the nature of the proposed development; to identify the procedures and standards that apply to the application; to discuss any project modifications recommended by the

responsible official; to identify any requests for relief to be sought by the applicant; to determine whether any waiver of application requirements should be granted; and to outline the schedule for acting on the application.

- (1) A post-submission conference is optional and shall not be required as a standard of approval of the application.
- (2) An applicant is encouraged to contact and meet with neighborhood organizations and neighborhood property owners for the area in which the applicant's proposed development is located. An applicant may request, in connection with a post-submission conference, contact information for neighborhood organizations known by the city. Contact with these organizations is optional and shall not be required as a standard of approval of the application.

Sec. 1.2.1.6. Universal development application contents.

(a) The city is hereby authorized to prepare application forms that include information requirements, checklists, drawing sizes, applicant contact information, and any other relevant information.

(b) All development applications or petitions for a legislative decision shall contain the following information:

- (1) Identification of property owner and authorized agent;
- (2) Description of the property and the nature of the development that is the subject of the application;
- (3) Identification of all zoning classifications (inside the city only) for the property;
- (4) Identification of all pending legislative applications for the property;
- (5) Identification of decisions on all quasi-judicial or administrative applications for the property that remain in effect;
- (6) Identification of all accompanying applications;
- (7) Identification of all pending or accompanying requests for relief;
- (8) Demonstration of compliance with approved priority permits;
- (9) Proposed waiver, if any, of the time for decision on the application; and
- (10) Any other information concerning such application and requested by the city or the responsible official.

Sec. 1.2.1.7. Application fees.

(a) Every petition for a legislative action or application for a permit or approval shall be accompanied by the prescribed fees set forth in the fee schedule prepared and adopted by the city. The prescribed fee shall not be refundable, except when the city council in its discretion waives the application fee for resubmission of an approval that was denied. The fee schedule may be amended from time to time by resolution of the city council.

Sec. 1.2.1.8. Modification of applications.

(a) The applicant may modify any application following its filing and prior to the expiration of the period during which the city is required to act on the application. If the modification is under revisions requested by the city, and the modification is received at least five working days prior to the time scheduled for decision on the application, the application shall be decided within the period for decision prescribed by this Unified Development Code. In all other instances (e.g., when the applicant chooses to submit a revised application on his own accord because of a change in development decisions), submittal of a modified application shall extend the time for deciding the application for a period equal to the time specified in this Unified Development Code to decide the original application, commencing on the date the modified application is received, unless a waiver of the time for decision is first required, in which case the terms of the approved waiver shall govern the period within which the city must act on the application.

Sec. 1.2.1.9. Action by responsible official.

(a) Following the determination that an application is complete, the responsible official shall circulate the application to all other administrative officials whose review is required for a decision on the application and compile the comments and recommendations of the officials. The responsible official shall render a decision in the time prescribed, if the official is the decision maker for the application. In all other cases, the responsible official shall forward the application for review to any advisory body and the final decision maker, and prepare a report to such board or commission, or to the city council, as the case may be, including the compilation of any comments and recommendations by other administrative officials. The responsible official also shall prepare required notices and schedule the application for decision within the time and in the manner required by this Unified Development Code.

Sec. 1.2.1.10. Exemption determination.

(a) For any application for a development permit for which exemptions are listed, an exemption from the requirement to apply for such permit shall be determined in the following manner:

- (1) The application for exemption must be filed on a form supplied by the responsible official, must be accompanied by the review fee set by the city council, and must include all of the following information:
 - a. Name, address, and telephone number of the property owner and the applicant;
 - b. A brief description of the activity or development for which exemption is sought;
 - c. A scale drawing depicting the boundaries of the site, the location of existing improvements on the site, and the location of the proposed development activities on the site;
 - d. Information establishing the basis for the exemption.
- (2) The responsible official shall notify the applicant of the decision. If the responsible official denies the application for exemption, the official shall require that an application for the development permit be prepared in accordance with this code.
 - (b) An exemption is a separate and distinct consideration that is differentiated from a special exception and/or a variance.
 - (c) Other sections within this UDC contain exemptions.

Sec. 1.2.1.11. Action by advisory body.

(a) In the absence of a recommendation from an advisory body by a majority vote on a proposed application, the advisory body shall be presumed conclusively to have recommended that the application be considered by the city council with a recommendation for denial from the advisory body.

Sec. 1.2.1.12. Decision maker.

(a) The decision maker for the application shall approve, approve with conditions or deny the application within the time prescribed by this Unified Development Code. Unless otherwise prescribed by law, where the decision maker is a board, commission or the council, the application shall be decided by majority vote of a quorum of the

members of the board, commission or the council, provided that a super-majority vote or other decision rule on the application has not been invoked in accordance with the provisions of law or this code.

Sec. 1.2.1.13. Conditions to the approval.

(a) The initial or final decision maker may attach such conditions to the approval of an application as are reasonably necessary to assure compliance with applicable requirements of this Unified Development Code.

Division 2. Notice Requirements

Sec. 1.2.2.1. Initiation of application.

(a) Unless otherwise expressly provided by this Unified Development Code, a petition for legislative action affecting land, other than a petition for a text amendment or a zoning amendment, or an application for a permit, may be initiated only by a city official or body, by the owner of an interest in the land subject to the application, or the owner's designated agent. If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf. The responsible official may establish the type of documents needed to determine ownership or agency.

Sec. 1.2.2.2. Published notice.

(a) Whenever notice of a public hearing before a board or commission or the city council is required to be published in a newspaper under state law, other city ordinances or this Unified Development Code, the responsible official shall cause notice to be published in a newspaper of general circulation in the city before the 15th day before the date set for the required hearing. The notice shall set forth the date, time, place and general purpose of the hearing, and, where the decision concerns an individual tract or parcel of land, an identification of the subject property.

Sec. 1.2.2.3. Personal notice.

(a) Whenever personal notice of a public hearing before a board or commission or the city council is required by state law or this Unified Development Code, the responsible official shall cause notice to be sent by regular mail before the 10th day before the hearing date to:

- (1) Each owner of real property located within 200 feet of the exterior boundary of the property in question;

- (2) The applicant and/or property owner; and
- (3) If the matter to be considered is an appeal, to the appellant.

[(b)] The notice shall set forth the name of the applicant, the time, place and purpose of the hearing, identification of the subject property, and if the matter to be considered is an appeal, the name of the appellant.

- (1) Ownership for purposes of notice under this ordinance shall be as indicated on the most recently approved municipal tax roll for land inside the city limits, and on the most recently approved county tax roll for land in the extraterritorial jurisdiction. For recently annexed land that is not included on the most recently approved municipal or county tax roll, notice may be given by publication.
- (2) Notice may be served by depositing the notice in the United States mail, properly addressed, postage prepaid, by first class or certified mail as chosen by the city.

Sec. 1.2.2.4. Posting notice on property.

(a) Any person, firm or corporation requesting a zoning change, a special use permit (SUP), or a variance from the terms of this UDC shall be required to erect and maintain a sign(s), to be inspected by the city, upon the property for which a variance or zoning change has been requested. Such sign(s) shall be located as follows:

- (1) One sign per street frontage shall be located within 30 feet of the abutting street, or as determined by the building official or a designee.
- (2) So as to be clearly visible and readable from the public right-of-way and not obstructed in any manner.
- (3) So as not to create a hazard to traffic on the public rights-of-way abutting the property.
- (4) In the case of a variance request, on the subject property at least ten days prior to the hearing of such variance request by the zoning board of adjustment, and to remain continuously on said property until final action by the board or withdrawal of the case by the applicant. Removal of the sign by the applicant prior to a decision by the zoning board of adjustment shall constitute a withdrawal of the request.
- (5) In the case of a zoning change request or a request for a SUP, on the subject property at least ten days prior to the hearing of such request by the planning commission or city council, and to remain continuously on said property until final action by the city council or withdrawal of the case by the applicant.

Removal of the sign by the applicant prior to a recommendation by the planning commission and/or a final decision by the city council shall constitute a withdrawal of the request.

(b) The signs shall be of a size, type, and message content as determined by the city, but shall advise that a variance, SUP, or zoning change has been requested and shall list the telephone number of the city secretary for more information. The city is hereby authorized to establish size, type and message requirements for such signs and to distribute such requirements to applicants.

(c) Upon making an application for a variance, SUP, or zoning change, the applicant shall place sign(s) as required by this section. The city may inspect such sign(s) to ensure compliance as required by this section.

(d) In the case of a zoning variance request, after the variance request is approved by the zoning board of adjustment, denied by the zoning board of adjustment, or withdrawn by the applicant, the applicant shall remove the sign from the area of the request within ten days of such event.

(e) In the case of a zoning change request or a request for a SUP, after the request is approved by the city council, denied by the city council, or withdrawn by the applicant, the applicant shall remove the sign from the area of the request within ten days of such event.

(f) It shall be unlawful for anyone to remove, destroy, deface or obstruct the view of a sign which gives notice that a variance, SUP, or zoning change has been requested.

(g) In the event the applicant shall fail to erect and/or maintain signs in accordance with this section, then the public hearing before the appropriate body shall be postponed to a date in the future which would allow time for compliance.

(h) The erection of any sign required by this section shall not require a sign permit.

(i) The owner or applicant shall promptly notify the building official of any sign required by this section which becomes lost, stolen or vandalized. In the case of a zoning variance request, the zoning board of adjustment shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs. In the case of a zoning change request or a request for a SUP, the city council shall have the power to decide whether or not there has been substantial compliance with the posting requirements in the case of lost, stolen or vandalized signs.

Sec. 1.2.2.5. Notification following decision.

(a) Within ten working days of the date of a responsible official, board, commission or city council determination on an application, written notification of the action shall be mailed to the applicant, stating the action taken. Record of this notification shall be filed with the secretary of the board or commission or city council on the date of notification.

Sec. 1.2.2.6. Notification of appeal or revocation.

(a) Whenever appeal is taken from a final decision on an application following a public hearing, or whenever the city is to consider revocation of a permit which was obtained following a public hearing, personal notice of the appeal or revocation proceeding shall be provided in the manner prescribed by section 1.2.2.3. If no public hearing was held prior to approval of the application, personal notice of revocation shall be given only to the holder of the permit.

*Division 3. Public Hearings***Sec. 1.2.3.1. Setting of the hearing.**

(a) When the responsible official determines that an application is complete and that a public hearing is required by this Unified Development Code, the official shall consult with the secretary of the body required to conduct the hearing and shall select a place and a time certain for the hearing, and shall cause notice of such hearing to be prepared and made under section 1.2.2.1. The time set for the hearing shall conform to the time periods required by this code.

Sec. 1.2.3.2. Conduct of hearing.

(a) Any person may appear at the public hearing and submit evidence, either individually or as a representative of an organization. Each person who appears at a public hearing shall state his or her name, address, and if appearing on behalf of an organization, state the name and mailing address of the organization for the record.

(b) The public hearing shall be conducted in accordance with state law.

Sec. 1.2.3.3. Record of proceedings.

(a) The body conducting the hearing shall record the proceedings by any appropriate means.

Sec. 1.2.3.4. Continuance of proceedings.

(a) The body conducting the hearing may, on its own motion or at the request of any person, for good cause, continue the hearing to a fixed date, time and place. No notice shall be required if a hearing is continued. If a public hearing is closed, no further public testimony shall be taken.

Sec. 1.2.3.5. Additional rules.

(a) The body conducting the hearing may adopt rules of procedure to limit the number of applications for development approval which may be considered per meeting and the time for each presentation, and may apply such additional rules to govern the public hearing which are not inconsistent with this section.

Sec. 1.2.3.6. Joint public hearing.

(a) The city council may convene a joint public hearing with the planning commission in the manner prescribed in chapter 211.007(d) of the Texas Local Government Code [V.T.C.A., Local Government Code § 211.007(d)].

*Division 4. Post-Decision Procedures***Sec. 1.2.4.1. Re-application following denial.**

(a) A request which has been denied by the responsible official, the planning commission, and/or the city council may be resubmitted at any time for reconsideration by the city (a new filing fee must accompany the request). The responsible official, the planning commission, and/or the city council may deny any request with prejudice. If a request has been denied with prejudice, the request may not be resubmitted to the city for one year from the original date of denial.

Sec. 1.2.4.2. Amendments and revisions to approval.

(a) Unless another method is expressly provided by this Unified Development Code, any request to amend or revise an approved application shall be considered a new application, which must be decided in accordance with the procedures governing the original application and the standards in effect at the time such new application is filed with the city.

*Division 5. Expiration, Extension, and Reinstatement***Sec. 1.2.5.1. Time of expiration.**

(a) Unless otherwise expressly provided by this Unified Development Code, a complete, officially filed application shall automatically expire and become null and void, and all activities under the permit thereafter shall be deemed in violation of this code if:

- (1) The applicant fails to satisfy any condition that was imposed as part of the approval of the development application or that was made under the terms of any development agreement within the time limits established for satisfaction of such condition or term; or
- (2) The applicant fails to submit a subsequent application required by this Unified Development Code within the time so required. If no time limit for satisfaction of conditions is specified in the decision on the application, the time shall be presumed to be two years from the date the complete application was officially filed, except as provided in section 1.2.5.8.

Sec. 1.2.5.2. Effect of expiration.

(a) Upon the expiration of a complete, officially filed application, all previously approved applications for the same land also shall expire on the expiration date if the filing of an application for the expired permit was required to avoid expiration for the previously approved permit or permits, except as provided in section 1.2.5.8. Thereafter, a new application for each permit deemed expired under this section must be approved subject to regulations in effect at the time the new application is accepted for filing.

Sec. 1.2.5.3. Extension procedures—Initial request.

(a) Unless a different time is expressly provided for a specific procedure by this Unified Development Code, the responsible official or the board, commission or the city council that finally approves an application may grant an initial extension of the time for expiration of the application for a period not to exceed one year from the date of the expiration of the application, provided that a request for extension is made in writing at least 30 days before the approved application expires. Every request for extension shall include a statement of the reasons why the expiration date should be extended. The decision maker may grant a request for an initial extension upon

demonstration that circumstances beyond the control of the permit holder have resulted in the permit holder's inability to perform the tasks necessary to prevent the permit from expiring before the expiration date.

Sec. 1.2.5.4. Extension procedures—Subsequent extension.

(a) A permit holder may apply for an extension of the expiration date for an application for a period not to exceed two years from the date of the expiration of an officially filed, complete application. A second extension of the expiration date of an officially filed, complete application may be granted for a period not to exceed one additional year. The extension application must be in writing. Such an extension may be granted only by the city council. In determining whether to grant a request, the council shall take into account the reasons for the requested extension, the ability of the applicant to comply with any conditions attached to the original approval, whether extension is likely to result in timely completion of the project, and the extent to which any newly adopted regulations should be applied to the proposed development.

Sec. 1.2.5.5. Conditions.

(a) In granting an extension, the official or body deciding the request may impose such conditions as are needed to assure that the land will be developed in a timely fashion and that the public interest is served. In granting a subsequent extension request, the city council may require that one or more newly adopted development standards be applied to the proposed development.

Sec. 1.2.5.6. Reinstatement.

(a) Unless otherwise provided by this Unified Development Code, an applicant may request reinstatement of an expired application by filing a written request with the responsible official within 30 days of the date of expiration. The request for reinstatement shall include a statement of the reasons why the application should be reinstated and extended. A request for reinstatement shall be processed and decided in the manner provided for an extension of an expiration period for more than one year. The expiration date shall not be extended for more than two years from the date a complete application was officially filed.

Sec. 1.2.5.7. Effect of decision on extension or reinstatement.

(a) The granting of an extension or reinstatement request for a permit also extends or reinstates any other permits otherwise deemed expired under section 1.2.5.2. The denial of an extension or reinstatement results in the immediate lapse of the permit and

any other permits deemed expired under section 1.2.5.2. Thereafter, the permit holder shall file a new application for a permit or permits before undertaking any activity authorized by the lapsed permit.

Sec. 1.2.5.8. Expiration for projects commenced on or after effective date of ordinance.

(a) Notwithstanding any other provision of this Unified Development Code, for any permit authorized by this code for which an expiration date is established and which is submitted for filing after the effective date of this ordinance, the expiration date shall be two years following the date of approval of the permit, unless the holder of the permit files a petition before such date for a vested rights alleging that progress has been made toward completion of the project for which the application subject to expiration was filed. If a vested rights petition is timely filed, the city council shall determine the expiration date of the permit in deciding the petition.

(b) Notwithstanding any other provision of this Unified Development Code, for any permit authorized by this code which is submitted for filing after the effective date of this ordinance and which has expired under subsection (a), all previously approved applications for the same land also shall expire no later than five years from the date of filing of the first application for the project for which the expired application was filed, if the filing of an application for or approval of the expired permit was required to avoid expiration for the previously approved permit or permits, unless the holder of such permits files a petition before such date for a vested rights determination alleging that progress has been made toward completion of the project for which the applications subject to expiration were filed. If a vested rights petition is timely filed, the city council shall determine the expiration date of the previously approved permits in deciding the petition.

Division 6. Enforcement and Revocation of Permits

Sec. 1.2.6.1. Enforcement activities.

(a) Enforcement activities include informal contacts with individuals to advise them of requirements, the issuance of verbal warnings, written warnings, and municipal court citations, formal court action, billing and collection, and any other action to enforce this ordinance. Employees of the fire marshal's office and building inspections are authorized to issue municipal court citations for violations of this article.

Sec. 1.2.6.2. Right to enter.

(a) The authorized official shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this Unified Develop-

ment Code. Submittal of any application for a permit that authorizes construction of structures or improvements shall be construed as a grant of authority to the responsible official to enter on land subject to the application for purposes of enforcing the approved permit.

Sec. 1.2.6.3. General remedies.

(a) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used or developed in violation of this Unified Development Code or any development application approved hereunder, in addition to other remedies, the city may institute any appropriate action or proceedings to prevent, enjoin, or abate such activity. Appropriate action or proceedings may include termination of utility services (water, gas, electric) by providers; revocation of permits, licenses, or bonds; and institution of legal action in a court of competent jurisdiction.

Sec. 1.2.6.4. Stop work orders.

(a) Whenever any construction or development activity is being done contrary to any term, condition or requirements of an approved application or this Unified Development Code, the authorized official may order the work stopped by notice in writing, served on the property owner or authorized agent. Notice shall be given before the order shall be effective, except when the order should be effective immediately to protect and preserve the public health, safety, or general welfare. Any person thereafter shall cease and desist from further development or construction material to the alleged noncompliance, until corrected by compliance and authorized by the responsible official to proceed with the work. This prohibition shall extend throughout any appeal period.

(b) The owner or authorized agent may appeal the stop work order to the authorized official by giving written notice. The authorized official shall hear the appeal within five working days of receiving the notice.

(c) The appellant may appeal a negative ruling by the authorized official in writing to the city manager, who shall hear the appeal within five working days after receipt of the notice of appeal.

(d) The decision maker on the appeal may require the placement of temporary erosion control, drainage protection or other measures by the owner or appellant in order to protect the site and the community resources during the appeal period.

(e) The authorized official or the city council, as the case may be, shall decide the appeal and make such order as is necessary to assure compliance with the terms of this Unified Development Code and all approved development applications.

Sec. 1.2.6.5. Municipal court actions.

(a) The city attorney is authorized to prosecute violations of this Unified Development Code in the municipal court where jurisdiction lies for the action.

(b) In prosecutions for violations of this Unified Development Code, it shall not be necessary to allege or prove a culpable mental state, as said requirement is hereby waived.

Sec. 1.2.6.6. Civil court actions.

(a) With the approval of the city council, the city attorney or any attorney chosen by the city is authorized to file and prosecute a civil action at law or in equity, in any court of competent jurisdiction to enforce the provisions of this Unified Development Code.

Sec. 1.2.6.7. Reserved.

Sec. 1.2.6.8. Fines and penalties.

(a) A person who violates any provision of this Unified Development Code pertaining to fire safety, zoning or public health and sanitation, including dumping of refuse, shall be punished, upon conviction, by a fine not to exceed \$2,000.00. A person who violates any other provision of this Unified Development Code shall be punished, upon conviction, by a fine not to exceed \$500.00. The owner or owners of any building or premises or part thereof, where anything in violation of this ordinance shall be placed or shall exist, any architect, builder, contractor, agent, persons or corporation employed in connection therewith, and who may have assisted in the commission of any such violation, shall be guilty of a separate offense and upon conviction shall be fined as herein provided. This section does not apply to enforcement of an ordinance in the city's extraterritorial jurisdiction.

Secs. 1.2.6.9—1.2.6.11. Reserved.

Sec. 1.2.6.12. Revocation proceedings.

(a) If an authorized official determines, based on inspection or investigation by the city, that there are reasonable grounds for revocation of an approved application, the official shall set a hearing before the board or commission to which appeal may be

taken from such decision under this Unified Development Code. If the city council was the original decision maker, the council may refer the proposed revocation to the planning commission for its report and recommendation prior to such hearing. Circumstances that warrant revocation of an approved application shall include but not be limited to the following:

- (1) A material mistake was made in approving the application;
- (2) Approval of the application was procured on the basis of material misrepresentations or fraud on the part of the applicant;
- (3) Development activities being undertaken on the land subject to the permit are not in conformity with terms of the approved application;
- (4) The use authorized by the permit is in violation of a condition of approval of the approved application;

(b) The applicant and any interested parties shall be given notice of the hearing in the manner provided in chapter 1, article 2, division 2. The public hearing shall be conducted in accordance with the procedures described in chapter 1, article 2, division 3.

(c) In rendering its decision whether to revoke the approved application, the decision maker shall determine whether the activity authorized under the original approved application complies with the terms, conditions and requirements of such approval. The decision maker may revoke the application, affirm it, or affirm it with attached conditions that assure that the terms; conditions and requirements of the application shall be met.

(d) Following revocation and pending any appeal, it shall be unlawful to undertake or perform any activity that was previously authorized by the approved application without applying for and obtaining approval of a new application for the activity. Appeal from the decision to revoke the approved application shall be to the city council, unless the decision to revoke was made by the council, in which case revocation is final.

Sec. 1.2.6.13. Exemption.

(a) This division does not apply to building permits issued under separate ordinance or provision of the city Code.

Division 7. Text Amendments

Sec. 1.2.7.1. Amendments to the Unified Development Code (UDC).

(a) The city council may from time to time amend, supplement, or change the text of this Unified Development Code.

Sec. 1.2.7.2. Hearing and notice.

(a) The city council shall conduct a public hearing on a proposed text amendment in accordance with chapter 1, article 2, division 3 and cause notice of the amendment to be published in accordance with section 1.2.2.1 for amendments to the provisions of this Unified Development Code (no personal notice is required):

(b) The hearing and notice requirements of this section do not apply to an action of the city council imposing a moratorium on the acceptance, processing or issuance of development permits or petitions for legislative actions.

(c) Amendments to chapter 3 may be made by notification in accordance with section 1.2.2.1.

Sec. 1.2.7.3. Recommendation of advisory body.

(a) Where required by this Unified Development Code or other law, the city council shall first consider the recommendation of the planning commission, together with the recommendations of any other advisory body prescribed by this code, concerning the proposed text amendment. Where action is required of the planning commission or other advisory body on a proposed text amendment, the advisory body also shall conduct a public hearing.

Sec. 1.2.7.4. Initiation of text amendments.

(a) Unless otherwise limited by this Unified Development Code, a petition for amending the text of the Unified Development Code may be initiated by the city council, the planning commission, a board, commission or advisory body described in chapter 1, article 1, an ad hoc advisory body appointed by the council, a responsible official designated in this code, any citizen or owner of land within the city limits, or any citizen or owner of land within the city's extraterritorial jurisdiction (for a regulation that applies to the ETJ).

- (1) Except for amendments initiated by the city council, the petition to amend the text of this Unified Development Code shall state with particularity the nature of the amendment and the reason for the amendment.
- (2) A petition for a text amendment may be submitted in conjunction with a development application, approval of which depends on approval of the amendment, but shall in every such instance be decided prior to any action by the city on the development application.

- (3) The city council may establish rules governing times for submission and consideration of text amendments.

ARTICLE 3. RELIEF PROCEDURES

Division 1. Appeals

Sec. 1.3.1.1. Purpose, applicability and effect.

(a) The purpose of an appeal is to contest an initial decision on an application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this code that apply to the development application.

(b) Unless otherwise provided by this code, any final administrative decision on an application by a city official, including a determination by the responsible official that a proposed development is exempt from one or more applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made. For administrative decisions on applications appeal shall be to the zoning board of adjustment. Final decisions on an application by a board or commission may be appealed to the city council only if expressly provided for in the regulations establishing the procedure by which the decision was made.

(c) The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the application for which approval was sought.

Sec. 1.3.1.2. Appeal requirements.

(a) The applicant and any interested person may appeal a final decision on an application to the appellate body designated by this code, if any.

(b) The appeal shall contain a written statement of the reasons why the final decision is erroneous, and shall be accompanied by the fee established by the city council. An appeal by an applicant shall be accompanied by a copy of the application on which the initial decision was rendered. An appeal may include any other documents that support the position of the appellant.

(c) A written appeal must be filed with the responsible official within ten working days from the date of notification of the final decision on the application.

Sec. 1.3.1.3. Processing of appeal and decision.

(a) The responsible official for an appeal is the responsible official designated by this code for processing of the application at issue in the appeal. Upon receipt of a written appeal, the responsible official shall compile all documents constituting the record of the decision on appeal and transmit the record to the appellate body.

- (1) Receipt of a written appeal of a decision on an application stays all proceedings of the city in furtherance of the decision from which appeal is taken, including, without limitation, acceptance, processing or issuance of any applications that are dependent on the application being appealed, and any development activities authorized by initial approval of the application. The stay shall be lifted only if the responsible official certifies in writing to the appellate body that a stay would cause imminent peril to life or property.
- (2) Thereafter, the stay may be reinstated only by order of the appellate body or a court of record, on application, after notice to the responsible official, for due cause shown.

(b) Notification of the appeal and conduct of the public hearing thereon shall be in accordance with article 2, divisions 2 and 3 of this chapter 1. The initial public hearing on the appeal shall be held within 25 working days after the filing of the appeal with the responsible official, unless a different time is prescribed by the provisions of this chapter.

(c) The appellate body shall decide the appeal within 30 working days of the close of the public hearing. The appellate body shall affirm, reverse or modify the decision from which the appeal was taken.

(d) The appellant and the applicant for the development permit shall be notified of the decision on appeal in the manner provided in article 2, division 2 of this chapter 1.

Sec. 1.3.1.4. Criteria.

(a) In deciding the appeal, the appellate body shall apply the same criteria that govern the initial decision on the application under the provisions of this code.

Sec. 1.3.1.5. Expiration and extension.

(a) For purposes of determining expiration or extension periods under this code, the date of the appellate body's granting of relief on an appeal is the date on which the application is deemed approved.

*Division 2. Petition for Relief from Dedication or Construction Requirement***Sec. 1.3.2.1. Purpose, applicability and effect.**

(a) The purpose of a petition for relief from a dedication or construction requirement is to assure that the application of uniform dedication and construction standards to a proposed development does not result in a disproportionate burden on the property owner, taking into consideration the nature and extent of the demands created by the proposed development on the city's public facilities systems.

(b) A petition for relief under this section may be filed by a property owner to contest any requirement to dedicate land or to construct public improvements for dedication to the public that is imposed under the city's public facilities standards in chapter 3 of this Unified Development Code to an application or to any related application authorized under this code, whether the requirement is under uniform standards, or attached as a condition to approval of the petition or permit. A petition under this section shall not be used to waive standards on grounds applicable to a petition for a waiver under section 3.1.1.6 of this UDC.

(c) If the relief requested under the petition is granted in whole or in part by the city council, the dedication or construction requirement initially imposed shall be modified accordingly, and the standards applied or the conditions attached to initial approval of the application shall be thereafter applied in accordance with the relief granted. In the event the original application was denied by the decision maker based upon the property owner's failure to incorporate the dedication or construction requirement in the proposed permit, the application shall be remanded to the original decision maker for a decision consistent with the relief granted by the council.

Sec. 1.3.2.2. Petition requirements.

(a) A petition for relief from a dedication or construction requirement may be filed by a property owner or the applicant for an application, in which the dedication or construction requirement has been applied or attached as a condition of approval, or as grounds for denying the application.

(b) The petition for relief from a dedication or construction requirement shall allege that application of the standard or the imposition of conditions relating to the dedication or construction requirement is not roughly proportional to the nature and extent of the impacts created by the proposed development on the city's facilities system, as the case may be, or does not reasonably benefit the proposed development.

(c) The petitioner shall provide a study in support of the petition for relief that includes information as required by the city engineer including any other information that shows the alleged disproportionality between the impacts created by the proposed development and the dedication or construction requirement imposed by the city.

(d) A petition for relief from a dedication or construction requirement shall be filed with the responsible official within ten days of the decision to conditionally approve or deny an application for approval of an application that has been submitted. The study in support of the petition shall be filed within 30 days of the initial decision, unless the petitioner seeks an extension in writing. The responsible official may extend the time for submitting the study for a period not to exceed an additional 30 days for good cause shown.

Sec. 1.3.2.3. Land in extraterritorial jurisdiction.

(a) Where land or facilities to be dedicated are located in the extraterritorial jurisdiction of the city and are to be dedicated to a county under an interlocal agreement under Tex. Loc. Gov't Code chapter 242 [V.T.C.A., Local Government Code ch. 242], or are located with a drainage district and are to be dedicated to the district, a petition for relief or study in support of the petition shall not be accepted as complete for filing by the responsible official unless the petition or study is accompanied by verification that a copy has been delivered to the county or drainage district in which the facilities are to be located.

Sec. 1.3.2.4. Processing of petitions and decisions.

(a) The city engineer is the responsible official for a petition for relief from a dedication or construction requirement. Where the petition is for relief from dedication of rights-of-way for or construction of a facility in the city's extraterritorial jurisdiction that is to be dedicated to a county under an interlocal agreement under Texas Local Government Code chapter 242 [V.T.C.A., Local Government Code ch. 242], or to a drainage district, the city engineer shall coordinate a recommendation with the county or drainage district official responsible for reviewing plats in the county.

(b) The city engineer shall evaluate the petition and supporting study and shall make a recommendation to the city council based upon the information contained in the study, any comments received from the county, and the city engineer's analysis. In evaluating the petition and study, the city engineer may utilize any reasonable methodology in evaluating the petitioner's study, including but not limited to impact methodologies.

(c) The city council shall decide the petition for relief from a dedication or construction requirement.

(d) The city council shall conduct a public hearing in accordance with article 2, division 3 of chapter 1, within 30 working days after the study supporting the petition is filed with the city engineer.

(e) The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.

(f) The city council shall consider the petition for relief from a dedication or construction requirement and, based upon the criteria set forth in section 1.3.2.5, shall take one of the following actions:

- (1) Deny the petition for relief, and impose the standard or condition in accordance with the initial decision;
- (2) Deny the petition for relief, upon finding that the proposed dedication or construction requirements are inadequate to offset the impacts of the development and either deny the application or require that additional dedications of rights-of-way for or improvements to such systems be made as a condition of approval of the application;
- (3) Grant the petition for relief, and waive in whole or in part any dedication or construction requirement to the extent necessary to achieve proportionality; or
- (4) Grant the petition for relief, and direct that the city participate in the costs of acquiring land for or constructing the capital improvement under standard participation policies.

(g) The petitioner shall be notified of the decision on the petition for relief in the manner provided in article 2, division 2 of chapter 1.

Sec. 1.3.2.5. Criteria for approval.

(a) In deciding the petition for relief from a dedication or construction requirement, the city council shall determine whether the application of the standard or condition requiring dedication of an interest in land for public improvements or construction of capital improvements is roughly proportional to the nature and extent of the impacts created by the proposed development and reasonably benefits the development.

(b) In making such determination, the council shall consider the evidence submitted by the petitioner, the city engineer's report and recommendation and, where the property is located within the city's extraterritorial jurisdiction, or a drainage district, any recommendations from the county or district.

Sec. 1.3.2.6. Expiration and extension.

(a) Where an application was denied based upon the imposition of the standard or condition requiring dedication of land or construction of a capital improvement, the petitioner shall resubmit the application to the original decision maker within 90 days of the date the petition for relief is granted, in whole or in part, showing conformity with the city council's decision on the petition.

- (1) If such re-submittal of the application is not made within the 90-day period, the relief granted by the city council on the petition shall expire.
- (2) The council may extend the time for filing the application for good cause shown, but in any event, the expiration date for the relief granted shall not be extended beyond one year from the date the petition was granted.
- (3) If the application is modified to increase the number of residential units or the intensity of nonresidential uses, the responsible official may require a new study to validate the relief granted by the city council.
- (4) If the development application for which relief was granted is denied on other grounds, a new petition for relief may be required.

(b) Where approval of the application was conditioned on satisfaction of the dedication or construction requirement, the city engineer may require the applicant to submit a modified application or supporting materials consistent with the relief granted by the city council on the petition.

- (1) The relief granted on the petition shall remain in effect for the period the plat or related approved application is in effect, and shall expire upon expiration of the application.
- (2) Extension of the plat also shall result in extension of the relief granted on the petition.

Division 3. Vested Rights Petition

Sec. 1.3.3.1. Purpose, applicability and effect.

(a) The purpose of an appeal is to contest an initial decision on an application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this code that apply to the development application.

(b) Unless otherwise provided by this code, any final administrative decision on an application by a city official, including a determination by the responsible official that a proposed development is exempt from one or more applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made. For administrative decisions on applications appeal shall be to the zoning board of adjustment, except to the extent that any ordinance or code authorizes the building codes board of appeals to hear that appeal. Final decisions on an application by a board or commission may be appealed to the city council only if expressly provided for in the regulations establishing the procedure by which the decision was made.

(c) The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the application for which approval was sought.

(d) The Unified Development Code does not apply to appeals to the building codes board of adjustment, and those appeals are governed by the building codes. (Ord. No. 2021-20, pt. I(B), 5-17-2021)

Sec. 1.3.3.2. Petition requirements.

(a) A vested rights petition may be filed by a property owner or the owner's authorized agents, including the applicant, with any development application identified in section 1.3.2.1, or by the holder of a permit subject to expiration pursuant to section 1.2.5.8.

(b) The vested rights petition shall allege that the petitioner has a vested right for some or all of the land subject to the development application under Texas Local Government Code chapter 245 [V.T.C.A., Local Government Code ch. 245], or successor statute, or pursuant to Texas Local Government Code section 43.002 [V.T.C.A., Local Government Code § 43.002], or successor statute, that requires the city to review and decide the application under standards in effect prior to the effective date of the currently applicable standards. The petition shall include the following information and documents:

- (1) A narrative description of the grounds for the petition;
- (2) A copy of each approved or pending application or permit (the "vesting permit") which is the basis for the contention that the city may not apply current standards to the application which is the subject of the petition;

- (3) The date of submittal of the application for the vesting permit, or of a plan pursuant to which the vesting permit was subsequently filed, if the submittal date is different from the official filing date;
- (4) The date the project for which the application for the vesting permit was submitted was commenced;
- (5) Identification of all standards otherwise applicable to the application from which relief is sought;
- (6) Identification of any current standards which petitioner agrees can be applied to the application at issue;
- (7) A narrative description of how the application of current standards affect the application for which the petition is filed;
- (8) A copy of any prior vested rights determination involving the same land;
- (9) Where the petitioner alleges that a permit subject to expiration under section 1.2.5.8 should not be terminated, a description of the events constituting progress toward completion of the project for which the permit subject to expiration was approved.

(c) A vested rights petition shall be filed with an application for which a vested right is claimed, except that the petition may be filed before the date of expiration of any permit when filed pursuant to section 1.2.5.8. Where more than one application is authorized to be filed by this Unified Development Code, the petition may be filed simultaneously for each application.

Sec. 1.3.3.3. Processing of petitions and decision.

(a) The responsible official for a vested rights petition is the responsible official for processing the application with which the petition is associated, except where a petition is submitted pursuant to section 1.2.5.8. Where multiple applications are submitted, and there is more than one responsible official, the decision of each responsible official shall be coordinated with that of any other responsible official on the vested rights petition. The responsible official shall promptly forward a copy of the vested rights petition to the city attorney following acceptance.

(b) If the responsible official is the decision maker on the application, the official shall determine whether the relief requested in the vested rights petition should be granted in whole or in part, and shall formulate a written report summarizing the official's reasoning and setting forth the decision on the petition, which shall be delivered to the applicant within ten business days from the date the vested rights

petition is accepted for filing, unless the tenth business day falls on a weekend or a city holiday, in which case the deadline shall be the next business day following said weekend or holiday.

(c) If the application is to be decided by the planning commission or another board or commission, the building official shall submit a report in the form of a recommendation to the decision maker. The commission or board shall render a decision on the vested rights petition in conjunction with its decision on the application.

(d) Where the city council is the final decision maker on the application, or for any petition submitted pursuant to section 1.2.5.8, the petitioner may submit a written request that the vested rights petition be immediately forwarded to the council for a determination. The request must be accompanied by a waiver of the time for decision on the application imposed under this Unified Development Code pending decision by the council on the petition, which shall stay further proceedings on the application. Upon receipt of the request, the responsible official shall prepare a recommendation and forward the matter to the council for decision, which shall decide the petition within 30 calendar days of

(e) (sic) the petitioner's request. If no written request for council referral is filed, the council shall decide the vested rights petition with its decision on the application.

(f) The petitioner or any interested person may appeal the responsible official's or the commission's or board's decision on the vested rights petition within ten working days of the date of such decision to the city council in accordance with the procedures in division 1 of this article 3. An appeal under this subsection stays acceptance of filing of any related applications. The council shall decide the petition within 30 days of receipt of the notice of appeal.

Sec. 1.3.3.4. Action on petition and order.

(a) The decision maker on the vested rights petition may take any of the following actions:

- (1) Deny the relief requested in the petition, and direct that the application shall be reviewed and decided under currently applicable standards;
- (2) Grant the relief requested in the petition, and direct that the application shall be reviewed and decided in accordance with the standards contained in identified prior regulations;

- (3) Grant the relief requested in part, and direct that certain identified current standards shall be applied to the application, while standards contained in identified prior regulations also shall be applied; or
 - (4) For petitions filed pursuant to section 1.2.5.8, specify the expiration date or the conditions of expiration for the permit(s).
- (b) The responsible official's report and each decision on the vested rights petition shall be memorialized in an order identifying the following:
- (1) The nature of the relief granted, if any;
 - (2) The approved or filed application(s) upon which relief is premised under the petition;
 - (3) Current standards which shall apply to the application for which relief is sought;
 - (4) Prior standards which shall apply to the application for which relief is sought, including any procedural standards;
 - (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the petition;
 - (6) To the extent feasible, subordinate applications that are subject to the same relief granted on the petition; and
 - (7) For petitions filed pursuant to section 1.2.5.8, the date of expiration of the permit.

Sec. 1.3.3.5. Criteria for approval.

- (a) The decision maker shall decide the vested rights petition based upon the following factors:
- (1) The nature and extent of prior applications filed for the land subject to the petition;
 - (2) Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
 - (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
 - (4) Whether current standards adopted after commencement of the project affect proposed use of the land based upon the proposed application;
 - (5) Whether any statutory exception applies to the standards in the current Unified Development Code from which the applicant seeks relief;

- (6) Whether any prior approved applications relied upon by the petitioner have expired;
- (7) For petitions filed pursuant to section 1.2.5.8, whether any of the events in section 1.3.3.8(c) have occurred;
- (8) Any other provisions outlined in the Texas Local Government Code chapter 245 [V.T.C.A., Local Government Code ch. 245] or successor statute.

(b) If the claim of vested rights under a petition is based upon a pending application subject to standards that have been superseded by current standards under this Unified Development Code, the decision maker may condition any relief granted on the petition on the approval of the application under such prior standards.

Sec. 1.3.3.6. Application following final decision on petition.

(a) Following the city's final decision on the vested rights petition, the property owner shall conform the application for which relief is sought to such decision. The decision maker on the application shall consider any application revised under this subsection in accordance with the procedures for deciding the initial application under this Unified Development Code and in conformity with the relief granted on the petition. If the relief granted on the vested rights petition is consistent with the application on file, no revisions are necessary. If proceedings have been stayed on the development application pending referral of the vested rights petition to the city council, proceedings on the application shall resume after the council's decision on the vested rights petition.

Sec. 1.3.3.7. Expiration and extension.

(a) Relief granted on a vested rights petition shall expire on occurrence of one of the following events:

- (1) The petitioner or property owner fails to submit a required revised application consistent with the relief granted within 45 days of the final decision on the petition;
- (2) The application for which relief was granted on the vested rights petition is denied under the criteria made applicable through the relief granted on the petition; or
- (3) The application for which relief was granted on the vested rights petition expires.

(b) Extension of the date of expiration for the application for which relief was granted on a vested rights petition shall result in extension of the relief granted on petition for a like period.

Sec. 1.3.3.8. Dormant projects.

(a) For purposes of this section only:

- (1) Initial permit means any of the following types of approvals granted under the UDC ordinance, as amended, or any predecessor ordinance that was in effect prior to the adoption of this UDC, including: site plan, design plan, special use permit, variances or any other application that was approved subject to a schematic drawing illustrating the location, arrangement, orientation or design improvements on a site intended for development.
- (2) Final permit means a building permit or certificate of occupancy, approved under the UDC ordinance, as amended, or any predecessor ordinance that was in effect prior to the adoption of this UDC.

(b) Any application for an initial permit that was approved or filed before, but that was not subject to an expiration date, two years prior to the adoption date of this UDC shall expire on the effective date of this Unified Development Code.

(c) The owner of the land subject to an initial permit that expires under subsection (b) above may petition the city council to reinstate such permit by filing a written petition within 60 calendar days of the effective date of this Unified Development Code. The petition shall clearly state the grounds for reinstatement, and shall be accompanied by documentation of one of the following:

- (1) As of two years prior to the adoption date of this UDC one of the following events had occurred:
 - a. A final permit for all or part of the land subject to the approved initial permit was approved, or was filed and was subsequently approved;
 - b. An application for a final permit was submitted for all or part of the land subject to the expired initial permit, but such application was rejected on grounds of incompleteness;
 - c. Costs for development of the land subject to the initial permit, including, but not limited to, costs associated with roadway, utility and other infrastructure facilities designed to serve the land in whole or in part, but exclusive of land acquisition costs, were incurred in the aggregate amount of five percent of the most recent appraised market value of the land;

- d. Fiscal security was posted to ensure performance of an obligation required for all or a part of the land subject to the approved initial permit; or
 - e. Utility connection fees for all or part of the land subject to the approved initial permit were paid.
- (2) After two years prior to the adoption date of this UDC but before the expiration date specified in subsection (b) above, one of the following events had occurred:
- a. A final permit was approved for all or part of the land subject to the approved permit, and remained in effect for such land on such expiration date; or
 - b. A complete application for approval of a final permit for all or part of the land subject to the approved initial permit was pending for decision on such expiration date.
- (d) The city council may take one of the following actions:
- (1) Reinstate the expired initial permit without an expiration date, if it finds that the petitioner has met any one of the criteria listed in subsection (c)(1);
 - (2) Reinstate the initial permit for all or part of the land subject thereto, if it finds that the petitioner has met any one of the criteria listed in subsection (c)(2), subject to such expiration dates or other conditions that assure that the remaining land that is not subject to an approved or pending final permit application will be developed in a timely fashion. In granting relief under this provision, the council may require that development of such remaining land is subject to standards enacted after approval of the initial permit;
 - (3) Deny the petition, if it finds that the petitioner has failed to meet any of the criteria in subsection (c); or
 - (4) Reinstate the permit for only that part of the land subject to a pending final permit application, if it finds that the petitioner has met the criteria in subsection (c)(2)(b) and the pending application subsequently was approved, and deny the petition for the remaining land subject to the expired initial permit.

Division 4. Petition for Waivers

Sec. 1.3.4.1. Purpose, applicability and effect.

(a) The purpose of a petition for a waiver is to determine whether one or more standards of applicable to applications or permits within this Unified Development Code should not be applied to an application by operation of state law.

(b) The applicant may file a petition for waiver of one or more standards applicable to an application or permit.

Sec. 1.3.4.2. Application and decision maker.

(a) The waiver petition shall be decided by the city council.

Sec. 1.3.4.3. Criteria for approval.

(a) The following criteria shall be applied in deciding a waiver:

- (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land such that the strict application of the provisions of this chapter to the proposed use would create an unnecessary hardship or inequity upon or for the applicant, as distinguished from a mere inconvenience, in developing the land or deprive the applicant of the reasonable and beneficial use of the land;
- (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
- (3) The waiver is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
- (4) Granting the waiver will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- (5) Granting the waiver will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this code, or adversely affect the rights of owners or residents of surrounding property;
- (6) The hardship or inequity is not caused wholly or in substantial part by the petitioner;
- (7) The request for a waiver is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
- (8) The degree of variation requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.

(b) The petitioner bears the burden of proof to demonstrate that the application of a dedication or construction requirement that is uniformly applied imposes a disproportionate burden on the petitioner.

(c) The city council shall consider the waiver petition and, based upon the criteria set forth in subsection (a) above, shall take one of the following actions:

- (1) Deny the petition, and impose the standard or requirement as it is stated in this UDC; or
- (2) Grant the petition, and waive in whole or in part the standard or requirement as it is stated in this UDC.

(d) The petitioner shall be notified of the decision on the waiver petition in the manner provided in article 2, division 2 of chapter 1.

Sec. 1.3.4.4. Effect of approval.

(a) The waiver granted shall remain in effect for the period the approved development application is in effect, and shall expire upon expiration of the application. Extension of the application also shall result in extension of the relief granted on the petition.

CHAPTER 2. RESERVED

CHAPTER 3. SITE DEVELOPMENT DESIGN AND IMPROVEMENTS

ARTICLE 1. LANDSCAPE

Division 1. General

Sec. 3.1.1.1. Purpose.

These regulations are enacted to ensure the health, safety, and welfare of the citizens of Iowa Colony, Texas, by protecting the existing natural environment and providing additional exterior landscaping requirements that enhance the outdoor visual character and quality of life.

Sec. 3.1.1.2. Application/authority/jurisdiction.

This article is applicable to all persons, including, without limitation, the city and other governmental agencies and entities, except that its application shall not extend to real property owned or controlled by the state of Texas or the United States of America.

- (a) The building official or an assign shall have authority and jurisdiction over all trees, shrubs and plants of any kind and character that are now or may hereafter

be planted on or along the streets or other public places of the city, including all plantings of every kind and character lying outside of the property lines of privately owned property and as prescribed in this code.

- (b) The building official or an assign shall have the duty to:
- (1) Direct, regulate and encourage the planting, culture and preservation of shade and ornamental trees and plants on the streets and public places of the city;
 - (2) Direct, regulate and encourage the pruning, spraying, cultivation and maintenance of such trees and plants, and to direct the time and method of pruning and trimming the same;
 - (3) Remove or cause to be removed any tree or plant, or other obstruction that would interfere with the development of adjoining trees or plants or with the free use of the streets or sidewalks;
 - (4) Advise property owners with respect to the kinds of trees to plant or shrubbery desired on the particular street, and the method of planting the same;
 - (5) Take all such measures as may be deemed necessary or desirable to control all dangerous insects, pests and plant diseases that may affect trees or shrubbery on the streets or other public places in the city;
 - (6) Devise plans for the planting of trees on and along the streets between the curbs and property lines within the city, where trees may be desirable;
 - (7) Prescribe the character, kind, size, space and position of all trees so planted on or along public streets or other public places;
 - (8) Prevent the planting of trees, shrubs or other plants that are not desirable; and
 - (9) Plant or cause to be planted such trees on or along such streets or other public places as the building official or an assign may deem proper.

Sec. 3.1.1.3. Designation of trees.

- (a) The city council may by motion designate a tree that:
- (1) Has historical significance arising from any historical event or events that are associated with the tree; or

(2) Has arboricultural significance as listed on the county, state or national tree register by American Forests, the Texas Forest Service or an equivalent arboricultural organization.

(b) No tree shall be designated except upon application made or joined by the owner of the tree, which application shall be filed with the building official or an assign in such for as the building official or an assign may require and shall set forth and document the grounds for the requested designation.

(c) The building official or an assign shall review each application that is received and shall return any application that is determined to be incomplete or inconsistent with the requirements of this section. A complete and consistent application that is based upon historical significance shall be submitted for review by the building official or an assign, which shall review the same and provide a response, if any, within 45 days. The building official or an assign shall submit comments of the city council together with the building official or an assign's own recommendation for approval or denial.

(d) The city council shall consider each application on the basis of the application itself and the recommendations and comments provided. city council shall not be obligated to conduct any hearing on the matter, provided that interested persons may make an appearance on the matter or may submit written comments to the city secretary for distribution to the council members.

(e) The city council shall approve or disapprove an application that is referred by the building official or an assign by motion. The decision of the city council shall be final, and if the application is disapproved, another application for designation of the same tree may not be considered for a period of three years.

(f) To the extent permitted by laws governing the filing of documents in the county real property records, a notice setting forth each tree designation shall be filed by the city in the real property records of the county.

Sec. 3.1.1.4. Green corridors.

(a) A green corridor may be designated in accordance with this section.

(b) In this section, a tract or parcel of land and its contiguous parkway that is devoted by actual use or by valid deed restrictions or covenants running with the land to single-family residential use or being located within a single-family residential zoning district is referred to as a "single-family property." The provisions of this section

shall not be construed to prohibit a single-family property from being physically situated within a green corridor. However, a single-family property shall not be subject to any requirement created by the green corridor designation.

(c) Each green corridor shall consist of the right-of-way of a major thoroughfare and building setback areas of abutting and contiguous properties. A green corridor shall be not less than one mile long.

(d) A green corridor may be designated by the city council by motion following a hearing and determination that designation of the green corridor would significantly enhance the beautification of the city. Trees within the green corridor shall be entitled to enhanced protection as provided in this article, and the city council may, in designating the green corridor, specify one or more particular species, varieties, and/or colors of trees to be planted, to the exclusion of others within the green corridor. Additionally, green corridors may be given priority for expenditure of city moneys for street tree planting, to the extent permitted by law.

(e) Petitions for the designation of a green corridor shall be submitted to the city secretary upon a form promulgated by the building official or an assign for that purpose. Each petition shall be joined and signed by the owners of properties representing three quarters of the front footage of tracts or parcels that would be adjacent to the major thoroughfare in the proposed green corridor, single-family properties and their owners excluded. All required signatures must be collected within a period of time not exceeding 90 days, and the petition must be filed with the city secretary not later than the fifteenth day after the last date of any property owner's signature on the petition.

(f) The city council shall conduct a hearing regarding each petition within 90 days following the date of its filing. Written notice of the hearing shall be given by the city secretary in such manner as the city council may specify in the call for the hearing. Any person may present testimony at the hearing. Additionally, written comments may be provided to the city secretary for distribution to council members. If a petition is disapproved, another petition for designation of the same or substantially the same green corridor shall not be considered for a period of three years.

(g) Nothing in this section shall be construed to prohibit the city council from waiving any irregularity in any petition or from designating any green corridor for which a petition has not been presented.

Sec. 3.1.1.5. Removal of protected trees.

(a) The provisions of this section shall be applicable to the removal of a protected tree unless:

- (1) The tree is situated upon the site of a construction or enlargement of a building or parking lot such that division 2 of this article is applicable; or
- (2) The tree is not a designated tree and is situated upon a tract or parcel of land devoted by use or by valid deed restrictions or covenants running with the land to single-family residential use or within a single-family residential zone; and the term "protected tree" is so restricted as used in this section.

(b) No person shall cause a protected tree to be removed without complying with a protected tree replacement requirement, which may be satisfied as follows:

- (1) By the planting anywhere on the tract or parcel of land where the protected tree to be removed is situated or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed; or
- (2) By contributing to the fund created under section 3.1.2.3(a)(2) of this code an amount equal to:
 - a. If the tree is a parkway tree, \$225.00 per caliper inch of tree removed for a six-inch caliper tree and smaller, \$375.00 per caliper inch of tree removed for over six-inch and up to 12-inch caliper trees, and \$500.00 per caliper inch of tree removed for over 12-inch caliper trees;
 - b. If the tree is a corridor tree or green corridor tree, \$103.00 per caliper inch of tree removed; or
 - c. A combination of the foregoing; any or all of which shall be subject to a cost adjustment from January 2016 in accordance with the formula established in the definition of the term "cost adjustment."

Installation of trees provided shall be subject to the planting standards established in division 2 of this article, and the trees shall be planted within 30 days following the removal of the tree unless a documented assurance of planting is provided to the building official or an assign with the notice, in which case the trees shall be placed within six months of the removal of the trees. A documented assurance may be provided in the same manner as under section 3.1.2.12(b) of this code. A variance may be requested in the same manner provided in sections 3.1.2.14 through 3.1.2.16 of this

code. Additionally, the mitigation provisions of section 3.1.2.17 of this code shall be applicable to trees that are provided in order to satisfy a protected tree replacement requirement.

(c) No person shall cause a protected tree to be removed without first filing with the building official or an assign a written notice of removal of the protected tree, which must be filed at least 20 days prior to the removal. The notice shall include a map depicting the tract or parcel of land upon which the protected tree or trees to be removed are situated and shall demonstrate the manner in which the protected tree replacement requirement will be provided.

(d) It is an affirmative defense to prosecution under this section that the protected tree sustained damage from fire, wind storm, accident or other cause such that the protected tree became an immediate threat to persons or property, provided that the owner of the tree caused the circumstances to be documented and filed written notice of the removal with the building official or an assign within ten days following the removal of the tree.

(e) It is a defense to prosecution under this section that the protected tree was removed by or on behalf of a public utility or a governmental entity and that its removal without notice was reasonably required for the maintenance or installation of public facilities or utility systems.

(f) The building official or an assign shall promulgate forms of notices and procedures under this section. A map need not be prepared in the form of a survey map, provided that it shall provide sufficient information to unmistakably identify the protected tree that is to be removed and the location of any tree that is to be planted in order to provide the protected tree replacement requirement, as well as the species and caliper of each tree. If the owner elects to make a contribution to the fund created under section 3.1.2(a)(2) of this code, then the contribution shall be tendered with the notice. No provision of this section shall be construed to require city personnel to review any notice filed under this section for accuracy or sufficiency or to perform any site inspection of trees for which notices are filed.

(g) No provision of this article shall be deemed to excuse compliance with division 3 of this chapter. If a notice of removal calls for the removal of a tree situated in a public right-of-way that is protected under division 3, then written permission for its removal issued by building official or an assign shall be submitted with the notice of removal that is required under subsection (c) above.

Sec. 3.1.1.6. Cumulative effect.

The protections afforded to trees under this article are cumulative of other provisions of this code, including, but not limited to, section 3.1.1.2 and division 3 of this chapter. Without limitation of the foregoing, nothing in this article shall be construed to authorize the removal or damaging of a tree growing in whole or in part within a public street that is subject to protection under division 3 without full compliance with the provisions of division 3.

Sec. 3.1.1.7. Tree protection; affirmative defense.

No person shall perform or cause or allow to be performed any construction activity, including, without limitation, construction or repair of buildings or other structures, installation or repair of utilities, or installation or repair of streets or sidewalks within the dripline circle area of any protected tree that is not to be lawfully removed, without complying with the applicable provisions of the City of Iowa Colony engineering design criteria manual with respect to any protected tree. It is an affirmative defense to prosecution under this section that the construction activity is an emergency repair of utilities on public or private property.

Sec. 3.1.1.8. Records.

(a) Notices, maps, applications, landscape plans and other documents received by the city under this article are governmental records, and any person providing a false governmental document shall be subject to prosecution as provided by the Texas Penal Code.

(b) Governmental records received by the city under this article are subject to public inspection and copying as provided by law.

Sec. 3.1.1.9. Fines and penalties.

See chapter 1.

Sec. 3.1.1.10. Single-family residential properties.

(a) While properties with an existing single-family residence are not subject to the requirements of division 2 of this article, it is the policy and requirement of the city that no final building permit inspection approval shall be given by the building official for

construction of a new single-family residential house unless the property owner has complied with this section by preserving or planting a tree or trees or obtaining credit therefor, as follows:

- (1) The required tree or trees, whether planted or preserved, shall be 1½-inch caliper size or larger.
- (2) The required tree or trees may be either new trees that are planted in compliance with this article or trees already existing on the building site or abutting street right-of-way as herein below provided that have been preserved in accordance with this article.
- (3) The required tree or trees, whether newly planted or preserved, must be of species listed on the large tree list or the small tree list.
- (4) Except as provided in subsection (b), below, the requirement for building sites or lots being one acre or more in size is:
 - a. Planting or preservation of one tree of 1½-inch caliper or larger, per 6,300 square feet of lot or building site area;
 - b. If the tree is an existing tree that is preserved, then it may be situated anywhere on the building site or in the abutting street right-of-way;
 - c. For a newly planted tree, up to one-half of the total tree requirement, it may be planted in the abutting street right-of-way, unless the building official or an assign requires it to be planted elsewhere on the building site upon determination by the building official or an assign that no adequate planting site exists in the abutting street right-of-way.
- (5) Except as provided in subsection (b) below, the requirement for building sites or lots being between 6,300 square feet and one acre in size is:
 - a. Planting of two new trees of 1½-inch caliper or larger per 6,300 square feet of lot or building site area. If this option is selected, then one tree must be planted in the abutting street right-of-way unless the building official or an assign requires it to be planted elsewhere on the building site upon determination by the building official or an assign that no adequate planting site exists in the abutting street right-of-way, and the other tree shall be planted on the building site;
 - b. Planting of one new tree of four-inch caliper or larger per 6,300 square feet of lot or building site area; if this option is selected, then the tree may be planted in the abutting street right-of-way, unless the building official or an

assign requires it to be planted elsewhere on the building site upon determination of the building official or an assign that no adequate planting site exists in the abutting street right-of-way; or

- c. Preservation of an existing tree of 1½-inch caliper or larger, up to one-half of the total tree requirement and planting of one new tree of 1½-inch caliper or larger per 6,300 square feet of lot or building site area; if this option is selected, then one tree may be preserved in the abutting street right-of-way and the other tree shall be planted either:
 - (1) Within the abutting street right-of-way unless the building official or an assign requires it to be planted elsewhere on the building site upon determination by the building official or an assign that no adequate planting site exists in the abutting street right-of-way; or
 - (2) Elsewhere on the building site.

(b) The building official or an assign may excuse the planting or preservation of the tree or trees otherwise required under this section and instead authorize the property owner to purchase credits under section 3.1.2.3 of this code upon determination that the size and configuration of the property and the house do not afford sufficient space for the planting or preservation of even one tree.

(c) Nothing in this ordinance shall waive any rights of the city to control its rights-of-way, including but not limited to the right to remove a tree from the right-of-way.

Sec. 3.1.1.11. Screening of electric meters on residential properties.

A single-family or multifamily residential development that contains three or more electric meters that are clustered together in a group meter or gang meter configuration that is visible from the right-of-way shall install screening around the electric meters in accordance with the following:

- (1) The screen must be constructed out of wood, lattice, metal, brick, vegetation, or other opaque fencing material;
- (2) The screen must be tall enough to obstruct the view of the electric meters from the right-of-way; and
- (3) The screen shall provide for at least three feet of front clearance from the face of the meter and at least two feet of side clearance from the electric meter, or the minimum clearance for electric meters required by all utility companies with authority to service the electric meters.

Sec. 3.1.1.12. Limitation on tree mitigation requirements and fees.

(a) In this section:

(1) "Residential structure" means:

- a. A manufactured home as that term is defined by section 1201.003 Texas Occupations Code [V.T.C.A., Occupations Code § 1201.003];
- b. A detached one-family or two-family dwelling, including the accessory structures of the dwelling;
- c. A multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or
- d. Any other multifamily structure.

(2) "Tree mitigation fee" means a fee or charge imposed by the city in connection with the removal of a tree from private property.

(b) This code does not require a person to pay a tree mitigation fee for the removed tree if the tree:

- (1) Is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and
- (2) Is less than ten inches in diameter at the point on the trunk 4.5 feet above the ground.

(c) To the extent that this code imposes a tree mitigation fee for tree removal on a person's property, that person may apply for a credit for tree planting under this article to offset the amount of the fee, and the city must grant the credit to the extent provide by this article, if the application complies with this section.

(d) An application for a credit under subsection (c) must be in the form and manner prescribed by the building official. To qualify for a credit under this section, a tree must be:

- (1) Planted on property:
 - a. For which the tree mitigation fee was assessed; or
 - b. Mutually agreed upon by the city and the person; and
- (2) At least two inches in diameter at the point on the trunk 4.5 feet above the ground.

(e) For purposes of subsection (d)(1)b, the city and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the city.

(f) The amount of a credit provided to a person under this section must be applied in the same manner as the tree mitigation fee assessed against the person and:

- (1) Equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person's residence (Note: The mitigation fee is zero in these circumstances, per subsection (b), if the tree removed is less than ten inches in diameter at a height of 4.5 feet above the ground, so this paragraph applies only to trees at least ten inches in these circumstances);
- (2) At least 50 percent of the amount of the tree mitigation fee assessed against the person if:
 - a. The property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and
 - b. The person is developing, constructing, or renovating the property nor for use as the person's residence; or
- (3) At least 40 percent of the amount of the tree mitigation fee assessed against the person if:
 - a. The property is not a residential structure; or
 - b. The person is constructing or intends to construct a structure on the property that is not a residential structure.

(g) As long as the city meets the requirement to provide a person a credit under subsection (c), this section does not affect the ability of or require the city to determine the following, and does not impair any provisions of this article requiring the determining the following:

- (1) The type of trees that must be planted to receive a credit under this section, except as provided in subsection (d);
- (2) The requirement for tree removal and corresponding tree mitigation fees, if applicable;
- (3) The requirements for tree-planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; or
- (4) The amount of a tree mitigation fee.

(h) This code does not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that:

- (1) Is diseased or dead; or
- (2) Poses an imminent or immediate threat to persons or property.

Division 2. Building Sites

Sec. 3.1.2.1. Application.

(a) The requirements of this division shall only apply to a building site where any of the following conditions is present:

- (1) There is new construction of a nonresidential or multifamily residential building for which a building permit is required;
- (2) There is an enlargement exceeding 1,000 square feet in area of the exterior dimensions of an existing nonresidential or multifamily residential building for which a building permit is required;
- (3) There is either a new parking lot for which site plans are required for initial construction or an existing parking lot which is expanded in area to provide additional parking spaces; or
- (4) There is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length.

(b) The requirements of this division apply to the entirety of the building site if:

- (1) It is completely developed by the new construction of a building (or buildings) and appurtenant surface parking area; or
- (2) It is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length.

In case the entirety of the building site is only partially developed by new construction or enlargement, the requirements of this division shall be applied incrementally. Trees, shrubs, and landscape buffers are required with respect to and in proportion to:

- (1) The area of the new or increased building and off-street parking spaces; or
- (2) The length of street pavement, if the building site is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length. This subsection shall control over any other conflicting or inconsistent provision.

- (c) The requirements of this division do not apply to:
- (1) The reconstruction of an existing single-family structure;
 - (2) The reconstruction of any existing nonresidential building of which 50 percent of the existing building floor area square footage or less was physically destroyed or ruined by flooding, fire, windstorm or act of God. This exemption shall apply only where reconstruction of that building will not result in an increase in the paving area of the parking facilities to be provided; or
 - (3) The placement of a temporary classroom building if there is a reasonable likelihood that the condition necessitating a temporary classroom building will not continue for more than five years and an analysis of the public school site and the buildings thereon support the conclusion that timely compliance with the statutory student/teacher ratio cannot be achieved without the installation of the temporary classroom building(s).

(d) Nothing in this division shall be construed to require a landscape plan or landscape plan review for finish work performed by an owner, a tenant or on behalf of a tenant, in a portion of a building unless that tenant finish work or remodeling results in an increase in the paving area of the parking facilities to be provided or in an enlargement of the exterior dimensions of an existing building.

(e) Nothing in this division shall be construed to preclude the filing of a landscape plan where the requirements of this division are not otherwise applicable and the property owner desires to plant trees and obtain a credit under section 3.1.2.3(c) of this code.

Sec. 3.1.2.2. Landscape plan required.

(a) A landscape plan for the building site shall be submitted to the building official or an assign by an applicant for a building permit for approval in accordance with the provisions of this division.

(b) The landscape plan may be depicted on either the development plans or parking lot site plan, provided the drawing scale is sufficient to properly depict the landscape plan requirements. The landscape plan shall identify and show the locations of existing and proposed utility lines (both above and below ground), roadways, sidewalks, street lights, trees, shrubs, understory, natural features, other landscape elements, and planting or construction details. Where credit is being requested for the preservation of existing trees and associated understory, the landscape plan shall also demonstrate the manner in which the requirements for preservation established under section 3.1.2.10

are to be satisfied. A plant schedule shall be provided which includes quantities, minimum size at time of planting, and botanical and common names keyed to the plan.

(c) If the building site includes any protected trees, then the landscape plan shall depict the location of each and indicate whether each is to be removed or preserved. If any protected trees are to be removed, then a protected tree replacement requirement shall be applicable, in addition to any other tree planting requirements of this division, which may be satisfied as follows:

- (1) By the planting anywhere on the building site or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed;
 - (2) By contributing to the fund created under section 3.1.2.3(a)(2) of this code an amount equal to either:
 - a. If the tree is a parkway tree, \$225.00 per caliper inch of tree removed for a six-inch caliper tree and smaller, \$375.00 per caliper inch of tree removed for over six-inch and up to 12-inch caliper trees, and \$500.00 per caliper inch of tree removed for over 12-inch caliper trees; or
 - b. If the tree is a green corridor tree, \$103.00 per caliper inch of tree removed, which shall be subject to a cost adjustment from January 2016 in accordance with the formula established in the definition of the term "cost adjustment";
 - (3) By preservation credits as provided in section 3.1.2.3(b) of this code; or
 - (4) By a combination of the foregoing.
- (d) The protected tree replacement requirement shall not be applied to trees:
- (1) That must reasonably be removed in order to:
 - a. Install or maintain public utilities;
 - b. Construct or maintain access drives, streets and sidewalks;
 - c. Prevent visual impairment in a visibility triangle;
 - d. Prevent visual impairment where a driveway intersects with a street; or
 - e. Conduct emergency repairs of utilities on public or private property; or
 - (2) That are in poor condition, such that it is more likely than not that the tree would have died within one year if not removed.

(e) Based upon the landscape plan as filed, the building official or an assign shall review the landscape plan to verify compliance with all requirements of this article prior to the issuance of a building permit. If an artificial lot is delineated, it shall be depicted on the building plans prior to the issuance of the building permit. Nothing in this section shall be construed to require that city personnel perform a site inspection prior to the issuance of the building permit.

(f) No building permit shall be issued by the building official for the construction or alteration of a building within the city unless the building official or an assign approves the landscape plan verifying that the applicant has provided for the planting of trees and shrubs to the extent required in this article. If the landscape plan calls for the removal of any protected tree, then the building permit shall be conditioned such that the protected tree may not be removed until the twentieth day following the date of filing of the landscape plan.

(g) Except as provided in subsection (h) below, no final certificate of occupancy shall be issued by the building official for the occupancy of a new or altered building unless the plantings required by this article have been provided. Prior to the issuance of a certificate of occupancy, the building official shall inspect the planting provided to verify compliance with the approved landscape plan.

(h) A conditional certificate of occupancy may be issued if the owner provides the building official with either the documented assurances specified in section 3.1.2.3 or a bond or assigned certificate of deposit as set forth in section 3.1.2.13.

(i) Except for section 3.1.1.12, which concerns tree removal mitigation, no provision of this article shall be deemed to excuse compliance with division 3 of this chapter. If a landscape plan calls for the removal of a tree situated in a public right-of-way that is protected under division 3 of this chapter, then written permission for its removal issued by the building official or an assign and shall be submitted with the landscape plan filed under this section.

Sec. 3.1.2.3. Tree planting equivalency credits.

(a) [*Credits claimed against tree total.*] The following credits may be claimed against the total tree requirement under this division:

- (1) *Credit for planting trees exceeding the minimum caliper required.* Credit toward the total tree requirement shall be given for the planting of trees that exceed the minimum caliper required by this division at the rate of two trees for each tree with a caliper of four inches or more that is planted.

- (2) *Credit for depositing with the city a sum of money equal to the cost of planting the required trees.* Money so deposited shall be placed in a special fund designated for the purposes of planting street trees in city parks or public street rights-of-way that are located as near as possible to the area in which the removed trees were located. The credit shall be calculated based on a planting cost per tree of \$500.00 per 15 gallon container-grown tree, planted and maintained for a year, subject to a cost adjustment from January 2016 in accordance with the formula established in the definition of the term "cost adjustment." The maximum allowable credit under this option shall not exceed 30 percent of the total tree requirement.
- (3) *Credit for preserving existing on-site trees.* Credit for the preservation of existing on-site trees (including any to be transplanted) may be granted when requested and depicted on the landscape plan in accordance with section 3.1.2.2. In order to be eligible for credit, an existing tree to be preserved on the site shall have a minimum caliper of 1½ inches, shall be in good condition, and shall be true to species habit and form. Credit for preserving existing trees shall be granted based upon the caliper of the trees preserved, with a credit of one tree to be allowed for each 1½ total caliper inches of eligible trees that are preserved, subject to the limitations otherwise provided in this division. This item (3) shall not apply to trees situated in the abutting street right-of-way.
- (4) *Credit for preserving existing right-of-way street trees.* Credit for the preservation of existing trees situated within the abutting street right-of-way that are designated on the large tree list may be granted when requested and depicted on the landscape plan in accordance with section 3.1.2.2 of this code. In order to be eligible for credit, an existing street tree to be preserved shall have a minimum caliper of 1½ inches, shall be situated in the street right-of-way, be in good condition, and be true to a species listed on the large tree list in habit and form. Credit for preserving existing street trees shall be granted on the basis of one street tree preserved for each street tree otherwise required to be planted in the same block-face under this article, with no additional credit being allowed for preservation of a street tree that exceeds 1½ inches in caliper. Preservation methods for the tree must be at a minimum those specified in section 3.1.2.9 of this code; provided, however, that:
 - (1) The combined credit under items (1) and (2) above may not exceed 50 percent of the total tree planting requirement; and
 - (2) The total number of large trees, whether planted or preserved, shall never be less than 50 percent of the number required in section 3.1.2.6 of this

code as applied separately to each side of the property that abuts a street right-of-way and, if any side abuts two or more block faces, then separately to each block face.

(b) [*Credits claimed for tree replacement to preserve existing trees.*] A credit may be claimed for up to the entire protected tree replacement requirement for preservation of existing trees in the same manner provided in subsection (a)(3) above, except that the credit shall be based upon one caliper inch of tree preserved for one caliper inch of tree removed. However, a tree or caliper inch portion of a tree preserved may only be used for credit against the total tree requirement or the protected tree replacement requirement, but not both.

(c) [*Request for future credit for proposed trees when no planting requirement exists.*] Any owner who proposes to plant trees when no planting requirement exists under this division or desires to plant trees in excess of the requirements of this division may, at the time of filing of a landscape plan, request future credit against tree requirements upon the same building site. Upon completion of the work and verification of the unrequired planting or excess in planting by the building official or an assign, a certificate of credit shall be provided by the building official or an assign to the owner.

Sec. 3.1.2.4. Artificial lot delineation.

If the building site is over two acres in size, the applicant may request that the building official or an assign designate an artificial lot to satisfy the requirements of this division. If requested, the building official or an assign shall designate an artificial lot consistent with the purposes and policies of this division as determined from the criteria established below. No artificial lot may be delineated by the building official or an assign unless it:

- (1) Wholly includes the area on which the construction work is to be done;
- (2) Has an area that does not exceed 50 percent of the area of the building site; and
- (3) Depicts and includes all proposed and existing buildings and structures, access drives, appurtenant parking required for the building expansion or new building construction, and other areas functionally appurtenant to the buildings or structures.

Sec. 3.1.2.5. Review of documents.

(a) The building official or an assign shall review building permit applications for the construction or expansion of a building or parking lot, and construction drawings for city-funded construction or reconstruction projects that include the entire width of the pavement of a public street and are at least 30 feet in length, to determine if the proposed landscape plan complies with the provisions of this article.

(b) When a certificate of occupancy is sought, the building official or an assign shall determine whether the applicant has complied with this article.

(c) A building permit shall not be issued unless the application shows plans the, upon completion of construction, will comply with this article.

(d) A certificate of occupancy shall not be issued or approved unless the applicant demonstrates compliance with the provisions of this article.

Sec. 3.1.2.6. Street trees required.

(a) Street trees shall be planted within the public street rights-of-way, or on private property within ten feet parallel and adjacent to a local street right-of-way, or on private nonresidential property within 25 feet parallel and adjacent to a major thoroughfare, or in the esplanade pursuant to the requirements of section 3.1.2.8(b). When the building site abuts a designated state or federal highway or road or any designated county road and street trees are not otherwise required by law, street trees shall be planted on private property in accordance with this section. The number of street trees planted shall equal the total number of trees (T) required under the following formula:

$$T = (X/30)$$

where X shall represent the length in linear feet measured along each side of the property line on the public street(s).

This formula and all resulting planting requirements under this section shall be applied separately to each side of the property that abuts a street right-of-way, and if any side abuts two or more block faces, then separately to each block face.

(b) Street trees planted in accordance with this section shall be of a species listed on the large tree list. In the case of trees planted within the public rights-of-way, trees shall be planted in a location which conforms with the requirements of section 3.1.2.8 of this division. The trees shall be planted so as not to interfere with existing utilities, roadways, sidewalks, or street lights.

(c) The planting scheme for street trees shall be such that no street tree is planted closer than 20 feet to any other street tree (whether an existing tree or a tree planted hereunder) with the trees being spaced without extreme variation in distance across each block face frontage taking into account existing site conditions and driveway locations. The building official or an assign may authorize a partial waiver under the credit terms of section 3.1.2.3 of this code if he determines that planting all of the otherwise required street trees upon any given side of the property that abuts a street

right-of-way or block face would result in excessive tree canopy, based upon existing trees that are to be preserved during construction. Any request for a waiver shall be in writing and shall specify the preservation methods that will be used for the existing trees, which shall meet or exceed the requirements of section 3.1.2.9 of this code. Additionally, the building official or an assign may authorize the spacing to be reduced from 20 feet to no less than 18 feet if he determines that the conditions in the right-of-way make compliance at 20 foot spacing impracticable.

Sec. 3.1.2.7. Parking lot planting of trees and shrubs required.

(a) In addition to any street trees that may be required pursuant to section 3.1.2.6, the owner of a building site included under section 3.1.2.1 shall provide one tree for every ten parking spaces, rounding up or down in the case of a fraction to the nearest whole number, but in no case less than one tree. There shall be at least one parking lot or street tree within 120 feet of each parking space as measured from the center of the trunk of the tree to some point on the marked parking space. Not fewer than one-half of the parking lot trees so required shall be large trees, and the remainder may be either large or small trees. In the case of a parking lot that is being expanded, the trees required pursuant to this subsection may be planted in the same manner as those required for a new parking lot.

(b) In addition to the street tree and parking lot tree requirements established within section 3.1.2.6 and subsection (a) above, the owner of a building site included under section 3.1.2.1 shall plant or cause shrubs, as listed on the shrub list, appendix 3.1.3.14, to be planted along the perimeter of all parking surfaces so that the parking lot is screened from all adjacent public streets, exclusive of driveway entrances, pedestrian walkways and visibility triangles. Shrubs shall be maintained at a height of no more than 36 inches nor less than 18 inches as measured from the surrounding soil line. The number of shrubs required under this subsection shall be equal to the total number of street trees required under this division multiplied by ten. No less than 75 percent of the shrubs required under this section shall be planted along the perimeter of the parking surface adjacent to the public street.

Sec. 3.1.2.8. General planting standards.

(a) Trees and shrubs planted in a parkway shall be planted in accordance with the applicable standards required by appendix 3.1.3.11 and appendix 3.1.3.13 [in section 3.1.3.10]. The following additional limitations shall apply:

- (1) When located in the visibility triangle, trees shall be headed to a minimum height of seven feet, and shrubs shall be maintained at a maximum height of 30 inches as measured from the surrounding soil line.

- (2) For streets with curbs or proposed curbs, trees shall be planted at least three feet from the back of the existing curb or the city's final approved design line of the back of the curb of any public street as measured from the center line of the tree trunk; provided, the city engineer may in writing authorize the planting distance to be reduced after review of the specific location, with the preference that at least two feet of open space should be maintained between the street side of the tree and the back of the curb.
 - (3) For streets without curbs or proposed curbs, trees shall be planted at least four feet behind the roadside drainage ditch as measured from the back (private property) side of the top of the roadside drainage ditch bank to the center line of the tree trunk; provided, the city engineer may in writing authorize the planting distance to be reduced, after review of the specific location, with the preference that the roots not interfere with ditch maintenance.
- (b) In addition to the tree and shrub planting standards contained within appendix 3.1.3.11 and appendix 3.1.3.13 [in section 3.1.3.10], trees and shrubs in esplanades shall be planted according to the following requirements:
- (1) Trees in any major arterial or major collector street esplanade shall not be planted closer to the end of the esplanade than 75 feet.
 - (2) Trees in any local street esplanade shall not be planted closer to the end of the esplanade than 50 feet.
 - (3) Trees planted in any esplanade shall be located not closer than 50 feet from any mid-block opening in the esplanade.
 - (4) Shrubs planted in any esplanade shall not be planted closer to the end of the esplanade than 25 feet or closer than three feet from the back of the curb or the final approved design line for the curb of any public street. Use of ground covers or annuals and perennials conforming with the height restrictions of a visibility triangle shall not be restricted.
 - (5) Trees planted in the esplanade shall not be located closer than five feet from the back of the curb or the final approved design line for the curb. Trees shall not be spaced at intervals of less than 30 feet.
- (c) Any tree located within a parking lot must be planted and maintained within a permeable area which has a radius of not less than three feet. No tree shall be planted closer than three feet from a curb or tire stop.

Sec. 3.1.2.9. Preservation of existing trees and associated understory.

(a) The following procedure shall be required where credit for the preservation of existing trees and associated understory is being requested to be applied toward the total tree planting requirement pursuant to section 3.1.2.3 of this code or the protected tree replacement requirement. Where such credit is being requested, the applicant shall also supply to the building official for review with the building plans a tree and associated understory preservation plan, which shall be integrated into the proposed landscape plan and shall include:

- (1) Delineation of proposed limit of clearance and establishment of tree protection zones which shall extend to just outside the dripline of the tree and understory to be protected, if any;
- (2) Proposed soil stabilization practices, i.e., silt fence, hay bales;
- (3) The species of each tree to be preserved and for which credit is being requested;
- (4) The proposed finished grade and elevation of land within six feet of or within the dripline of any tree to be preserved, whichever is greater, shall not be raised or lowered more than three inches unless compensated for by welling or retaining methods;
- (5) Existing and proposed location of all trees and plant materials to be relocated at the drawing scale;
- (6) A landscaping tabulation, and itemized credit requests for existing trees to be preserved which have a minimum of four inches in caliper and greater;
- (7) Tree and associated understory preservation details; and
- (8) Specification of ground plane treatment as either turf or sod. If a combination of both is utilized, the limit of each shall be indicated.

(b) The following tree relocation information shall be provided on the landscape plan or in a report for the transplantation of existing specimen trees when preservation credit is being requested for them. This information shall include an assessment of the cost of transplanting the trees as opposed to the potential mortality rate which may result from the attempted transplantation. If relocation is elected, the following information shall be provided:

- (1) Transplanting techniques;
- (2) Equipment to be utilized;
- (3) Locations of existing trees and proposed locations for transplanted trees;

- (4) Genus, species, caliper, height and general condition of the existing tree;
- (5) Pruning and maintenance schedule and methods to be followed; and
- (6) Which form of assurance of performance will be provided, i.e., executed contract, bond or assigned certificate of deposit.

(c) If preservation credit is requested, the trees shall be protected and preserved as set forth in this article and as promulgated by the building official or an assign and the city engineer.

(d) The building official or an assign shall make recommendations to minimize damage to existing vegetation during the site construction phase. The building official or an assign shall also suggest possible uses for those trees removed as a result of development such as the creation of wood chip mulch from removed hardwood trees.

Sec. 3.1.2.10. Duty; affirmative defenses.

(a) All owners of building sites included under section 3.1.2.1 shall plant or cause the planting of trees or shrubs required in sections 3.1.2.6 or secure the planting equivalency credits allowed in section 3.1.2.3, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this division.

(b) All owners and lessees of new or expanded parking lots on building sites included under section 3.1.2.1 shall additionally plant trees or shrubs in compliance with section 3.1.2.7, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this article.

(c) It shall be an affirmative defense to prosecution under this section that:

- (1) The person caused the tree or shrub to be planted and maintained in accordance with this article, but the tree or shrub died more than two years after the issuance of the certificate of occupancy;
- (2) The person caused the tree or shrub to be planted and maintained on the public right-of-way in accordance with this article, but the tree or shrub died and was removed by the owner with the written permission of the building official or an assign or the city engineer or the period allowed by this article for replacing the tree or shrub has not yet elapsed;
- (3) The person caused the tree or shrub to be planted or maintained on private property in accordance with this article but the tree or shrub died and the period allowed by this article for replacing the tree or shrub has not yet elapsed;

- (4) The building permit for the person's property is for single-family residential use;
- (5) The person's property has an unexpired conditional certificate of occupancy, and the person has provided an executed contract or a bond or assigned certificate of deposit in accordance with this article; or
- (6) A variance or waiver was secured for the building site in conformity with the requirements of this article.

Sec. 3.1.2.11. When required landscaping (trees, shrubs or fences) must be installed; documented assurance.

(a) Except as otherwise provided in subsection (b) and section 3.1.2.12, all proposed landscaping must be installed in accordance with the approved landscape plan prior to issuance of a final certificate of occupancy on a building site.

(b) The property owner may elect to provide the building official with documented assurances that the landscaping will be completed within a six-month period. If so, a conditional certificate of occupancy may be issued by the building official for six months. For purposes of this section, "documented assurance" shall mean a copy of an executed contract for the proper installation of the required landscaping in accordance with the approved landscape plan within a six-month period.

(c) The property owner is responsible for notifying the building official when the landscape installation is complete. If the property owner fails to notify the building official within the prescribed six-month period, the building official shall revoke the conditional certificate of occupancy.

Sec. 3.1.2.12. Bond, assigned certificate of deposit.

(a) Prior to the issuance of any conditional certificate of occupancy, any applicant who has not provided the documented assurance set forth in section 3.1.2.11 shall file with the building official a bond which bond shall be executed by the applicant as principal and by a good and sufficient corporate surety company licensed to do business in the state of Texas. The bond in the sum of one and one-quarter times the proposed cost to install the required landscaping improvements and fences, based upon the reasonable adjusted costs established by the building official and of record from time to time, shall be payable to the city and conditioned that the principal and surety will pay all amounts required to install the landscaping and fences required by this division. The bond shall provide that it will remain in full force and effect until released by the building official pursuant to this division.

(b) In lieu of such bond, an applicant for a conditional certificate of occupancy may, upon payment to the city of a nonrefundable fee of \$100.00, assign an account with a financial institution insured by the Federal Deposit Insurance Corporation to the city. Such account shall have a deposit of not less than the amount required under subsection (a). Under such an assignment, the financial institution must agree not to release, make payment from, or otherwise divert or dispose of the funds in such account, except it shall agree to disburse all or such portion of the funds in the account as may be directed by city council resolution.

Upon installation and inspection of the required landscaping, the city shall release the assigned deposit to the property owner.

When requesting a conditional certificate of occupancy, the owner must grant the city permission to enter upon the owner's land for the purpose of installing the required landscaping if the owner does not fulfill the owner's obligation to install the required landscaping within the specified six-month period. If permission is not granted, the owner's application for a conditional certificate of occupancy shall be denied.

(c) In the event that any holder of a conditional certificate of occupancy who has previously furnished an account assignment under subsection (b) elects to furnish a bond under subsection (a) instead, then the holder shall be entitled to disbursement of the account proceeds in the same manner and under the same terms provided in subsection (b).

Sec. 3.1.2.13. Appeal of denial of building permits.

Appeals from the denial of a building permit for noncompliance with this division shall be reviewed and acted upon by city council.

Sec. 3.1.2.14. Variance procedure.

(a) An applicant for a building permit may make written application to the building official for a variance from the requirements of this division other than those which may be made the basis of a request for a waiver under section 3.1.2.18. A completed application for a variance shall include:

- (1) Completed application on form supplied by the city; and
- (2) A nonrefundable fee of \$200.00 for uses other than single-family residential uses.

This application package shall be reviewed by the building official or an assign.

(b) Within seven days of the date the application is accepted, the building official shall forward a copy of the application to the city engineer who shall file the city engineer's report and recommendations regarding the proposed variance with the commission.

(c) A staff report regarding the variance request shall be provided to the commission prior to the meeting at which the variance shall be considered.

Sec. 3.1.2.15. Standards for variance.

(a) The commission is authorized to consider and recommend to city council variances from the provisions of this division by majority vote of those members present and voting, when the commission determines that all four of the following conditions exist:

- (1) The imposition of the terms, rules, conditions, policies and standards of this division would deprive the owner or applicant of the property of reasonable use of the land or building;
- (2) The circumstances supporting the granting of the variance are not the result of a hardship imposed or created by the applicant, and the general purposes of this division are observed and maintained;
- (3) The intent of this article is preserved; and
- (4) The granting of such a variance will not be injurious to the public health, safety or welfare.

(b) The city council will consider and take action on variances based on the four conditions listed in subsection (a) above, and a recommendation from the commission.

Sec. 3.1.2.16. Applicability of variance.

Any variance granted under the provisions of this section will apply only to the specific property and use upon which the commission was requested to review and recommend to council and council to grant a variance by the applicant. All variances as granted shall be in writing, shall be signed by the city secretary and maintained as a permanent record of the council.

Sec. 3.1.2.17. Mitigation for loss of installed and preserved vegetation.

(a) All proposed, existing or relocated vegetation shall be maintained in accordance with this article and appear healthy for a minimum of two years from the issuance of the final certificate of occupancy. Dying, damaged or removed trees shall be replaced at

the owner's expense with another living plant that complies with the approved landscape plan. The tree replacement quantity shall be equal to or greater than the original or credited quantity for the tree in question.

(b) The building official or an assign shall notify the owner of a building site in writing when a plant is discovered which does not meet the requirements of subsection (a), above. The owner shall then replace the plant within one year from receipt of the written notice or between November 1 and April 1, whichever period is less.

Sec. 3.1.2.18. Interference with existing utilities, curbs, sidewalks, drainage facilities, roadways, street lights, appeal of denial of waiver.

(a) The building official shall grant a waiver when requested in the application if the area in which the planting is required by this division is too small to accommodate the required planting without damage to existing utilities, curbs, sidewalks, roadways, street lights or drainage facilities, and the planting requirements of this division may not be otherwise satisfied pursuant to this division.

(b) A waiver shall be granted where the building official finds the following:

- (1) That a literal application of this division will result in damage to existing utilities, roadways, street lights, curbs, sidewalks or drainage facilities;
- (2) The waiver, if granted, will not be contrary to the public interest;
- (3) The waiver, if granted, will not be detrimental to the public health, safety, or welfare; and
- (4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute.

(c) No later than the 30th calendar day following the filing of the required application for a waiver, the building official shall issue to applicant a written notice that the waiver has been granted or refused. Any notice of refusal of an application for a waiver must include a written report explaining in detail the reasons for such refusal. The issuance of a written notice to the applicant shall be complete upon deposit of such notice in the United States mail, first class postage paid, addressed to the applicant at address given on the application for the waiver.

(d) The applicant may appeal the denial of a waiver to the commission in the manner provided in section 3.1.2.13 of this code.

(e) Notwithstanding the provisions of this section, the building official and the city engineer shall use their best efforts to resolve any disputes regarding the application of this division to city-funded projects that include the entire width of the pavement of a public street and are at least 30 feet in length. The city engineer is authorized to promulgate guidelines for administration of this article, in consultation with the building official, that are consistent with this chapter.

Division 3. Protection of Trees

Sec. 3.1.3.1. Removal of a tree, protected or otherwise.

Except as may otherwise be provided in this article, it shall be unlawful for any person to remove any tree or to cause, permit or suffer the removal of any tree that is situated in whole or in substantial part within a street or to perform any construction activity, including, without limitation, construction or repair of buildings or other structures, installation or repair of utilities, or installation or repair of streets or sidewalks within the dripline circle area of any tree that is situated in whole or in substantial part within a street. The determination of whether the tree is situated in whole or in substantial part in the street shall be based upon the location of the trunk of the tree at ground level. For purposes of the foregoing requirements, a tree shall be considered to be in substantial part within a street if one-half or more of the area of the trunk of the tree is situated in the street as determined at the point where the trunk intersects the ground.

Sec. 3.1.3.2. Affirmative defenses.

It is an affirmative defense to prosecution under section 3.1.3.1 of this code that:

- (1) The person complied with the provisions of City of Iowa Colony engineering design criteria manual;
- (2) The person had the prior written permission of the building official for the action taken and that the action taken was consistent with the terms of the building official's written permission; or
- (3) The person reasonably removed the tree in order to conduct emergency repairs of utilities located on public or private property.

Sec. 3.1.3.3. Affirmative defense; house movers.

It is an affirmative defense to prosecution under section 3.1.3.1 of this code that the person is an established commercial house mover and that the person removed a tree in order to move a house, provided that the house was being moved in accordance with all

applicable requirements of the said article upon a route authorized in a permit issued by the building official thereunder, and further provided, with respect to any tree that is removed, that the person had the prior written permission of building official for the action taken and that the action taken was consistent with the terms of the building official's written permission. This defense shall extend to agents and employees of the house mover.

Sec. 3.1.3.4. Procedure for permission.

For purposes of section 3.1.3.2 or 3.1.3.3 of this code a person may obtain the building official's permission by making written application. The application shall be made in accordance with regulations promulgated for that purpose by the building official and in a form provided in the regulations. In considering whether or not to grant the approval, the building official shall consider the age and condition of the tree. The building official shall consult with the city engineer and shall also consider whether the requested action is reasonably required, considering other alternatives that may exist, if the request is for the purpose of installing or maintaining public utilities and access lines thereto, constructing or maintaining driveways, alleys or streets, constructing or maintaining sidewalks or preventing visual obstruction of a street or driveway intersection. The building official, in consultation with the city engineer, may also authorize the removal of a tree to facilitate development of the abutting property if the tree extends in part beyond the building set back line established by law or deed restriction and the building official and the city engineer determine that the requested action is reasonably required in order to make beneficial use of the property. In the event that the building official proposes to deny an application, then the building official shall ensure that the applicant is afforded the opportunity for an informal hearing to be conducted as provided in the building official's regulations before the decision to deny the application is made final.

Sec. 3.1.3.5. Educational intent.

The intent of this article is to result in compliance through public assistance and education. Upon request, the building official or an assign shall, without charge therefor, provide assistance in identifying tree species, training and/or instructional materials with respect to proper practices for tree pruning and other reasonable assistance for the purpose of ensuring compliance with this article.

Sec. 3.1.3.6. Provisions cumulative.

The provisions of this article are cumulative of state laws and are also expressly made cumulative of any other provisions of this chapter. To the extent that any tree governed

by this section is also subject to other regulations, then both the provisions of this article and any other regulation shall be applicable. The building official and the city engineer shall establish procedures under which removal notices and landscape plans that are required to be filed may be combined with or jointly filed with applications filed under section 3.1.3.4 of this code, above.

Sec. 3.1.3.7. Fines and penalties; civil remedies.

See chapter 1. Additionally, each tree that is unlawfully removed shall constitute a separate offense. Criminal prosecution shall not preclude civil action by the city to recover for the damage to or loss of the tree, and the city attorney is hereby authorized, without further authorization from city council to institute and prosecute a lawsuit for an injunction against the imminent unlawful removal of a tree and/or a lawsuit against any person who removes a tree without permission or authorization as required under this section and to recover the reasonable value of the tree or damage thereto and all other remedies.

Sec. 3.1.3.8. Deferred disposition.

In keeping with the policy of education and street tree protection that is the underlying purpose of this article, the municipal courts are urged to consider deferred dispositions under article 45.54 of the Texas Code of Criminal Procedure whenever the circumstances warrant deferred dispositions. Conditions of deferral may include the defendants' replacing or repairing damaged trees wherever practicable and participating in community service programs for the planting and care of trees.

Sec. 3.1.3.9. Tree replacement requirement.

(a) Notwithstanding anything to the contrary in this article, no person shall cause a tree that is situated in whole or in substantial part within a street to be removed without complying with a tree replacement requirement, which may be satisfied as follows:

- (1) By the planting in the area adjacent to the street of additional trees from the large or small tree list on the basis of one caliper inch of tree planted for one caliper inch of tree removed;
- (2) By contributing to the fund created under section 3.1.2.3(a)(2) of this code an amount equal to \$225.00 per caliper inch of tree removed for six-inch caliper trees and smaller, \$375.00 per caliper inch of tree removed for over six-inch and up to 12-inch caliper trees, and \$500.00 per caliper inch of tree removed for over 12-inch caliper trees; or

- (3) By a combination of the foregoing.

[(b)] Installation of trees provided shall be subject to the planting standards established in division 2 of this article, and the trees shall be planted within 30 days following the removal of the tree unless a documented assurance of planting is provided to the building official with the notice, in which case the trees shall be placed within six months of the removal of the trees. A documented assurance may be provided in the same manner as under section 3.1.2.12(b) of this code. A variance may be requested in the same manner provided in sections 3.1.2.14 through 3.1.2.16 of this code. Additionally, the mitigation provisions of section 3.1.2.17 of this code shall be applicable to trees that are provided in order to satisfy a protected tree replacement requirement.

- (1) No person shall cause a tree to be removed without first filing with building official, a written notice of removal of the tree, which must be filed at least 20 days prior to the removal. The notice shall include a map depicting the tract or parcel of land upon which the tree or trees to be removed are situated and shall demonstrate the manner in which the tree replacement requirement will be provided.
- (2) It is an affirmative defense to prosecution under this section that the tree sustained damage from fire, wind storm, accident or other natural cause such that the tree became an immediate threat to persons or property, provided that the owner of the tree caused the circumstances to be documented and filed written notice of the removal with the building official within ten days following the removal of the tree.
- (3) It is a defense to prosecution under this section that the tree was removed by or on behalf of a public utility or a governmental entity and that its removal without notice was reasonably required for the maintenance or installation of public facilities or utility systems.
- (4) The city engineer shall promulgate forms of notices and procedures under this section. A map need not be prepared in the form of a survey map, provided that it shall provide sufficient information to unmistakably identify the tree that is to be removed and the location of any tree that is to be planted in order to provide the tree replacement requirement, as well as the species and caliper of each tree. If the owner elects to make a contribution to the fund created under section 3.1.2.3(a)(2) of this code, then the contribution shall be tendered with the notice. No provision of this section shall be construed to require city personnel to review any notice filed under this section for accuracy or sufficiency or to perform any site inspection of trees for which notices are filed.

Sec. 3.1.3.10. Landscape planting appendix.

Appendix 3.1.3.11. Tree Planting

(a) *Tree selection.* Trees planted under section 3.1.1.7 must be selected from the large tree list. All plant stock shall meet the standard for nursery stock specifications, as established by the American Association of Nurserymen (1986 edition) The following factors shall be considered in the selection of trees from the tree and shrub lists indicated in this division:

1. Hardiness of trees for the specific site (i.e., soil conditions, pH, drainage).
2. Mature plant size, form and growth rates (i.e., proximity to overhead utility lines).
3. Drought tolerance.
4. Pest and insect resistance.

(b) *Tree planting.*

1. Holes for the trees shall be excavated 1½ to two feet greater in width than the diameter of the soil ball. The sides of the hole shall be vertical and the bottom horizontal. Trees shall be planted with the top of the root ball two inches above existing grade. No holes shall be left uncovered overnight.
2. Trees shall be set in an upright plumb position at depth two inches higher than grown in the container. Care shall be taken so as not to injure the root system, trunk, or foliage. The trunk shall not be used as a level in positioning or moving the tree in the planting hole.
3. The backfill shall consist of topsoil excavated from the planting hole. If there is not enough topsoil, a supplement of similar topsoil shall be furnished. Each planting hole shall be backfilled and tamped lightly so as not to damage roots. A saucer shall be constructed six to eight inches above soil grade around the planting hole and shall be a minimum of six feet in diameter, free of weeds and grass.
4. Any pruning shall be done according to the standards of the National Arborist Association (rev. 1988) (The Meeting Place Mall, Route 101, P.O. Box 1094, Amherst, NH 03031), on file in the office of the city secretary. All damaged limbs shall be removed. The tree shall be maintained in a shape appropriate to its species. Street trees shall be pruned in accordance with the standards for hazard pruning contained in Class III.

5. Trees planted hereunder shall be staked with a minimum of two stakes, eight feet long, attached to the tree with plastic tree chain, one inch in size, or equivalent, in a manner that is secure and will not injure the tree. Any 100-gallon trees shall be tri-staked (three stakes). Other types of securing ties or devices may be used if designed for that purpose.
6. Mulch shall be placed loosely around trees planted hereunder within 24 hours after planting to a uniform depth of three to four inches and to a diameter of six feet. No leaves, branches, roots or other foreign material may be used as a mulch. This area shall be maintained free of weeds and grass vegetation with a three- to four-inch mulch cover for a minimum period of one year.

(c) *Watering.* The following watering schedule may be utilized and revised during prolonged periods of rain or drought.

Initial watering after planting	Root zones shall be slow-soaked every seven days for four weeks.
November, December, January, February	In the absence of sufficient rainfall, root zones shall be slow-soaked on a 21-day water schedule.
October, March, April	In the absence of sufficient rainfall, root zones shall be slow-soaked on a 14-day water schedule.
May, June, July, August, September	In the absence of sufficient rainfall, root zones shall be slow-soaked on a seven-day watering schedule.

Appendix 3.1.3.12. Large Tree Plant List

<i>Botanical Name</i>	<i>Common Name*</i>	<i>Comments</i>
<i>Acer rubrum</i> var. <i>drummondii</i>	D Drummond Red Maple	Wet sites
<i>Acer rubrum</i> var. <i>tridens</i>	D Trident Red Maple	Wet sites
<i>Acer barbatum</i>	D Southern or Texas Sugar Maple	
<i>Betula nigra</i>	D River Birch	Wet sites
<i>Bumelia lanuginosa</i>	D Chittamwood, Gum bumelia or Woolybucket	Drought-tolerant/attracts birds
<i>Carya cordiformis</i>	D Bitternut Hickory	
<i>Carya illinoensis</i>	D Pecan	Nut
<i>Carya texana</i>	D Black Hickory	Drought-tolerant
<i>Carya tomentosa</i>	D Mockery Nut Hickory	Fruit
<i>Diospyros virginiana</i>	D Persimmon, Eastern	Fruit
<i>Ehretia anacua</i>	D Anacua	Flowering/fruit/ Drought-tolerant
<i>Fraxinus americana</i>	D White Ash	

APPENDIX B—UNIFIED DEVELOPMENT CODE § 3.1.3.10

<i>Botanical Name</i>	<i>Common Name*</i>	<i>Comments</i>
<i>Fraxinus pennsylvanica</i>	D Green Ash	
<i>Ginkgo biloba</i>	D Ginkgo	Male only
<i>Ilex opaca</i> (and cultivars)	E American Holly	Female/fruit
<i>Juglans nigra</i>	D Black Walnut	
<i>Juniperus virginiana</i>	Eastern Red Cedar	
<i>Liquidambar styraciflua</i>	D Sweetgum	Fall color
<i>Liriodendron tulipifera</i>	D Tulip Tree or Yellow Poplar	Flowering/wet sites
<i>Magnolia grandiflora</i>	E Southern Magnolia	Flowering
<i>Magnolia virginiana</i>	E Sweet Bay Magnolia	Flowering/wet sites
<i>Metasequoia glyptostroboides</i>	D Dawn Redwood	
<i>Nyssa aquatica</i>	D Water Tupelo	Wet sites
<i>Nyssa sylvatica</i> var. <i>biflora</i>	D Swamp Tupelo or Black Gum	Wet sites
<i>Nyssa sylvatica</i> var. <i>sylvatica</i>	D Black Gum	Fruit/fall color
<i>Pinus palustris</i>	E Longleaf Pine	
<i>Pinus taeda</i>	E Loblolly Pine	
<i>Pinus glabra</i>	E Spruce Pine	
<i>Plantanus mexicana</i>	D Mexican Sycamore	Wet sites
<i>Plantanus occidentalis</i>	D Sycamore	
<i>Prunus serotina</i>	D Black Cherry	Flowering/fruit
<i>Quercus acutissima</i>	D Sawtooth Oak	
<i>Quercus alba</i>	D Oaks, White	Fall color
<i>Quercus canbii</i>	D Canby Oak	
<i>Quercus falcata</i>	D Southern Red Oak	
<i>Quercus laurifolia</i>	D Laurel Oak	
<i>Quercus lyrata</i>	D Overcup Oak	Wet sites
<i>Quercus macrocarpa</i>	D Bur Oak	Wet sites/drought-tolerant
<i>Quercus michauxii</i>	D Swamp Chestnut Oak	Fall color
<i>Quercus muehlenbergii</i>	D Chinkapin Oak	Drought-tolerant
<i>Quercus nutallii</i>	D Nutall Oak	Fall color/wet sites
<i>Quercus palustris</i>	D Pin Oak	Fall color
<i>Quercus phellos</i>	D Willow Oak	
<i>Quercus polymorpha</i>	D Monterrey Oak	
<i>Quercus rysophylla</i>	D Loquat Leaf Oak	
<i>Quercus shumardii</i>	D Shumard Oak	Fall color
<i>Quercus stellata</i>	D Post Oak	
<i>Quercus virginiana</i>	D Live Oak	
<i>Sassafras albidum</i>	D Sassafras	Fall color/attracts birds
<i>Taxodium distichum</i> var. <i>distichum</i>	D Bald Cypress	Wet sites/drought-tolerant

<i>Botanical Name</i>	<i>Common Name*</i>	<i>Comments</i>
<i>Taxodium distichum</i> var. <i>nutans</i>	D Pond Cypress	
<i>Taxodium mucronatum</i>	D Montezuma Bald Cypress	
<i>Tilia caroliniana</i>	D Carolina Basswood	
<i>Ulmus americana</i>	D American Elm	
<i>Ulmus alata</i>	D Winged Elm	
<i>Ulmus crassifolia</i>	D Cedar Elm	Drought-tolerant
<i>Ulmus parvifolia</i> var. <i>drakii</i>	D Drake Elm	
<i>Zelkova serrata</i>	D Japanese Zelkova	

Appendix 3.1.3.13. Small Tree List

<i>Botanical Name</i>	<i>Common Name*</i>	<i>Comments</i>
<i>Acer leucoderme</i>	D Chalk Maple	Fall color
<i>Acacia wrightii</i>	D Wright Acacia	Flowering/drought-tolerant
<i>Aesculus pavia</i> var. <i>pavia</i>	D Red Buckeye	Flowering
<i>Aesculus pavia</i> var. <i>flavescens</i>	D Red Buckeye	Yellow flowers
<i>Aesculus glabra</i> var. <i>arguta</i>	D White Buckeye	Flowering/drought-tolerant
<i>Asimina triloba</i>	D Pawpaw	Flowering/fruit
<i>Bauhinia congesta</i>	D Anacacho Orchid Tree	Flowering/drought-tolerant
<i>Carpinus caroliniana</i>	D American Hornbeam, Ironwood or Blue Beech	Wet sites/fall color
<i>Cercis canadensis</i>	D Eastern Redbud	Flowering
<i>Cercis canadensis</i> var. <i>texensis</i> cultivars	D Texas Redbud	Flowering/drought-tolerant
<i>Cercis canadensis</i> var. <i>mexicana</i>	D Mexican Redbud	Flowering/drought-tolerant
<i>Chionanthus virginicus</i>	D Fringetree	Flowering/attracts birds
<i>Chionanthus retusus</i>	D Chinese Fringetree	Flowering/drought-tolerant
<i>Cornus florida</i>	D Flowering Dogwood	Flowering/attracts birds
<i>Cotinus obovatus</i>	D American Smoketree	Fall color/drought-tolerant
<i>Crataegus marshallii</i>	D Parsley Leaf Hawthorn	Flowering/attracts birds
<i>Crataegus opaca</i>	D Mayhaw	Flowering/fruit/attracts birds
<i>Crataegus spathulata</i>	D Little Hip Hawthorn	Flowering/attracts birds
<i>Crataegus viridis</i>	D Green Hawthorn	Flowering/attracts birds
<i>Crataegus texana</i>	D Texas Hawthorn	Flowering
<i>Crataegus reverchonii</i>	D Reverchon Hawthorn	Flowering
<i>Cyrilla racemiflora</i>	D Titi	Wet sites
<i>Diospyros texana</i>	D Texas Persimmon	Fruit/drought-tolerant
<i>Eysenhardtia texana</i>	D Texas Kidneywood	Flowering/drought-tolerant
<i>Halesia diptera</i>	D Two-winged Silverbell	Flowering

<i>Botanical Name</i>	<i>Common Name*</i>	<i>Comments</i>
<i>Ilex cassine</i>	E Dahoon Holly	Female-Fruit/attracts birds
<i>Ilex decidua</i>	D Possumhaw	Female-Fruit/attracts birds
<i>Ilex vomitoria</i>	E Yaupon	Female-Fruit/attracts birds
<i>Magnolia × soulangeana</i>	Saucer Magnolia	Flowering
<i>Malus angustifolia</i>	D Southern Crabapple	Flowering/fruit
<i>Myrica cerifera</i>	E Southern Wax Myrtle	Wet sites/attracts birds
<i>Ostrya virginiana</i>	D Eastern Hop Hornbeam	
<i>Parkinsonia aculeata</i>	D Retama	Flowering/drought-tolerant
<i>Pistacia chinensis</i>	D Chinese Pistachio	Fall color/drought-tolerant
<i>Pistacia texana</i>	D Texas Pistache	Drought-tolerant
<i>Prosopis glandulosa</i> var. <i>glandulosa</i>	D Mesquite	Drought-tolerant
<i>Prunus mexicana</i>	D Mexican Plum	Flowering/fruit/ Drought-tolerant
<i>Prunus umbellata</i>	D Flatwoods Plum	Flowering/fruit
<i>Prunus angustifolia</i>	D Creek Plum	Flowering/fruit
<i>Rhamnus caroliniana</i>	D Carolina Buckthorn	Fall color/fruit/attracts birds/ drought-tolerant
<i>Rhus copallinum</i>	D Sumac	Fall color
<i>Sophora secundiflora</i>	E Texas Mountain Laurel	Flowering/drought-tolerant
<i>Sophora affinis</i>	D Eve's Necklace	Flowering
<i>Ungnadia speciosa</i>	D Mexican Buckeye	Flowering/drought-tolerant
<i>Viburnum rufidulum</i>	D Rusty Blackhaw Viburnum	Flowering/fall color/drought- tolerant/attracts birds

Appendix 3.1.3.14. Shrub Planting

(a) *Shrub selection.* Shrubs planted in public rights-of-way shall be selected from the shrub list (appendix 3.1.3.15). Shrubs planted in other areas may also be selected from that list. The following factors shall be considered when making a selection from the shrub list for planting:

1. Hardiness for the specific site selected.
2. Present and ultimate size, branching habits, and growth rate. The plant shall be at least 18 inches in height as measured from the surrounding soil line, shall have a minimum 18-inch width at the widest portion when planted and shall be capable of growth to not less than 30 inches in height as measured from the surrounding soil line within three annual growing seasons.
3. Resistance to pests.

(b) *Shrub planting.*

1. Holes for shrubs shall be excavated six inches greater in width than the diameter of the soil ball. The sides of the hole shall be vertical and the bottom horizontal. Shrubs shall be planted with top of root ball slightly above existing grade. No holes shall be left uncovered overnight.
2. Shrubs shall be set in an upright plumb position at a depth slightly higher than grown in the container. Care shall be taken not to injure the root system, trunk, or foliage. The trunk shall not be used as a lever in positioning or moving the shrub in the planting hole.
3. Holes shall be backfilled with soil and tamped lightly and carefully so as not to damage roots. The shrub shall be watered to settle soil around the roots and remove air pockets.
4. All damaged branches shall be removed.
5. A minimum three-inch layer of mulch shall be placed loosely at the base to retard weed growth and conserve moisture.

(c) *Watering.* The following water schedule may be utilized and revised during prolonged periods of rain or drought.

Initial watering after planting	Root zones shall be drenched every seven days for four weeks.
November, December, January, February	In the absence of sufficient rainfall, root zones shall be drenched on a 21-day watering schedule.
October, March, April	In the absence of sufficient rainfall, root zones shall be drenched on a 14-day watering schedule.
May, June, July, August, September	In the absence of sufficient rainfall, root zones shall be drenched on a seven-day watering schedule.

Appendix 3.1.3.15. Shrub List

<i>Expected Height After 3 Years (in feet)</i>	<i>Common Name</i>	<i>Botanical Name</i>
<i>Evergreens</i>		
1—3	Japanese Boxwood	<i>Buxus microphylla</i> var. japonica
1	Dwarf Euonymus	<i>Euonymus japonica</i> 'Microphylla'
2—3	Silver King Euonymus	<i>Euonymus japonica</i> 'Silver King'

<i>Expected Height After 3 Years (in feet)</i>	<i>Common Name</i>	<i>Botanical Name</i>
1—2	Dwarf Gardenia	<i>Gardenia jasminoides</i> 'Radicans'
2—3	Dwarf Burford Holly	<i>Ilex cornuta</i> 'Burfordii Nana'
2—3	Dwarf Chinese Holly	<i>Ilex cornuta</i> 'Rotunda'
1—2	Compact Japanese Holly	<i>Ilex crenata</i> 'Compacta'
1—3	Dwarf Yaupon Holly	<i>Ilex vomitoria</i> 'Nana'
1—2	Primrose Jasmine	<i>Jasminum mesnyi</i>
3—4	Texas Sage	<i>Leucophyllum frutescens</i>
3—4	Dwarf Wax Myrtle	<i>Myrica cerifera</i>
1	Dwarf Purple Nandina	<i>Nandina domestica</i> 'Nana Purpurea'
2—3	Harbor Dwarf Nandina	<i>Nandina domestica</i> 'Nana Harbor Dwarf'
2—3	Dwarf Oleander	<i>Nerium oleander</i>
1—2	Turner's Dwarf Pittosporum	<i>Pittosporum tobira</i> 'Turner's Dwarf'
1—2	Wheeler's Dwarf Pittosporum	<i>Pittosporum tobira</i> 'Wheeler's Dwarf'
3—4	Fraser's Photinia	<i>Photinia</i> × <i>fraseri</i>
2—3	Red Elf Pyracantha	<i>Pyracantha</i> 'Red Elf'
2—4	Indian Hawthorne	<i>Raphiolepis indica</i>
2—3	Red Spirea	<i>Spiraea</i> × <i>bumalda</i> 'Anthony Waterer'
3—4	Spring Bouquet [Laurustinus]	<i>Viburnum tinus</i> 'Spring Bouquet'
6	Red Tip Photinia	<i>Photinia glabra</i>
6	Chinese Photinia	<i>Photinia serrulata</i>
6	Waxleaf Ligustrum	<i>Ligustrum japonicum</i>
6	Southern Wax Myrtle	<i>Myrica cerifera</i>

ARTICLE 2. PARKLAND

Division 1. Parks and Private Parks

Sec. 3.2.1.1. Purpose.

(a) The purpose of this article is to provide recreational areas in the form of neighborhood parks, regional parks, and trail systems linking public areas and subdivisions, as a function of subdivision development within the city and the city's extra-territorial jurisdiction. It is hereby declared that recreational areas in the form of neighborhood parks, regional parks, and trail systems are necessary and in the public

welfare, and that the only adequate procedure to provide for same is by integrating such a requirement into the procedure for planning and development property or subdivisions within the city and the city's extraterritorial jurisdiction.

(b) Neighborhood parks are those parks providing for a variety of outdoor recreational opportunities and within convenient distances from a majority of the residences to be served thereby. The city council may adopt park zones, which shall be shown on a future official parks and recreation map for the city. If adopted, such park zones shall be prima facie proof that any park located therein is within such a convenient distance from any residence located therein. The primary cost of neighborhood parks should be borne by the ultimate residential property owners who, by reason of the proximity of their property to such parks, shall be the primary beneficiaries of such facilities.

(c) Regional parks are those parks not primarily serving a specific neighborhood, but rather designed to serve the entire city and the city's extraterritorial jurisdiction, such as ballparks, soccer fields, and trail systems which connect various neighborhoods.

(d) Parks dedicated to a municipal utility district or dedicated to the city shall be considered public parks.

(e) The maintenance of a public park shall be the responsibility of the municipal utility district, if so dedicated, or the homeowners association of the development, unless the city expressly agrees to maintenance.

Sec. 3.2.1.2. Applicability.

(a) The regulations contained in this article shall be applicable to all property within the city limits and the city's extraterritorial jurisdiction proposed to be developed in whole or in part for single-family or duplex residential or multifamily residential or any other residential or partial residential purposes for which a subdivision plat is required, unless otherwise noted herein.

(b) These regulations do not apply to replats of land owned by the state of Texas or the United States of America.

Sec. 3.2.1.3. Land to be used for single-family, duplex, or multifamily residential purposes.

(a) Whenever a final plat is filed in the county real property records for development of a residential area in accordance with this article, such plat shall contain a clear fee-simple dedication of an area of land, as a restricted reserve, to the city (or to a

municipal utility district) for neighborhood park purposes, which area shall equal one acre for each 54 proposed dwelling units. Any proposed plat submitted to the city for approval shall show the area proposed to be dedicated under this section, either within the platted residential area or within one-fourth mile of the boundary of the platted residential area and directly connected by a permanent accessible route. The required dedication of this section may be met by a payment of money in lieu of land as indicated in section 3.2.1.4, the pledge of security guaranteeing a future dedication of parkland before the subdivision plat is recorded, or the provision of private neighborhood parkland when permitted or required by the other provisions of this article.

(b) In instances where an area of less than five acres is required to be dedicated, the city shall accept or reject the dedication of such public park within 60 days following approval of the preliminary plat after consideration by the planning commission and the city council. In the event the city determines that sufficient park area already is in the public domain in the area of the proposed development, or if the recreation potential for that zone would be better served by expanding or improving existing parks, then the proposed dedication will be disallowed and the developer shall be required to make payment of cash in lieu of land, as provided by section 3.2.1.4.

(c) If the actual number of completed dwelling units exceeds, by less than ten percent of the total original dedication, the figure upon which the original dedication was based, such additional dedication shall be required, and shall be made by payment of the cash in lieu of land amount provided by section 3.2.1.4. If the actual number of completed dwelling units exceeds the total original dedication by more than ten percent of the total original dedication, such additional dedication shall be required, and may be made, at the sole option of the city, either by land dedication or by the payment of cash in lieu of land as provided in section 3.2.1.4.

(d) For land dedicated for park purposes, evidence of recording in the appropriate real property records of a general warranty deed of the required parkland as approved by the city engineer and the city attorney.

(e) Identification of the required amount of parkland is to be indicated on an approved subdivision plat.

(f) Parkland dedication does not qualify for, remove or reduce the amount of any other required compensating open space that is provided for lot size reduction compensation.

(g) Parkland dedication can be provided for a phased development, not within the subdivision section that requires the dedication, subject to location criteria indicated elsewhere in this article or where funds have been paid for a phased development, and

the original developer does not complete all phases of the development, credit for any prior dedication or payment shall be applied to subsequent subdivision plats for the same land on a pro-rata basis by dwelling unit. Increased density by the increase in the number of dwelling units shall require the dedication of additional parkland or payment of additional fees.

(h) Unless provided elsewhere in rules promulgated by the city engineer, the dedicated land shall be reasonably free of recognized environmental conditions. If land is proposed to be dedicated by subdivision plat, prior to the submission of an application for final subdivision plat approval, the applicant shall submit either a Phase 1 environmental assessment that shows no environmental conditions exist on the property or a Phase 2 environmental assessment that shows no remediation is required.

(i) Land in a federally designated floodplain or floodway may not be dedicated as parkland unless the dedicated land would be available for active recreational uses for a minimum annual timeframe as determined by the city engineer.

Sec. 3.2.1.4. Money in lieu of land dedication for neighborhood parks.

(a). Subject to approval of the city council and the provisions of section 3.1.2.3 above, a developer responsible for dedication of neighborhood parkland under this section may elect to meet the requirements of section 3.1.2.3, in whole or in part, by a cash payment in lieu of land, in the amount of \$350.00 per dwelling unit. Such payment in lieu of land shall be made at or prior to the time of final plat recordation. The city shall not issue any permits for construction within the subdivision, except permits to construct public improvements, until such time as the payment of money in lieu of parkland required by this article is submitted to and accepted by the city. The city may annually review the fee per dwelling unit and may increase the fee, if approved by the city council, up to a combination of the annual Consumer Price Index plus the percent of annual population increase within the city limits and the extraterritorial jurisdiction or a city engineer report indicating the percentage increase of taxable value of property within the city limits and the city extraterritorial jurisdiction, whichever is greater. The fee amount will be the adjusted fee per dwelling unit at the time of plat recordation.

(b) The city may, from time to time, decide to purchase land for parks in or near the area of actual or potential development. If the city does purchase parkland within a designated park zone, subsequent parkland dedications for that zone shall be in cash only and calculated to reimburse the city's actual cost of acquisition and development of such land for parks. The cash amount shall be equal to the sum of:

- (1) The average price per acre of such land; and

- (2) The actual cost of adjacent streets and on-site utilities, or an estimate of such actual cost provided by the city engineer.

Once the city has been reimbursed entirely for all such city-purchased parklands within a park zone, this paragraph shall cease to apply, and the other paragraphs of this article shall again be applicable.

(c) To the extent that the required cash amount of section 3.2.1.4(b) cannot be determined, the dedication requirement shall be met by a payment in lieu of land computed on the basis of \$450.00 per dwelling unit.

Sec. 3.2.1.5. Private neighborhood parkland in lieu of public dedicated parkland.

(a) A developer responsible for dedication under this article may elect to meet up to 50 percent of the requirements of section 3.2.1.3 by the provision of private neighborhood parkland. Credit for private parkland will be governed by the following criteria:

- 1. The land offered as private neighborhood parkland must be open and accessible to all residents of the platted subdivision. Land or facilities that are excluded to a portion of the subdivision residents will not be considered as private neighborhood parkland.
- 2. Land which is unencumbered by easements, detention areas, lake and drainage channel borders, or other similar characteristics will qualify for private neighborhood parkland at full credit. Land that has recreation facilities on it such as tennis courts, swimming pools, playing fields, recreation buildings, and any other similar facility also will qualify for full credit.
- 3. Land which is encumbered by easements, detention areas, lake and drainage channel borders, or other similar characteristics shall qualify at a 50 percent credit but only if it complies with criteria (A)(1), (2), and (3) below:
 - (A) Pipeline or utility easements, or areas along lake borders and drainage ditches shall have:
 - (1) Hike, bike, and all-weather paths, landscaping and sodding installed according to the construction standards of the city. Paths must also be connected to recreational areas as part of an open space system;
 - (2) An average minimum width of 30 feet and a minimum width of 20 feet; and
 - (3) Side slopes for areas used in the credit not to exceed a five to one ratio, unless otherwise approved by the city.

(b) Maintenance responsibility for areas offered as private neighborhood parkland must be identified with the submission of a preliminary plat.

(c) Land offered for private neighborhood parkland credit, which is less than three acres in size is generally discouraged unless it is an integral part of the private park and open space provisions of the subdivision. A list of landscaping and other improvements of special uses planned for areas of land less than one-half acre in size shall be submitted with the preliminary plat.

(d) For land established as a private park, identification of the required amount of private park area as one or more restricted reserves with the following notation on each private reserve within the subdivision plat:

"RESERVE RESTRICTED TO PRIVATE PARK PURSUANT TO THE UNIFIED DEVELOPMENT CODE OF THE CODE OF ORDINANCES, CITY OF IOWA COLONY, TEXAS. THIS PRIVATE PARK DESIGNATION MAY NOT BE CHANGED WITHOUT APPROVAL OF THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS."

Land that is established as a private park for the purposes of this article may not be replatted to change this designation pursuant to section 212.0146 of chapter 212 (Texas Local Government Code) [V.T.C.A., Local Government Code § 212.0146] without the recommendation of the planning commission and the approval of the city council. The planning commission shall not recommend approval of a replat that would change the private park designation unless the planning commission determines that alternative private park space that satisfies the requirements of this section is available within the original subdivision generating the dedication requirement.

Sec. 3.2.1.6. Contribution for regional parks.

In addition to the provisions for neighborhood parks by dedication of land (public or private) or the payment of fees in lieu thereof as described above, a developer shall contribute an additional \$450.00 per dwelling unit for the development of regional parks.

Sec. 3.2.1.7. Special funds, right to refund.

(a) There is established a special fund within the city general fund for the deposit of all sums paid in lieu of parkland dedication, which funds shall be known as the "parkland dedication fund" and the "regional park fund." The city may establish additional sub-funds as it deems appropriate to track funds for different zones or different regional parks.

(b) The city shall account for all sums paid in lieu of parkland dedication under this article with reference to the individual plats involved. Any funds paid for such purposes must be expended by the city for acquisition and development of parks. Such funds shall be considered to be spent on a first in, first out basis for each park zone.

Sec. 3.2.1.8. Additional requirements.

(a) Any land dedicated to the city or provided as private neighborhood parkland under this article must be appropriate for park and recreation purposes. The city reserves the right to reject any land that it deems as unsuitable for such purposes.

(b) Drainage areas may be accepted as part of a park if the channel is constructed in accordance with city standards, the land is appropriate for park use, and if no significant area of a park is cut off from access by such channel.

(c) Each park must have ready access to a public street.

ARTICLE 3. SCREENING AND FENCING

Division 1. Screening

Sec. 3.3.1.1. Screening—New construction nonresidential and multifamily.

(a) Nonresidential and multifamily screening required.

(1) Requirement criteria. This section shall apply to the following:

- a. Any nonresidential use that has a side or rear contiguous to any residential use or residential zoning district other than multifamily.
- b. Any multifamily use that has a side or rear contiguous to any residential use or residential zoning district other than multifamily.

(2) The following shall apply in either case outlined above:

- a. The nonresidential or multifamily use shall provide the following:
 - 1. An opaque screening wall eight feet in height. The screen shall be located no closer to the street than the property line. Such screening fence shall be maintained in good condition. Any sections of this code concerning sight obstructions of intersections shall be applicable to the screen where it is intersected by a street or throughway.
 - 2. In addition to an opaque screening wall, there shall be a minimum 25-foot-wide landscape buffer between nonresidential or multifamily and all single-family uses. The buffer, located on the nonresidential or

multifamily property, shall also include large trees (from the large tree plant list in UDC section 3.1.3.31 [appendix 3.1.3.12 in section 3.1.3.10]) with a minimum two-inch caliper measured at 12 inches above the root ball shall be provided, with the total caliper inches equal to at least one inch for each ten feet of lot depth.

3. In situations where a fence already exists along the property line between the nonresidential or multiple-family use and the residential use, the screening required by this section shall be in addition to the existing fence unless the nonresidential or multiple-family use obtains permission from the owner(s) of the existing fence to replace said fence with the opaque screening wall and 25-foot buffer described above.
4. Prior to construction of buffers, complete plans showing type of material, depth of beam and structural support shall be submitted to the building official or an assign for analysis to determine whether or not:
 - i. The screen will withstand the pressures of time and nature; and
 - ii. The screen adequately accomplishes the purpose for which it was intended.
5. The building official or an assign shall determine if the buffer meets the requirements of this section.

Sec. 3.3.1.2. Screening—Parking area screening along major and minor arterials.

Landscaping shall be required for the screening of parking areas along major or minor arterials when nonresidential parking areas are located on the nonresidential lot such that they are adjacent to such roadways (i.e., there is no building between the parking area and the lot line adjacent to the roadway). In such case, parking areas shall be screened by a continuous hedge of shrubs (from section 3.1.3.34 [appendix 3.1.3.15 in section 3.1.3.10] shrub list) that are maintained at a height of no more than 36 inches nor less than 24 inches as measured from the surrounding soil line and at a minimum 36-inch spacing.

Sec. 3.3.1.3. Screening—Residential screening along major thoroughfares (applies to the city and ETJ).

(a) *Requirement criteria.* Where residential subdivisions adjacent to a super arterial, major or minor arterial are platted so that the rear or side yards of single-family or two-family residential lots therein are within 200 feet of a right-of-way line of said

major thoroughfare, or are separated from such thoroughfare by an alley, landscape, or open space area/detention facility and utility easements, or back up to such thoroughfare, the developer shall provide, at its sole expense, a minimum six-foot tall masonry screening wall (also see subsection (b) below), or some other alternative form of screening, if approved by the building official or an assign, according to the following alternatives and standards. All screening shall be adjacent to the right-of-way or property line and fully located on the private lot(s), including columns and decorative features. All forms of screening shall conform to the requirements of city ordinances and policies that govern sight distance for traffic safety.

(b) *Screening alternatives.* Screening shall be provided in accordance with, and shall be constructed to, standards and criteria as set forth in the city's engineering design criteria manual. An alternative form of screening, in lieu of the masonry wall, may be approved by the building official or an assign and the city engineer with the preliminary subdivision plat application. Alternatives that may be considered include:

- (1) A living/landscaped screen in conjunction with decorative metal (e.g., wrought iron) fence sections with masonry columns;
- (2) A combination of berms and living/landscaped screening;
- (3) A combination of berms, decorative masonry walls and living/landscaped screening, either with or without a decorative metal or "WoodCrete" type of fence with masonry columns; or
- (4) Some other creative screening alternative may be approved if it meets the spirit and intent of this section, if it is demonstrated to be long-lasting and generally maintenance-free, and if the building official or an assign and city engineer find it to be in the public interest to approve the alternative screening device.

(c) *Time required for opacity.* Any required screening device shall be, or shall achieve, at least six feet in height and at least 90 percent opacity within three years of initial installation/planting. Any landscaping used to achieve the purpose of required screening shall be in conformance with other divisions of this article and other chapters of the Uniform Development Code.

(d) *Maintenance easement.* A wall/screening maintenance easement at least five feet in width shall be dedicated to the city or to a property owners association on the private lot side and adjacent to the entire length of the screening wall or device.

(e) *Installation.* The screening/wall/device shall be installed prior to final acceptance of the subdivision public improvements. All landscape materials, if utilized, shall be installed in accordance with other divisions of this article and other chapters of the

Uniform Development Code. Failure to properly install all components of a required screening wall or device within the prescribed timeframe, shall constitute a violation of this Unified Development Code, and shall authorize the city engineer to refuse acceptance of the subdivision public improvements.

(f) *Design of walls.* All masonry, wrought iron, steel or aluminum screening wall plans and details must be designed and sealed by a licensed professional engineer, and must be approved by the city engineer. Use of chain-link, chicken-wire, hog-wire fencing, barb-wire fencing, and any other material similar in appearance and quality is expressly prohibited. The use of wood is prohibited.

(g) *Height of screening.* The height of required screening devices, including spans between columns, shall be a minimum of six feet and shall be no more than eight feet decorative columns, pilasters, stone caps, sculptural elements, and other similar features may exceed the maximum eight-foot height by up to two feet for a total maximum height of ten feet for these features, provided that such taller elements comprise no more than ten percent of the total wall length in elevation view.

(h) *Other easements.* Screening fences, walls and devices shall not be constructed within any portion of a utility or drainage easement unless specifically authorized by the city engineer and by any other applicable utility provider(s).

Sec. 3.3.1.4. General screening.

(a) The following requirements shall be in addition to the foregoing landscaping and planting requirements:

- (1) All loading spaces and docks, outside storage areas including open storage, storage in containers and boxes not designed to be permanently affixed to real property, refuse containers/areas, mechanical and electrical equipment, and the rear of nonresidential uses/structures on double frontage lots, must be screened from view from the street or public rights-of-way and adjoining properties.
- (2) Approved screening techniques include masonry, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof. In any case in which a fence/wall is constructed to provide screening, landscaping elements shall be incorporated along a majority of the fence/wall. Screening for ground mounted mechanical, electrical equipment in nonresidential areas shall consist of a decorative wall or architectural element of the building that is 100 percent opaque and equal to or exceeds the height of the area being screened. Shrubbery shall be a minimum of three feet in height at the time of planting, planted every

three feet or less on center, and have year-round foliage. Also, in the case of roof-mounted mechanical equipment, parapet roof structures are approved for screening such equipment.

- (3) If a nonresidential use is adjacent to a residential use other than multiple family, such nonresidential use shall be screened in accordance with section 3.3.1.1(a) and shall include a vegetative buffer.

(b) If screening is required, it shall be of sufficient height and opacity to completely obscure the activity, structure, or use.

Sec. 3.3.1.5. Screening for utility support structures and stations.

(a) *Applicability.* This section shall apply to all utility support structures or stations located on private property regardless if there is an easement or other form of agreement between the utility company or property owner.

(b) *Support structures and stations defined.* These shall include, but not be limited to, any switching equipment, lift stations, pipe valves connected to pipes above ground, boxes or cabinets, cabling equipment or wiring above ground, transmitting equipment, control rooms, control cabinets, etc. Utility poles and transformers and like appurtenances attached to utility poles more than ten feet above the ground are not considered a support structure or station.

(c) *Regulations.* A utility support structure or station located on private property or outside a public street right-of-way must have proper screening. The construction or modification of an existing utility support structure or station equal to more than 50 percent of its original or current economic value, whichever is higher, must provide screening meeting one of the following:

- (1) Eight-foot-high masonry fence with up to a maximum of four-foot-long sections of wrought iron (ornamental iron) or similar style fencing material to allow for security. For walls or sides that have over 50 percent masonry as a component (not counting the gate) no landscaping would be required on that side. The gate would need to be wrought iron (ornamental iron) or solid metal finished in a neutral or natural color, not gray or steel color, unless otherwise approved by the city engineer. All drives and work areas will be paved with concrete within the area under the utility's control.
- (2) Wrought iron (ornamental iron) fencing or substantially similar style, eight feet high, with gate similar in style to the fencing, unless otherwise approved by the

city engineer, in combination with landscaping shall be permitted, but shall require a concrete slab over the entire area under the utility's control including the drive or access to the support structure or station.

- (3) Opaque or near-opaque live vegetative screening year-round from the ground to a height of at least eight feet at installation along the boundary lines of the easement or area containing the utility facilities or apparatus. The screening shall provide a minimum of 50 percent screening during the growing season. The planting shall be a minimum of eight feet in height at a spacing of at least four feet on center.
- (4) A self-contained masonry building that houses the equipment, provided the structure is constructed consistent with the appearance of surrounding businesses or homes in the area in which it is located. Factors affecting appearance shall include, but not be limited to, pitched shingle roofs, façade articulations, color scheme, and architecture trim.

(d) *Alternative.* If the utility company does not wish to install the screening as outlined, it may, in its application for a special use permit (SUP), submit an alternative plan for providing proper screening. If the alternate screening plan is approved as a part of an approved Planned Unit Development District plan or with a SUP, the utility company may install screening pursuant thereto in lieu of screening that conforms with the requirements of this section.

(e) *Exceptions.* The following two conditions exempt certain equipment from the above requirements or to obtain a SUP:

- (1) Where no more than two support structures and/or stations as defined above are within 50 feet of each other, are located within a common public utility easement, and each structure or station is located on a concrete pad with the dimensions of the structure being no larger than six feet in height, four feet deep, and seven feet wide and is located at least 50 feet from the ROW line of a public street.
- (2) Pedestals, cabinets, or similar equipment structures when the structure is less than three feet in height, covers less than six square feet, and is located in a common public utility easement, but is partially hidden from public view from a public street by landscaping, building, or fencing, as deemed appropriate by the building official or an assign.

*Division 2. Fencing***Sec. 3.3.2.1. Fencing allowed.**

(a) *Fences in residential areas/districts, except multiple family.*

(1) Materials permitted. Fences may be constructed of approved wood, decorative metal, chain link or woven wire mesh, and other materials traditionally used in private fence construction. New and innovative materials such as plastics, PVCs, metal panel or metal slat, "honeycomb," cementitious fiber board (e.g., "WoodCrete"), and other similar materials may be approved for use by the city's building official if the material is proven to be sturdy, durable and relatively maintenance-free.

(b) *Fences permitted in front yard(s) adjacent to a public street.*

(1) Except as provided by subsection (b)(2) (decorative fences) below, no fence or wall shall be permitted within the required front yard of any single-family or duplex residential lot which is adjacent to a public street. No residential fence shall be closer than 15 feet to a public street; however, in cases where the side or rear building line of the yards on continuous corner lots adjoin (i.e., the side yard lot is not a key corner lot), the fence may be constructed out to the property line of the side yard, such that the street side yard may be included as part of the lot's rear yard area.

(2) Decorative fences. Decorative fences with openings not less than 50 percent of the fence area and not exceeding four feet in height are permitted in front yards. Chain link, woven wire mesh metal panel, or similar materials are not considered decorative fencing, and are therefore not allowed in front yards.

Sec. 3.3.2.2. Fencing not allowed or allowed with conditions.

(a) *Perimeter fencing in residential zoning districts for residential use.* Above-ground electrical fencing (does not include underground virtual fencing, which is allowed), wire mesh (such as hog wire, chicken wire) and barbed wire are prohibited as perimeter fencing except on parcels or lots of two acres or greater in size in the residential single-family units/agriculture zoning district.

(b) *Fences within public easements.* Fences are allowed within public easements with the approval of the building official or an assign and the city engineer but any allowed fence must have a gate or removable panel to allow for maintenance access to such easement.

(c) *Fences within drainage easements.* No fences or structures of any kind that restrict the flow of drainage water will be allowed within drainage easements. Non-restrictive fences or structures within drainage easements must be specifically approved by the city engineer.

(d) *Fences in side/rear yards.* Fences located in side or rear yards shall not exceed eight feet in height.

Sec. 3.3.2.3. Fencing required.

(a) *Around single-family residential developments.*

- (1) Single-family residential use existing at the effective date of this article is exempt from any requirement to provide any perimeter fencing.
- (2) Single-family residential use, if only a single tract or lot and not a part of a multi-lot residential subdivision, if constructed or permitted after the effective date of this article is exempt from any requirements to provide any perimeter fencing.
- (3) Single-family residential use, if a part of a multi-lot (more than one lot) residential subdivision and not a part of an approved Planned Unit Development District, shall provide an eight feet high approved opaque wood or masonry or combination materials fence, per details established by the engineering design criteria manual of the city (called DCM in this ordinance), as revised from time to time, around the outside single-family residential perimeter boundary of the subdivision section unless a portion of the outside perimeter boundary of the section is a part of an approved general plan. In which case, that part of the outside single-family residential perimeter boundary of the subdivision adjacent to future sections of the development shall not be required to provide a perimeter fence.
- (4) Gates used for access control within private street single-family residential developments must be set back a minimum of 24 feet from the intersecting public street right-of-way to allow for vehicular stacking to occur outside the public street right-of-way.
- (5) Any fence provided within a single-family residential development that exceeds eight feet in height will require construction plans approved by a civil engineer registered to practice in the state of Texas and will require a building permit.

- (b) *Around non-single-family residential developments.*
 - (1) Single tract/lot or multi-tract/lot non-single-family developments are not required to provide boundary perimeter fencing when the new development is adjacent to other existing non-single-family development.
 - (2) The owner of a building site included under section 3.1.2.1 and which is to be developed or expanded for a non-single-family residential or a multifamily residential use adjacent to any existing single-family residential property shall provide a landscape buffer adhering to at least one of the following buffer type:
 - a. A wood, concrete or masonry opaque screening fence with a height of eight feet along the entire property line or entire artificial lot line, if any, adjacent to the single-family residential property.
 - (3) A building permit must be obtained to construct any type of new fence where the market value of the work (materials and labor) exceeds \$300.00. A building permit is not required for the repair or replacement of existing fences if the repair or replacement does not exceed the original fence criteria.

ARTICLE 4. EXTERIOR ENVIRONMENTAL LIGHTING

Division 1. General

Sec. 3.4.1.1. Purpose and applicability.

(a) *[Purpose.]* The purpose of this division is to establish standards for outdoor lighting in order to:

- (1) Minimize adverse off-site effects from glare and light trespass or obtrusive light;
- (2) Maintain adequate, appropriate lighting fixtures and practices that do not exceed the IES recommended practices for night-time safety, utility, productivity, enjoyment, and commerce while curtailing light pollution, skyglow, and the adverse effects of night lighting from gas or electric sources;
- (3) Promote efficient lighting design and operation by conserving energy and resources to the greatest extent possible; and
- (4) Protect residential uses from light sources from nonresidential uses that are improperly selected, placed, aimed, maintained, or shielded.

(b) *[Scope; applicability.]* See section 0.1.1.2 concerning the geographical scope of this ordinance. Except as described below, all outdoor lighting shall comply with these requirements. This includes, but is not limited to, existing lighting that has been

amortized per amortization regulations contained in this article, new lighting, replacement lighting, or any other lighting whether attached to structures, poles, the earth, or any other location, including lighting installed by any third party. Submission and approval of a site plan shall be required for all nonresidential (including churches, schools, etc., within residential areas), mixed-use, townhouse, single-family attached, and multifamily residential projects. The building official or an assign shall be the responsible official for processing of a site plan.

- (1) *Building permit issuance.* Site plans shall be submitted prior to or in conjunction with a building permit application. No building permit shall be issued until a site plan, if required, and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the city. A lighting plan shall be included for review and approval with submittal of a site plan.
- (2) *Exemptions.* The following are not regulated by this ordinance:
 - a. Lighting within the public right-of-way or easement for the principal purpose of illuminating roads and highways. No exemption shall apply to any street lighting and to any lighting within the public right-of-way or easement when the purpose of the luminaire is to illuminate areas outside of the public right-of-way or easement.
 - b. Lighting for public monuments and statuary.
 - c. Lighting solely for signs if regulated by another ordinance.
 - d. Repairs to existing luminaires not exceeding 25 percent of total installed luminaires.
 - e. Temporary lighting for theatrical, television, performance areas and construction sites.
 - f. Underwater lighting in swimming pools and other water features.
 - g. Temporary lighting and seasonal lighting provided that individual lamps are less than ten watts and 70 lumens.
 - h. Lighting that is used under emergency conditions.
 - i. In ambient lighting Level 1 and 2 areas, low voltage landscape lighting controlled by an automatic device that is set to turn the lights off at one hour after the site is closed to the public or at a time established by city council.

- j. Temporary use of security lighting for no longer than necessary to prevent imminent or occurring harm to any person or property, due to a sudden emergency.

Sec. 3.4.1.2. Review and approval authority.

(a) An exterior light plan shall be required for all proposed or modified lighting that includes:

1. Description of light fixtures including component specifications such as associated with a nonresidential or multifamily site plan. Lighting plans shall include the following: Lamps, reflectors, optics, angle of cutoff, supports, poles, and include manufacturer's catalog cuts.
2. Location and description of every outdoor light fixture and hours of operation.
3. Maintained horizontal illumination levels shown as footcandles.

Sec. 3.4.1.3. General standards.

(a) Shielding shall be required in all installations except as specified herein. The lower edge of the shield shall be at or below the lowest point of the light source the light source or lamp so as to minimize the light transmission above the horizontal plane, or at least 90 percent of the emitted light projects below the horizontal plane as evidenced by the manufacturer's photometric data. Shielding requirements may be reduced for architecturally decorative light fixtures in consideration of aesthetics and theme style lighting.

(b) Any use is prohibited from operating in a manner so that the intensity of its glare or direct illumination projecting across the property boundary and onto another public or private property is a nuisance or detracts from the use or enjoyment of adjacent property.

(c) Exterior lights shall be located so as to not produce direct illumination across the bounding property line. All outside lights shall be comprised of a light source and reflector selected so that acting together the spillover is controlled and not directed across any bounding property line above a height of three feet.

(d) Outdoor advertising displays and signs not exclusively illuminated internally, may only utilize illuminating devices mounted on the top of the advertising display structure. All such fixtures shall comply with all other provisions of this section.

(e) Outdoor advertising signs constructed of translucent materials and wholly illuminated from within do not require shielding.

(f) Light fixtures mounted on canopies or fueling station service islands shall be recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy.

(g) In all cases, the maximum correlated color temperature for all nonresidential lighting and all nonresidential uses within residential use areas or residential zones in the city limits shall not be more than 3,000 degrees kelvin and a s/p (scotopic-nighttime light level, photopic-daytime light level) ratio of less than 1.2 to minimize blue light emission.

(h) The allowable ambient light source intensity and the requirements for shielding light emissions for outdoor lighting fixtures shall be as set forth in the following table:

<i>Ambient Light Level</i>	<i>Zoning/Use</i>	<i>Recommended Uses or Areas</i>
ALL-0	Wilderness areas, parks and preserves, and undeveloped rural areas	No ambient lighting. Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from human enjoyment and appreciation of the natural environment. Human activity is subordinate in importance to nature. The vision of human residents and users is adapted to the darkness, and they expect to see little or no lighting. When not needed, lighting should be extinguished.
ALL-1	Rural and low density residential areas	Low ambient lighting. Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is adapted to low light levels. Lighting may be used for safety and convenience but it is not necessarily uniform or continuous. After midnight, most lighting should be extinguished or reduced as activity levels decline.
ALL-2	Light commercial business and high density or mixed-use residential areas	Moderate ambient lighting. Areas of human activity where the vision of human residents and users is adapted to moderate light levels. Lighting may be typically used for safety and convenience but it is not necessarily uniform or continuous. After midnight, lighting may be extinguished or reduced as activity levels decline.

(i) Lighting control requirements.

1. Automatic switching requirements. Controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a

control device or system such as a photoelectric switch, astronomic time switch or equivalent functions from a programmable lighting controller, building automation system or lighting energy management system, all with battery or similar backup power or device. Exceptions include automatic lighting controls are not required for the following:

- a. Lighting under canopies.
 - b. Lighting for tunnels, parking garages, garage entrances and similar conditions.
2. Automatic lighting reduction requirements. After the midnight hour, total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, except under any of the following:
- a. Lighting for single-family residential properties including multiple residential properties not having common area.
 - b. When the outdoor lighting consists of only one luminaire.
 - c. Code required lighting for steps, stairs walkways, and building entrances.
 - d. When in the opinion of the city engineer or building official, lighting levels must be maintained.
 - e. Motion activated lighting.
 - f. Lighting governed by special use permit in which times of operation are specifically identified.
 - g. Businesses that operate on a 24-hour basis.

Sec. 3.4.1.4. Nonresidential lighting.

For all nonresidential properties, and for multiple residential properties of two or more domiciles having common outdoor areas, all outdoor lighting shall comply either with Part A or Part B of this section.

(a) *Part A, prescriptive method.*

- (1) *Total site lumen limit.* The total installed initial luminaire lumens of all outdoor lighting shall not exceed the total site lumen limit. The total site lumen limit shall be determined using either the parking space method (Table A) or the hardscape area method (Table B). Only one method shall be used per permit application, and for site with existing lighting, existing

lighting shall be included in the calculation of total installed lumens. The total installed initial luminaire lumens is calculated as the sum of the initial luminaire lumens for all luminaires.

- (2) *Limits to off-site impacts.* All luminaires shall be rated and installed according to Table C.
 - (3) *Light shielding for parking lot illumination.* All parking lot lighting shall have no light emitting above 90 degrees. Exception:
 - a. Ornamental parking lighting shall be permitted by special permit only, and shall meet the requirements of Table C-1 for backlight, Table C-2 for uplight, and Table C-3 for glare, without the need for external field-added modifications.
- (b) *Part B, performance method.*
- (1) *Total site lumen limit.* The total installed initial luminaire lumens of all lighting systems on the site shall not exceed the allowed total initial site lumens. The allowed total initial site lumens shall be determined using Tables D and E. For sites with existing lighting, existing lighting shall be included in the calculation of total installed lumens. The total installed initial luminaire lumens of all is calculated as the sum of the initial luminaire lumens for all luminaires.
 - (2) *Limits to off-site impacts.* All luminaires shall be rated and installed using either Option A or Option B. Only one option may be used per permit application.

Option A: All luminaires shall be rated and installed according to Table C.

Option B: The entire outdoor lighting design shall be analyzed using industry standard lighting software including inter-reflections in the following manner:

 1. Input data shall describe the lighting system including luminaire locations, mounting heights, aiming directions, and employing photometric data tested in accordance with IES guidelines. Buildings or other physical objects on the site within three object heights of the property line must be included in the calculations.
 2. Analysis shall utilize an enclosure comprised of calculation planes with zero reflectance values around the perimeter of the site. The top of the enclosure shall be no less than 33 feet (ten meters) above the

tallest luminaire. Calculations shall include total lumens upon the inside surfaces of the box to and vertical sides and maximum vertical illuminance (footcandles and/or lux) on the sided of the enclosure.

The design complies if:

- a. The total lumens on the inside surfaces of the vertical enclosure are less than 15 percent of the total site lumen limit; and
- b. The maximum vertical illuminance on any vertical surface is less than the allowed maximum illuminance per Table F.

Sec. 3.4.1.5. Residential lighting.

(a) *General requirements.* For residential properties including multiple residential properties not having common areas, all outdoor luminaires shall be fully shielded and shall not exceed the allowed lumen output in Table G, column 2. Exceptions:

- (1) One partly shielded or unshielded luminaire at the main entry not exceeding the allowed lumen output in Table G, column 1.
- (2) Any other partly shielded or unshielded luminaires not exceeding the allowed lumen output in Table G, column 3.
- (3) Low voltage landscape lighting aimed away from adjacent properties and not exceeding the allowed lumen output in Table G, column 6.
- (4) Shielded directional flood lighting aimed so that direct glare is not visible from adjacent properties and not exceeding the allowed lumen output in Table G, column 5.
- (5) Open flame gas lamps.
- (6) Lighting installed with a vacancy sensor, where the sensor extinguishes the lights no more than 15 minutes after the area is vacated.
- (7) Lighting exempt per section 3.4.1.1(b)2.

(b) *Requirements for residential landscape lighting.*

- (1) [Lighting] shall comply with Table G.
- (2) [Lighting] shall not be aimed onto adjacent properties.

Sec. 3.4.1.6. Lighting by special permit only.

(a) *High intensity and special purpose lighting.* The following lighting systems are prohibited from being installed or used except by special use permit:

- (1) Temporary lighting in which any single luminaire exceeds 20,000 initial luminaire lumens of the total lighting load exceeds 160,000 lumens.
- (2) Aerial lasers.
- (3) Searchlights.
- (4) Other very intense lighting defined as having a light source exceeding 200,000 initial luminaire lumens or an intensity in any direction of more than 2,000,000 candelas.

(b) *Complex and nonconforming uses.* Upon special use permit issued by the City of Iowa Colony, lighting not complying with the technical requirements of this ordinance but consistent with its intent may be installed for complex sites or uses or special uses including, but not limited to, the following applications:

- (1) Sports facilities, including, but not limited to, unconditioned rinks, open courts, fields, and stadiums.
- (2) Construction lighting.
- (3) Lighting for industrial sites having special requirements, such as petrochemical manufacturing or storage, shipping piers, etc.
- (4) Parking structures.
- (5) Urban parks.
- (6) Ornamental and architectural lighting of bridges, public monuments, statuary and public buildings.
- (7) Theme and amusement parks.
- (8) Correctional facilities.

[(c)] [*Proposed lighting installation.*] To obtain a special use permit, applicants shall demonstrate that the proposed lighting installation:

- a. Has sustained every reasonable effort to mitigate the effects of light on the environment and surrounding properties, supported by a signed statement describing the mitigation measures. Such statements shall be accompanied by the calculations required for the performance method;

- b. Employs lighting controls to reduce lighting at a project specific curfew ("curfew") time to be established in the special use permit; and
- c. Complies with the performance method after curfew.

The City of Iowa Colony building official or an assign and the city engineer shall review each such application and make a recommendation to the city council. The city council will review the application and the recommendation of the building official and the city engineer and may agree to grant a special use permit if the city council believes that the proposed lighting will not create unwarranted glare, sky glow, or light trespass.

Sec. 3.4.1.7. Existing lighting.

Any and all lighting installed prior to the effective date of this ordinance shall comply with the following:

- (a) *Amortization.* All existing single-family residential structures and developed tracts or lots shall be allowed to continue using existing exterior lighting but must comply with the requirements of this article after a reasonable amortization period, which is presumed to end ten years after the effective date of the adoption of this article, including repair and comparable replacement.
- (b) *New uses or structures, or change of use, after the effective date of this article.* Whenever there is a new use of a property (zoning or variance change) or the use of the property is changed, all outdoor lighting on the property shall be brought into compliance with this ordinance before the new or changed use commences.
- (c) *Additions or alterations.*
 - (1) *Major additions.* If a major addition occurs on a property, lighting for the entire property shall comply with the requirements of this article. The following are considered major additions:
 - a. Additions of 25 percent or more in terms of additional dwelling units, gross floor area, seating capacity, or parking spaces, either with a single addition or with cumulative additions after the effective date of this article.
 - b. Single or cumulative additions, modifications or replacement of 25 percent or more of installed outdoor lighting luminaires existing as of the effective date of this ordinance.
 - (2) *Minor modifications, additions, or new lighting fixtures for nonresidential and multiple dwellings.* For nonresidential and multiple dwellings, all additions, modifications, or replacement of more than 25 percent of outdoor

lighting fixtures existing as of the effective date of this article shall require the submission of a complete inventory and site plan detailing all existing and any proposed new outdoor lighting. Any new lighting shall meet the requirements of this article.

- (3) *Resumption of use after abandonment.* If a property with nonconforming lighting is abandoned for a period of six months or more, then all outdoor lighting shall be brought into compliance with this article before any further use of the property occurs.

Sec. 3.4.1.8. Tables.

Table A. Allowed Total Initial Luminaire Lumens per Site for Nonresidential Outdoor Lighting, Per Parking Space Method

May only be applied to properties up to ten parking spaces (including handicapped accessible spaces).

<i>Light Zone</i>	<i>Use/Zone</i>	<i>Allowed Luminaire Lumens per Parking Space (Lumens/Space)</i>
ALL-0	Wilderness areas, parks and preserves, and undeveloped rural areas	350
ALL-1	Rural and low density residential areas	490
ALL-2	Light commercial business and high density or mixed-use residential areas	630

Table B. Allowed Total Initial Lumens per Site for Nonresidential Outdoor Lighting, Hardscape Area Method

May be used for any project. When lighting intersections of site drives and public streets or roads, a total of 600 square feet for each intersection may be added to the actual site hardscape area to provide for intersection lighting.

Base Allowance

<i>Light Zone</i>	<i>Use/Zone</i>	<i>Base Allowance of Lumens per Square Foot of Hardscape</i>
ALL-0	Wilderness areas, parks and preserves, and undeveloped rural areas	0.5

<i>Light Zone</i>	<i>Use/Zone</i>	<i>Base Allowance of Lumens per Square Foot of Hardscape</i>
ALL-1	Rural and low density residential areas	1.25
ALL-2	Light commercial business and high density or mixed-use residential areas	2.5

Lumen Allowances, in Addition to Base Allowance

Additional allowances for sales and service facilities. No more than two additional allowances per site. Use it or lose it.

<i>Light Zone</i>	<i>Outdoor Sales Lots (1)</i>	<i>Outdoor Sales Frontage (2)</i>	<i>Drive-Up Windows (3)</i>	<i>Vehicle Service Station (4)</i>
ALL-0	0	0	0	0
ALL-1	4 lumens/sq. ft.	0	2,000 lumens/drive up window	4,000 lumens/pump (based on 5 footcandles horizontal)
ALL-2	8 lumens/sq. ft.	1,000 lumens/lineal ft.	4,000 lumens/drive up window	8,000 lumens/pump (based on 10 footcandles horizontal)

- (1) This allowance is lumens per square foot of uncovered sales lots used exclusively for the display of vehicles or merchandise for sale, and may not include drive-ways, parking, or other non-sales areas. To use this allowance, luminaires must be within two mounting heights of sales lot area.
- (2) This allowance is for lineal feet of sales frontage immediately adjacent to the principal viewing location(s) and unobstructed for its viewing length. A corner sales lot may include two adjacent sides, provided that a different principal viewing location exists for each side. In order to use this allowance, luminaires must be located between the principal viewing location and the frontage outdoor sales area.
- (3) In order to use this allowance, luminaires must be within 20 feet horizontal distance of the center of the window.
- (4) This allowance is lumens per installed fuel pump.

Table C. Maximum Allowable Backlight, Uplight, and Glare (BUG) Ratings

May be used for any project. A luminaire may be used if it is rated for the lighting zone of the site or lower in number for all ratings, B, U, and G. Luminaires equipped with adjustable mounting devices permitting alteration of luminaire aiming in the field shall not be permitted.

Table C-1. Allowed Backlight Rating (1)

<i>Light Zone</i>	<i>Greater Than 2 Mounting Heights From Property Line</i>	<i>1 to Less Than 2 Mounting Heights From Property Line and Ideally Oriented (2)</i>	<i>0.5 to 1 Mounting Heights From Property Line and Ideally Oriented (2)</i>	<i>Less Than 0.5 Mounting Height to Property Line and Properly Oriented (2)</i>
ALL-0	B1	B1	B0	B0
ALL-1	B3	B2	B1	B0
ALL-2	B4	B3	B2	B0

- (1) For property lines that abut public walkways, bikeways, plazas, and parking lots, the property line may be considered to be five feet beyond the actual property line for purposes of determining compliance with this section. For property lines that abut public roadways, the property line may be considered to be the centerline of the public roadway for the purpose of determining compliance with this section. Note: This adjustment is relative to Table C-1 and C-3 only and shall not be used to increase the lighting area of the site.
- (2) To be considered ideally oriented, the luminaire must be mounted with the backlight portion of the light output oriented perpendicular and towards the property line of concern.

Table C-2. Maximum Allowable Uplight (BUG) Ratings - Continued

<i>Light Zone</i>	<i>Allowable Uplight Rating</i>	<i>Allowed % Light Emission Above 90 Degrees for Street or Area Lighting</i>
ALL-0	U0	0%
ALL-1	U1	0%
ALL-2	U2	0%

Table C-3. Maximum Allowed Glare (BUG) Ratings - Continued

<i>Light Zone</i>	<i>Allowed Glare Rating</i>	<i>Any Luminaire Not Ideally Oriented (3) With 1 to Less Than 2 Mounting Heights to Any Property Line of Concern</i>	<i>Any Luminaire Not Ideally Oriented (3) With 0.5 to 1 Mounting Heights to Any Property Line of Concern</i>	<i>Any Luminaire Not Ideally Oriented (3) With Less Than 0.5 Mounting Heights to Any Property Line of Concern</i>
ALL-0	G0	G0	G0	G0
ALL-1	G1	G0	G0	G0

<i>Light Zone</i>	<i>Allowed Glare Rating</i>	<i>Any Luminaire Not Ideally Oriented (3) With 1 to Less Than 2 Mounting Heights to Any Property Line of Concern</i>	<i>Any Luminaire Not Ideally Oriented (3) With 0.5 to 1 Mounting Heights to Any Property Line of Concern</i>	<i>Any Luminaire Not Ideally Oriented (3) With Less Than 0.5 Mounting Heights to Any Property Line of Concern</i>
ALL-2	G2	G1	G0	G0

(3) Any luminaire that cannot be mounted with its backlight perpendicular to any property line within 2X the mounting heights of the luminaire location shall meet the reduced allowed glare rating in Table C-3.

Table D. Performance Method Allowed Total Initial Site Lumens
May be used on any project.

<i>Light Zone</i>	<i>Allowed Lumens Per Sq. Ft.</i>	<i>Allowed Base Lumens Per Site</i>
ALL-0	0.5	0
ALL-1	1.25	3,500
ALL-2	2.5	7,000

Table E. Performance Method Additional Initial Luminaire Lumen Allowances

All of the following are "use it or lose it" allowances. All area and distance measurements in plain view unless otherwise noted. Additional lumens allowances for all buildings except service stations and outdoor sales facilities. A maximum of three allowances are permitted. these allowances are "use it or lose it."

<i>Light Zone</i>	<i>Building Entrances or Exits (1)</i>	<i>Building Façades (2)</i>	<i>Sales or Non-Sales Canopies (3)</i>	<i>Guard Stations (4)</i>	<i>Outdoor Dining (5)</i>	<i>Drive Up Windows (6)</i>
ALL-0	400	0	0	0	0	0
ALL-1	1,000	0	3/sq. ft.	6/sq. ft.	1/sq. ft.	2,000 Lumens/Drive Up Window
ALL-2	2,000	8/sq. ft.	6/sq. ft.	12/sq. ft.	5/sq. ft.	4,000 Lumens/Drive Up Window

(1) This allowance is per door. In order to qualify for this allowance, luminaires must be within 20 feet of the door.

(2) This allowance is lumens per unit area of the building façade that are illuminated. To use this allowance, luminaires must be aimed at the façade and capable of illuminating it without obstruction.

- (3) This allowance is lumens per unit area for the total area within the drip line of the canopy. In order to qualify for this allowance, luminaires must be located under the canopy.
- (4) This allowance is lumens per unit of area of guardhouse plus 2,000 sq. ft. per vehicle lane. In order to use this allowance, luminaires must be within two mounting heights of a vehicle lane or the guardhouse.
- (5) This allowance is lumens per unit area for the total illuminated hardscape of outdoor dining. In order to use this allowance, luminaires must be within two mounting heights of the hardscape area of outdoor dining.
- (6) This allowance is lumens per window. In order to use this allowance, luminaires must be within 20 feet of the center of the window.

Additional lumens allowances for service stations only. Service stations may not use any other additional allowances.

<i>Light Zone</i>	<i>Additional Allowance for Service Stations - Vehicle Service Station Hardscape (7)</i>	<i>Additional Allowance for Service Stations - Vehicle Service Station Canopies (8)</i>
ALL-0	0	0
ALL-1	4/sq. ft.	8/sq. ft.
ALL-2	8/sq. ft.	16/sq. ft.

- (7) This allowance is lumens per unit area for the total illuminated hardscape area less area of buildings, area under canopies, area off property, or areas obstructed by signs or structures. In order to use this allowance, luminaires must be illuminating the hardscape area and must not be within a building below a canopy, beyond property lines, or obstructed by a sign or other structure.
- (8) This allowance is lumens per unit area for the total area within the drip line of the canopy. In order to use this allowance, luminaires must be located under the canopy.

Additional lumens allowances for outdoor sales facilities only.

Outdoor sales facilities may not use any other allowances. Notice: Lighting permitted by these allowances shall employ controls extinguishing this lighting after a curfew time to be determined by the City of Iowa Colony.

<i>Light Zone</i>	<i>Outdoor Sales Lots (9)</i>	<i>Outdoor Sales Frontage (10)</i>
ALL-0	0	0
ALL-1	4/sq. ft.	

<i>Light Zone</i>	<i>Outdoor Sales Lots (9)</i>	<i>Outdoor Sales Frontage (10)</i>
ALL-2	8/sq. ft.	1,000/lineal ft.

- (9) This allowance is lumens per square foot of uncovered sales lots used exclusively for the display of vehicles or other merchandise for sale, and may not include driveways, parking or other non-sales areas and shall not exceed 25 percent of the total hardscape area. To use this allowance, luminaires must be within two mounting heights of the sales lot area.
- (10) This allowance is for lineal feet of sales frontage immediately adjacent to the principal viewing location(s) and unobstructed for its viewing length. A corner sales lot may include two adjacent sides, provided a different principal viewing location exists for each side. In order to use this allowance, luminaires must be located between the principal viewing location and the frontage outdoor sales area.

Table F. Maximum Vertical Illuminance At Any Point in the Plane of the Property Line

<i>Light Zone</i>	<i>Maximum Vertical Illuminance</i>
ALL-0	0.05 FC or 0.5 LUX
ALL-1	0.1 FC or 1.0 LUX
ALL-2	0.3 FC or 3.0 LUX

Table G. Residential Lighting Limits

<i>Light Zone</i>	<i>Column 1 (1)</i>	<i>Column 2 (2)</i>	<i>Column 3 (3)</i>	<i>Column 4 (4)</i>	<i>Column 5 (5)</i>	<i>Column 6 (6)</i>
ALL-0	Not allowed	630 lumens	Not allowed	Not allowed	Not allowed	Not allowed
ALL-1	420 lumens	1,260 lumens	315 lumens	Not allowed	Not allowed	SFR exempt others not allowed
ALL-2	630 lumens	1,260 lumens	315 lumens	1,050 lumens	1,260 lumens	525 lumens

- (1) Maximum allowed luminaire lumens* for unshielded luminaires at one entry only.
- (2) Maximum allowed luminaire lumens* for each fully shielded luminaire.
- (3) Maximum allowed luminaire lumens* for each unshielded luminaire excluding main entry.

- (4) Maximum allowed luminaire lumens* for each landscape lighting.
- (5) Maximum allowed luminaire lumens* for each shielded directional flood lighting.
- (6) Maximum allowed luminaire lumens* for each low voltage landscape lighting.

ARTICLE 5. COMMERCIAL BUILDINGS

Division 1. General

Sec. 3.5.1.1. Purpose.

The purpose of this article is to establish minimum standards for exterior building improvements for nonresidential structures in order to protect and advance the general welfare of the community by:

- (a) Promoting economic development to ensure the community is a desirable place to shop and work;
- (b) Provide for the structural integrity, safety, durability, and improved maintenance of the façade of buildings;
- (c) Enhance and protect the aesthetic interests of the community; and
- (d) Protect property values and lessen the impact that commercial properties have on surrounding residential development.

Sec. 3.5.1.2. Applicability.

- (a) This article applies to all sides of all buildings that are:
 - (1) Nonresidential;
 - (2) And either:
 - a. Constructed after the date of adoption of this article; or
 - b. Repaired, added to, or altered as to more than 50 percent of the exterior walls, after the date of adoption of this article; and
 - (3) Located within 1,000 feet of a public street or highway.
- (b) However, this article shall not apply to agricultural buildings, such as barns. This exception shall not apply to commercial businesses that are open to the public, even if they are agricultural.

*Division 2. Types of Improvements***Sec. 3.5.2.1. Existing buildings; maintenance, repair, replacements.**

(a) Maintenance. The exposed walls and roofs of buildings shall be maintained in a clean, orderly and attractive condition, free of cracks, dents, punctures, breakage and other forms of visible marring. Materials that become excessively faded, chalked or otherwise deteriorated shall be refinished or repainted. "Excessively faded" shall be defined as a color change exceeding seven Delta E (Hunter) units under ASTM D2244. "Excessively chalked" shall be defined as chalk in excess of ASTM D759 number 6 rating.

(b) The maintenance, repair, or replacement of existing building elements shall be performed in the following order of priority:

- (1) Maintaining the original materials, elements, and systems is the preferred and typically best method of preserving the character of existing buildings and shall be done except as otherwise authorized in (2) or (3) below.
- (2) If maintaining the original as provided above is not economically or technically feasible, repairs shall be done so that the original materials and elements remain intact by replacing the deteriorated portion in-kind using the same material as the original for replacement.
- (3) If, for technical or economic reasons, replacement in kind as provided above also proves not to be feasible, the deteriorated material or element shall be replaced with a compatible substitute material which has the same appearance, size, shape, texture, color, and other defining characteristics as the original. The substitute material shall also be physically and chemically compatible with adjacent materials so that it does not cause future maintenance problems.

Sec. 3.5.2.2. Alterations.

Exterior alterations to an existing building or to its site that affect appearance or landscape shall be done in a manner that does not detract from the character-defining features of the building, site, or the neighborhood.

Sec. 3.5.2.3. Additions.

Additions to existing commercial buildings are sometimes necessary to extend their functional or economic life. Consideration shall be given to the effect the location, size, and exterior appearance of the addition will have on an existing building and its neighbors. Visibility from a public right-of-way and the character of the existing

elevation to which the addition is to be attached shall be evaluated including: height, width, proportion, rhythm of windows and doors, roof shape, ornamentation, projections, and materials.

Sec. 3.5.2.4. New construction.

New construction shall follow the same general design principles as existing construction including particular attention to its setback from the street and its alignment with the front façades of neighboring buildings and landscape features. Achieving compatibility does not mean duplicating neighboring buildings or environment. A new building or addition shall be seen as a product of its own time. However, by effectively relating to the neighborhood, a new building shows the neighborhood's evolution just as the existing buildings show its past. By providing features or elements in the new building that support significant existing elements in the neighborhood, the new building will be a good neighbor, enhancing the character of the neighborhood.

*Division 3. Character Defining Elements**

Sec. 3.5.3.1. Setback, driveways, sidewalks, and parking for commercial/retail/office/industrial use buildings.

The City of Iowa Colony Unified Development Code is a part of the Iowa Colony zoning ordinance, subdivision ordinance, and building codes. Other parts of those ordinances currently indicate minimum building setbacks. Over time, those other regulations will be incorporated into the Unified Development Code. Until the incorporation is complete, there may be conflicts between regulations for the same condition in the Unified Development Code and in those other sources. In the case of conflict between a regulation in the Unified Development Code and a regulation for the same condition in other parts of the zoning ordinance, subdivision ordinance, or building codes, the regulation expressed in the Unified Development Code shall prevail and supersede all other regulations, but only to the extent necessary to resolve the conflict. Regulations for building setbacks for nonresidential zoning districts and nonresidential uses are as follows:

- (a) *Front building setback for commercial/retail/office use buildings.* To encourage both pedestrian and vehicular building access, depending on the type of street

***Note**—Observing and understanding specific details of design is critical to preserving the character of a neighborhood. Character-defining features include setback, orientation, scale, proportion, rhythm, massing, height, materials, color, roof shape and details, ornamentation, landscape features, such as plants, trees, fences, sidewalks, and driveways, and the design and location of secondary buildings, such as garages.

frontage, the front wall of a building shall be located at one of only three locations relative to the distance from the front property line, that property line that provides both legal and physical vehicular access to the property.

- (1) If the property frontage is not on a designated super arterial or major arterial, the front wall of the building shall be located on a build-to building setback line located ten feet from the ultimate right-of-way line of the street along the front of the property.
- (2) If property frontage is on a designated super arterial, the front wall of the building shall be located on a build-to building setback line of 71 feet from the ultimate right-of-way line of the street along the front of the property.
- (3) If both:
 - (i) Property frontage is on a designated major arterial; and
 - (ii) Either:
 - (a) The tract size is less than two acres; or
 - (b) The proposed building size is limited to a maximum of 25,000 square feet of gross leasable area (GLA);

then the front wall of the building shall be located on a build-to building setback line of 53 feet from the ultimate right-of-way line of the street along the front of the property.

- (4) If both:
 - (i) Property frontage is on a designated major arterial; and
 - (ii) Either:
 - (a) The tract size is two acres or larger; or
 - (b) The proposed building size is greater than 25,000 square feet of gross leasable area (GLA);

then the front wall of the building shall be located on a build-to building setback line of 71 feet from the ultimate right-of-way line of the street along the front of the property.

- (5) In the condition indicated in (1) above, the required street sidewalk may be replaced with a sidewalk between the building and the front property line within the ten foot space between the building and the street right-of-way line if the relocated sidewalk is located adjacent to the building wall and if the sidewalk is at least six feet wide and contains a minimum of a three-foot-wide pedestrian clear zone and if a public access easement document is recorded for use of the sidewalk on private property. No fences, trees,

shrubs taller than three feet, or freestanding permanent signs shall be placed between the front of the building and the street curb and no parking or driveway is allowed within the space between the building and the front property line.

- (6) In the condition indicated in (3) above, the space between the building and the front property line may be used for a private driveway with single-loaded (only on one side of the driveway) head-in, 90-degree parking. A minimum six-foot-wide sidewalk shall be located between the end of the parking spaces and the building wall and the sidewalk shall be adjacent to the front wall of the building. A public sidewalk six feet wide for arterials is also required within the street right-of-way along the front of the property. A front parking setback of 29 feet is required between the front of the building and the front property line and no driveway access to the front public street is allowed between the front of the building and the front property line. No fences, trees, shrubs taller than three feet, or freestanding permanent signs shall be placed between the front of the building and the street curb. Driveway access to the public street shall occur beyond the building end.
- (7) In the condition indicated in (4) above, the space between the building and the front property line may be used for a private driveway with double-loaded (both sides of the driveway) head-in, 90-degree parking. A minimum six-foot-wide sidewalk shall be located between the end of the parking spaces and the building wall and the sidewalk shall be adjacent to the front wall of the building. A public sidewalk six feet wide for arterials is also required within the street right-of-way along the front of the property. A front parking setback of five is required between the front of the building and the front property line. No fences, trees, shrubs taller than three feet, or freestanding permanent signs shall be placed between the front of the building and the street curb.
- (b) *Front building setback for industrial use buildings.* All industrial use buildings, regardless of the type of street frontage, shall be set back to a build-to setback line of 25 feet from the front property line but may be more than 25 feet if the owner can provide evidence satisfactory to the city that a deeper setback is required for public safety.

Sec. 3.5.3.2. Orientation for commercial/retail/office use buildings.

- (a) Buildings shall squarely face the front street, with their principal façade and entrance in full view. Buildings shall also have rear building entrances to access the building from the on-site parking located behind the building unless a minimum

five-foot-wide sidewalk is provided from the parking area to the front entrance. This is not an exception to any entrance, exit, or access requirements of the fire code or any other ordinance or law.

(b) Where on-site parking, not located in front of a building, is provided along street frontage, a minimum 20 feet parking setback from the street right-of-way is required. Only perpendicular driveways accessing the public street, directional signs (i.e., enter, exit, additional parking, with or without arrows), in conformance with the Iowa Colony Sign ordinance, and shrubs no taller than three feet, will be allowed within this parking setback. Only a maximum of 60 feet of parking lot width will be allowed along street frontage.

Sec. 3.5.3.3. Scale for commercial/retail/office use buildings.

(a) The overall scale of a building is its size relative to its neighbors and people. Other aspects of the scale of a building involve elements such as windows, doors, cornices, roofs, and architectural details. All non-governmental or non-religious buildings shall be scaled and designed to relate to the size of an average human being (typically a person of six feet in height). Governmental and religious buildings may be designed to be monumental to give the building prominence or symbolic importance.

(b) Scale can be achieved in a variety of ways. For example, the size of an element contributes to the scale of a building. Also, façades can be heavily rusticated, contributing to a sense of monumentality, or of plain materials and treatments, making the building appear to be more human in scale. The scale of a new building or addition shall respect and be compatible with the scale of its neighbors unless the building's use or symbolic importance, such as a church in a residential area, differs from that of its neighbors.

Sec. 3.5.3.4. Proportion for commercial/retail/office use buildings.

Proportion is the relationship of the size of building elements, such as windows and doors, to each other and to the building elevations. The design of an addition or a new building shall respect and be compatible with the existing proportions of neighboring buildings. Building proportions shall relate to the human form (i.e., vertical in stature, three main parts—base, trunk, head, etc.) and its proportional relationship.

Sec. 3.5.3.5. Rhythm for commercial/retail/office use buildings.

The spacing of repetitive façade elements, such as projecting bays, storefronts, windows, doors, masonry belt courses and the like, gives an elevation its rhythm. The

space between these façade elements can also provide a rhythmic relationship. Also, the space between freestanding buildings, the repetition of the same building type, and the height of roofs, cornices, towers, and other roof projections establish the rhythm along a street. Any addition or new building shall be compatible with the rhythm established by its neighbors and on the street on which it is located.

Sec. 3.5.3.6. Massing for commercial/retail/office use buildings.

Massing typically involves the articulation of a façade by the use of dormers, towers, and other roof projections, as well as façade projections such as bays, porches, and steps. This overall level of articulation visually emphasizes or de-emphasizes volumetric relationships which gives a building its perceived visual mass. The same volume building can appear larger in mass with less articulation and smaller in mass with more articulation as the articulation visually divides the façade into smaller visual parts. Any addition or new building shall be compatible with the massing established by its neighbors and on the street on which it is located.

Sec. 3.5.3.7. Height for all buildings.

(a) Building height in Iowa Colony is restricted to a maximum of two stories, but in no case more than 35 feet from the natural ground elevation, as fire protection above that height is not now possible. This regulation may be changed after fire-fighting equipment is secured to allow taller construction.

(b) Even in consideration of (a) above, should that height restriction be removed, a building still shall be designed to respect and be compatible with existing building heights. To be compatible, it does not necessarily have to be exactly the same height as its neighbors but two similar elements at a different height shall not be directly adjacent to each other but have some gap space between to allow for the visual disparity. Visual height is determined by not only the height of walls, but also of cornices and roofs, as well as chimneys and towers, which contributes to the character of existing buildings, neighborhoods, and commercial areas. New in-fill construction must not be more or less than one story different in height than the prevalent height of existing buildings on the same street that are all generally the same height.

Sec. 3.5.3.8. Materials.

- (a) *Exterior materials for office, commercial/retail, and industrial uses.*
- (1) *Office and commercial/retail use buildings.* Only the following building materials shall be used for all office and commercial/retail buildings located within the City of Iowa Colony jurisdiction:
- a. *Masonry.* Brick, stone, concrete masonry units (CMUs) with split-face, fluted, scored or other rough texture finish. (Specifically excluding smooth finish CMU or concrete brick with the color and texture of clay brick.)
 - b. *Concrete.* Precast, cast in place, or tilt up panels provided a rough texture is present or to be added before the construction is substantially complete, and if the building is unoccupied, before it is occupied. Smooth finish concrete on vertical panels is not allowed.
 - c. *Stucco.* True stucco consisting of multiple layers placed on an expanded metal lath base. Color shall be included in the final top layer integral with the mix. Painted stucco will not be allowed.
 - d. *Structural clay tile.* Excluding glazed surface finish.
 - e. *Glass.* Glass curtain walls or glass block, but mirror glass which reflects more than 40 percent of incident visible light shall not be used on more than 20 percent of the exterior walls of any building.
 - f. *Metal.* Used only in incidental trim purposes.
 - g. *Roofing materials.* Standing seam metal, natural metal, uncolored, for projection canopies on walls over windows or other openings. No other roofing materials shall be visible from a public street at standing eye level.
- (2) *Industrial use buildings [fronting on arterial or collector streets].* Industrial buildings fronting on arterial streets or collector streets may utilize the following approved materials:
- a. Fronts of all industrial buildings located on streets classified as arterials or collectors, i.e., four lanes or greater, shall utilize 100 percent approved materials specified in (a)(1) above.
 - b. Sides of all industrial buildings facing or fronting on arterial streets or collector streets shall incorporate a minimum of 50 percent of the approved materials listed in (a)(1) above. The other 50 percent of the sides shall use only the approved materials listed in (a)(1) above or pre-engineered and

pre-finished rough textured metal siding panels and/or pre-engineered and pre-finished rough textured metal siding panel systems, meeting adopted building codes.

- (3) *[Industrial use buildings fronting on other than arterial streets.]* Industrial buildings fronting on other than arterial streets shall utilize only the following materials:
 - a. Fronts of all industrial buildings facing a non-arterial or non-collector street shall incorporate a minimum of 50 percent of the approved materials listed in (a)(1) above.
 - b. Sides of all industrial buildings facing or fronting on other than arterial streets or collector streets shall utilize only the same materials allowed in (a)(1) or (2) above.
- (4) *[Industrial use buildings behind other buildings fronting on public streets.]* Industrial buildings located in areas behind industrial or other buildings that directly front on a public street shall utilize only the following materials:
 - a. Fronts of all industrial buildings so located shall incorporate a minimum of 50 percent of either the approved materials listed in (a)(1) or (2) above.
 - b. The other 50 percent of the front and all of the remaining sides of all industrial buildings so located shall utilize only the approved materials listed in (a)(1) or (2) above.
- (5) *Conditional materials.* However, the following materials may be used if a variance is granted.
 - a. *Wood.* Only when used to provide compatibility to surrounding buildings or residential districts.
 - b. *Vinyl.* Only when used to provide compatibility to surrounding buildings.
 - c. *[New material.]* New materials not listed as approved, prohibited or conditional, may be approved if a variance is granted. In addition to the other requirements for a variance, the variance shall not be granted unless the alternative finish is substantially equal to or better than an allowed or specified exterior finish in quality, durability, and unless the use of the material will not violate any other provision of this UDC.
- (6) *Temporary materials.* Materials for temporary use may only be allowed for a specific period of time as determined by the city council on a case-by-case basis.

Approval of temporary materials shall be noted on the building permit or development site plan and the specific period of time the temporary material is allowed.

- (7) *Prohibited materials.* Exterior building materials are intended to be long lasting and low maintenance. Exterior building materials not listed either as approved, conditional or temporary materials as defined herein are prohibited. New materials may be considered as conditional materials and may be considered for approval or disapproved as in (5) above; otherwise, the following materials are prohibited on the exterior of a building:
- a. Vinyl siding, wood fiber hardboard siding, oriented strand board siding, plastic or fiberglass panels, corrugated or ribbed panels, of any thickness, or any flat metal panel less than 26 Ga. thick;
 - b. Galvanized, aluminum coated, zinc-aluminum coated or unpainted exterior metal finishes, except for trim purposes around door, window, and other openings, which cannot exceed five percent of the total façade area per wall;
 - c. Unfired or underfired clay, sand or shale brick, or concrete masonry units (CMUs) when used as more than trim or ornamentation, or smooth or un-textured concrete finishes including cement panels without a top-coat material of true stucco;
 - d. Concrete finish or precast concrete panel (tilt wall) without a profiled finish of exposed aggregate, hammered, sandblasted, sculptured, fluted, or other architectural concrete finish;
 - e. Mirrored glass with a reflectance greater than 40 percent shall not be permitted on more than 20 percent of the exterior walls of any building;
 - f. Exterior insulation finishing system (EFIS);
 - g. Painted materials including brick, thin brick, naturally occurring stone, concrete masonry units or cementitious stucco.

Sec. 3.5.3.9. Colors.

(a) The only permitted colors are those colors that are derived from the materials used in construction, for example, brick, stone, terra cotta, slate, asphalt shingle, copper, lead, and other materials that are typically left unpainted and would give color to a building. Color may be applied to wood as a stain that also helps protect the

building material. Color that is an inherent internal part of the final product may also be an ad-mixture to stucco and concrete during the initial placement or forming. No more than three distinct colors shall be used on a building.

Sec. 3.5.3.10. Roofs.

(a) *Roof shape.* The shape of a roof and its details are character defining elements. An addition or new building shall have a roof shape that is compatible with the existing roof shapes along the street. In a street with flat roofs, an addition or new building shall also have a flat roof (not truly flat as a slight grade is required for drainage) or a sloped roof may be provided behind a visually flat parapet wall. Conversely, if an existing street has buildings with sloped roofs then an addition or new building shall have a roof shape that is compatible with the existing roof shapes along the street. Introducing a different roof shape, such as a flat roof within an area that has sloped roofs, would not be in keeping with the existing character of the street.

(b) *Roof elements and details.* Roof elements and details allowed include only: cornices, parapets, eaves, dormers, towers, finials, cresting, gutters, and downspouts. Parapets must have a cap or coping made of metal, tile, stone, or precast concrete.

(c) *Gutters and downspouts.* If exterior gutters and downspouts are used, they must be made of galvanized steel or copper. If not the natural metal or galvanized, the color of the gutters and downspouts must match the building trim color. Downspouts shall be connected directly to the underground storm sewer system or connected to a rain-water retention system or a natural green space bio-swale for ground absorption of the stormwater.

(d) *Sloped roofs.* If slope roofs are used, they shall be covered with metal, either panels (standing seam) or shingles, slate, or clay tile. Asphalt shingles, wood shingles or wood shakes are not allowed.

(e) *Roof appurtenances.* Satellite dishes, communication towers, solar panels or other roof additions shall be located so that they are not visible from a public street.

(f) *HVAC equipment.* Heating, ventilating and air conditioning (HVAC) equipment shall be located to not be visible from a public street or shall be screened from view. Screens shall be designed to be compatible with the proportion, scale, materials, color and other character defining elements of the building. Mechanical penthouses, if required, shall be compatible with the building design if they can be seen from a street.

Sec. 3.5.3.11. Offsets.

(a) Horizontal breaks shall be provided on all sides of buildings to provide architectural relief and may include bands of accent color, brick course variances in color or placement, i.e., soldier course bricks for bands of different texture, windows, cornices, wall protrusions, horizontal belt courses, etc. The maximum horizontal distance without a break shall be 25 feet.

(b) Vertical breaks shall be provided on all sides of buildings to provide architectural relief as in (a) above. The maximum vertical distance without a break shall be ten feet.

(c) Articulation. Not less than 15 percent of the area of each front exterior façade, and of each street sidewall where a building is located on a corner lot, excluding windows, doors or overhead doors, shall be recessed, projected or alternately staggered from the primary plane of the wall. For purposes of this section, fascia or mansards shall not be counted as a projection from the primary plane. Recess shall mean a minimum of four inches from the primary wall plane and projection shall mean a minimum of six inches from the primary wall plane.

Sec. 3.5.3.12. Storefronts.

The primary purpose of a storefront is to display merchandise or market services to the public, both pedestrian and vehicular. Modern storefronts often consist of simple metal tubing and glass. Storefronts shall either align with the building wall or be slightly inset behind the building wall but not project from the building wall into the pedestrian space.

- (a) *Primary entrance treatment.* Each building shall have at least one visually identifiable building entrance on the facing street side. Additional building entrances are possible but all other building entrances shall be visually secondary to the primary building entrance. The primary building entrance shall have unique ornamentation and/or be larger in area than any other building entrance visible from a public street. Multiple tenants in the same building that are located adjacent to the exterior street facing wall may have individual tenant entrances. However, unless all building tenants have exterior entrances, the primary building entrance shall be visually identifiable.
- (b) *Transparency.* Each exterior wall of a commercial/retail/office building facing a public street must contain at least 65 percent transparent material to allow visual penetration of at least three feet into the building. Transparency includes stationary glass, windows, and the glass area of doors.

- (c) *Canopies/overhang.* All glass display areas and entrances shall have an overhead canopy or permanent overhang at least four feet projecting from the building wall and extending at least the entire length of the display area or entrance. Building entrances inset at least four feet into the building from the exterior wall plane do not require a canopy or overhang.
- (d) *Street furniture.* All new buildings and all new additions with a new primary building entrance shall provide at least one two-person metal bench, at least one metal litter container, and at least one two-bike, two-point-of-contact metal bicycle rack, all located within 25 feet of the primary building entrance. These items must comply with any details in the engineering design criteria manual.

Sec. 3.5.3.13. Details and ornamentation.

The general degree of detail and ornamentation provided in new buildings and additions to existing building(s) shall be compatible with that found on the existing buildings adjacent on the street. A contemporary interpretation of details found on older, existing buildings can be an effective way to differentiate a new building, or addition to an older building, from an existing building.

Sec. 3.5.3.14. Landscape features.

Plants, trees, fences, retaining walls, sidewalks, driveways, decorative retaining walls and fences are important character-defining elements. When possible, existing plant material shall be maintained, especially mature trees and shrubs. However, new landscaping with flowers and shrubs can complement the entire area, enhance the structure itself, and improve the appearance of the neighborhood. New fencing and/or new or repaired retaining walls shall match or complement the existing styles of neighborhoods. All natural site areas or vegetated area shall be irrigated by automatic irrigation systems. Non-spray heads are to be used on all trees, shrubs, and flowerbed areas.

Sec. 3.5.3.15. Secondary buildings.

Secondary buildings include structures such as garages, sheds, and other outbuildings. They often impact the scale and texture of the property and present a contrast to the primary structure. The design of new secondary buildings shall be compatible with the location, size, materials and other defining characteristics of the main building. Prefabricated sheds and structures shall be used with reservation and if used, should complement the primary structure in color and design. Metal shipping containers and other metal storage containers are not allowed on commercial/retail/office sites for a continuous period beyond three days.

Sec. 3.5.3.16. Lighting.

Exterior site lighting is regulated by article 4, exterior environmental lighting, in this UDC. Additionally, exterior lighting fixtures shall be in harmony with the character of the buildings. Visible lighting fixtures shall be mounted in entrance ways and on the front façade of the building. Concealed flood lighting may be used to light façades. Lighting fixtures shall be inconspicuous. Electrical elements such as wires, conduits, junction boxes, transformers, ballasts, switches, and panel boxes shall be concealed. Lighting shall comply with any criteria in the engineering design criteria manual.

(a) Allowed lighting methods:

- (1) Fully recessed downlights or wall washers.
- (2) Shielded lamps with diffusers.
- (3) Gooseneck or bent tube arm to prevent glare at pedestrian level.

(b) Prohibited lighting methods:

- (1) Exposed lamp lighting.
- (2) Exposed high power lamps that cause "over lighting" and excessive glare on the street.
- (3) Exposed bulbs.
- (4) Lights that blink, black out, flash, or have mechanical motion.

*Division 4. Signage**

Sec. 3.5.4.1. Sign types.

In addition to the flat, wall-mounted signs indicated in section 25 of the sign ordinance and window and door signs allowed in section 26 of the sign ordinance, two other sign types are allowed as a part of this article:

- (a) *Wall projecting signs or blade signs.* As a part of the total allowed wall sign area, wall projecting signs are allowed that extend in a perpendicular manner from the

***Note**—Site and building signage is regulated by the City of Iowa Colony sign ordinance (currently 2016-19). Site monument sign regulations are located in section 24.B. Building wall sign regulations are located in section 25. Additional building signage regulations are contained herein in addition to those located in the sign ordinance. In general, the design of signs shall neither obscure nor detract from architectural details of a building and shall help to emphasize any unique shapes or details of the façade, to draw attention to the building entrance, or to emphasize a display window. Once installed, signs must be maintained with respect to graphic characters, paint, fading, and other types of deterioration. Damaged and obsolete signs, as well as related posts, wiring and structures, are required to be repaired or removed.

building wall for a total distance of no more than 24 inches. Only one wall projecting sign is allowed per tenant in a multi-tenant commercial/retail building. Wall projecting signs are not allowed for office buildings.

- (b) *Under canopy signs.* As a part of the total allowed wall sign area, horizontal format, hanging signs located under building canopies are allowed but not longer than 24 inches and no lower than seven feet from the sidewalk elevation.

Sec. 3.5.4.2. Materials.

Signs shall be constructed of materials that are durable and easy to maintain such as aluminum, stone, acrylic, glass, and stained glass.

Sec. 3.5.4.3. Illumination.

Light sources external to the sign surface and directed toward the sign are preferred. The light level shall not detract from the building façade or other elements along the streetscape. The source of external lighting shall be shielded from pedestrian view. Individually lit or internally lit characters and back lit characters are acceptable. Flashing or moving signs, other than barber poles, are not permitted.

Sec. 3.5.4.4. Shape.

Signs shall consist of simple, straightforward shapes.

Sec. 3.5.4.5. Graphics.

The character forms shall occupy not more than 75 percent of the total sign panel. Finishes shall be matte or non-glare.

CHAPTER 4. SUBDIVISION DESIGN AND IMPROVEMENTS

ARTICLE 1. SUBDIVISION PLATTING (RESERVED)

ARTICLE 2. STREET LIGHTS

Division 1. General

Sec. 4.2.1.1. Purpose.

(a) The purpose of this chapter is to provide motor vehicle drivers and pedestrians with quick, accurate, and comfortable vision at night, taking into consideration the need to provide lighting in an economically feasible manner that is consistent, safe, and

compatible with surrounding land use. The purpose of this chapter is to also help property owners and developers understand the standard street lighting process as well as the fixture options available.

(b) Street lighting is a vital part of any community and when properly designed, street lighting can reduce automobile collisions, deter crime, and foster a sense of safety. Properly designed street lighting can all add aesthetic appeal, as well as contribute to the overall structural design of any community.

(c) This chapter includes requirements for street lighting within the city limits and the extraterritorial jurisdiction of the City of Iowa Colony within:

- (1) All public roadway rights-of-way, except those directly controlled by the Texas Department of Transportation; and
- (2) All private roadways within single-family residential subdivisions where private roadways are provided for primary lot access, the private roadways are designed to public street standards, and there is a homeowner's association (HOA) established that can and will maintain and provide operation funding for the provided street lights.

(d) The City of Iowa Colony city engineer shall approve street lighting plans for all street light improvements within the City of Iowa Colony limit and the extraterritorial jurisdiction of the City of Iowa Colony.

(e) Construction plans for private improvements within public rights-of-way and public easements that connect to or affect the public infrastructure shall be approved by the City of Iowa Colony city engineer subject to the requirements of this chapter and are subject to review and approval using the technical requirements defined in the City of Iowa Colony engineering design criteria manual (DCM). Private streets designed and built to public street standards with the same general geometric cross section as a public street shall be required to have street lighting in conformance with this chapter.

(f) The City of Iowa Colony has standardized its street light fixtures in an effort to continue to provide exceptional service to its citizens and property owners. CenterPoint Energy is the primary company that provides, maintains, and operates street light fixtures within Iowa Colony. Fixtures have been selected from those currently available from CenterPoint Energy from various manufactures to ensure a standardized community image. Using CenterPoint approved fixtures will ensure continued compatibility with the existing electrical system. Using CenterPoint approved fixtures also provides faster repair time, lower operational and installation costs, while maintaining a high level of street lighting standards.

(g) The City of Iowa Colony supports initiatives that reduce light pollution and ecosystem disturbance while maintaining the public's sense of safety and security within our community. To that end, the location and spacing criteria included herein shall be the maximum allowable lighting unless otherwise approved by the city engineer.

(h) As new technology, after thorough testing, becomes available and as the lighting industry changes, the City of Iowa Colony will update this chapter to provide its citizens and property owners with the most reliable, cost effective, functional, and long-lasting lighting products.

Sec. 4.2.1.2. Responsibility for installation and maintenance in existing developments.

(a) Existing developments are those developments where formal application for city approval, usually in the form of submittal of a set of construction plans, has been made as of the date of final adoption of this chapter, or those developments that are already in existence at the time of adoption of this chapter regardless of whether city approval was given, to the extent such development is already in place or to the extent application for city approval has already been made.

(b) In no case shall the standards in this chapter be interpreted to mean that existing street lights already installed or proposed in existing developments be removed, relocated, or otherwise changed unless the current street light layout of an existing development is to be substantially altered from the condition in place due to public safety endangerment at the time of the adoption of this chapter. In such instances, the new layout will conform to the technical standards set forth in this chapter.

(c) In existing residential and commercial developments where street lights are installed or proposed to be installed throughout the development, or a section thereof, by the developer or homeowners association (HOA) of the development or section, CenterPoint Energy, as funded by the developer or HOA, shall maintain and ensure the proper illumination in accordance with this policy of the street lighting, including paying of the installation and the monthly utility cost therefor, as required by CenterPoint. It shall not be the responsibility of the city to maintain or pay the monthly utility cost for street lights.

(d) In existing residential and commercial developments or sections thereof, where street lights have not been installed nor are proposed to be installed by the developer or HOA, the city may, at their option and if funding is available and authorized by city council, opt to provide for the installation and maintenance of street lighting by CenterPoint Energy.

(e) Notwithstanding anything to the contrary herein regarding existing developments, along existing major arterials or a portion thereof, where street lights have not been installed nor are proposed to be installed, the city may, at their option, provide for the installation and maintenance of street lights by CenterPoint Energy, including proper illumination, when the average daily traffic count, stage of development, street design, existing illumination levels and budgeted funds allow for the same, as determined by the city.

(f) In those cases where arterial or collector street intersections will be improved with traffic signalization, as indicated on the adopted City of Iowa Colony major thoroughfare plan, street light design should incorporate the future traffic signalization criteria.

Sec. 4.2.1.3. Responsibility for installation and maintenance in new developments.

(a) New developments are those developments where a complete formal application for city approval or conditional approval, usually in the form of submission of a preliminary plat (or where a preliminary plat is not required, a final plat) or a site plan, has not been made as of the date of adoption of this chapter. The developer shall include a street light layout plan, conforming to the provisions of this chapter and the DCM, with the construction plans submitted for approval by the city.

(b) In all new residential and commercial developments, CenterPoint Energy, as funded by the developer shall be responsible for the installation and maintenance, including the proper illumination, of street lights along all streets or portions of streets prior to the end of the one year maintenance period of the streets. Utility charges for the operation and maintenance of same will be the responsibility of the developer or the HOA, and shall be paid directly to the electrical service provider. The developer or the HOA and CenterPoint Energy will maintain a contract for maintenance of the street lights.

(c) Notwithstanding anything to the contrary herein regarding new developments, the developer of property adjacent to any arterial or collector, existing or proposed, designated on the City of Iowa Colony major thoroughfare plan, or of property within which a portion of any arterial or collector, existing or proposed, designated on the City of Iowa Colony major thoroughfare plan, is situated or proposed, shall be responsible for the installation and maintenance, including ensuring the property illumination, of street lights along the indicated roadway for the length of the designated thoroughfare along which the development is situated. When a developer develops only on one side of a designated thoroughfare, he is required to install and maintain only those street

lights required for the developer side of the designated thoroughfare. The responsibility to install and maintain street lights as set forth herein by the developer continues with a direct contract with CenterPoint Energy. The monthly utility charge for the street lights is the responsibility of the developer or HOA, and is paid directly to the retail electric provider.

Division 2. Requirements

Sec. 4.2.2.1. Street light location/spacing.

- (a) *Ambient lighting Level 0 area.* Street lights shall not be required except as follows:
 - (1) *Local streets.* Street lights shall not be required.
 - (2) *Collector streets.* Street lights shall only be required at all street intersections along collector streets. Only one street light is required at each intersection.
 - (3) *Minor arterials.* Street lights shall only be required at all street intersections along minor arterial streets. Two street lights, one on each opposing diagonal corner for "X" intersections and one street light on "T" intersections.
 - (4) *Major arterials.* Street lights shall only be required at all street intersections and at all median openings along major arterials. Two street lights, one on each opposing diagonal corner for "X" intersections and at median openings with streets on both sides of the median opening and one street light on "T" intersections and at median openings with only a street only on one side of the median opening.
- (b) *Ambient lighting Level 1 area.* Street lights shall be required as follows:
 - (1) *Local streets.* Street lights shall be required at all street intersections, 90-degree turns, and at the end of culs-de-sac or dead ends. Only one street light shall be required in each of these conditions.
 - (2) *Collector streets.* Street lights shall be required at all street intersections along collector streets. Only one street light is required at each intersection.
 - (3) *Minor arterials.* Street lights shall only be required at all street intersections along minor arterial streets. Two street lights, one on each opposing diagonal corner for "X" intersections and one street light on "T" intersections.
 - (4) *Major arterials.* Street lights shall only be required at all street intersections and at all median openings along major arterials. Two street lights, one on each opposing diagonal corner for "X" intersections and at median openings with streets on both sides of the median opening and one street light on "T"

intersections and at median openings with only a street only on one side of the median opening. In no case shall there be more than 1,200 feet between street lights.

(c) *Ambient lighting Level 2 area.* Street lights shall be required as follows:

- (1) *Local streets.* Street lights shall be required at all street intersections, 90-degree turns, and at the end of culs-de-sac or dead ends. Only one street light shall be required in each of these conditions.
- (2) *Collector streets.* Street lights shall be required at all street intersections along collector streets. Only one street light is required at each intersection.
- (3) *Minor arterials.* Street lights shall be required at all street intersections along minor arterial streets. Two street lights, one on each opposing diagonal corner for "X" intersections and one street light on "T" intersections. In no case shall there be more than 1,200 feet between street lights.
- (4) *Major arterials.* Street lights shall be required at all street intersections and at all median openings along major arterials. Two street lights, one on each opposing diagonal corner for "X" intersections and at median openings with streets on both sides of the median opening and one street light on "T" intersections and at median openings with only a street only on one side of the median opening. In no case shall there be more than 1,200 feet between street lights.

(d) *Bridge crossings.* Street lights shall be required as follows unless lighting internal to the bridge structure sufficiently provides traffic safety lighting as determined by the city engineer. Drainage structure opening sizes of 24 inches or less shall not require lighting:

- (1) *Ambient lighting Level 0 area.* All street types shall not require a street light at bridge/culvert drainage crossings. Approved TxDOT reflective markings shall be required on bridges in these locations.
- (2) *Ambient lighting Level 1 area.* A street light shall not be required at a bridge/culvert drainage crossing except for a major arterial which will require one street light or equal bridge lighting located within 100 feet of one end of the bridge.
- (3) *Ambient lighting Level 2 area.* A street light is required for all street types except local for a street light to be placed within 100 feet of each end of a bridge/culvert drainage crossing.

(e) *[Intersections on major and minor arterials.]* Notwithstanding any provision herein to the contrary, street lights at intersections on major and minor arterials will be located so as to illuminate the major arterial and not turned to illuminate the other public street.

Sec. 4.2.2.2. Street light lumen size/manufacturer.

(a) The lumen size and manufacturer of street lights required to be installed will be in accordance (as provided by CNP CenterPoint Energy as approved LED street lights) with the DCM, subject to modification by the city engineer should a specified light luminaire no longer be available or be low performing.

Sec. 4.2.2.3. Street light poles.

The City of Iowa Colony desires a consistent, blended visual look for street light poles per provider/manufacturer indicated in the DCM of either standard wooden poles or standard grey steel poles in the following locations all at a fixture height of 30 feet above natural grade.

- (a) Wooden poles, with metal arms for the luminaire, shall be used at all locations within ambient lighting level 0 areas except along designated major and minor arterials which shall have grey steel poles (CenterPoint approved).
- (b) Grey steel poles shall be used in all residential developments in ambient lighting Level 1 and 2 areas.
- (c) In ambient lighting Level 1 and 2 areas, in commercial/industrial developments, grey steel poles are preferred. Where wood poles and overhead wires are already prevalent, wood poles will be used for street lights, using metal arms for the luminaire.

Sec. 4.2.2.4. Special conditions.

From time to time, special conditions may exist that render it necessary to alter the lumen size, spacing requirement, or other technical standards to adequately meet the objectives of this chapter. Such special conditions shall include, but not necessarily be limited to, the following:

- (a) In new construction of developments and arterials, the developer may be required to install lights in excess of the standards set forth in this chapter to lessen traffic and safety hazards existing because of certain site conditions which prevent the technical standards from providing sufficient lighting for

traffic safety, as determined by the city engineer. These conditions include, but are not limited to, pavement type, number of interchanges, street design, ratio of night to day accidents, and other relevant matters.

- (b) Wherever the city may deem it necessary or desirable, the city may elect to be responsible for the installation and maintenance of street lighting in excess of policy standards to lessen traffic safety hazards or otherwise alter existing conditions.

CHAPTER 5. DEFINITIONS

ARTICLE 1. GENERALLY APPLICABLE DEFINITIONS

Division 1. General Definitions

Sec. 5.1.1.1. General definitions.

(a) The following definitions are intended to provide descriptions for words and terms used within this UDC. Absent any conflict, words and terms used in this UDC shall have the meanings ascribed thereto in this chapter 5. When words and terms are defined herein, and are also defined in other ordinance(s) of the city, shall be read in harmony unless there exists an irreconcilable conflict, in which case the definition contained in this chapter 5 shall control. For any definition not listed in this chapter 5 of this UDC, the definition found within the latest edition of Webster's Dictionary shall be used.

Abandonment: As related to nonconforming uses and structures, having been abandoned as described in this UDC.

Absolute photometry: Photometric measurements (usually of a solid-state luminaire) that directly measures the footprint of the luminaire. Reference Standard IES LM-79.

Abutting: Having property or district lines in common, or two objects in immediate contact.

Access: Means of approaching or entering a property. Includes a right of passage to and from an adjacent street, alley, or property.

Accessory: Being secondary or subordinate to something else.

Accessory dwelling: A subordinate building that is detached from the primary on-site structure, is used as a residence, is incidental to the main structure (i.e., the building area must be significantly less than that of the main structure), and is not involved in the conduct of a business.

Accessory structure (business or industry): A subordinate building to a building used for nonresidential purposes that does not exceed the height of the main building and does not exceed 30 percent of the floor area of the main building, and that is used for purposes accessory and incidental to the main nonresidential use. Also see *Accessory use*.

Accessory structure (residential): A subordinate building that is either detached from or attached by only a breezeway to the primary on-site structure, and that is clearly incidental and secondary to the permitted on-site use, and which does not change the character thereof, including, but not limited to, garages, bathhouses, greenhouses, barns, tool sheds, or swimming pools.

Accessory use: A use that is clearly and customarily incidental and secondary to the permitted and/or principal use of land or building(s), and that is located upon the same lot therewith, and which does not change the character thereof, including garages, living quarters for servants, greenhouses, or tool sheds. The land/building area that is used for the accessory use is significantly less than that used for the primary use.

Addition: An extension or increase in floor area or height of an existing building or structure.

Adult day care center: A community-based group program which is licensed by the state of Texas and designed to meet the needs of functionally and/or cognitively impaired adults through an individual plan of care. These structured, comprehensive programs provide a variety of health, social, and other related support services in a protective setting during any part of a day, but less than 24-hour care. Adult day care services are dedicated to keeping adults needing assistance healthy, independent, and non-institutionalized. Adult day centers generally operate programs during normal business hours five days a week. Some programs offer services in the evenings and on weekends.

Agricultural animal husbandry: The breeding, judging, care and/or production of farm animals.

Airport: An area reserved or improved for the landing or take-off of aircraft other than rotary wing aircraft.

Alley: A public way which is used primarily for vehicular access to the back or side of properties.

Altered or alteration: Any change, modification or transformation.

Ambulance service: Provision of private (not operated by the City of Pearland) emergency transportation which may include mobile medical care, and the storage and maintenance of vehicles.

Amenitized detention/retention pond: An area that is designed to capture, store and release stormwater and that is designed as a site amenity by being aesthetically pleasing, by meeting the definition of "open space" herein, and be being constructed to seem natural (i.e., without visible concrete). Such areas have a natural edge and are constructed to resemble a naturally created lake or pond. Also refer to the definition of "amenity" below.

Amenity: Aesthetic or other characteristics of a development that increase its desirability visually, desirability to the City of Iowa Colony, and/or its marketability to the public. Amenities may vary according to the type and nature of development, but examples include a naturalized retention/detention pond (refer to definition herein), a recreational facility, landscaping, or large trees.

Animal hospital: An institution where the sick or injured animals are given medical or surgical care.

Annual bed: Any landscape where the majority of plants are intended to be replaced yearly or more frequently.

Antenna: An antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain (e.g., commercial broadcasting, cellular/wireless telecommunications, etc.). A receive-only television antenna or satellite dish antenna that exceeds four feet in diameter shall also be considered to be within this definition.

Antique shop: A business which sells items whose value is greater than original purchase price because of age or extrinsic value.

Apartment: See *Dwelling, multifamily*.

Appeal: A request for review of and relief from any decision applying a provision of this code and which is authorized.

Appliance repair: The maintenance and rehabilitation of appliances that are customarily used in the home including, but not limited to, washing and drying machines, refrigerators, dishwashers, trash compactors, ovens and ranges, countertop kitchen appliances, vacuum cleaners, etc., but not including appliances/equipment which have internal combustion engines.

Arcade: A series of piers topped by arches that support a permanent roof over a sidewalk.

Architectural lighting: Lighting designed to reveal architectural beauty, shape and/or form for which lighting for any other purpose is incidental.

Architectural metal: Metal products used for window and door trim, fascia, or soffit.

Art studio and/or gallery: Where objects of art are created or displayed for the public enrichment or where said objects of art are displayed for sale (including the teaching of both painting and sculpting).

Articulation: An interruption/differentiation of the building wall plane with either a recess (concavity) or an offset (convexity) that projects away from the building wall plane by a measurable distance.

Artificial lot: An area within the contiguous tract(s) or parcel(s) held under common ownership and designated on the building permit application that is delineated by the building official for the sole purpose of satisfying the requirements of this article.

As-built/record drawings: A group of drawings that depicts the final configuration of the installed or constructed improvements of a development, improvements which have been verified by the contractor as their installation or construction occurs during development. The as-built or record drawings should reflect the construction plans (or working drawings) used, corrected, and/or clarified in the field. For the purposes of this UDC, the terms "as-built drawing" and "record drawing" shall be interchangeable.

Asphalt batching plant: A permanent manufacturing facility engaged in the production of asphalt.

Assisted living facility: A congregate residence facility for four or more elderly (over 55 years of age) persons, regardless of legal relationship, who need limited assistance with daily living activities. A limited number of support services such as meals, laundry, housekeeping, transportation, social/recreational activities, hairdressing, etc. may be provided or associated with the assisted living facility. Units may be attached or detached, single- or double-occupancy, and may include limited or full kitchen facili-

ties. Full-time medical or nursing care is not typically provided by the facility, but may be privately arranged for by individual residents on a part-time or temporary basis (e.g., visiting nurses, etc.).

Association: When related to plants, a natural unit of vegetation characterized by a relatively uniform species composition and often dominated by a particular species.

Astronomic time switch: An automatic lighting control device that switches outdoor lighting relative to time of solar day with time of year correction.

Auto accessories and/or parts (retail sales only): The use of any building or other premises for the primary inside display and sale of new or used accessories and/or parts for automobiles, panel trucks or vans, trailers, or recreation vehicles. This definition expressly does not include a wrecking or salvage yard; this is separately defined herein.

Auto rental: A business establishment that provides for the renting of automobiles and light trucks on a short-term basis (differentiated from leasing, which is on a long-term basis). This may also involve the incidental storage of the automobiles and light trucks being rented.

Auto repair (major): General repair or reconditioning of engines, air-conditioning systems and transmissions for motor vehicles; wrecker service; collision repair services including body, frame or fender straightening or repair; customizing; painting; vehicle steam cleaning; undercoating and rustproofing; those uses listed under the term "auto repair (minor)"; and other similar uses.

Auto repair (minor): Minor repair or replacement of parts, tires, tubes and batteries; diagnostic services; minor maintenance services such as grease, oil, spark plug and filter changing; tune-ups; emergency road service; replacement of starters, mufflers, alternators, hoses and brake parts; automobile washing and polishing; performing state inspections and making minor repairs necessary to pass said inspection; normal servicing of air-conditioning systems; and other similar minor services for motor vehicles except heavy load vehicles, but not including any operation named under *Auto repair (major)* or any other similar use.

Auto sales/dealer or lot: A paved area for the display for sale of motorized and non-motorized vehicles accompanied by an on-site office with staffing during normal business hours.

Auto wash (full-service/detail shop): Washing, waxing or cleaning of automobiles or light duty trucks where the owner of the vehicle does not actually wash the vehicle. The

owner either leaves the vehicle and comes back to retrieve it later, or the owner waits in a designated area while employees of the car wash facility vacuum, wash, dry, wax and/or detail the vehicle for a fee.

Auto wash (self-service): Washing, waxing or cleaning of automobiles or light duty trucks where the owner of the vehicle causes the vehicle to become washed. One type of unattended car wash facility utilizes automated self-service (drive-through/rollover) wash bays and apparatus in which the vehicle owner inserts money or tokens into a machine, drives the vehicle into the wash bay, and waits in the vehicle while it is being washed. The other type of unattended facility is comprised of wand-type self-service (open) wash bays in which the vehicle owner drives the vehicle into the wash bay, gets out of the vehicle, and hand washes the vehicle with a wand-type apparatus by depositing coins or tokens into a machine.

Automatic irrigation controller: A timer capable of operating solenoid valves to set days and lengths of time for proper application of water, in each irrigation zone.

Awning: A flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below from the elements.

Backlight: For an exterior luminaire, lumens emitted in the quarter sphere below horizontal and in the opposite direction of the intended orientation of the luminaire. For luminaries with symmetric distribution, backlight will be the same as front light.

Bakery or confectionary shop (retail sales): A retail facility that is used for the production and/or sale of baked goods and confectionaries to the general public.

Bakery (wholesale): A manufacturing facility that is used for the production and distribution of baked goods and confectioneries to retail outlets.

Balcony: An open portion of an upper floor extending beyond a building's exterior wall that is not supported from below by vertical columns or piers.

Barber/cosmetology school/college: A for-profit business school that offers instruction and training in the barber, beauty, and/or cosmetology, but not including any other type of trade or commercial school.

Bay window: Generally, a U-shaped enclosure, extending the interior space of the building outward of the exterior building wall.

Bed and breakfast inn: A dwelling occupied as a permanent residence by an owner or renter. Within the dwelling, sleeping accommodations in not more than five rooms for

transient guests are provided and breakfast is provided, both for compensation. The period during which accommodations and breakfast are provided generally does not exceed seven days.

Best management practices (BMPs): Irrigation, lawn, and landscape practices designed to reduce negative impacts on the environment and to promote water conservation.

Block: An area bordered or enclosed by a street or streets.

Block face: That portion of a block that abuts a street between two intersecting streets.

Block length: The distance, as measured along the street centerline, from one end of a row or group of lots to the other end. A block is determined by the streets along its boundary which surround one or more lots. Such streets shall be through streets, not cul-de-sac streets. A block adjacent to a cul-de-sac shall not be counted as a block.

Board of adjustment: The zoning board of adjustment of the City of Iowa Colony. Also may be referred to with the acronym "ZBA."

Boarding or rooming house: Also referred to as "boardinghouse." A building, built and/or used for residential purposes, where meals are served for compensation to a person or persons residing in the building, and where no cooking facilities are provided in individual living units.

Brackets: A simple rigid structure in the shape of an L, one arm of which is fixed to a vertical surface, the other projecting.

Breezeway: A small corridor with a roof, with no structure above it, and that is a maximum of five feet in width (but may be of any length and height). The corridor provides a walking path between a main building and an accessory building, usually a garage or carport, and is commonly unenclosed (i.e., is open to the outside).

Brick: Kiln fired clay or shale material which meets the latest version of ASTM Standard C216, Standard Specification for Facing Brick (Solid Masonry Unit Made of Clay or Shale), is severe weather (SW) grade, that is made of or covered with masonry, flat panel concealed fastener metal system.

Buffer: An area of land that is intended to mitigate negative impacts between land uses and/or along roadways. A buffer may be landscaped and may also include berms, walls, and/or fences.

Bug: A luminaire classification system that classifies backlight (B), uplight (U) and glare (G).

Build-to-line: A build-to line identifies the precise horizontal distance from a street right-of-way that the building must be built to, in order to create a uniform line of buildings along the street.

Building: 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. This does not include any fence unless it is structurally a part of the building.

Building, main, primary, or principal: A building in which the permitted and/or principal use of the lot on which such use is situated is conducted. In a residential district, any dwelling shall be deemed to be the main building on the lot on which it is situated.

Building area: The area of the building site left to be built upon after the required setbacks and easements have been provided.

Building articulation: See *Articulation*.

Building code: All building construction regulations adopted as a uniform code by the City of Iowa Colony ordinances.

Building depth: The distance from the front edge of the building to the rear measuring along the secondary face of the building.

Building height: The vertical distance measured from grade at the front of the building to the highest point of a flat roof, to the deck line of a mansard roof, or to the mean height level between eaves and ridge for a gable, hip, or gambrel roof.

Building line: See *Setback line*.

Building official: That individual designated by the city council to ensure compliance with the building code of the City of Pearland, Texas, or the building official's designee.

Building permit: An instrument in writing signed by the building official or other designated responsible official authorizing described construction on a particular lot.

Building setback area: The area of building line restrictions along a street or alley as established by or pursuant to subdivision or zoning regulations adopted by the City of Iowa Colony.

Building setback line: A line defining an area on the lot between the property line and the building line within which no building shall be constructed, encroach or project, except as specifically authorized in an adopted City of Iowa Colony ordinance.

Front building setback line: A line parallel to the street right-of-way line which the building faces and takes its primary access from.

Rear building setback line: A line parallel to an adjacent lot, alley or street, for double frontage lots, which the building backs up to and has its rear or secondary access.

Side building setback line: A line parallel to an adjacent lot, property line, or street right-of-way on a corner lot, which the building sides up to.

Building site:

- (1) The tract or parcel of land which is designated on the building permit application, together with all contiguous tracts or parcels of land held under common ownership and any existing buildings and appurtenant parking;
- (2) If designated, an artificial lot contained therein and delineated by the building official; or
- (3) A city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length.

Building, temporary: Any building or structure that is designed to be transportable in one or more sections on a temporary chassis. The term "temporary building" does not include temporary construction trailers permitted as a contractor's temporary on-site construction office, as defined in zoning regulations of the City of Iowa Colony unless associated with a special event permit and or permitted outdoor activity or use in applicable zoning district.

Building width: The distance from one edge of the primary building face to the other.

Café or cafeteria: An informal restaurant, not exceeding 50 seats, outdoor and indoor, offering a range of food, snacks, meals, coffee, and/or other beverages. This definition is intended to exclude establishments with delivery offered to automobiles away from the main building. This definition does not prohibit take-out or drive-through windows.

Caliper: The American Association of Nurserymen standard for trunk measurement of nursery stock, as measured six inches above the ground or ambient grade for trees up to and including four inches in diameter, and as measured at 12 inches above the ground or ambient grade for trees having a diameter exceeding four inches but not exceeding

eight inches and 54 inches above the ground or ambient grade for trees having a diameter greater than eight inches. If the tree has been severed at less than 12 inches above the soil line, then the caliper shall be measured across the stump.

Canopy (nature): The outermost branchy layer of a tree or a stand of trees,

Canopy (man-made): A covered, unconditioned structure (open to the elements and has no heat or air conditioning) with at least one side open for pedestrian and/or vehicular access or an awning-like projection from a wall that is made of rigid materials and is permanently attached to a building's façade.

Certificate of occupancy: A written instrument executed by the building official authorizing a described use of a lot or building as set forth in the building code, in this UDC, and other subdivision or zoning regulations of the City of Iowa Colony.

Child day care center (business): A licensed operation providing care for seven or more children under 14 years of age for less than 24 hours a day at a location other than the permit holder's home. This definition is in conformance with Texas state law, chapter 745, Licensing, subchapter B, Child day-care operations chart.

Child day nursery: Also commonly referred to as a "registered family home" or "child care in a place of residence." A facility that regularly provides care in the caretaker's own residence for not more than six children under 13 years of age, excluding the caretaker's own children. Child day care can be provided for six additional children before and/or after the customary school day. However, the total number of children, including the caretaker's own, provided care at such facility does not exceed 12 at any given time. This definition is in conformance with Texas state law, chapter 745, Licensing, subchapter B, Residential child-care operations chart.

Church/temple/place of worship: A building for regular assembly for religious public worship which is used primarily for and designed for such purpose, along with accessory activities which are customarily associated therewith, such as a place of residence for ministers, priests, nuns or rabbis on the premises, and that is tax exempt as defined by state law. For the purposes of this ordinance, Bible study and other similar activities which occur in a person's primary residence shall not apply to this definition. Also see *Institution of Religious, Educational or Philanthropic Nature*.

City: The City of Iowa County, Texas, or any authorized or responsible person acting on the city's behalf.

City Code: All ordinances of the city, as they may be amended from time to time.

City engineer: The Iowa Colony city engineer or an authorized representative.

City manager: That person holding the office of Iowa Colony city manager or an authorized representative.

City secretary: That person holding the office of city secretary or an authorized representative.

City standards: All of the city's standards and specifications that apply to development, together with all tables, drawings and other attachments. All city standards described or referred to in this Unified Development Code are adopted by referenced and are a part of this Unified Development Code in the same way as if they were set out at length herein.

Civic building: A building that is allowed greater design flexibility due the prominence of its public functions and often its location. Civic buildings include municipal buildings, faith-based institutions, churches, synagogues, libraries, schools, educational facilities, auditoriums, and public recreation facilities. Civic buildings do not include retail buildings, residential buildings, or privately owned office buildings.

Civic center (municipal): A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, food service, convention or entertainment facilities owned or operated by a municipality.

"Class A" office: An office building that is ten years of age or less and that has amenities such as full-time administrative staff support, high-speed internet access, telecommunications access, conference rooms or suites, break rooms, copier services, etc. Such a facility generally serves as office space for professionals such as lawyers, financial planners, engineers, etc.

Cleaning, dyeing or laundry plant, commercial: An industrial facility where fabrics are cleaned with substantially non-aqueous organic solvents on a commercial or wholesale basis.

Clinic, medical or dental: An institution, public or private, or a station for the examination and treatment of outpatients by an individual or group of doctors, dentists, or other licensed members of a human health care profession.

Colonnade: A business similar to an arcade except that it is supported by vertical columns without arches.

Column face: The front edge of the supporting pillar or cylindrical shaft.

Commence construction: The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction or development.

Commercial amusement, indoor: An amusement enterprise offering entertainment or games of skill to the general public for a fee or charge, wherein all portions of the activity taking place indoors, including, but not limited to, a bowling alley, ice skating rink, racquetball/handball club, indoor tennis courts/club, indoor swimming pool or scuba diving facility, and billiard parlor.

Commercial amusement, outdoor: An 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 outdoors, including, but not limited to, a golf driving range, archery range, miniature golf course, batting cages, go-cart tracks, and amusement park.

Commercial amusement, temporary: An amusement enterprise that is in operation on a temporary basis (i.e., one month or less) offering entertainment or games of skill to the general public for a fee or charge. Activity may take place in or out of doors. Examples include a carnival or haunted house.

Commercial or business message: A message contains or conveys commercial context or information or advertising for any business, commodity, service, entertainment, product or other attraction or event.

Commercial use: A type of nonresidential land use that has one or more of the following characteristics:

- (1) The use is service-oriented;
- (2) The use does not primarily sell retail items;
- (3) The use sells goods or products on a wholesale basis; or
- (4) The use has or has the need for open storage areas or warehouses its products.

Such uses include motels, auto dealerships, welding shops, manufactured home sales, mini-warehouses, funeral homes, auto body repair shops, and air conditioning and/or heating services.

Commercial vehicle/truck: See *Heavy load vehicle* definition herein.

Commission: The City of Iowa Planning Commission.

Common area (outdoors): Land not individually owned or dedicated for public use, within a development that is designed and intended for the common use and enjoyment of the residents of the development. May include complementary structures and improvements and is one or more of the following means a parking lot; a parking structure or covered vehicular entrance; a common entrance or public space shared by all occupants of the domiciles.

Common property: 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 development.

Common wall: An approved fire-rated wall separating two dwelling units or businesses.

Community home: A place where not more than six physically or mentally impaired or handicapped persons are provided room and board, as well as supervised care and rehabilitation by not more than two persons as licensed by the Texas Department of Mental Health and Mental Retardation (also see chapter 123 of the Texas Local Government Code [V.T.C.A., Local Government Code ch. 123]). The limitation on the number of persons with disabilities applies regardless of the legal relationship of those persons to one another.

Community or social buildings: A building or complex of buildings that house cultural, recreational, athletic, food service or entertainment facilities owned or operated by a governmental agency or private nonprofit agency.

Compatibility: The characteristics of different land uses or activities that permit them to be located near each other in harmony and without conflict.

Complete application: An application that meets the standards of this UDC, and has been deemed complete by the city in accordance with the Texas Local Government Code chapter 245 [V.T.C.A., Local Government Code ch. 245], or successor statute.

Comprehensive plan: The comprehensive plan of the City of Iowa Colony, including any portion thereof that is separately adopted and any amendment to the comprehensive plan or portion thereof.

Concept plan: A component of the regulations for a Planned Development District that complies with the requirements of this Unified Development Code that illustrates elements of the proposed Planned Development District, such as the proposed location and arrangement of uses, the relationship of such uses to base zoning districts, development phasing, planned public improvements, open space, proposed amenities and the overall design of the development.

Concrete batching plant: A permanent manufacturing facility engaged in the production of concrete.

Concrete masonry unit: Plain, indented, hammered, or split face concrete blocks usually in eight-inch by eight-inch by 16-inch dimensions.

Conditional use permit (CUP) or special use permit: A permit authorizing the establishment of a use that may be suitable only in certain locations in a zoning district, or that is allowed only when subject to standards and conditions that assure compatibility with adjoining uses.

Condominium: Two or more dwelling units on a lot with individual ownership of a unit rather than of a specific parcel of real property, together with common elements. See article 1301a, Tex. Rev. Civ. Stat.

Construction: With respect to a building, the assembly of materials into a structure, or the rehabilitation or replacement of a structure which has been damaged, altered or removed or which is proposed to be altered or removed to an extent exceeding 50 percent of the area of the structure at the time of the damage, alteration or removal. For the purposes of this definition, "construction" includes the installation of a parking lot.

Construction plans: The drawings and technical specifications that conform to provisions of this UDC. Construction plans, including bid documents and contract conditions, where applicable, provide a graphic and written description of the character and scope of the work to be performed in construction of a development.

Consumer Price Index: The Consumer Price Index for all Urban Consumers" as established by the Bureau of Labor Statistics for the Department of Labor.

Contiguous: Adjacent property whose property lines are shared (i.e., abutting property lines) or are separated by only a street, alley, easement or right-of-way.

Convenience store with (or without) gasoline sales: A retail establishment selling food for off-premises consumption and a limited selection of groceries and sundries, including possibly gasoline, if pumps are provided. Does not include or offer any automobile repair services.

Convent or monastery: A place of dwelling and/or study for persons under religious vows.

Copy/printing shop: An establishment which primarily reproduces, in printed form, individual orders from a business, profession, service, industry or government organization. Offset, letter press, and duplicating equipment are used, but no rotary presses or linotype equipment are used. Related services might include faxing, digitizing, graphic reproducing, and report assembling.

Corner lot: A lot abutting upon two or more streets at their intersection(s).

Cornice: A decorative horizontal feature that projects outward near the top of an exterior wall.

Corridor tree: A tree of a species listed on the large tree list or the small tree list that has a caliper of 20 inches or more and is situated in the building setback area along a local street or along a major thoroughfare, other than a portion of a major thoroughfare that has been designated as a green corridor.

Cost adjustment: Shall be the increase in any cost specified in this article as subject thereto and calculated by the percentage change in the Consumer Price Index for a base year period to a recent year period. The cost is payable where the sum of money is computed to the nearest cent according to the following formula:

$$(A/B - 1) \times \text{Cost subject to adjustment}$$

In the foregoing formula:

"A" is the index value of the Consumer Price Index for All Urban Consumers, U.S. city average, All Items for base year period =100), as published in the Monthly Labor Review by the Bureau of Labor Statistics of the Department of Labor of the United States of America (index) applicable to the third month immediately preceding the month during which the computation is required to be performed.

"B" is the index value of such Index applicable the desired updated cost.

Council: The City of Iowa Colony City Council.

Country club: An area of 20 acres or more containing a golf course and/or a clubhouse and available to a private specific membership, which club may also contain adjunct facilities such as a dining room, swimming pool, tennis courts or other recreational or service facilities.

Courtyard: A roofed or unroofed private open space surrounded by building walls on at least three sides.

Cul-de-sac: A local street having one inlet/outlet to another street and terminated on the opposite end by a vehicular turnaround.

Curb: The edge of the vehicular pavement as a raised curb or a swale. The curb usually incorporates the drainage system.

Dancehall/nightclub: An establishment offering to the general public facilities for dancing and/or entertainment.

Day camp (for children): A facility utilized for the organized recreation and instruction of children, including outdoor activities in the vicinity of the facility, on a daytime basis (i.e., no overnight stays).

Day nursery: An establishment where children, separated from their parents or guardian, are housed for care or training during the day (no overnight stay) or a portion thereof on a regular schedule more often than once a week; does not include a public school, private school, kindergarten or registered family home.

Deciduous plants: Those which shed their leaves at one time each year, usually in the autumn.

Density, gross: The number of dwelling units per gross acre. All density calculations shall be made using gross acreage, inclusive of easements, thoroughfare rights-of-way, and streets dedicated and accepted prior to platting of the property.

Density, gross residential: The number of dwelling units per gross acre used for residential use. All density calculations shall be made using gross acreage dedicated for residential use, exclusive of easements and thoroughfare rights-of-way, and inclusive of retention/detention areas, public or private streets that are platted or will be platted as part of the development of the property, open space, recreational areas, and parks provided within the development.

Density, net: The number of dwelling units per net acre. Net density calculations are made using net acreage, exclusive of thoroughfare rights-of-way and retention/detention areas, and public or private streets that are platted or are to be platted as part of the development of the property, but inclusive of open space, recreational areas, or parks.

Department store: A store selling a wide variety of goods, which are arranged into departments.

Designated tree: A specific tree designated by the city council as having particular historical or arboricultural significance.

Detention/retention pond: As that term is defined within the city's engineering design criteria manual (EDCM).

Developed area: That portion of a plot or parcel upon which a building, structure, pavement or other improvements have been placed.

Developer: An individual, partnership, corporation or governmental entity undertaking the division or improvement of land and other activities covered by this Unified Development Code, including the preparation of a subdivision or development plat showing the layout of the land and the public improvements involved therein. The term "developer" is intended to include the term "subdivider," even though personnel in successive stages of a development project may vary.

Development: Initiation of any activities related to the platting of land or construction of buildings or structures, the construction of impervious surfaces, the installation of utilities, roadways, drainage facilities or other infrastructure; or any disturbance of the surface or subsurface of the land in preparation for such construction activities, including without limitation removal of vegetation, grading, clearing, filling, or removal of soil.

Development permit: A decision by the commission, board or responsible official designated by this Unified Development Code, acting in an administrative or quasi-judicial capacity, that authorizes the holder of the permit to undertake one or more development activities or to file further applications needed to initiate or continue development activities authorized under the Unified Development Code. The filing of a complete application for a development permit may or may not stay the city from adopting new standards applicable to the permit or any subordinate permit, depending on the nature of the standards.

Development standards: All regulations, design standards, requirements and restrictions that apply to a development.

District: A zoning district under this Unified Development Code.

Dormers: Small, roofed ancillary structures with windows providing light and air to habitable space within the roof. Dormers are permitted and do not constitute a story so long as they do not break the primary eave line.

Dormitory: Any structure specifically designed to house student tenants associated with a university, college or school, public or private.

Dripline: An imaginary circle drawn around a tree, extending to the tree's branching limit.

Drag strip/race track: An establishment where a pre-established race course of at least one-quarter mile in length is located.

Drive-in/refreshment stand: Any place or premises used for sale, dispensing or serving of food and/or beverages to consumers in automobiles or on foot, or at an outdoor patio or table, and where indoor tables are not provided.

Drive-in theater: An open lot with its appurtenant facilities devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in automobiles.

Driveway: A minor private entranceway off the common access route into an off-street parking area.

Drought tolerant plants: Plants that, once established, survive on natural rainfall with occasional irrigation during dry periods.

Duplex: See *Dwelling, two-family*.

Dumpster: A large, metal refuse receptacle specifically designed to be emptied by heavy machinery and which is otherwise stationary.

Dwelling/dwelling unit: Any building or portion thereof which is designed or used exclusively for residential purposes. The term "dwelling unit" does not include rooms in hotels, motels or institutional facilities.

Dwelling, HUD Code manufactured home: A structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

Dwelling, industrialized home, or modular prefabricated structure or modular home: A structure or building module as defined under the jurisdiction and control of the Texas Department of Labor and Standards, that is transportable in one or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a fixed residence on a permanent foundation system. The term includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term does not include mobile homes or HUD Code manufactured homes as defined in the Texas Manufactured Housing Standards Act (article 5221f, V.A.C.S. [now V.T.C.A., Occupations Code § 1201.001 et seq.]).

Dwelling, mobile home: A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems.

Dwelling, multiple-family: A residential building designed for occupancy by three or more families, with the number of families not to exceed the number of dwelling units. The residential building contains dwelling units that are designed to be occupied by

families living independently of one another, exclusive of hotels or motels. This definition includes three-family units (triplexes) and four-family units (quadraplexes), as well as traditional apartments.

Dwelling, patio home: A single-family dwelling on a separately platted lot which is designed such that one side yard is reduced to zero feet in order to maximize the width and usability of the other side yard, and which permits the construction of a detached single-family dwelling with one side (i.e., wall) of such dwelling placed on the side property line.

Dwelling, quadruplex: Four dwelling units joined by common sidewalls.

Dwelling, single-family: A residential building, other than a mobile home, designed for occupancy by one family or individual.

Dwelling, single-family detached: A single-family dwelling unit with no attached wall(s) or dwelling unit(s).

Dwelling, town house: One of a group of no less than three nor more than 12 attached dwelling units, separated by a fire rated wall, each dwelling unit located on a separate lot.

Dwelling, two-family: A residential building containing two attached dwelling units, each designed to be occupied by one family (i.e., the building is occupied by not more than two families).

Easement: An interest in land granted to the city, to the public generally and/or to a private entity.

EDCM: The acronym for the city's engineering design criteria manual.

Efficiency apartment: An apartment without a bedroom separate from other living quarters.

Elevation: The exterior walls of a building not along a frontage.

Emergency conditions: Generally, lighting that is only energized during an emergency; lighting fed from a backup power source; or lighting for illuminating the path of egress solely during a fire or other emergency situation; or, lighting for security purposes used solely during an alarm.

Emergency vehicle: Any vehicle meeting the requirements for emergency vehicles under state law or city ordinance.

Emitter: A device that applies irrigation water. The term "emitter" is primarily used to refer to the low flow rate devices used in micro-irrigation systems.

Enforcing officer: The designated enforcing officer of the City of Iowa Colony or a designated representative.

Engineer: A person duly licensed under the Texas Engineering Practice Act to practice the profession of engineering.

Entrance, primary: The principal place of pedestrian entry to a building. In the support of pedestrian activity, the primary entrance should give to the frontage rather than to the parking.

Environmental Protection Agency (EPA): The U.S. Environmental Protection Agency or, where appropriate, the administrator or other duly authorized official of that agency.

Erect: To construct, reconstruct, install or build.

Esplanade: An unpaved area between two paved roadway sections.

ETJ: Extraterritorial jurisdiction. See the definition of *Extraterritorial jurisdiction* herein.

Evergreen plants: Those plants that do not lose all of their leaves at one time, though they shed their old leaves intermittently, as new leaves come out.

Excavation: Any digging, trenching, scraping or other activity that disturbs natural soil or rock to a depth of two feet or more, other than soil disturbance incidental to the removal of trees or vegetation.

Existing vegetation to be preserved: Any viable grouping of or single existing evergreen or deciduous trees and associated understory for which tree or buffer preservation credit is being requested.

Expression line: A decorative horizontal feature that projects outward from an exterior wall to delineate the top of the first story of a multi-story building.

Extended stay hotellmotel: A multi-unit, extended stay lodging facility consisting of efficiency units or suites with complete kitchen facilities and which is suitable for long-term occupancy. Customary hotel services such as linens and housekeeping, telephones, and upkeep of furniture shall be provided. Meeting rooms, clubhouse, and recreational facilities intended for the use of residents and their guests are permitted. This definition shall not include other dwelling units as defined by this UDC.

Exterior wall: The exterior wall of a building that is visible from or used as the exterior surface of an exterior wall.

Extraterritorial jurisdiction: The unincorporated area, not a part of any other municipality, which is contiguous to the corporate limits of the City of Iowa Colony, the outer limits of which are measured from the extremities of the corporate limits of the city outward for the distances as may be stipulated in the Texas Local Government Code in accordance with the population of the City of Iowa Colony, or by valid petition from the land owner and in which area the city may enjoin violation of certain provisions of this Unified Development Code.

Façade: The entire area of a side (the elevation) of a building or structure that extends from ground level to the top of a parapet, wall or eave(s) and from one corner to another. The area of a façade is defined by the outer limits of all of its visible exterior elements. Separate faces of a building oriented in the same direction or within 45 degrees of each other are considered part of the same façade.

Façade transparency: The quality of being able to see through the primary face of a building.

Family: An individual or any number of persons related by blood or marriage or not more than four unrelated persons living as a single housekeeping unit.

Farm (ranch, livestock): An area used for the raising thereon of the usual farm animals such as horses, cattle, and sheep and including the necessary accessory uses for raising, treating, and storing animals on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of husbandry specifically prohibited by ordinance or law.

Feed and grain store/farm supply store: An establishment for the selling of corn, grain and other food stuffs for animals and livestock, and including implements and goods related to agricultural processes, but not including farm machinery.

Fence: A tangible barrier constructed of any allowable materials (excluding natural vegetation) erected for the purpose of providing a boundary or as a means of protection, or to prevent uncontrolled access, or for decorative purposes, or to screen from viewers in or on adjoining properties and streets, materials stored and operations conducted behind such barrier. A "gateway," as defined herein, shall not be considered a fence.

Fence, living: A hedge of vegetation used as a screening device or a fence with vegetation growing to it or on it which at the time of maturity prevents a visually open effect, providing a visual barrier by blocking the normal line of sight.

Fence, privacy: A solid barrier erected or constructed to prevent views across the fence line.

Fence, subdivision: A uniform fence, built at the time a residential subdivision is initially developed, that partially or completely surrounds the subdivision. Other characteristics can include construction by the subdivision developer, maintenance by a home owners association, and design requirements contained in recorded deed restrictions for that subdivision.

Fence, wood rail: A fence constructed of narrow, or split wood timbers, placed between upright supporting posts and with a maximum opacity of 25 percent.

Final subdivision plat: The plat of a subdivision for which platting is required which, when approved, will be recorded in the official public records.

Financial institution (with or without motor bank services): An establishment for the custody, loan, exchange and/or issue of money, the extension of credit, and/or facilitating the transmission of funds, examples of which include banks, saving and loans, and credit unions. The establishment may or may not have the ability to provide services via a drive-up window, also known as motor bank services.

Fire station: Any public service building of the municipal government, or quasi-public entity, that is used in the provision of fire protection services, including the housing of fire-fighting personnel and/or apparatus.

First floor For the purpose of determining façade requirements, "first floor" is defined as the vertical distance of a structure/building measured from the average established floor elevation (slab) to the space above it between the floor and the next floor or ceiling or roof, the height of said space being no more than 12 feet.

Footcandle: The unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot.

Flood or flooding: A general or temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters.
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood fringe: That portion of the floodplain, outside the floodway, that is subject to inundation by the 100-year recurrence interval flood.

Flood hazard area: Land in the floodplain within the city, or its jurisdiction, subject to a one percent or greater chance of flooding in any given year. This area is shown as zones A, AE, AH, AO, A1—99, VO, V1—30, VE or V on the flood insurance rate map (FIRM).

Flood insurance rate map (FIRM): 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.

Floodplain or floodprone area: Any area of land that is subject to being inundated by water from any source.

Floodway or regulatory floodway: 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.

Floor area: The sum total area of all climate controlled floors as calculated from measurements to outside walls.

Food store/supermarket: A retail market primarily selling consumable goods that are not to be eaten on the premises. Prepared food and other items and/or services may be sold only in limited quantities as a secondary or accessory use.

Forward light For an exterior luminaire, lumens emitted in the quarter sphere below horizontal and in the direction of the intended orientation of the luminaire.

Franchised private utility: A utility such as one distributing heat, electricity, telephone, cable television or similar service and requiring a franchise to operate in the City of Iowa Colony.

Fraternal organization: An organized group having a restricted membership and specific purpose related to the welfare of the members. Examples include common organizations such as the Elks, Masons, Knights of Columbus, or a labor union.

Fraternity or sorority house: A building other than a hotel that is occupied only by individuals enrolled in a college or university located within the city and persons to attend the house and supervise activities of the fraternity or sorority. Except for the attendants, each resident is a member of a fraternity or sorority that is recognized by the college or university and chartered by a state or national organization.

Frontage: The linear distance of the property line abutting the street right-of-way upon which the property is addressed.

Front porch: See *Porch*.

Fully shielded (luminaire): Outdoor light fixtures shielded or constructed so that all light rays emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire are projected below the horizontal plane passing through the lowest point on the fixture from which light is emitted, nearly 100 percent cut-off type, as evidenced by the manufacturer's photometric data.

Funeral home: A place for the storage of human bodies prior to their burial or cremation, which may also be used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

Gaming establishment: A video arcade, game room, or other establishment that has more than four eight-liners or other amusement machines on which are played games of chance for use by the general public for a fee or charge.

Garden shop, outside plant sales or plant nursery: An establishment, including a building, part of a building or open space, for the growth, display and/or sale of plants, shrubs, trees and other materials used in indoor or outdoor planting.

Garden wall: A masonry wall defining a property line or delineating a private area.

Gasoline service station: An establishment where gasoline is sold and dispensed into motor vehicle tanks.

Gateway: A marker for a point of arrival or entrance.

Glare: Excessive brightness of light entering the eye directly or indirectly from reflective surfaces in the field of view that is sufficiently greater than that to which the eyes are adapted, causing annoyance or visual discomfort or reduced visibility so as to jeopardize health, safety, or welfare.

Glass curtain wall: An exterior building wall consisting of no less than 60 percent glass, which carries no structural loads, and is made of a combination of metal, glass or other surfacing material supported in a metal framework.

Golf course (private): An area of 20 acres or more improved with trees, greens, fairways, hazards, and which may include clubhouses, and which is owned and operated by a private business entity.

Golf course (public): An area of 20 acres or more improved with trees, greens, fairways, hazards, and which may include clubhouses, and which is owned and operated by the City of Pearland.

Grade (adjacent ground elevation): The lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point five feet in distance from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five feet in distance from said wall. In case walls are parallel to and within five feet of a public side-walk, alley or public way, the grade shall be the elevation of the sidewalk, alley or public way

Green corridor: Any portion of a major thoroughfare that has been designated as a green corridor by city council.

Green corridor tree: A tree of a species listed on the large tree list that has a caliper of 15 inches or more and is situated in the building setback area of a green corridor.

Green space: The entire parcel less the building footprint, driveways, vehicular use areas, hardscapes such as decks, swimming pools, decorative fountains, patios, and other non-porous areas. Stormwater management systems, and wetland conservation areas, lakes, rivers and creeks are excluded in the calculation of green space area.

Gross leasable area: The total floor area of a building which is designed for tenant occupancy and use, including basements and mezzanines, and measured to center lines of joint partitions and to outside of exterior walls, excluding mechanical equipment, storage, restrooms, stairwells, elevator shafts and other common areas.

Habitable: A space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

Hardscape: Permanent hardscape improvements to the site including parking lots, drives, entrances, curbs, ramps, stairs, steps, medians, walkways, and non-vegetated landscaping that is ten feet or less in width. Materials may include concrete, asphalt, stone, gravel, etc.

Hardscape area: The area measured in square feet of all hardscape. It is used to calculate the total site lumens limit in both the prescriptive method and performance methods. Refer to *Hardscape*.

Hardscape perimeter: The perimeter measured in linear feet that is used to calculate the total site lumen limit in the performance method. See *Hardscape*.

Hardware store: A store in which the primary items offered for sale are wares such as fittings, tools, machinery, utensils and other similar objects.

Heavy load vehicle: A self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) of greater than 16,000 pounds (including trailers), such as large recreational vehicles (originally manufactured as RVs, not converted), tractor-trailers, buses, vans, and other similar vehicles. The term "truck" shall be construed to mean "heavy load vehicle" unless specifically stated otherwise.

Heavy machinery sales, storage and repair: The sale, trade, transfer, storage, and/or repair of any motor propelled machinery used for excavation and/or construction purposes.

Heliport/helipad: A landing facility for rotary wing aircraft subject to regular use and which may include fueling or servicing facilities for such craft.

Hobby shop: See *Specialty shop*.

Holiday: A day on which custom dictates commemoration of a particular event. For the purposes of this UDC, holiday shall be deemed to include any day(s) of religious celebration, such as Christmas, Hanukah, and Easter, as well as the Fourth of July, Labor Day, Memorial Day, Presidents' Day, Martin Luther King Day, Halloween, Valentine's Day.

Home for alcoholic, narcotic or psychiatric patients: An institution offering inpatient or outpatient treatment to alcoholic, narcotic or psychiatric patients.

Home improvement center: Materials, tools, and/or hardware customarily used in the construction of buildings and other structures, including facilities for storage of materials for retail sales.

Home occupation: An occupation carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises, and which is clearly incidental and secondary to the use of the premises for residential purposes.

Homeowners association/property owners association: An incorporated, nonprofit organization operating under recorded land agreements through which:

- (a) Each lot and/or home owner in a planned unit or other described land area is automatically a member;
- (b) Each lot is automatically subject to charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property; and

(c) The charge, if unpaid, becomes a lien against the property.

Hospital (for profit): A building or portion thereof, used or designed for the housing or treatment of sick or injured patients where they are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state of Texas. This definition does not include rooms in any residential dwelling, hotel, or apartment hotel not ordinarily intended to be occupied by said persons. Said building houses a business operation intended to make a profit for the financial gain of the shareholders/owners of the operation.

Hospital (nonprofit): A building or portion thereof, used or designed for the housing or treatment of sick or injured patients where they are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state of Texas. This definition does not include rooms in any residential dwelling, hotel, or apartment hotel not ordinarily intended to be occupied by said persons. Said building houses a business operation that is not intended to make a profit for financial gain of any shareholder/owner of the operation.

Hotellmotel: A facility offering temporary lodging accommodations or guest rooms on a daily rate to the general public and possibly providing additional services, such as restaurants, meeting rooms, housekeeping service and recreational facilities, on an accessory use basis. For the purposes of this definition, a guest room shall be defined as a room designed for the overnight lodging of hotel guests for an established rate or fee.

Household care facility or hospice: A dwelling unit which provides residence and care to persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; or rendered temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two supervisory personnel as a single housekeeping unit. This definition shall be consistent with that of "assisted living facility" in Texas Health and Safety Code section 247.002 [V.T.C.A., Health and Safety Code § 247.002] as it presently exists or may be amended in the future.

IDA: The International Dark-Sky Association, which is the authoritative voice on light pollution. IDA educates lighting designers, manufacturers, technical committees and the public about controlling light pollution.

IESNA: The Illuminating Engineering Society of North America, a nonprofit learned society whose members are regarded as professionals in their industry and are

globally respected for their knowledge to improve the lighted environment by bringing together those with lighting knowledge and by translating that knowledge into actions that benefit the public.

Impervious cover: The total amount of impermeable surfaces, including buildings, pavement, and rooftops, which prevent the infiltration of water into the soil.

- a. Any outside area that is covered with a roof structure, whether fully enclosed or not, shall be considered as part of the total amount of impermeable surfaces.
- b. Wooden decking (planks of wood with gaps (approximately one-quarter inch) in between) is not considered as part of the total amount of impermeable surfaces.
- c. However, other typical outdoor surfaces that do not allow for water infiltration, such as exposed aggregate surfacing or concrete porches, shall be considered as part of the total amount of impermeable surfaces.
- d. The portion of swimming pools designed to contain water shall not be considered as part of the total amount of impermeable surfaces.

Impervious material: Any material sealed to restrict water entry and movement.

Improved lot or tract: A lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

Industrial manufacturing: Establishments engaged in the manufacturing or transformation of materials into new products. These establishments are usually described as plants and factories, and characteristically use power driven machines and materials handling equipment. Manufacturing production is usually carried on for the wholesale market, rather than for direct sale to the domestic consumer.

Industry standard lighting software: Lighting software that calculates point-by-point illuminance that includes reflected light using either ray-tracing or radiosity methods.

Institution of religious, educational or philanthropic nature: A nonprofit, religious, or educational semi-public or public use, such as the Salvation Army, Habitat for Humanity, or an outreach religious facility.

Integrated business development: A subdivision of land into separate lots that are utilized for nonresidential uses, where:

1. The subdivision is achieved by a single plat that is filed by an owner who owns the entire property being platted;

2. The plat, or an amending plat or replat thereof, contains a note that individual on-premises ground signs shall not be allowed on any lot in said subdivision if the use on said lot is advertised on a multi-user sign is erected on any lot in the subdivision; and
3. Each lot in the subdivision is contiguous to at least one other lot in the subdivision.

Interested person: A person who is impacted by a final decision of the city to the extent that such impact exceeds the impact of the decision on a member of the general public. An interested person may include any officer or agency of the city.

Irrigation system: Permanent watering systems designed to transport and distribute water to plants as a supplement to natural rainfall.

Irrigation zone: A control valve circuit containing emitters and/or sprinklers with consistent application rates.

ISO: Insurance Services Office, an independent statistical, rating and advisory organization that serves the property/casualty insurance industry. ISO collects information on a community's building-code adoption and enforcement services, analyzes the data, and then assigns a building code effectiveness classification (BCEGS) from 1—10.

Key box: A secure, tamperproof device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

Kindergarten: Any school, private or parochial, whether operated for profit or not, attended by children during any part of a 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.

Laboratory, medical or dental: An indoor establishment that includes laboratories and/or experimental equipment for medical or dental testing, prototype design and development, and product testing.

Laboratory, scientific or research: An indoor establishment equipped for experimental study in a science or for testing and analysis.

Lamp: A generic term for a source of optical radiation (i.e., "light"), often called a "bulb" or "tube." Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, more commonly known as a bulb, as well as light-emitting diode (LED) modules and arrays.

Landscape buffer: The shielding or obscuring of one land use from another by the planting of evergreen trees or shrubs, or both, or the erection of a screening fence designed to minimize the transmission or propagation of noise, light, vibration, or dust, from traffic or other activity on one property to adjoining public or private properties.

Landscape lighting: Lighting of trees, shrubs, or other plant material as well as ponds and other landscape features.

Landscape plant zone: A grouping of plants with similar water and cultural needs.

Landscaped: Adorned or improved by contouring land and placing thereon live flowers, shrubs, trees, grass, other vegetation, water features, and/or pervious rock material.

Landscaped area: The area of a developed site/lot that is required by this UDC to consist of landscaping materials, trees and/or groundcover.

Laundromat (self-service laundry): A facility where patrons wash, dry or dry clean clothing and other fabrics in machines that are operated by the patron.

Laundry/dry cleaning (retail only, drop-off/pick-up): A facility used for the purpose of receiving articles or goods of fabric to be subjected to the process of laundering, dry cleaning, or cleaning elsewhere, and for the pressing and distribution of any such articles or goods that have been subjected to any such process.

LED: Light emitting diode.

Light industrial use: A use engaged in the processing, manufacturing, compounding, assembling, packaging, treatment, or fabrication of materials and products, from previously manufactured materials. Such use is capable operating in such a manner as to control the external effects of the manufacturing process, such as smoke, noise, odor, etc.

Light load vehicle: A self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) not greater than 16,000 pounds and having no more than two axles, such as pick-up trucks, sport utility vehicles, vans and mini-vans, recreational vehicles (less than 32 feet in length), campers and other similar vehicles but not including automobiles and motorcycles.

Light manufacturing: A process(es) which does not emit detectable dust, odor, smoke, gas or fumes beyond the bounding property lines of the lot or tract upon which the use

is located and which does not generate noise or vibration at the boundary of the district which is generally perceptible in frequency or pressure above the ambient level of noise in the adjacent areas.

Light pollution: Any adverse effect of artificial light including, but not limited to, glare, light trespass, sky-glow, energy waste, compromised safety and security, and impacts on the nocturnal environment.

Light trespass (spillover): Light emitted by a luminaire or lighting installation, which is cast beyond the boundaries of the property on which the lighting installation is sited. The maximum intensity measured at the property line adjacent to all single-family and town home residential uses is 0.2 footcandle.

Lighting: Electric, man-made, or artificial lighting. See *Lighting equipment*.

Lighting equipment: Equipment specifically intended to provide gas or electric illumination, including, but not limited to, lamp(s), luminaire(s), ballast(s), poles, posts, lens(es), and other related structures, electrical wiring, and other necessary or auxiliary components.

Local street: A public street that is not specifically designated on the adopted City of Iowa Colony major thoroughfare plan as a super arterial, a major arterial, a minor arterial, a major collector, or a minor collector.

Local utility line (above ground or below ground): The facilities provided by a municipality or a franchised utility company for distribution or collection of gas, water, surface drainage water, sewage, electric power or telephone service, including pad- and pole-mounted transformers.

Lodging: Premises available for daily and weekly renting of bedrooms.

Lot: An undivided tract or parcel of land shown and designated with a tract or lot number on a duly recorded subdivision or development plat. A lot is or may be offered for sale, conveyance, transfer or improvement, which is designated as a distinct and separate tract, and which is identified by a tract, or lot number or symbol in a duly approved subdivision plat that has been properly filed of record.

Lot coverage: The amount of impervious cover (see definition) on a lot.

Lot measurement:

- a. *Lot area:* The net area of the lot, expressed in square feet or acreage and shall not include portions of any public street or alley, but may include easements. For flag lots, the area of the lot that does not meet the applicable minimum lot width shall be excluded.

- b. *Lot depth*: The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear (the mean horizontal distance between the front and rear lot line). For flag lots, the distance between the midpoints of straight lines connecting the foremost points of the side lot lines where the lot satisfies the applicable minimum lot width and the rearmost points of the side lot lines in the rear.
- c. *Lot width*: The shortest distance in a straight line between the side lot lines, measured at any point on the lot from the required front setback line to the required lot depth.
- d. *Lot, double frontage*: Any lot, not a corner lot, with frontage on two streets that are parallel to each other or within 45 degrees of being parallel to each other.
- e. *Lot, flag*: A lot which has frontage and width at the building line that is less than the minimum required width, but which satisfies the required lot width at a point further away from the front property line than is the building line. The portion of the lot that has frontage but does not satisfy the minimum width is hereby designated the "pole" and the portion that meets the minimum lot width but at a point further away from the front property line than is the building line is designated as the "flag." No flag lot shall have more than one pole portion, and said pole shall have a minimum length equal to the minimum lot depth for the zoning district in which the lot is located and a maximum length no greater than 500 feet. The entire flag portion of a flag lot shall meet the minimum lot width for that zoning district.
- f. *Lot, irregular*: Any lot not having equal front and rear lot lines or equal side lot lines; a lot, the opposite lot lines of which vary in dimension and the corners of which have an angle of either more or less than 90 degrees.
- g. *Lot line*: The boundary that legally and geometrically demarcates a lot.
- h. *Lot, thumbnail (or eyebrow)*: A partial cul-de-sac bulb, usually with a central angle of 180 degrees or less.

Low voltage landscape lighting: Landscape lighting powered at less than 15 volts and limited to luminaires having a rated initial luminaire lumen output of 525 lumens or less.

Lumen: The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from "watt," a measure of power consumption).

Luminaire: The complete lighting unit (fixture), consisting of a lamp, or lamps and a ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

Luminaire lumen: For luminaires with relative photometry per IES, is calculated as the sum of the initial lamp lumens for all lamps within an individual luminaire, multiplied by the luminaire efficiency. If the efficiency is not known for a residential luminaire, assume 70 percent. For luminaires with absolute photometry per IES LM-79, it is the total luminaire lumens. The lumen rating of a luminaire assumes the lamp or luminaire is new and has not depreciated in light output.

Lux: The SI unit of illuminance. One lux is one lumen per square meter. One lux is a unit of incident illuminance approximately equal to one-tenth footcandle.

Main building: The building on a lot which are occupied by the primary (main) use.

Manufactured home: See *Dwelling, HUD Code manufactured home*.

Manufactured home display, sales and/or rental (new or used): The offering for sale, rental, storage, or display of new or previously owned (i.e., used) manufactured housing units (e.g., mobile homes/trailers, HUD Code homes, industrialized homes) on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.

Manufactured homel/mobile home space: A division of a parcel of land into a single lot for use by a single manufactured home or mobile home, as applicable.

Manufacturing, processing or fabrication: Activities or facilities, including, but not limited to, beverage plant, fabrication, metal finishing, foundry, ice plant, machine shop, planing mill, printing plant, publishing and bindery plant, masonry products manufacturing, refinery for nonagricultural products, food products, processing and packaging plant, precision instruments manufacturing, and research laboratory.

Marquee: A roof-like structure projecting over the entrance to a building. It may also project over a sidewalk adjacent and parallel to the front wall of a building.

Masonry: Brick, stone brick veneer, custom treated tilt wall, decorative or textured concrete block, split face block and stucco.

Master plat: The initial plat for a subdivision to be developed in phases that delineates the sequence and timing of development within the proposed subdivision, and that is reviewed and decided under this Unified Development Code.

Metal: 24-gauge or heavier architectural panels (wall systems) with concealed fasteners and no exposed seams. Corrugated metal, exposed fasteners, and exposed seams are not included in this definition. Other materials (i.e., from technological advances) may be considered metal by the city when such materials are deemed to be the same or better in quality and appearance.

Micro-irrigation: An irrigation system with a maximum flow rate per emitter of 30 gallons per hour. Not appropriate for turf-grass applications.

Mini-warehouse/self-storage: Small individual storage units for rent or lease, restricted solely to the storage of items, such as motor vehicles, trailers, boats, bulky household goods, and sundry personal property. There is no conduct of sales, business or any other activity within the individual storage units.

Minor subdivision plat: A plat dividing land into no more than four lots that may be administratively approved under certain circumstances under this Unified Development Code.

Mobile home: See *Dwelling, mobile home*.

Moldings: An embellishment in strip form, made of wood or other structural material, which is used to decorate or finish a surface.

Motion picture theater (indoors): An indoor establishment charging admission to the general public for the privilege of observing a live, televised, or motion picture performance.

Mounting height: The height of the photometric center of a luminaire above grade level.

Mulch: Any material except fresh grass clippings applied to the soil surface to retain soil moisture control erosion, inhibit weeds, and/or regulate soil temperatures.

Mullions: A vertical member, as of stone or wood, dividing a window or other opening.

Multifamily residential: Any building, or portion thereof, which is designed, built, rented, leased, let out or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other, and shall include flats, apartments and a condominium created under chapter 82 of the Texas Property Code [V.T.C.A., Property Code ch. 82].

Multiple building complex: More than one principal structure on a building lot.

Multiple-occupancy or multi-tenant: One or more adjacent premises containing two or more occupancies, each having main entrances directly from the exterior of a common building or complex of buildings and utilizing common facilities for vehicular access, parking, landscaping, etc.

Natural plants: Plants that once established can survive on natural rainfall without irrigation.

New lighting: Lighting for areas not previously illuminated; newly installed lighting or any type except for replacement lighting or lighting repairs.

Nonconforming lot: A lot that does not conform to the regulations of this code.

Nonconforming structure: A structure that does not conform to the regulations of this code.

Nonconforming use: A use of property that does not conform to the regulations of this code.

Nonresidential use: All uses other than single-family residential use.

Nursing/convalescent home, long-term care facility, or skilled nursing facility: A facility providing primarily inpatient health care, personal care, or rehabilitative services over a long period of time to persons who are chronically ill, aged or disabled and who need ongoing health supervision but not hospitalization.

Oasis plants: Plants requiring frequent irrigation.

Object: A permanent structure located on a site. "Object" may include statues or artwork, garages or canopies, outbuildings, etc.

Object height: The highest point of an entity but shall not include antennas or similar structures.

Occupancy: Any utilization of real property.

Off-street parking incidental to nonresidential main use: Off-street parking spaces provided in accordance with the requirements of this ordinance, located on the lot or tract occupied by the main nonresidential use or within the vicinity of such lot or tract, and located within the same zoning district as the main nonresidential use or in an adjacent parking district.

Office, medical/dental: An office or group of offices for one or more physicians for the examination and treatment of ill and afflicted human outpatients.

Office, professional and general business: An office or group of offices used for the provision of executive, management, administrative services, or any other vocation involving predominately mental or intellectual skills. Specifically excludes any activity involving sales of personal property and veterinary clinics.

Office/clinic, veterinarian: A place where a veterinarian maintains treatment facilities for diseased or injured animals, including boarding facilities (no outside pens or kennels).

Office warehouse storage or sales: An establishment where not more than 75 percent of the total floor area is devoted to warehousing, and may include the sales of office products, but sales are not generally accessible to the public.

Official filing date: The date that a complete application (see definition) has been accepted by the city for filing.

Open space: Property designated for recreational use, including a private park, play lot, plaza or ornamental area intended for use or enjoyment by people. "Open space" does not include streets, alleys, utility easements, public parks or required setbacks.

Orchard: An area of two acres or more which is used for the growing of farm products, vegetables, fruits, trees and/or grain and including incidental and/or 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 or other animals and not including any type of agricultural animal husbandry as specifically defined.

Ornamental lighting: Lighting that does not impact the function and safety of an area but is purely decorative, or used to illuminate architecture and/or landscaping, and installed for aesthetic effect.

Ornamental street lighting: A luminaire intended for illuminating streets that serves a decorative function in addition to providing optics that effectively deliver street lighting. It has a historical period appearance or decorative appearance, and has the following design characteristics:

- (1) Designed to mount on a pole using an arm, pendant or vertical tenon;
- (2) Opaque or translucent top and/or sides;
- (3) An optical aperture that is either open or enclosed with a flat, sag or drop lens;
- (4) Mounted in a fixed position; and
- (5) With the photometric output measured using Type C photometry per IESNA LM-75-01.

Overspray: Water delivered beyond the landscape area and wets pavement, walks, structures, or other non-landscaped areas.

Outdoor light fixture: Outdoor artificial illuminating devices, installed or portable, used for floodlighting, general illumination, or advertisement. Such devices shall include but are not limited to search, spot, flood, and area lighting for:

- (1) Buildings and structures;
- (2) Recreational facilities;
- (3) Parking areas;
- (4) Landscape lighting;
- (5) Outdoor advertising;
- (6) Public and private street lighting; and
- (7) Walkway lighting.

Outdoor lighting: Lighting equipment installed within the property line and outside the building envelopes, whether attached to poles, building structures, the earth, or any other location; and any associated lighting control equipment.

Outside display or outside or outdoor sales: Any primary use of a premises whereon goods, materials, or merchandise is displayed for the purpose of sale on a temporary basis for not more than 24 hours, and which the display area is greater than 30 percent of the gross floor area of the principal building.

Outside storage or open storage: Keeping, displaying or storing, outside a building, of any goods, materials, merchandise or equipment on a lot or tract on a generally permanent basis for more than 24 hours. This includes storage within boxes, containers, portable sheds, trailers, and other structures that are not permanently affixed to a foundation, do not resemble the main onsite building in architectural style, or are not assembled on site.

Overlay zoning district: A zoning district that establishes regulations that combine with the regulations of an underlying (base) zoning district. The purposes of an overlay district shall be to prohibit uses otherwise allowed in the base district, to establish additional or different conditions for such uses, or to authorize special uses, together with standards for such uses, not otherwise allowed in the base district.

Park or playground (private): A recreation facility, park or playground which is not owned by a public agency such as the city or school district, and which is operated for the exclusive use of private residents or neighborhood groups and their guests and not for use by the general public.

Park or playground (public; municipal): Publicly owned and operated parks, recreation areas, playgrounds, swimming pools and open spaces that are available for use by the general public without membership or affiliation. This land use shall include special event type uses such as rodeos, concerts, festivals and other special events requiring special event permits, as set forth in the City of Pearland's Code of Ordinances.

Parking, stacked Also known as tandem parking, an off-street parking stall arrangement, not more than two spaces in depth, wherein one space is located directly in front of another space and requires the moving of the rear vehicle in order for another vehicle to enter or leave the forward space.

Parking area: An off-street area for the temporary storage of motor vehicles, whether free, for compensation or as an accommodation for clients or customers.

Parking lot: A paved, surfaced or leveled area designed and ordinarily used for accessory or public parking of motor vehicles, including commercial parking areas available for lease and leased premises available for public parking. The term shall not include parking garages.

Parking lot tree: A tree of a species listed on the large tree list and the small tree list and includes both large and small parking lot trees as provided on the list.

Parking lot tree list: A large tree list and a small tree list issued and revised from time to time by the city engineer, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting in parking lots. The city engineer may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into large trees and small trees based upon canopy size characteristics.

Parking space: An individual vehicle parking space within a parking lot, which shall be computed on the basis of applicable provisions in other parts of the ordinances of the City of Iowa Colony.

Parkway area: That portion of the public right-of-way laying primarily between the edge of the pavement or curb and the private property line.

Parkway tree: A tree of a species listed on the large tree list or the small tree list that is situated in the parkway area adjacent to any tract or parcel of land and that has a caliper equal to or greater than 1½ inches.

Partially shielded: Shielding so that the lower edge of the shield is at or below the centerline of the lamp so as to minimize the light transmission above the horizontal plane, or at least 90 percent of the emitted light projects below the horizontal plane as evidenced by the manufacturer's photometric data.

Partly shielded luminaire: A luminaire with opaque top and translucent or perforated sides, designed to emit most light downward.

Paved: Ground surface covered with concrete and constructed in conformance with applicable requirements of the City of Iowa Colony Building Code.

Pawn shop: An establishment where articles are traded in exchange for money plus a right to redeem such articles within a given amount of time upon repayment of such money with interest. The establishment may also be involved in the retail sale of primarily used items is also allowed, provided that the sale of such items complies with local, state and federal regulations.

Pedestrian hardscape: Stone, brick, concrete, asphalt or other similar finished surfaces intended primarily for walking such as sidewalks and pathways.

Permitted use: A use specifically allowed in one or more of the various districts by right. This term does not include conditionally or special permitted uses.

Person: A natural person, the natural person's heirs, executors, administrators, or assigns and also includes a firm, partnership, or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

Person in charge: Any person who has real or apparent care, custody, and control of real property or buildings located thereon.

Personal service shop: A retail establishment for the purpose of supplying limited personal services, including, but not limited to, cleaning and laundry collection station; interior decorating; watch and jewelry repair; art gallery; library; museum; studio for professional artwork, photography, dance or fine arts, including teaching of applied and fine arts; this definition does not include massage parlors, barber shops, beauty shops, or hairdressers.

Pet care facility/animal kennel: A commercial establishment in which dogs or other domesticated (pet) animals are housed, groomed, bred, boarded, trained, sold, or provided other health and well-being related services, for a fee or compensation. This

term, along with the parenthetical phrase "without outdoor pens," means that all of the listed activities occur indoors, except outdoor exercise under supervision for a limited period of time (e.g., one-half to one hour at a time). This term, along with the parenthetical phrase "with outdoor pens," means that all of the listed activities may occur outdoors for an extended period of time. This term does not include a veterinary clinic.

Petition for a legislative decision: A request for approval of an action authorized under this Unified Development Code requiring action by the city council acting in its legislative capacity.

Petition for change in nonconforming status: A request by a property owner to the City of Iowa Colony zoning board of adjustment (ZBA) for a change in the status of a nonconforming use or structure to allow for modification to the use or property owned.

Petition for relief from dedication or construction requirement: A request for relief from a requirement imposed under this Unified Development Code to dedicate or construct a public improvement based on constitutional standards, and that is reviewed and decided under this Unified Development Code.

Petroleum products bulk storage (wholesale): A facility for the long-term storage and distribution of petroleum that may also involve wholesale sales, but not retail sales, of petroleum and petroleum-based products. No manufacturing or refining of petroleum or petroleum-based products occurs on the premises, only storage and/or distribution functions.

Photoelectric switch: A control device employing a photocell or photodiode to detect daylight and automatically switch lights off when sufficient daylight is available.

Photometric: Quantitative measurements of light levels and distributions.

Planned development: The terms "planned development" and "planned unit development" shall have the same meaning.

Planned unit development (PUD) district: A land development project comprehensively planned which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural features.

Plat: A map, drawing, chart or plan showing the exact layout and proposed construction of a proposed development into one or more lots, blocks, streets, parks, school sites, commercial or industrial sites, easements, alleys and/or any other elements as required by this Unified Development Code and which a subdivider shall submit for approval in accordance with this Unified Development Code.

Police station: Any public service building of the municipal government that is used in the provision of police protection services, including the housing of police personnel and related automobiles.

Plaza: An unroofed public open space designed for pedestrians that is open to public sidewalks on at least one side.

Porch, front: The ground floor platform attached to the front or side of the main building.

Preliminary subdivision plat: A plat that illustrates and thereby assures the general layout of a proposed subdivision, the adequacy of public facilities needed to serve the proposed subdivision, and the overall compliance of the land division with applicable requirements of the Unified Development Code and that is reviewed and decided prior to approval of a final subdivision plat.

Premises: A parcel or tract of land or one or more platted lots under the same ownership and use, together with the buildings and structures located thereon.

Primary finish: An exterior finish consisting of masonry, glass wall, cementitious stucco or a combination thereof.

Private open space: Private property under common ownership designated for recreational use, including a private park, play lot, plaza or ornamental area intended for use or enjoyment of property owners within a subdivision. Open space does not include streets, alleys, utility easements, public parks or required setbacks.

Project coverage: The total amount of impermeable surfaces (impervious cover) of an entire proposed development, as opposed to the lot-by-lot amount defined for the impervious cover calculation.

Projecting façade elements: Building elements which attach to the outside of the primary building envelope. Projecting façade elements can include stoops, porches, bay windows, awnings, canopies, second-floor balconies, colonnades, or arcades.

Propane sales (retail): Retail sales of gaseous substances commonly used for household purposes such as propane or butane; does not include the storage, sale or distribution of other types of combustible substances or alternative fuels such as containerized natural gas, liquid propane, etc.

Property line: The edges of the legally defined extent of privately owned property.

Protected tree: A corridor tree, designated tree, green corridor tree or parkway tree; any tree of a size 20 caliper inches or more of any species; or any tree of a size of 1½ caliper inches or more of any species included in the large tree list.

Protected tree replacement requirement: The requirement established to replace a protected tree as found elsewhere in this code, as applicable.

Public art: Art that is visually or physically accessible to the public (within the public realm, e.g., a street) and that is acquired by city funds, donated to the city, or provided by a private entity as a community benefit, including monuments and statues, building ornament, and visible public infrastructure such as bridges, etc.

Public educational facilities: Facilities that are used to provide instruction or education by primary or secondary schools or institutions of higher education that receive public funding. Private schools, day cares and other similar uses, and facilities not used for instructional purposes such as administrative and service facilities shall not be included in this definition.

Public facilities: Infrastructure and municipal service improvements owned and/or operated by the city, excluding dry utilities such as gas, phone, cable, etc.

Public open space: Property that is owned by or dedicated to the city and that is designated for recreational use, including a park, play lot, plaza or ornamental area intended for use or enjoyment of citizens. Open space does not include streets, alleys, utility easements, public parks or required setbacks.

Public right-of-way: A strip of land used or intended to be used, wholly or in part, as a public street, alley, crosswalk way, sidewalk or drainageway.

Public street right-of-way: The entire width between the boundary lines of every way which is held by the city, a county, the state or otherwise by the public in fee or dedication when any part thereof is open to the use of the public for purposes of vehicular travel.

Public view: Areas that can be seen from any public street.

Rain sensor device: A calibrated device that is designed to measure rainfall and override the irrigation cycle of the irrigation system when a pre-determined amount of rainfall has occurred.

Reconstruction: Rehabilitation or replacement of a structure which either has been damaged, altered or removed or which is proposed to be altered or removed to an extent exceeding 50 percent of the replacement cost of the structure at the time of the damage, alteration or removal.

Record drawings: See *As-built/record drawings*.

Recorded plat: A subdivision plat that has been finally approved by the city and that has been filed with the applicable county after meeting all city requirements for recordation under this Unified Development Code.

Recreation center (private, for-profit): An indoor business establishment used for recreation and social activities.

Recreational vehicle (RV): A vehicle that is:

- a. Built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light-duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Refuse container: Any container, including dumpster, used as temporary storage of routinely collected waste.

Refuse dump: A place reserved or used for the dumping or accumulation of refuse or discarded matter.

Registered family home: See *Child day nursery*.

Rehabilitation care facility (halfway house): A dwelling unit which provides residence and care to not more than nine persons regardless of legal relationship who have demonstrated a tendency towards alcoholism, drug abuse, mental illness, or antisocial or criminal conduct living together with not more than two supervisory personnel as a single housekeeping unit.

Rehabilitation care institution (business): A facility which provides residence and care to ten or more persons, regardless of legal relationship, who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct together with supervisory personnel.

Relative photometry: Photometric measurements made of the lamp plus luminaire, and adjusted to allow for light loss due to reflection or absorption within the luminaire. Reference standard: IES LM-63.

Remainder tract: Land that is part of a larger parcel that is not subject to a subdivision plat affecting the parcel.

Remodeling: Renovation, alteration or repair of an existing structure that is not an addition.

Remove or removal: To take a tree away from its existing position, and includes such actions that may be reasonably expected to damage a tree sufficiently to cause it to die.

Repair: To restore or mend to sound working condition after damage, decay or failure.

Repair(s) (lighting): The reconstruction or renewal of any part of an existing luminaire for the purpose of its ongoing operation, other than re-lamping or replacement of components including capacitor, ballast or photocell. Note that retrofitting a luminaire with new lamp and/or ballast technology is not considered a repair and for the purposes of this ordinance the luminaire shall be treated as if new. The term "repair" does not include normal re-lamping or replacement of components, including capacitor, ballast or photocell.

Replacement: The act of moving one structure from its existing location or site and replacing it with another structure.

Replacement lighting: Lighting installed specifically to replace existing lighting that is sufficiently broken to be beyond repair.

Reserve: A tract of land that is not restricted to single-family residential use and not designated on a subdivision plat as a lot or street right-of-way use and is designated as a reserve.

Residential use: A dwelling unit or group of dwelling units; includes dwelling units within the upper story or stories of a building wherein other parts of the building are used for a nonresidential purpose, such as a retail establishment or office.

Responsible official: The building official or an assign, or the city engineer who has been designated to accept a type of development application or plans for filing, to review and make recommendations concerning such applications, and where authorized, to initially decide such applications, to initiate enforcement actions, and to take all other actions necessary for administration of the provisions of this Unified Development Code with respect to such development applications.

Restaurant (with drive-in service or drive-thru service): An eating establishment where food or drinks are primarily served to customers in motor vehicles, or where facilities are provided on the premises which encourage the serving and consumption of food in automobiles on or near the restaurant premises. An area may also be provided for the consumption of food [on] the premises.

Restaurant (with no drive-in or drive-thru service): An eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which does not have a drive-through window.

Retail shop for accessories, gifts and similar goods: An establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Ribbon curb: A concrete boundary marking the edge of a roadway or paved area and, unlike a typical raised curb, is not vertically separated from the roadway or paved area.

Roadway: That portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.

Roadway or highway lighting: Lighting provided for freeways, expressways, limited access roadways, and roads on which pedestrians, cyclists, and parked vehicles are generally not present. The primary purpose of roadway or highway lighting is to help the motorist remain on the roadway and help with the detection of obstacles within and beyond the range of the vehicle's headlights.

Root collar: An encircling structure of band-like markings or a marked color change (from the tree bark) located at the highest part of the root system joining into the trunk of the tree at or slightly below the surrounding soil line.

Runoff: Water that flows from the area where it fell because it is not absorbed soon enough by the soil.

Sales area: Uncovered area used for sales of retail goods and materials, including, but not limited to, automobiles, boats, tractors and other farm equipment, building supplies, and gardening and nursery products.

School, other than public or parochial: A school under the sponsorship of a private agency or corporation, other than a religious agency, which offers a curriculum that is generally equivalent to public elementary and/or secondary schools.

School, public or parochial: A school under the sponsorship of a public or religious agency which provides elementary or secondary curricula, but not including private business or trade/commercial schools.

School, trade or commercial: A for-profit business that offers vocational instruction and training in trades such as the computer industry, welding, brick laying, machinery operation/repair, and similar trades.

Screening wall or solid wall: A solid vertical barrier constructed of masonry materials that is intended to separate and limit visibility between that which is on either side of the barrier, for example adjacent land uses or particular site elements.

Seasonal lighting: Temporary lighting installed and operated in connection with holidays or traditions.

Seat: One sitting space equal to 18 inches of bench or pew width if other than an individual chair.

Secondary building setback: The area of a lot measured from a lot line to a secondary building.

Security dwelling: An accessory dwelling incidental and subordinate to the primary use. The function of a security dwelling would be the protection and security of the primary use served.

Setback line: 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.

Shall: As used in this code, is mandatory and not discretionary.

Shared use of towers: Also referred to as "co-location." The use of a single antenna support structure and/or site by more than one communications provider.

Shed: (Also referred to as "tool shed.") An accessory structure typically used for storage that is:

- (1) Constructed on site;
- (2) Securely affixed to the ground by means of a permanent foundation or with tie-downs designed to be used to anchor a shed to the ground;
- (3) Resembles the main onsite structure in architectural style; and
- (4) Does not exceed 15 percent of the square footage of the main onsite structure in size.

Sheltered care facility: A nonprofit or for-profit boarding home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

Shielded directional luminaire: A luminaire that includes an adjustable mounting device allowing aiming in any direction and contains a shield, louver, or baffle to reduce direct view of the lamp.

Shopping center or integrated business development: A commercial development such as a strip center, mall, multi-tenant office building, commercial center, or industrial complex in which two or more separate businesses occupy a single or multiple structures which share on-site parking and common driveways.

Shrub: Any plant, deciduous or evergreen, which is generally multi-stemmed and sold by height or spread and measured in inches or feet.

Sidewalk or walkway: The paved portion of a public street right-of-way which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel. A paved pedestrian way generally located within the public street right-of-way but outside the roadway but may be located outside the public street right-of-way when a public access easement is granted.

Sight triangle: A triangle-shaped area adjacent to the intersection of two streets, formed by two lines.

Sign: Any object, device or display facing the exterior (outdoors), which is used to inform or give direction or to advertise or identify a person, organization, business, product, service, event or location by any means, including words, letters, numbers, symbols, figures, or illumination.

Sign copy: The letters, numbers, symbols or geometric shapes, either in permanent or changeable form, on the surface of a sign.

Sign permit: A city-issued permit that authorizes the display, erection, rebuilding, expansion or relocation of any on-premises or off-premises sign and that conforms to this UDC.

Sign, allowable effective area: The maximum effective sign area as allowed by the UDC, as measured from the highest point on the sign to the elevation of the center of the bottom of the sign (excluding base) by the width at the widest point. The highest point and the width shall be inclusive of all supports and framing.

Sign, animated: A sign with any visual effect of a light source which causes the perception of movement of graphics or text.

Sign, attached: Any sign attached to, applied on or supported by any part of a building or accessory structure, including awnings and other similar permanent attachments to the buildings. Also may be referred to as "building sign."

Sign, banner: A temporary sign that is designed to be attached or installed with rope, wire, or other temporary means to any part of the building façade, so as to allow ease of installation and removal.

Sign, billboard: An off-premises sign which is subject to regulation under the provisions of the Federal Highway Beautification Act, 23 U.S.C.A. section 131 et seq., as amended.

Sign, blade: A non-illuminated panel sign with dimensional copy suspended from a decorative bracket attached to the building, typically upon a merchant's storefront, permitted for occupant identification purposes only, and limited to one blade sign per public entrance where public foot traffic occurs, and limited to two square feet per face.

Sign, builder/subdivision: Any sign that advertises:

- (1) A new subdivision for the purpose of selling lots, land, and/or buildings; and/or
- (2) A builder(s) that has lots, land, or buildings for sale.

Such sign may or may not be directional.

Sign, community information: Any sign which promotes items of general interest to the community including time, temperature, date, atmospheric conditions and upcoming noncommercial events or charitable causes.

Sign, electronic changeable message: Any sign with a fixed or changing display/message composed of a series of lights that may be changed through electronic means. Includes electronic changeable message board and scrolling sign.

Sign, electronic changeable message board: Any sign with a fixed or changing display/message composed of a series of lights that may be changed through electronic means.

Sign, flashing/blinking: Sign with a type of animation characterized by cyclical switching of visual content or colors between on and off states in rapid successive increments of less than four seconds.

Sign, freestanding: An on-premises sign which advertises an establishment and is located on the premises owned or controlled by said establishment, which is supported by a single vertical support anchored or set into the ground.

Sign, ground: Also referred to as a "monument sign." A sign which is supported by one monolithic structure which is not less in width than one-half the maximum sign height, set upon the ground and is not part of a building, including ground signs that advertise for more than one occupancy on the premises (multi-tenant).

Sign, illuminated: A sign exposed to artificial lighting by light sources located on or in the sign or specifically directed toward the sign.

Sign, marquee: A sign with slots or wires for inserting individual letters so that a message about products sold or services provided on the same premises may be changed.

Sign, monument: See *Ground sign*.

Sign, multi-tenant: An on-premises sign with the name of the primary on-site facility and a list of the individual stores or businesses mounted on such sign. Examples include signs describing a mall arrangement, a shopping center development, and industrial park complex, or a complex of buildings with a unifying name and group of businesses.

Sign, multi-user: A ground sign used to advertise more than two businesses that are part of an integrated business development. A multi-user sign shall be located on the premises of one of said businesses, but shall be allowed to be off-premises signage as to the other businesses that are part of the integrated business development.

Sign, non-commercial or non-business: A sign with a message that does not contain or convey commercial context or information or advertising for any business, commodity, service, entertainment, product or other attraction or event.

Sign, nonconforming: Any sign lawfully existing on the effective date of the ordinance from which the sign regulations in this Unified Development Code derive which does not conform to all the standards and requirements of this Unified Development Code.

Sign, off-premises: A sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

Sign, off-premises portable: An off-premises sign which is also a portable sign.

Sign, on-premises: A sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product principally located or primarily manufactured or sold on the premises on which the sign is located.

Sign, permanent: A sign designed to be anchored to the ground, a building or other structure for the duration of the use of the premises.

Sign, political: A sign that contains primarily a political message and that is located on private real property with the consent of the property owner.

Sign, portable: Any sign designed or constructed to be easily moved from one location to another, including, but not limited to, signs mounted upon or designed to be

mounted upon a trailer, bench, wheeled carrier, A-frame, or other non-motorized mobile structure; a portable sign which has its wheels removed shall still be considered a portable sign hereunder. For the purpose of this definition, trailer signs and signs on benches are portable signs.

Sign, real estate: A sign which has the purpose of advertising for sale a parcel of real property or an estate in land, including rentals.

Sign, scrolling: A sign with a type of animation which causes displayed text or graphics to move continuously up, down, or across the screen, so that a line of text or graphics appears at one edge of the screen for each line that moves off the opposite edge.

Sign, subdivision identification: Any sign that is a permanent sign identifying an entrance to a residential or nonresidential (e.g., office park) subdivision.

Signs, suspended: Signs which hang or are suspended from any projecting element off the façade of the building. This can include blade signs.

Sign, temporary: Any sign constructed of cloth, canvas, light fabric, cardboard, wallboard, plywood, or other light materials with short life expectancies. A portable sign shall not be considered a temporary sign.

Sign, total effective sign area: The total effective area provided by a sign, measured from the highest point on the sign to the elevation of the center of the bottom of the sign (excluding base) by the width at the widest point. The highest point and the width shall be inclusive of all supports and framing.

Single-family residential: A building (attached or detached) designed to contain one or two separate living units with facilities for living, sleeping, cooking or eating.

Site: A tract of property that is the subject of a development application.

Site development plan: The final step of the development process within a PD district, if required by the ordinance adopting the PD.

Site plan: A scaled and detailed drawing that conforms to the requirements of this UDC, and that shows the roads, parking, footprints of all buildings, existing trees, proposed landscaping, parkland, open space, grading and drainage, and similar features needed to verify compliance with the city's approved land use plan and development standards.

Site preparation permit: A permit that is issued under this Unified Development Code, that authorizes site preparatory activities other than construction or placement of a structure on the land under one or more site plans and that, upon approval, authorizes the property owner to apply for a construction permit.

Sky glow: The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Sky glow is caused by light directed or reflected upwards or sideways and reduces one's ability to view the night sky.

Space: A plot of ground within a mobile home or manufactured housing park designed for the accommodation of one mobile home or manufactured home, together with the open space as required by this UDC. This term includes the terms "lot," "stand," and "site," [and] may also mean any plot or parcel of ground upon which is erected any accommodation for any recreational vehicle or structures of a temporary nature for living and sleeping purposes.

Special exception: A city-authorized modification of zoning standards applicable to particular types of development within any zoning district in a manner consistent with the overall intent of the zoning regulations and for which express standards are prescribed.

Specialty shop: An establishment for the purpose of supplying limited specialty items for hobbies and other similar activities, including, but not limited to: antiques, art objects and supplies, ceramic supplies, books, camera and photo supplies, candy, florist, gifts, greeting cards, framing, stamps and coins, stationery, and tobacco.

Specimen tree: An exemplary tree of good health and true to species habit and form, containing a minimum caliper of 1½ inches.

Stable, commercial: A facility used for the rental of a stall space or spaces, or for the sale or rental of horses or mules.

Stable (private, principal or accessory use): A facility used solely for the owner's private purposes for the keeping of horses, mules or ponies which are not kept for remuneration, hire or sale.

Stone material: Hard or durable naturally occurring rock, weathered, cut, or dimensioned, and manufactured stone products.

Stoop: A staircase on the façade of a building, usually constructed of concrete or stone, that leads either to a small un-walled entrance platform or directly to the main entry door.

Storefront windows: The large glass window facing the front of the building in a commercial, retail or office structure.

Street: The entire width between property lines when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic. This definition shall include public as well as private streets. An alley is not considered to be a street, and is separately defined herein.

Street light: Any man-made light installed for the purpose of vehicular traffic illumination purposes on a pole with a minimum fixture height of 30 feet above natural ground located within public or private street right-of-way.

Street lighting: Lighting provided for major, collector, and local roads where pedestrians and cyclists are generally present. The primary purpose of street lighting is to help the motorist identify obstacles, provide adequate visibility of pedestrians and cyclists, and assist in visual search tasks, both on and adjacent to the roadway.

Streetscape: The principal variables of streetscape are the type and dimension of curbs, walks, planters, street trees and street lights.

Street tree: A list of trees (large trees and small trees) issued and revised from time to time by the building official or the city engineer, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting adjacent to and within street rights-of-way within the city. The building official or city engineer may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into categories of trees that may be planted under power lines and trees that shall not be planted under power lines. The categories of trees that may be planted under power lines shall include live oak trees.

Street tree list: The large tree list and the small tree list indicated in appendix 3.1.3.12 and appendix 3.1.3.13 [in section 3.1.3.10].

Structure: Anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground. Also see *Building*.

Studio, health reducing or similar service: Includes, but is not limited to, an establishment which provides facilities and equipment, such as gymnasiums, weight rooms, swimming pools or spas, exercise apparatus and instruction classes, which are intended to promote health, fitness, weight reduction and/or similar health-related activities.

Such facilities may include such accessory uses as food service, sales of sundries and apparel, and child care services, provided that such accessory uses are clearly incidental to the primary use and are for the use of studio patrons only.

Studio, tattoo or body piercing: A building or portion of a building used for selling and/or applying tattoos (by injecting dyes/inks into the skin), and/or for piercing the skin with needles, jewelry or other paraphernalia, primarily for the purpose of ornamentation of the human body.

Studio for radio and/or television: A building or portion of a building used as a place for radio or television broadcasting.

Subdivide:

- (a) Is the following when done for the purpose of sale or building development:
 - 1. The division of any tract of land into two or more tracts or lots; or
 - 2. The assembly of two or more tracts of land into one tract or lot.
- (b) Is the following with regard to changes to a recorded subdivision plat:
 - 1. A re-subdivision of all or part of the subdivision;
 - 2. Any change of lot size or lot lines; or
 - 3. The relocation of any street.

Subdivider: Any person or any agent of the person dividing or proposing to divide land so as to constitute a subdivision, as that term is defined in this section. In any event, the term "subdivider" is restricted to include only the owner, equitable owner or authorized agent of the owner or equitable owner of land to be subdivided.

Subdivision: Pertaining to land for which a plat has been recorded, an area of subdivided lots. Pertaining to the act of subdividing land, see the definition of "subdivide" herein.

Submittal date: The date upon which the responsible city staff person makes a determination that a zoning or development application is complete and when a fee receipt is issued by the city for the required application fee.

Surveyor: A licensed state land surveyor or a registered professional land surveyor, as authorized by state statutes, to practice the profession of surveying.

Swimming pool, commercial: A swimming pool with accessory facilities which is not part of the municipal or public recreational system and which is not a private swim club, but where the facilities are available for use by the general public for a fee.

Swimming pool, private (use only by resident): A swimming pool constructed for the exclusive use of the residents of a one-family, two-family or multiple-family dwelling and located, fenced and built in accordance with the City of Pearland Code of Ordinances. A private swimming pool shall not be operated as a business nor maintained in a manner to be hazardous or obnoxious to adjacent property owners.

TCEQ: The acronym for the Texas Commission on Environmental Quality.

Telemarketing agency: An establishment which solicits business or the purchase of goods and/or services by telephone only. No sales of goods or services to the public occurs at or on the premises. No products are stored at or on the premises.

Temporary classroom building: A building(s) built on skids and which is utilized by a public school district for the purpose of eliminating the shortage of classrooms in order to bring the student/teacher ratio into compliance with state law.

Temporary lighting: Lighting installed and operated for periods not to exceed 60 days, completely removed and not operated again for at least 30 days.

Tennis or swim club: A recreational area containing a swimming pool or tennis courts or both with related facilities and/or clubhouse, all of which facilities are available to the public through a private membership.

Thin brick: Brick which does not have the thickness of brick material but is at least one-half inch thick and meets the latest version of ASTM Standard C-1088 thin veneer brick units, clay or shale, exterior grade.

Third party: A party contracted to provide lighting.

This ordinance: The entire Uniform Development Code, as herein defined.

Through street: A street that is not a cul-de-sac street and which intersects with at least two other streets that are not cul-de-sac streets, at intersections that are three-way or four-way intersections.

Tiedown: Any device designed for the purpose of anchoring a mobile home or manufactured home to ground anchors, as required by V.T.C.A., Occupations Code ch. 1201.

Time switch: An automatic lighting control device that switches lights according to time of day.

Total tree planting requirement: The total number of trees, if any, that must be planted under this article, excluding any which might be planted as part of a landscape buffer and further excluding the protected tree replacement requirement.

Total tree requirement: The total number of trees that must be provided under this article, excluding any which might be provided as part of a landscape buffer, and further excluding the protected tree replacement requirement. This sum shall be made up of:

- (1) Any street and parking lot trees to be planted; and
- (2) Planting equivalency credits earned pursuant to section 3.1.2.3.

Transfer storage and baggage terminal: An area and building where cargo is stored and where trucks, including tractor and trailer units, load and unload cargo on a regular basis. May include facilities for the temporary storage of loads prior to shipment.

Transit terminal: Any premises for the transient housing and/or parking of motor-driven buses and the loading and unloading of passengers.

Translucent: Allowing light to pass through, diffusing it so that objects beyond cannot be seen clearly (not transparent or clear).

Travel trailer/RV park/campground: An area or commercial campground for users of recreational vehicles, travel trailers, and similar vehicles to reside, park, rent or lease on a temporary basis. For the purpose of this definition, "temporary" means a maximum three-month time period.

Tree: Any evergreen or deciduous tree which at the time of planting has a caliper equal to or greater than 1½ inches as measured six inches above the root collar, which is not less than six feet in height as measured from the root collar, and which meets the standard for nursery stock specifications as established by the American Association of Nurserymen (1986 ed.).

Tree, large: A tree that is a minimum of three inches in caliper at the time of planting, and is a minimum planted height of eight feet at the time of planting.

Tree, ornamental: A tree that is a minimum of two inches in caliper at the time of planting, and is a minimum planted height of six feet at the time of planting.

Tree preservation: All definitions related to tree preservation that are contained within this UDC.

Truck: See *Heavy load vehicle*.

Truck and bus leasing: The rental of new or used panel trucks, vans, trailers, recreational vehicles or motor-driven buses in operable condition and where no repair work or intensive cleaning operations are performed.

Truck sales (heavy trucks): The display, sale or rental of new or used heavy load vehicles in operable condition.

Turf and/or turfgrass: Continuous plant coverage consisting of grass species appropriately suited to the site where it was planted.

TxDOT: The acronym for the Texas Department of Transportation.

Understory: The small tree, shrub and grass constituents of a plant association, excluding canopy vegetation.

Uniform Development Code or UDC: The following ordinances of the city, as they may be amended from time to time: this ordinance, the zoning ordinance, the subdivision ordinance, all building codes of any kind, and any ordinance providing that it amends or is part of the Uniform Development Code.

Unshielded: Fixtures lacking any means to restrict emitted light to below the horizontal plane.

Unshielded luminaire: A luminaire capable of emitting light in any direction including downward.

Uplight: For an exterior luminaire, means flux radiated in the hemisphere at or above the horizontal plane.

Usable open space: An open area or recreational facility that is designed and intended to be used for outdoor, active or passive, recreation purposes. An area of usable open space has a slope that does not exceed ten percent, and no dimension of less than ten feet. An area of usable open space may also include landscaping elements (e.g., trees, ground cover), trails, recreational facilities, water features and decorative objects such as art or fountains.

Use: The classification of the purpose or activity for which land or buildings are designated, arranged, intended, occupied or maintained.

Utility: A business that provides an essential commodity or service, such as electric, gas transmission, and local telephone, and that is generally under government regulations. Unless otherwise specified, this term (or the plural "utilities") when used within this UDC refers to a public utility.

Utility, dry: A facility that provides a service for electricity, natural gas, telecommunications, cable television, and/or internet/data. Also referred to as private utility.

Utility, wet: A facility that provides a service for potable water distribution, wastewater collection, and storm drainage. Also referred to as public utility.

Variance: Authorization to deviate from or vary one or more standards applicable to a development application that is reviewed and decided under this Unified Development Code.

Vertical illuminance: Illuminance measured or calculated in a plane perpendicular to the site boundary or property line.

Vested rights petition: A request for relief from one or more standards of this Unified Development Code based on an assertion that the petitioner has acquired a vested right requiring the city to review and decide the application under standards in effect prior to the effective date of the standards of this Unified Development Code.

Video sale or rental: An establishment primarily engaged in the retail sales or rental/lease of video tapes, films, CD-ROMs, and electronic media.

Violation: The failure of a structure or other development to fully comply with this article.

Visibility triangle: A triangle sight area, at all intersections, which shall include that portion of public right-of-way and any corner lot within the adjacent curb lines and a diagonal line intersecting such curb lines. The triangle is established by measuring a distance of 45 feet from the intersection of the extended curb or edge of the pavement of major thoroughfares, and 25 feet from the extended edge of the curb or pavement of local streets. A straight line connecting the ends of each measured distance which forms the hypotenuse shall establish the visibility triangle. The visibility triangle shall not contain any visual or physical impediments or obstructions to the vertical view between 30 inches and seven feet in height. Visibility triangle shall also mean a triangle sight area, on each side of a driveway where private driveways open into public streets, which shall include that portion of public right-of-way and any lot within a right triangle with the right angle at the point where the curb break begins and the sides forming the right angle being 15 feet long, one of which extends back along the adjacent curb and the other back toward the private property or parkway. (Also refer to the definition of "visibility triangle" as it applies to tree preservation in section 4.2.3.2 of the UDC.)

Visible: Capable of being seen by or perceptible to the general public.

Waiver: Authorization to deviate from or vary one or more standards applicable to a development application that is reviewed and decided this Unified Development Code.

Walkways: Passages or paths for walking.

Water features: Features of a site that hold water temporarily or permanently. These may include either natural features (lakes, wetlands, rivers, creeks, etc.) or artificial features (retention and detention ponds, fountains, ditches, and canals).

Warehouse storage or distribution facility: A building or facility used for the storage and/or distribution of wholesale items/products.

Wholesale distributor: An establishment or place of business primarily engaged in the selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or engaged in acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wrecking or salvage yard: A yard or building where motor vehicles, parts of motor vehicles, building materials, or machinery are stored, dismantled and/or offered for sale in the open as whole units, as salvaged parts or as scrap or processed metal.

Xeriscape: Quality landscape that conserves water, protects the environment, and is drought tolerant and adaptable to local conditions. The principles of xeriscape include planning and design, appropriate choice of plants, soil analysis which may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance.

Yard: Open space on the lot or parcel on which a building is situated, between the property line and an imaginary straight line that incorporates the nearest face of the main building and drawn to bisect the property, which is open and unobstructed to the sky by any structure except as herein provided.

Yard, front: That portion of the yard located between the front property line and a parallel imaginary straight line through the point nearest the front property line in the frontmost face of the principal building(s).

Yard, front (flag lot): The distance between the front of the building and the point nearest the abutting street where the lot satisfies applicable width requirements(s).

Yard, rear: That portion of the yard located between the rear property line and an imaginary straight line parallel to the front property line through the point nearest the rear property line in the rearmost face of the principal building(s).

Yard, required: An area being equal to the required setback areas (front, side, and rear) for a given zoning district.

Yard, side: That portion of the yard bounded by the front yard, the rear yard, the side property line, and the side façade of the principal building(s).

Appendix C

**PUBLIC PARTICIPATION AT COUNCIL MEETINGS AND PUBLIC
HEARINGS***

***Editor's note**—Printed herein is the city policy on public participation in meetings and hearings, as created by Ordinance No. 2015-13, adopted July 20, 2015. Obvious misspellings and punctuation errors have been corrected without notation. Additions made for clarity are indicated by brackets.

APPENDIX C—PUBLIC PARTICIPATION AT MEETINGS, HEARINGS

Policy on Public Participation at Council Meetings and Public Hearings.

Welcome to the Iowa Colony Council meeting. We hope the following information will help you understand the rules for public participation and citizen comments during public hearings.

The Mayor and City Council appreciate and encourage your participation and offer these rules of procedure and conduct to ensure that everyone has an equal opportunity to speak in a civil and orderly environment.

Speaking at City Council Meetings.

The agenda is available in the City Hall lobby and online at , 72 hours before the scheduled meeting.

Citizens may speak during "Citizen Comments" as designated on the meeting agenda or during Public Hearings intended to focus on specific issues at hand.

Sign-In Sheet.

Citizens wishing to address City Council are required to sign in before the start of the meeting. A sign-in sheet will be located in the lobby. Please print and sign your name to ensure correct spelling in the minutes.

The Mayor will call upon you to speak.

When you are called by the Mayor, please stand and wait to be acknowledged by the Mayor before you speak.

Direct your comments to the Mayor and Council. Begin by stating your name and address for the record. Citizens are limited to 3 minutes.

Audience Participation.

Citizens are urged but not required to present requests or complaints in writing to the Administration before meetings, along with indications of desire to address Council.

A. Acceptable Conduct.

1. Speakers shall not share, loan or borrow time.
2. Comments from speakers must be civil and orderly.
3. Comments on physical appearance or character not related to job performance will not be tolerated.
4. Members of the audience are expected to respect the opportunity of others to speak and not interrupt or harass speakers.

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B. Audience Participation.

Audience participation shall be at a set time on the agenda, not during Council deliberations.

1. In order to designate priority in speaking, citizens shall sign up in person prior to the start of Audience Participation.
2. Each speaker may speak a maximum of three minutes.
3. A maximum of thirty (30) minutes will be allowed for Audience Participation.
4. Following signed in speakers, others who wish to speak will be recognized by a show of hands.

C. Violations.

1. If any person makes or attempts to make a public comment in violation of this policy, the Mayor may refuse to allow that person to make any public comment, or further public comment, at that meeting.
2. Any person preventing or disrupting a Council meeting by physical action or verbal utterance is subject to expulsion by order of the Mayor or City Council.

Direct your comments to the Mayor and Council. Due to the requirements of the Open Meetings Act, it is not the practice of Council to discuss items not on the agenda.

Authority to Grant Exceptions.

The Mayor shall have discretion to grant exceptions to the time limits and number of speakers in this ordinance, if the Mayor determines in his discretion that the subject matter cannot reasonably be addressed within those limits. The City Council shall also have the same discretion and authority as the Mayor to extend the limits described in this section or to overrule an extension by the Mayor. Such action by the Council shall be done by a motion, second, and vote without debate.

Presiding Officer.

Any reference herein to the Mayor shall also include any other person presiding at the Council meeting in question.

Public Hearings.

Public Hearings are designated to discuss a specific topic as noted on the agenda.

APPENDIX C—PUBLIC PARTICIPATION AT MEETINGS, HEARINGS

The Procedures and rules for public hearings are the same as for Council Meetings, except that comments are limited to the subject of the hearing.

Communicating with Your Elected Representatives.

If you have a concern or issue that you would like to discuss for longer than three minutes, you are encouraged to contact your elected officials directly.

The City Secretary is authorized to attach contact information for each Council Member to this policy.

CODE COMPARATIVE TABLE

LEGISLATION

This table gives the location within this Code of those ordinances and other legislation which are included herein. Ordinances and other legislation not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Legislation	Date	Section	Section this Code
Ord. No. 81-A	7-20-1981	art. I	22-38
		art. II	22-39
		art. III	22-40
		art. IV	22-41
		art. V	22-42
Ord. No. 87-2	7-20-1987	V	10-1
		VI	10-1
Ord. No. 88-1	1-18-1988	I	32-1
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		III	32-3
Ord. No. 88-1a	9-19-1988	1-1	8-338
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		3-16	8-423
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Ord. No. 89-1	3-27-1989	1	12-1
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Ord. No. 90-1	1-15-1990	1	10-21
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Ord. No. 90-2	1-22-1990	1	18-91
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Ord. No. 95-2	6-19-1995	I	42-40
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Ord. No. 98-6	9-21-1998	1	22-1
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Ord. No. 99-2	6-21-1999	IV	16-1
Ord. No. 2000-2(b)	7-17-2000	1-100	8-231
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Ord. No. 2000-08	10-4-2000	—	App. A (note)
Ord. No. 2001-3	2-19-2001	1	38-1
Ord. No. 2002-5	7-15-2002	1	40-1
Ord. No. 2004-2	6-21-2004	12	38-4
Ord. No. 2004-4	10-18-2004	1	38-1
Ord. No. 2007-12	8-20-2007	1	24-59
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Ord. No. 2008-4	4-21-2008	2	8-283
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Ord. No. 2008-7	7-21-2008	1	24-103
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Ord. No. 2009-12	6-15-2009	1	6-417
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Ord. No. 2011-07	11-21-2011	1	10-23
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Ord. No. 2011-08	11-21-2011	1	10-24
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Ord. No. 2012-02	1-23-2012	1	38-1
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Ord. of 4-16-2012	4-16-2012	—	App. A (note)
Ord. No. 2012-13	8-20-2012	1	34-91
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Ord. No. 2014-01	1-27-2014	1	App. A, § 70
Ord. No. 2014-11	7-21-2014	2	2-73
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Ord. No. 2014-16	8-15-2014	2	App. A, § 5
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Ord. No. 2014-20	10-14-2014	X-1	8-209
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Ord. No. 2014-21	10-14-2014	2	10-22
Ord. No. 2014-23	12-15-2014	1	36-1
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Ord. No. 2015-11	4-15-2015	1	38-2
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Ord. No. 2015-13	7-20-2015	1	2-40
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Ord. No. 2015-19	9-21-2015	—	App. C (note)
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Ord. No. 2015-22	10-19-2015	1	34-19
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Ord. No. 2016-04	3-21-2016	1	18-56
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Ord. No. 2016-12	6-20-2016	1	18-115
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Ord. No. 2016-14	6-20-2016	1	28-1
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Ord. No. 2016-19	8-15-2016	1	30-1
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		Ord. of 5-15-2017	5-15-2017	—	App. B (note)
		Ord. No. 2017-11-1	5-30-2017	1	30-5
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Ord. No. 2017-13	8-21-2017	1	6-385		
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Ord. No. 2017-15-1	9-2-2017	1	12-35		
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Ord. No. 2017-21	10-16-2017	—	App. B (note)		
Ord. No. 2017-22	10-16-2017	—	App. B (note)		
Ord. No. 2017-25	11-20-2017	—	App. B (note)		
Ord. No. 2017-29	12-18-2017	—	App. B (note)		
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Ord. No. 2018-22	10-15-2018	A	34-62		
Ord. No. 2018-31	12-17-2018	1	38-2		
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Ord. No. 2019-09	4-8-2019	1	38-53		
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Ord. No. 2019-20	6-10-2019	1	6-386
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Ord. No. 2019-27	7-22-2019	3	App. A, § 5
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Ord. No. 2019-29	8-19-2019	1	38-2
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Ord. No. 2019-30	9-16-2019	2	14-19
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Ord. No. 2019-38	11-18-2019	9	24-27
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Ord. No. 2019-40	12-16-2019	I-1	6-86
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Ord. No. 2020-04	1-27-2020	2	6-255
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Ord. No. 2020-39	12-21-2020	1	18-19
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Ord. No. 2020-40	12-21-2020	1	6-19
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Ord. No. 2021-03	1-15-2021	A	6-255
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Ord. No. 2021-06	1-25-2021	3	App. A, §§ 90—93
		4	App. B, § 1.1.5.1
Ord. No. 2021-11	2-22-2021	A	6-150
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Ord. No. 2021-12	3-15-2021	3	App. A, § 71
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Ord. No. 2021-27	8-16-2021	1	38-2
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Ord. No. 2021-23	9-20-2021	1	38-3
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Ord. No. 2021-30	9-20-2021	1	2-119
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Ord. No. 2022-11	8-15-2022	1	2-94
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STATE LAW REFERENCE TABLE

This table shows the location within this Charter and Code, either in the text or notes following the text, of references to Texas state law.

V.A.T.S. Insurance Code Section	Section this Code
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