



## **CITY OF ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING AGENDA**

**Wednesday, November 02, 2022**

Notice is hereby given that the Planning and Zoning Commission of the City of Rollingwood, Texas will hold a meeting, open to the public, in the Municipal Building at 403 Nixon Drive in Rollingwood, Texas on November 02, 2022 at 6:00 PM. Members of the public and the Planning and Zoning Commission may participate in the meeting virtually, as long as a quorum of the Planning and Zoning Commission and the presiding officer are physically present at the Municipal Building, in accordance with the Texas Open Meetings Act. The public may watch this meeting live and have the opportunity to comment via audio devices at the link below. The public may also participate in this meeting by dialing one of the toll-free numbers below and entering the meeting ID and Passcode.

**Link:** <https://us02web.zoom.us/j/5307372193?pwd=QmNUbmZBQ1lwUjNjNmM5RnJreIRFUT09>

**Toll-Free Numbers:** (833) 548-0276 or (833) 548-0282

**Meeting ID:** 530 737 2193

**Password:** 9fryms

The public will be permitted to offer public comments via their audio devices when logged in to the meeting or telephonically by calling in as provided by the agenda and as permitted by the presiding officer during the meeting. If a member of the public is having difficulties accessing the public meeting, they can contact the city at [dadair@rollingwoodtx.gov](mailto:dadair@rollingwoodtx.gov). Written questions or comments may be submitted up to two hours before the meeting. A video recording of the meeting will be made and will be posted to the City's website and available to the public in accordance with the Texas Public Information Act upon written request.

### **CALL ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING TO ORDER**

1. Roll Call

### **PUBLIC COMMENTS**

Citizens wishing to address the Planning and Zoning Commission for items not on the agenda will be received at this time. Please limit comments to 3 minutes. In accordance with the Open Meetings Act, the Planning and Zoning Commission is restricted from discussing or taking action on items not listed on the agenda.

Citizens who wish to address the Planning and Zoning Commission with regard to matters on the agenda will be received at the time the item is considered.

### **CONSENT AGENDA**

All Consent Agenda items listed are considered to be routine by the Planning and Zoning Commission and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a Board Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

- [2.](#) Discussion and possible action on the minutes from the May 4, 2022 Planning and Zoning Commission meeting
- [3.](#) Discussion and possible action on the minutes from the October 12, 2022 Joint Planning and Zoning Commission and City Council Meeting

### **REGULAR AGENDA**

- [4.](#) Discussion of intent to continue to serve on the Planning and Zoning Commission
- [5.](#) Discussion and possible action regarding residential zoning ordinances defining the minimum required depth and width of yards
- [6.](#) Discussion and possible action regarding building height and related provisions in the residential zoning code
- [7.](#) Discussion and possible action regarding a plan for commercial zoning code updates as identified in the city's Comprehensive Plan

### **ADJOURNMENT OF MEETING**

### **CERTIFICATION OF POSTING**

I hereby certify that the above Notice of Meeting was posted on the bulletin board at the Rollingwood Municipal Building, in Rollingwood, Texas and to the City website at [www.rollingwoodtx.gov](http://www.rollingwoodtx.gov) at **5:00 p.m.** on **October 28, 2022.**

*Desiree Adair*

Desiree Adair, City Secretary

#### **NOTICE -**

The City of Rollingwood is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact the City Secretary, at (512) 327-1838 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

The Planning and Zoning Commission will announce that it will go into executive session, if necessary, to deliberate any matter listed on this agenda for which an exception to open meetings requirements permits such closed deliberation, including but not limited to consultation with the city's attorney(s) pursuant to Texas Local Government Code section 551.071, as announced at the time of the closed session.

Consultation with legal counsel pursuant to section 551.071 of the Texas Local Government Code;  
discussion of personnel matters pursuant to section 551.074 of the Texas Local Government Code;  
real estate acquisition pursuant to section 551.072 of the Texas Local Government Code;  
prospective gifts pursuant to section 551.073 of the Texas Local Government Code;  
security personnel and device pursuant to section 551.076 of the Texas Local Government Code;

and/or economic development pursuant to section 551.087 of the Texas Local Government Code.  
Action, if any, will be taken in open session.



## **CITY OF ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING MINUTES**

**Wednesday, May 04, 2022**

The Planning and Zoning Commission of the City of Rollingwood, Texas held a meeting, open to the public, in the Municipal Building at 403 Nixon Drive in Rollingwood, Texas on May 4, 2022. Members of the public and the Planning and Zoning Commission were able to participate in the meeting virtually, as long as a quorum of the Planning and Zoning Commission and the presiding officer were physically present at the Municipal Building, in accordance with the Texas Open Meetings Act. A video recording of the meeting was made and will be posted to the City's website and available to the public in accordance with the Texas Public Information Act upon written request.

### **CALL ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING TO ORDER**

#### **1. Roll Call**

**Acting Chair Amie Rodnick called the meeting to order at 6:02 p.m.**

**Present members: Acting Chair Amie Rodnick, Dave Bench, Michael Rhodes, Michael Hall, and Greg Demas.**

**Also present: Interim City Administrator Ashley Wayman, City Secretary Desiree Adair, Council Member Brook Brown, Council Member Sara Hutson, and City Attorney Charlie Zech.**

### **PUBLIC COMMENTS**

No individuals spoke during public comments.

### **CONSENT AGENDA**

All Consent Agenda items listed are considered to be routine by the Planning and Zoning Commission and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a Board Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

#### **2. Discussion and possible action on the minutes from the March 30, 2022 Planning and Zoning Commission meeting**

**Dave Bench motioned to approve the consent agenda. Mike Rhodes seconded the motion. The motion passed 5 – 0.**

### **REGULAR AGENDA**

#### 3. Discussion and possible action to elect a Chair of the Planning and Zoning Commission

Amie Rodnick volunteered to serve as the Chair for 6 months. Dave Bench publicly thanked Amie Rodnick for her time.

**Mike Rhodes motioned to elect Amie Rodnick as Chair of the Planning and Zoning Commission. Dave Bench seconded the motion. The motion passed 4 – 0, with 1 abstention.**

#### 4. Review of the proposed Comprehensive Plan

Interim City Administrator Ashley Wayman introduced the City Comprehensive Plan and opened up the review by the Planning and Zoning Commission for comments to take to City Council. Council Member Brook Brown, previously a member of Comprehensive Plan Strike Force, explained that the City Comprehensive Plan is a planning tool for the City of Rollingwood.

*Tony Stein joined the meeting at 6:07 p.m.*

Council Member Brook Brown discussed the development process of the Comprehensive Plan and recommendations to the City Council for adoption. She pointed out the City's vision statement and mission statement and described how these two formative statements reflect the goal and the means of getting to the goal. Each chapter of the Comprehensive Plan has a quote from the citizen survey and key takeaways from the Comprehensive Plan Strike Force.

Topics from the Comprehensive Plan were presented and discussed including Current Land Use, Future Land Use, Parks and Recreation, Facilities and Infrastructure, Mobility and Connectivity, Economic Development and Fiscal Policy, Implementation, and Future Policy and Objectives.

Goals and recommendations for general, residential, and commercial policies from each of these chapters were questioned and discussed by Council Member Brook Brown and the Planning and Zoning Commission.

In regards to implementation, Council Member Brook Brown stated that the Comprehensive plan should be reviewed regularly and the community should be reengaged with the process each time it is reviewed. All recommendations have been provided in the chart on page 44 of the Comprehensive Plan. After the Comprehensive Plan has been adopted by City Council, any zoning changes would come back to the Planning and Zoning Commission.

### **ADJOURNMENT OF MEETING**

**The meeting was adjourned at 8:00 p.m. by Chair Amie Rodnick.**

**Minutes Adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

\_\_\_\_\_  
**Amie Rodnick, Chair**

**ATTEST:**

\_\_\_\_\_  
**Desiree Adair, City Secretary**



**CITY OF ROLLINGWOOD  
JOINT PLANNING AND ZONING COMMISSION AND CITY COUNCIL  
MEETING  
MINUTES**

**Wednesday, October 12, 2022**

The Planning and Zoning Commission of the City of Rollingwood, Texas held a joint meeting with the Rollingwood City Council, open to the public, in the Municipal Building at 403 Nixon Drive in Rollingwood, Texas on October 12, 2022 at 5:00 PM. Members of the public, the Planning and Zoning Commission, and the City Council were able to participate in the meeting virtually, as long as a quorum of the Planning and Zoning Commission and the City Council and the respective presiding officers were physically present at the Municipal Building, in accordance with the Texas Open Meetings Act. A video recording of the meeting was made and will be posted to the City's website and available to the public in accordance with the Texas Public Information Act upon written request.

**CALL JOINT ROLLINGWOOD PLANNING AND ZONING COMMISSION AND CITY COUNCIL MEETING TO ORDER**

1. Roll Call

**Mayor Gavin Massingill called the City Council meeting to order at 5:07 p.m.**

**Chair Amie Rodnick called the Planning & Zoning meeting to order at 5:07 p.m.**

**Present Members of City Council:** Mayor Gavin Massingill, Mayor Pro Tem Sara Hutson, Council Member Phil McDuffee, Council Member Roxanne McKee, Council Member Alec Robinson, and Council Member Brook Brown.

**Present Members of Planning and Zoning Commission:** Chair Amie Rodnick, Michael Hall, Dave Bench, Brian Nash, and Tony Stein.

**Also Present:** City Administrator Ashley Wayman, City Attorney Charles Zech, City Secretary Desiree Adair, RCDC President Emily Doran, and Assistant to the City Administrator Makayla Rodriguez.

**PUBLIC COMMENTS**

No individuals spoke during public comments:

**REGULAR AGENDA**

2. Discussion and possible action in regard to residential zoning ordinances defining the minimum required depth and width of yards

*Mayor Gavin Massingill called up agenda items 2, 3, and 4 simultaneously.*

Council Member Brook Brown discussed how City Council has received funding from RCDC in order to proceed on the commercial zoning changes from the Comprehensive Plan. She discussed bringing development along the commercial corridor and issues discovered with our existing Code.

Dave Bench asked if only clarification needs to be made to existing Code. Tony Stein asked about the reasons for these issues being sent to the Planning and Zoning Commission by City Council at this time. Council Member Brook Brown explained the difference between the items, the timing for public hearings, and the understanding of the process of an ordinance.

Council Member Phil McDuffee discussed current yard requirements. Dave Bench discussed potentially cleaning up the language of the Code.

Mayor Pro Tem Sara Hutson discussed how the Comprehensive Plan was focused on the commercial side. She would also like residential building code issues to be addressed. She provided a list, included in the packet under item 4, that is not comprehensive and has been brought to her by residents.

Amie Rodnick discussed the process of moving forward with concerns of residents and determining the character of Rollingwood.

Brian Nash liked the idea of soliciting input from the community in regards to residential building concerns. He hadn't realized that the projections issue was a problem and requested examples. Council Member Brook Brown offered to put together a list of examples.

The Planning and Zoning Commission and the City Council discussed spec homes, investment funds, and multiple owners of one property.

Council Member Roxanne McKee explained she is all in favor of citizen input and public reviews. She discussed issues in which engineers and builders have pushed the limits. She supports changes listed in item 2 knowing that a Comprehensive Plan review is going to take significant time. She would like to see action on these pressing items.

Tony Stein expressed concern with fixing issues one at a time that cause unintended consequences.

Mike Hall discussed development in Rollingwood with the mixture of newer and older homes, and providing time for the community to decide their options.

Dave Bench discussed overhangs and the purpose that they provide from an energy efficiency standpoint. He had previously emailed his concerns to City Council. Chair Amie Rodnick asked how overhangs are more energy efficient. Dave Bench explained that overhangs provide shade in the summer time and allow the low sun to provide some heat in the winter season. He



explained that being restricted to the setback requirements has other considerations. City Council discussed trees as shade and water runoff from the roof onto neighboring properties. The Planning and Zoning Commission discussed the creation of non-conforming structures with making these changes. Council Member Brook Brown discussed defining overhangs, eaves, cornices, and projections.

Tony Stein and Brian Nash discussed the purpose of the meeting and what is desired to be accomplished. Mayor Gavin Massingill defined which Rollingwood municipal codes are being discussed and reviewed. Chapter 107 is the Zoning Code, and section 107-3 includes the residential building height definition. Section 107-71 describes the maximum permissible height. Chapter 101 is the building and construction code which has definitions in section 101-2. Yard and setback line definitions are found in Chapter 107 of the Zoning Code in the definition section 107-3. Section 107-75 Yards generally and section 107-76 Minimum required depth and width of yards are also relevant to this discussion.

Abe Salinas, of K. Friese + Associates, discussed definitions, application, and recommendations. Their focus has been on building yard depths with respect to projections and maximum height regulations for residential buildings. They apply the code as written to reviews for approval or disapproval. Yard depths with projections need definitions, and limitations, such as 18-36 inches as other cities have done, and review for conformance with Code and the requirements for approval. K. Friese + Associates reviews the plans for general conformance with maximum height. He discussed the terrain and sloping lots with grading changes that occur during the building process. Mayor Gavin Massingill discussed an administrative requirement of an upfront promulgated form with clear indications of what the reference datum points are.

Tony Stein asked about the measurement of the building height. Mayor Gavin Massingill discussed how to find the highest point and the lowest point. He explained the Code and how to determine the highest and lowest points without fluctuation. Council Member Brook Brown discussed a legal provision in our building code in section 107-71 that does not allow any part of a building to be greater than 35 feet, and the definition in 107-3 of residential building height. With the adoption of the International Building Code, the definitions were used, and in her opinion, causes a problem with enforcement. The Planning and Zoning Commission asked Mr. Salinas how this is currently applied. Mr. Salinas explained that they use the definition in section 107-3.

*Mayor Gavin Massingill left the meeting at 6:36 p.m.*

The Planning and Zoning Commission, City Council, and Mr. Salinas discussed projections and cantilevers and application of the code.

The Commission and Council Members discussed next steps in this process including costs and consultants. Council Member Brook Brown discussed how the Comprehensive Task Force acted with a survey, public hearings, workshops, and the development of a new plan.

Kendra Roloson, building on 304 Vale and living at 301 Wallis, discussed the need for community input. She would like her voice to be heard as well as other members of the community. She would like alternative times for meeting for community input, and she feels a code rewrite should be considered with the input of all citizens. She is a real estate attorney and discussed nonconforming use issues with piecemeal code changes and would like careful consideration by the community as a whole.

Emily Doran, 601 Ridgewood, discussed the complexity of building a house in Rollingwood. She would like a consideration of a welcoming committee for builders.

City Council and the Planning and Zoning Commission discussed the timing for a public hearing. City Administrator Ashley Wayman explained the noticing requirements for a public hearing at both the Planning and Zoning Commission and City Council meetings. City Staff will request availability tomorrow.

3. Discussion and possible action regarding building height and related provisions in the residential zoning code
  
4. Discussion and possible action to begin an assessment of the city's residential zoning ordinances

#### **ADJOURNMENT OF MEETING**

The Planning and Zoning Commission meeting was adjourned at 6:59 p.m.

The City Council meeting was adjourned at 7:01 p.m.

Minutes Adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 by the Planning and Zoning Commission.

\_\_\_\_\_  
Amie Rodnick, Chair

**ATTEST:**

\_\_\_\_\_  
Desiree Adair, City Secretary

Minutes Adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 by City Council.

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**Gavin Massingill, Mayor**

**ATTEST:**

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**Desiree Adair, City Secretary**

## **Planning and Zoning Commission**

<b><u>Member Name</u></b>	<b><u>Position – Office</u></b>	<b><u>First Appointed</u></b>	<b><u>Current Term Ends</u></b>
Brian Nash	1 – Member	March 2018	December 2023
Amie Rodnick	2 – Member/Chair	March 2019	December 2023
Michael Hall	3 – Member	March 2021	December 2023
Tony Stein	4 – Member	June 2017	December 2023
Michael Rhodes	5 – Member	May 2020	December 2022
Greg Demas	6 – Member	February 2022	December 2022
Dave Bench	7 – Member	October 2021	December 2022

**Council Liaisons:** Brook Brown and Sara Hutson

7 Members appointed by City Council, Chair designated by majority vote of Commission yearly.

Commission meets the 1<sup>st</sup> Wednesday of each month at 6:00 p.m.

## Concerns with respect to residential zoning code and required "yards"

### I. How the code defines "yard":

Rollingwood's zoning code for residential "setbacks" uses the term "yard" to define the required front, side and rear setbacks for residential lots rather than the term "setback".

"Yard" is defined in Section 107-3 as follows:

"'Yard' means an unoccupied space on a lot which:

(1) Is open and unobstructed from the ground upward to the sky *except for fencing, walls, or permitted projections, such as cornices, eaves, porches or landscaping;*

(2) Extends between a main building and the lines of the lot upon which the main building is located; and

(3) Has a depth between the front, side or rear lot lines and the main building as required for the district in which the lot is located".

### 2. Current issues:

The italicized exception in clause (1), "except for fencing, walls, or permitted projections, such as cornices, eaves, porches or landscaping", poses two issues:

(1) The terms of the ordinance are subject to interpretation on the question whether any particular projecting structure is or is not a "fence", "wall", "cornice", "eave", "porch" or "landscaping", or "permitted projection" within the scope of the exception

(Note: Although an upper level roof that projects into the "yard" *does not* seem to fit within the permitted exceptions as the listed exceptions relate to outermost parts of a roof ("eave", "cornice"), and not the roof itself, as such exceptions would not be necessary if the "roof" itself were an exception.)

(2) The ordinance language places no limit on how far an excepted structure can extend into the "yard". Ordinances of other Texas cities either preclude a projection into a "yard" or setback or contain absolute limits for how far a "projection" may extend into the "yard" or "setback". See examples below.

**Discussion Question:** These two issues raise the question whether the Rollingwood ordinances should be amended to clarify the "permitted projections" and to incorporate express limits on these exceptions.

## Example Ordinances from various other Texas Cities

### Westlake Hills, Texas:

#### Sec. 22.03.276 Setbacks for accessory structures

The minimum setback distances for accessory structures, other than unroofed steps, ramps, fences, walks, driveways, driveway gates, playscapes, and mailboxes, shall be the same as the setback distances applicable to a principal building under the appropriate category in [section 22.03.281](#). Accessory structures, including overhangs and eaves, shall not encroach into setbacks. Propane tanks shall not be required to meet the setback requirements of this section so long as they are permitted and placed in accordance with the Liquefied Petroleum Gas Safety Rules adopted by the Railroad Commission of Texas in title 16, part 1, chapter 9, of the Texas Administrative Code, including any and all future amendments thereto. (Ordinance 2020-005 adopted 5/13/20)

**Note: Section 22.03.281 sets setbacks based on lot size:**

≥.5 acres: front/side/rear = 50/30/25

Less than .5 acre: front/side/rear=30/25/20

### City of Lakeway, Texas

#### Sec. 24.02.241 Position of structures on lot

(a) Encroachments. Structures, including overhangs, may not encroach into any setback, public utility easement, or drainage easement. Exceptions:

- (1) Retaining walls;
- (2) Fences;
- (3) Signs.

**Richardson, Texas:****(e) Front setback.**

(1) There shall be a front setback having a minimum depth of 30 feet. Unenclosed porches, fireplaces, and other architectural appendages may project into the required front setback for a distance not to exceed five feet.

**(f) Side setback.**

(1) There shall be a side setback on each side of the lot as provided in this section without projections or appendages except as allowed herein, except the side setback on a corner lot adjacent to a side street shall not be less than 20 feet. The minimum required side setback is:

a. Where lots are created or combined so that the resulting lot is less than 80 feet in width, the minimum side setback shall be seven feet.

b. Where lots are created or combined so that the resulting lot is 80 feet or more, but less than 120 feet in width, the minimum side setback shall be ten feet.

c. Where lots are created or combined so that the resulting lot is 120 feet or more in width, the minimum side setback shall be 15 feet.

d. The reconstruction of a single-family dwelling on an existing, platted lot of record may utilize the side setback established for the previous dwelling on that lot. However, in no instance shall the side setback be less than seven feet in width, nor less than the side setback of the previous dwelling.

(2) The ordinary projections of a roof eave or cornice may extend into the required side setback a maximum of two feet. A fireplace, windowsill, box or bay window, or other architectural features not more than ten feet in width may extend into the required side setback a maximum of two feet. ....

**(g) Rear setback.** There shall be a rear setback having a depth of not less than 25 feet, except:

(1) The ordinary projections of a roof eave or cornice may extend into the required rear setback a maximum of two feet. A fireplace, windowsill, box or bay window, and other architectural features not more than ten feet in width may extend into the required rear setback a maximum of two feet.

**Texas City, Texas:****160.086 PROJECTIONS INTO REQUIRED YARDS.**

Certain architectural features, fences, walls and hedges may project into, or be located in, required yards as follows:

(A) Cornices, eaves and sills not more than two feet into any required yard;

(B) Balconies, bay windows and chimneys not more than three feet into front yards, or two feet into side and rear yards;

(C) Patios and open decks may be located in side yards and rear yards; provided that, they are not closer than three feet to any adjacent property line. In the case of a corner lot, patios or decks shall be subject to the regular street side yard requirements of the district;

(D) Upon approval of the Building Official, open sided carports may be located in front yards (or, in the case of a corner lot, in the side yard); provided that, not closer than five feet to any front property line they are, and do not exceed the eave height of the existing dwelling; .....

**Rockwall, Texas:**

SUBSECTION 01.07: PROJECTIONS INTO REQUIRED YARD OR COURT (A) Every part of a required yard within a building setback shall be unobstructed and open from its lowest point to the sky, except for the ordinary projections of sills, belt courses, cornices, chimneys, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall extend into a court more than six (6) inches nor into a required yard by more than 30-inches; and provided existing open porches extending into the required yard shall not be enclosed.



### Sec. 107-3 Definitions.

....

*Yard* means an unoccupied space on a lot which:

- (1) Is open and unobstructed from the ground upward to the sky; ~~except for fencing, walls, or permitted projections, such as cornices, eaves, porches or landscaping;~~
- (2) Extends between a main building and the lines of the lot upon which the main building is located; and
- (3) Has a depth between the front, side or rear lot lines and the main building as required for the district in which the lot is located.

*Yard, front,* means a yard which faces a street, is located between the main building on a lot and the street easement or front line of the lot, and extends across the front of a lot between the side lot lines.

*Yard, rear,* means a yard which is located between the main building on a lot and the rear line of the lot, and extends across the rear of the lot between the side lot lines.

*Yard, side,* means a yard which is located between the main building on a lot and the side lines of the lot, and extends across the side of a lot between the front yard and the rear yard.

### Sec. 107-76. - Minimum required depth and width of yards.

(a) In order to determine compliance with the minimum yard depth and width requirements of this section, measurements shall be made from the closest point ~~on the foundation line~~ of a "qualified building," as the term is defined in this subsection, to either the lot line or street right-of-way line, whichever results in the shortest distance. For purposes of this subsection, "qualified building" means a main building, a garage, carport, an accessory building, a covered porch, patio or terrace, or any projection of any such structure.

(b) The front yard of each lot shall have a minimum depth of 30 feet. ~~For purposes of this subsection, "qualified building" means either a main building, a garage, or a covered front porch or covered front terrace.~~

(c) The side yard of each lot shall have a minimum width of:

- (1) Ten feet, when the lot abuts another lot, except that the sum total of the two side yards of any lot shall not be less than 25 feet;
- (2) Thirty feet, when the lot borders a street other than described in subsection (c)(3) of this section;
- (3) Twenty feet, when two lots extend the length of one block and have abutting rear lot lines.

~~For purposes of this section, the term "qualified building" means a main building or accessory building.~~

(d) The rear yard of each lot shall have a minimum depth of 20 feet. ~~For purposes of this subsection, "qualified building" means an accessory building, or a main building or any projection thereof other than a projection of uncovered steps, unenclosed balconies or unenclosed porches.~~

(e) No part of a qualified building or other structure may overhang, extend into or be cantilevered into a required yard unless expressly permitted in this Division II – Residential Zoning District; provided however, that a roof, eave, cornice, above ground balcony or patio, sill, or bay window, or chimney of a qualified building may overhang or be cantilevered into a required yard a maximum of two feet."

(f) Extensions into required yards for accessory buildings, temporary buildings, fences, swimming pools and tennis courts are as expressly permitted in other sections of this Division, and nothing in this subsection, including the definition of "qualified building," alters such requirements.

(g) Landscaping, uncovered patios at ground level, terraces at ground level, retaining walls, uncovered steps, ramps, walks, driveways, playscapes and mailboxes may encroach into a required yard.

## COMMENTS

1. New Section 107-3 removes the "projections" language from the definition of "yard". This language permitted unlimited projections into a "yard". New 107-76 (e) permits defined projections up to two feet into a required yard, as discussed at the Council meeting. New (f) retains existing sections that allow extensions into a side or rear yard for accessory buildings, etc., as listed in (f). New (g) lists things that may be located in a required yard.

2. New Section removes the three different definitions of "qualified building" and substitutes one single definition of "qualified building". The defined term for "qualified building" names what structures are counted for purposes of measuring whether the required yard depth and width is met. This changed definition eliminates some drafting issues with the previous language (e.g.: if a structure wasn't listed as a "qualified building", then it didn't count for purposes of measuring the required yard and, consequently it could be argued that an unnamed structure could be placed in a required yard), and where previous language was intended to permit certain structures in side or rear yards, those exceptions are now expressly referred to in the proviso to (e), and new (f) and (g).

## Chapter 107 ZONING

### ARTICLE I. IN GENERAL

#### Sec. 107-1. Purpose.

The purpose of this chapter is to promote the health, safety and general welfare of the residents and property owners of city. The regulations herein are designed to lessen traffic congestion, secure safety from fire and other dangers, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and facilitate the adequate provision of water, parks and other public requirements. These regulations have been made with reasonable consideration, among other things, for the character of each zoning district, and its peculiar suitability for the particular uses specified, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city consistent with the residential character and mature development of the city.

(Code 1987, ch. 11, subch. G, art. I, § 2; Code 1995, § 14.02.002)

#### Sec. 107-2. Minimum requirements.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

(Code 1987, ch. 11, subch. G, art. I, § 3; Code 1995, § 14.02.003)

#### Sec. 107-3. 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:

*Accessory building or structure* means a building or structure which does not share a common roof or common wall, including, but not limited to, a toolhouse, home workshop, greenhouse, garage, carport, children's playhouse, or swimming pool house, which:

- (1) Is located on the same lot as a dwelling;
- (2) Is subordinate in area to the dwelling and is used for a purpose customarily incidental to the dwelling;
- (3) Is detached from the dwelling except that a connected foundation or walkway may exist with the dwelling;
- (4) Does not provide complete independent living facilities for one or more persons which include permanent provisions for living, sleeping, and sanitation facilities; and
- (5) Is not used for lease or rental, or for a commercial purpose other than a home occupation by a resident of the main dwelling.

*Addition* means a construction project that causes an existing structure to increase in total square footage.

*Alley* means a minor public or private right-of-way which:

- (1) Is used primarily for vehicular traffic to the rear or side of properties which abut a public street; and
- (2) Affords secondary means of access to abutting property.

*Block* means a parcel or tract of land entirely surrounded by streets, and occupied by or intended for occupancy by buildings or structures.

*Board* means the board of adjustment of the city.

*Building* means any structure which is:

- (1) Permanently affixed to the land;
- (2) Has a roof supported by columns or walls; and
- (3) Is built for the enclosure, shelter or protection of persons, animals or property of any kind.

*Building footprint* means the horizontal surface area measured by taking the aggregate outside horizontal dimensions of the building and covered structures, including garages, carports, and covered porches and/or decks. Uncovered decks are not included in the measurement.

*Building height, nonresidential*, means the vertical distance from the lowest finished floor elevation (including a garage floor) to the highest part of the following: the coping of a flat roof; the deck line of a mansard roof; or the gable of a pitched or hipped roof, where, due to topographical or other conditions, the lowest finished floor elevation of a building differs from one part to another, the maximum permissible height shall be computed separately for each portion of such building containing a differing lowest finished floor elevation. If the lowest finished floor elevation is more than four feet directly above the point where the foundation intersects the natural grade, then the vertical distance must be measured from a point that is four feet directly above the point where the foundation intersects the natural grade to the highest point described above.

*Building height, residential*, means the vertical distance above a reference datum measured to the highest point of the building. The reference datum shall be selected by either of the following, whichever yields a greater height of the building:

- (1) The elevation of the highest adjoining original native ground surface within a five-foot horizontal distance of the exterior wall of the building when such original native ground surface is not more than ten feet above the lowest grade; or
- (2) An elevation of ten feet higher than the lowest grade when the original native ground surface described in subsection (1) of this section is more than ten feet above lowest grade.

*Certificate of occupancy* means a document issued by the building official which:

- (1) Certifies that the construction of a building or structure or use of premises complies with the requirements of this article and other applicable city ordinances; and
- (2) Authorizes the occupancy or use of the premises for which the certificate is issued.

*Commercial district* means a C-1 (professional and business office) zoning district or C-2 (business) zoning district.

*Commission* means the planning and zoning commission of the city.

*Demolition* means the taking down of a building while carefully preserving valuable elements for reuse. The term "demolition" may also include the total and complete deconstruction and removal of a building and its foundation to make room for the construction of a new building.

*District* means a zoned section of the city for which regulations governing the area, height or use of buildings and premises are uniform for each type and class of structure.

*Dwelling.*

- (1) The term "dwelling" means a building which:
  - a. Is designed and constructed for occupancy as a residence;
  - b. Includes bathroom facilities;
  - c. Includes facilities for food preparation and sleeping; and
  - d. Is not attached to any other building by any means.
- (2) A dwelling's extent consists of all aspects of the structure that share:
  - a. A common framed, decked, and sheathed roof; and
  - b. A common concrete slab-on-grade or wood framed and decked floor.

*Easement* means a privilege, or right of use or enjoyment, granted on, above, under or across a particular tract of land by one party to another.

*Fence* means a fixed-in-place physical barrier, including a wall, that wholly or partially encloses, screens, separates, or establishes a border for a portion of real property (e.g., yard or field) and is commonly used to control access, to confine, or to mark a boundary. Unless otherwise specifically provided, the term "fence" does not include temporary barriers, including, but not limited to, silt fencing or other erosion controls, or temporary construction barriers.

*Front-yard fence* means that portion of a fence that extends beyond the front foundation line of the primary residential structure located on the property toward the front building setback line (or for unplatted property, toward the street from which the front building setback line would be measured). In the case of undeveloped property, a front-yard fence is:

- (1) The portion of a fence located closer to a street fronting the property than the front setback line of a platted lot; or
- (2) For an unplatted property, the portion of a fence located closer to a street than the front setback line that would be required by this Code if the property were being platted pursuant to the regulations of this Code at the time of installation of such fence.

*Garage, detached* means an accessory building, separated and independent of the main building on a lot, designed to shelter motor vehicles.

*Gate* means a movable door or obstruction that closes an opening in a wall, fence, or other barrier.

*Grade* means the elevation of the original or finished surface of the ground, paving or sidewalk within the area between setback lines of the lot.

*Greenbelt* means an open area not occupied by any structures or impervious surfaces which:

- (1) Is left undisturbed in its natural state; or
- (2) Is landscaped as required under the city's landscaping regulations; provided that the width of all greenbelts shall be maintained as required under this article, notwithstanding the provisions of the city's landscape ordinance.

*Ground floor area* means the floor area of a building or structure measured by taking the aggregate outside horizontal dimensions of the building or structure, at foundation level, excluding the floor area of garages, basements, or open or screened porches.

*Home occupation* means an activity or occupation, including, but not limited to, an accountant, engineer, architect, music teacher, tailor, artist, or activity associated with management of property or assets, which is performed in a dwelling for gain, whether or not paid or provided by a third party, and which:

- (1) Is conducted by a members of the family residing in the dwelling;
- (2) Is conducted as a use that is clearly incidental and secondary to the use of the dwelling for ordinary residential purposes;
- (3) Does not require structural alterations in the dwelling or the installation of machinery or equipment other than that customary to ordinary household activities;
- (4) Does not involve the display of a sign to advertise the occupation;
- (5) Is not detrimental or injurious to adjoining property by reason of the creation of noise or other obnoxious conditions, such as the emission of odor or generation of light, smoke or other objectionable conditions;
- (6) Does not generate a substantial increase in motor vehicle traffic; and
- (7) Is conducted in the single-family residence where the operator of the home occupation resides.

*Impervious cover* means any area where the natural absorption of runoff water by the land is prevented by site development.

*Job trailer* means an enclosed building or structure, including a mobile or relocatable office unit, the use of which is incidental to construction work being done under a valid building permit on the premises, which:

- (1) Is erected on a temporary foundation, such as skids or plywood;
- (2) Is located on the same lot as an existing main building or a main building under construction;
- (3) Does not contain plumbing or sanitation facilities;
- (4) Is not connected to any city water, wastewater or gas utility service; and
- (5) Is removed upon completion or cessation of the activity for which the structure was erected.

*Lot* means a portion of a subdivision or other parcel of land designated as a unit for transfer of ownership or for development.

*Lot, area of,* means the total area encompassed within the lines of a lot, excluding any street or alley rights-of-way.

*Lot, corner,* means a lot located at the angle of two intersecting streets.

*Lot line* means the boundary of a lot.

*Lot line, front,* means the front line of a lot, which is also the right-of-way line of the street abutting such lot.

*Lot line, rear,* means the lot line most nearly opposite and most distant from the front lot line.

*Lot line, side,* means any lot line other than a front or rear lot line.

*Main building* means a building (not including an accessory building) within which is conducted the principal use of the site upon which the building is located. In a residential district, all dwellings are deemed to be main buildings.

*Masonry* means clay brick, concrete, hollow clay tile, natural stone, stucco, marble, or any combination of these materials, on the exterior surface of a building.

*Mayor* means the mayor of the city.

*Mirrored glass* means glass with a reflectivity factor of 20 percent or greater.

*Motor vehicle* means a vehicle, motor home, trailer, boat, mobile home, camper, travel trailer, bus, tractor, commercial vehicle, truck, recreational vehicle or other vehicle that either has its own motive power, including a sailboat, or is mounted on or towed by another vehicle.

*New construction* means a construction project that begins on a vacant lot or on a lot in which the walls and foundation of a preexisting building and any related structures have been demolished completely and removed from the lot.

*Nonconforming building or structure* means a building or structure, the size, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which they are located.

*Nonconforming lot* means a lot, the area, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

*Nonconforming use* means a use or activity which was lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

*Parking space* means a paved area of at least 180 square feet (measuring not less than nine feet wide and not less than 18 feet in length), enclosed or unenclosed, having a paved driveway which connects the parking space with a street or alley and which permits ingress or egress of motor vehicles. The term "parking space" does not include a driveway, aisle or any area on a public street.

*Personal wireless telephone service facility* means a tower and related fixtures and equipment for the provision of wireless cellular telephone signals by one or more commercial operators of wireless telephone services.

*Planned unit development* means a tract of land developed as a single entity, pursuant to a unified site design which makes provisions for common open spaces and variegated building types and land uses, and which provides for the calculation of densities over the entire development, rather than on an individual lot-by-lot basis.

*Premises* means land, together with any buildings or structures occupying it.

*Public view* means the view as seen from any private property in a residential district or public street within the city.

*Reconstruction* means a construction project that constitutes the rebuilding, using the original building footprint, of a building, or structure, whether a dwelling or other that is damaged or destroyed by fire or other accidental or natural means.

*Remodel* means any addition or alteration to an existing building or its foundation or any component thereof, including, but not limited to, the addition or alteration of any porch, deck, or garage.

*Residence, resident or reside* means to have residence in, to be a resident of, or to reside in a dwelling, the dwelling must be the place where the person primarily lives, sleeps, bathes, and maintains personal possessions such as clothing.

*Residential plot plan or residential site plan* means a site plan drawn to a scale of one inch to 50 feet depicting existing and proposed contours in two-foot elevations on the property, the existing and proposed drainage patterns and the 50- and 100-year floodplains if they exist on the property.

*Resubdivision* means the division of an existing subdivision, together with any change of lot sizes therein, or with the relocation of any street lines.

*Retaining wall* means any fence or wall built or designed to retain or restrain lateral forces of soil or other materials, said materials being similar in height to the height of the soil or other materials being retained.

*Setback* means the minimum horizontal distance between a lot line and the closest wall or face of a building or foundation or projection thereof, excluding uncovered steps or unenclosed balconies or porches, or cantilevered roof cornices, eaves, or facias, located on the lot.

*Setback line* means a line within a lot, which is parallel to and is measured from a corresponding lot line, which governs the placement of structures and uses on the lot.

*Special exception* means a use that is not permitted in a particular district under this article, but which is permitted in such district following approval by the board of adjustment, upon a showing that the use will comply with all of the conditions prescribed by the board for such use.

*Special use* means a use that may be authorized by the city council in the district in which it is allowed.

*Square feet of floor space* means the square footage of a building computed from the exterior perimeter footprint of each story of such building, or portion thereof. Provided, that when the term "square feet of floor" is used with reference to a dwelling, the computation of square footage shall not include attached garages, attics, basements or porches. Provided further, that when the term "square feet of floor" is used with reference to a building that is not a dwelling, the computation shall include, but not be limited to, atriums, vents, elevator shafts, exterior balconies and porches, mechanical and storage rooms, elevator lobbies, halls and corridors, but shall exclude courtyards.

*Story* means that portion of a building, other than a basement, open or screened porch, attached garage or attic, which is included between the surface of one floor and the surface of the floor next above it, or, if there is only one floor, the term "story" means the space between such floor and the ceiling above it.

*Street* means a public thoroughfare, other than an alley, which has been improved and dedicated for use as a roadway and provides principal vehicular and pedestrian access to adjacent properties.

*Structure* means anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but not limited to, signs, and excepting utility poles, berms, fences, mailboxes and retaining walls.

*Subdivision* means a division of any tract of land situated within the city limits, or within one-half mile of such limits, in two or more parts for the purpose of laying out any subdivision of any tract of land, or for laying out suburban lots or building lots, or any lots, streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" includes resubdivision. The term "subdivision" includes those parcels being platted in accordance with section 105-23(b).

*Subdivision sales office* means a temporary building or structure, including a mobile or relocatable office unit, used as an office to sell property in a new or developing subdivision tract.

*Temporary building* means an enclosed building or structure which is erected on a temporary foundation, such as skids; is located on the same lot as an existing main building or a main building under construction; does not contain plumbing or sanitation facilities; and is not connected to any electrical, water, wastewater or gas utility service.

*Use of property* means the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

*Use, principal,* means the main use of land or buildings as distinguished from the subordinate or accessory use of such land or buildings.

*Variance* means an authorization by the board of adjustment granting specific relief from the literal enforcement of the provisions of this chapter.



*Veterinary services* means an establishment which provides care for small domestic animals for treatment; but excluding overnight convalescence boarding, pet grooming facilities, animal training centers and clubs, and facilities where animals are boarded during the day or overnight.

*Wall* means a masonry structure enclosing real property (e.g., a yard or field).

*Yard* means an unoccupied space on a lot which:

- (1) Is open and unobstructed from the ground upward to the sky except for fencing, walls, or permitted projections, such as cornices, eaves, porches or landscaping;
- (2) Extends between a main building and the lines of the lot upon which the main building is located; and
- (3) Has a depth between the front, side or rear lot lines and the main building as required for the district in which the lot is located.

*Yard, front*, means a yard which faces a street, is located between the main building on a lot and the street easement or front line of the lot, and extends across the front of a lot between the side lot lines.

*Yard, rear*, means a yard which is located between the main building on a lot and the rear line of the lot, and extends across the rear of the lot between the side lot lines.

*Yard, side*, means a yard which is located between the main building on a lot and the side lines of the lot, and extends across the side of a lot between the front yard and the rear yard.

(Code 1987, ch. 11, subch. G, art. II, § 1; Code 1995, § 14.02.051; Ord. No. 2011-11-16(A), 11-16-2011; Ord. No. 2012-10-17(A), § 1, 10-17-2012; Ord. No. 2015-12-16(B), § 1, 12-16-2015; Ord. No. 2017-01-18, 1-18-2017; Ord. No. 2017-09-13, 9-13-2017; Ord. No. 2018-02-21(B), §§ 1, 2, 2-21-2018; Ord. No. 2018-09-19(A), § 1, 9-19-2018; Ord. No. 2019-08-21(A), § 2, 8-21-2019; Ord. No. 2019-10-16-05, § 2, 10-16-2019; Ord. No. 2021-10-20-06, § 2, 10-20-2021)

**Secs. 107-4—107-24. Reserved.**

## ***ARTICLE II. DISTRICT REGULATIONS***

### ***DIVISION 1. GENERALLY***

#### **Sec. 107-25. Districts designated.**

- (a) The city is hereby divided into the following zoning districts:
- (1) Residential District (R);
  - (2) Professional and Business Office District (C-1);
  - (3) Business District (C-2);
  - (4) Park District (P); and
  - (5) Governmental and Institutional District (GI).
  - (6) Hospital District (H).
  - (7) Planned Unit Development District (PUD).

- (b) These zoning districts are of such shape and area as have been deemed best suited to carry out the purposes of V.T.C.A., Local Government Code ch. 211. Within such districts, this article hereby regulates and restricts the construction, alteration and use of buildings and structures, and the use of land, as herein set forth. While the regulations applicable in each of the districts differ, all such regulations are uniform in each district.
- (c) Any portion of land within the city not specifically zoned C-1, C-2, P, GI, H, or PUD is hereby expressly zoned R.

(Code 1987, ch. 11, subch. G, art. III, § 1; Code 1995, § 14.02.081)

### **Sec. 107-26. Official zoning map.**

- (a) The boundaries of the zoning districts set out herein are as delineated on the official zoning district map of the city (hereinafter referred to as zoning district map). The lines of demarcation between the districts as shown on the zoning district map are more particularly described by the field note descriptions in appendix A1 through A4 on file with the city. The field note descriptions and the official zoning district map, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this article.
- (b) The official zoning district map shall be identified by the signature of the mayor, attested by the city secretary, and bear 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 Code of Ordinances of the City of Rollingwood, Texas."
- (c) The official zoning district map shall be maintained by the city secretary and kept current to reflect changes in zoning or changes in zoning district boundaries. No change shall become effective until it has been approved by the city council and duly entered upon the map, and each such entry shall be dated and shall be signed by the mayor and attested by the city secretary. It shall be the responsibility of the city secretary to deliver to a licensed surveyor, designated by the city council, any change in zoning or change in zoning district boundaries not later than 15 days from the date the same was approved by the city council. The surveyor shall, upon receipt of the change, modify the zoning district map including appropriate field notes describing such change and return an updated reproducible Mylar to the city secretary within 15 days from the date the change was received by the surveyor, and the additional field note description thereupon will become a part of this article. The surveyor shall note the date the revision was made by showing the following on the zoning district map "Revised (date)."
- (d) No change shall be made on the official zoning district map except in conformity with the procedures set forth in this article. An unauthorized change of any kind is prohibited.
- (e) Regardless of the existence of purported copies of the zoning district map which may from time to time be made or published, the official zoning district map maintained by the city secretary shall be the final authority with respect to the current zoning status of land, buildings and structures in the city.
- (f) If the official zoning district map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes, the city council may, by resolution, adopt a new official zoning district map which shall supersede the prior map. The new official zoning district map may correct drafting mistakes or other errors or omissions in the prior map, but no such correction shall have the effect of amending the original official zoning district map or any subsequent amendment thereof. The new official zoning district map shall be identified by the signature of the mayor, attested by the city secretary.
- (g) The city secretary shall maintain zoning district map replicas which clearly delineate duly authorized changes in zoning or changes in zoning district boundaries. These replicas shall be reproduced in reduced size and made available to the public for a reasonable fee.

(Code 1987, ch. 11, subch. G, art. III, § 2; Code 1995, § 14.02.082)

#### **Sec. 107-27. Minimum regulations.**

The regulations established by this article for each zoning district shall be minimum regulations and shall apply uniformly and particularly to each class or kind of land, building or structure, except as otherwise provided.

(Code 1987, ch. 11, subch. G, art. IV, § 1; Code 1995, § 14.02.121)

#### **Sec. 107-28. Compliance required.**

No land, building or structure shall hereafter be used or occupied, and no building or structure or part thereof, shall hereafter be constructed, altered or moved, except in conformance with all of the regulations specified in this article for the district in which such land, building or structure is located.

(Code 1987, ch. 11, subch. G, art. IV, § 2; Code 1995, § 14.02.122)

#### **Sec. 107-29. Vacation of streets.**

Whenever any street or other public way is vacated by official action of the city council, the zoning district adjoining each side of the public way shall be extended to the center of the vacated area, and thereafter all land included in the vacated area shall be subject to all zoning regulations applicable in the extended district. Notwithstanding the foregoing, if South Crest Drive or any portion thereof shall ever be vacated, then the vacated portion of South Crest Drive shall be included in the residential district.

(Code 1987, ch. 11, subch. G, art. III, § 3; Code 1995, § 14.02.083)

#### **Sec. 107-30. Designation of newly annexed territory.**

- (a) All territory hereafter annexed to the city shall be temporarily zoned residential until permanently zoned by the city council.
- (b) Within 60 days after the effective date of the annexation of any territory to the city, the planning and zoning commission shall institute proceedings to permanently zone the territory. If the commission fails to institute proceedings within the prescribed 60-day period, the owners of the property in the newly annexed territory may make a written request to the commission to give the territory a permanent zoning classification.
- (c) The procedure for establishing permanent zoning for newly annexed territory shall conform to the procedures established by law for the adoption of original zoning regulations.

(Code 1987, ch. 11, subch. G, art. III, § 4; Code 1995, § 14.02.084)

#### **Sec. 107-31. Building or structures per lot; no more than one main building per lot.**

Each building or structure hereafter constructed in the city shall be located on a lot. No more than one main building shall be located on a lot except as provided in this article.

(Code 1987, ch. 11, subch. G, art. IV, § 3; Code 1995, § 14.02.123)

**Sec. 107-32. Vision clearance.**

- (a) On a corner lot, any tree and any vegetation with a height greater than 36 inches above top of curb may not be placed, planted, or maintained within 15 feet of the intersection of the street surfaces of the two streets bordering the lot.
- (b) A tree existing prior to January 1, 2017, is exempt from the requirements of subsection (a) of this section; provided, however, that the foliage of an exempted tree shall be maintained at a height no lower than 96 inches above the top of curb.
- (c) New plantings, including trees, shall not impede vision of approaching traffic through the intersection.
- (d) On a corner lot, no structure, fence, retaining wall, or berm with a height greater than 36 inches above the top of the curb may be constructed, placed, planted, maintained or allowed to grow within 15 feet of the intersection of the right-of-way lines of the two streets bordering the lot.

(Code 1987, ch. 11, subch. G, art. IV, § 4; Code 1995, § 14.02.124; Ord. No. 2018-02-21(B) , § 3, 2-21-2018)

**Sec. 107-33. Retaining walls.**

- (a) No retaining wall, or portion of a retaining wall with a height greater than 36 inches above the street curb level may be constructed within 15 feet of a front lot line, or side lot line adjacent to the street of a corner lot.
- (b) If a retaining wall is constructed at a distance greater than 15 feet from a front lot line, or a side lot line adjacent to the street of a corner lot, the maximum allowable height of the retaining wall above the street curb level may be increased by 12 inches for each additional five feet of distance between the retaining wall and the applicable lot line.
- (c) The height of a retaining wall is defined as the vertical distance measured from a reference datum, which may vary with the elevation of the curb at the street, to the top of the retaining wall at the point where the measurement is taken. The reference datum shall be the point where a line, which is level with the top and perpendicular to the face of the curb at the street, intersects the vertical face of the retaining wall.

(Ord. No. 2018-02-21(B) , § 4, 2-21-2018)

**Sec. 107-34. Fences.**

- (a) Except as otherwise provided in this section, no front-yard fence may be erected or maintained.
- (b) A front-yard fence complying with the criteria provided in this subsection (b) of this section is allowed on property in a residential zoning district. The following criteria shall apply to such a fence:
  - (1) The height shall not exceed three feet measured perpendicular from the adjacent finish grade;
  - (2) Piers or posts may exceed the maximum height and fencing adjacent to the pier or post by four inches;
  - (3) On sloped lots, to accommodate variations in elevation of the ground beneath a fence segment between two piers or posts, a fence may exceed the maximum height by up to six inches, provided that the average height of such fence segment does not exceed the maximum height;
  - (4) The fence shall be constructed of such materials or in a manner to allow for an average of 80 percent visibility through the fence;

- (5) All fence components shall be a minimum of 15 feet from the curb, or edge of the street pavement where there is no curb;
  - (6) The fence shall have columns, posts, or supports that are metal, brick, rock, stone, or wood;
  - (7) If only one side of the fence is stained wood or other finished material, the finished side shall face away from the interior of the property; if support components are provided on only one side of the fence, such support components shall be on the side facing the interior of the property;
  - (8) If a fence crosses a driveway or means of vehicular access to the property, the fence and any gate shall be located so that entering vehicles will be completely off the street when stopped for the gate to open, and such gate shall open parallel to or away from the street;
  - (9) No chain link, barbed wire, or electrified fences shall be installed or maintained;
  - (10) No fence, including decorative or ornamental fence tops, shall be designed to include or be constructed of barbed wire, broken glass or any exposed sharp or pointed materials that may penetrate or impale persons or animals.
- (c) On a corner lot, a fence may be erected and maintained in a side yard and rear yard adjacent to a street, but may be located no closer than 15 feet from:
    - (1) The edge of the street curb closest to the property, if the street has a curb; or
    - (2) The edge of the street pavement, if there is no curb.
  - (d) If a fence along the side or rear of a lot or property is erected to the property line, adequate access to utility lines and meters shall be provided.
  - (e) In no event may a fence be erected or maintained in or upon a city right-of-way or public right-of-way, except when installed by the city or its agents for municipal purposes.
  - (f) All fences shall be maintained in good condition.

(Code 1995, § 14.02.125; Ord. No. 2012-10-17(A), § 2, 10-17-2012; Ord. No. 2018-03-18, 3-21-2018)

### **Sec. 107-35. Swimming pools and tennis courts.**

- (a) A swimming pool or tennis court may only be constructed on a lot within the residential or park zoning districts.
- (b) No swimming pool or tennis court shall be constructed or maintained in the area between the front lot line and the front setback line of a lot.
- (c) On a corner lot, no swimming pool or tennis court shall be constructed or maintained in the area between the side setback line and the side lot line that borders a street.
- (d) No swimming pool or tennis court shall be constructed or maintained:
  - (1) In the area between the side setback line and a side lot line that does not border a street; nor
  - (2) In the area between the rear setback line and a rear lot line.
- (e) A deck or apron designed to serve a swimming pool or tennis court shall be located at least five feet from a side lot line and ten feet from a rear lot line.
- (f) Overhead lighting in swimming pool or tennis court areas is prohibited.
- (g) Each outdoor swimming pool erected, constructed or substantially altered after March 1, 1988, shall be completely enclosed by a fence in compliance with all applicable regulations then adopted by the city and in

effect from time to time. From and after April 20, 2016, all such new or substantially altered fences shall comply with the requirements of appendix G, section AG 105.1 of the 2012 International Residential Code, except that no building material may be used in the construction of a fence except as permitted by this Code.

- (h) Following the issuance of a certificate of occupancy for a swimming pool or other improvements that include a swimming pool, the swimming pool fence required by subsection (g) of this section shall be maintained in reasonably good condition and in the manner and configuration required by the applicable regulations of the building code adopted by the city and in effect at the time of the original installation of such fencing. Such obligation to maintain shall continue at all times that the swimming pool is in usable condition or holds water. On an annual basis or such other frequency reasonably determined by the responsible city official, a designated agent of the city may require a visual inspection of a swimming pool and related fencing for which a certificate of occupancy has been issued. Any such inspection shall be conducted only after reasonable written or verbal advance notice has been provided to the owner or occupant of the affected property. If a swimming pool fence is found not to comply with applicable regulations, the designated official shall provide written notice of noncompliance by certified mail forwarded to the address where the swimming pool is located. The owner shall make all repairs and corrections to make the fencing fully compliant not later than 30 days after the date written notice of noncompliance is forwarded as provided in this subsection (h) of this section. The designated official shall conduct an inspection to verify timely compliance.
- (i) A failure to timely correct each noncompliance in a swimming pool fence following notice of noncompliance forwarded as provided in subsection (h) of this section shall constitute a Class C misdemeanor. An offense shall be punishable by a fine of not less than \$25.00 nor more than \$500.00 per day the noncompliance continues. The penalty provided in this subsection shall be cumulative and not exclusive of any other civil or injunctive remedy provided by applicable law.

(Code 1987, ch. 11, subch. G, art. IV, § 6; Code 1995, § 14.02.126; Ord. No. 2016-03-16(B), 3-16-2016)

### **Sec. 107-36. Driveways.**

Each driveway shall be located at least five feet from a side lot line and ten feet from a rear lot line. Each driveway shall be permanently hard-topped with a durable surface and shall be designed and constructed in a manner that will permit ingress and egress of motor vehicles.

(Code 1987, ch. 11, subch. G, art. IV, § 7; Code 1995, § 14.02.127)

### **Sec. 107-37. Buildings or structures of special historical or architectural significance.**

- (a) The city council may designate certain buildings and structures as having special historical or architectural significance. Before making any such designation, the city council shall submit the proposed designation to the commission, which shall consider the proposal and submit a recommendation to the council. The commission shall give notice, conduct a hearing and make recommendations to the city council according to the same procedures provided under this article for proposed changes in zoning. In like manner, the city council shall give notice, hold a hearing and make its determination in the manner provided under this article for changes in zoning.
- (b) In determining whether to designate a building or structure as having special historical or architectural significance, the city council and the commission shall consider one or more of the following criteria, as well as other criteria deemed appropriate by the council or commission with respect to the building or structure:
  - (1) Its value as part of the development, heritage, or culture of the city, county, state, or nation;

- (2) Its recognition as a recorded state historic landmark, a national historical landmark, or entry into the National Register of Historic Places;
- (3) Its distinguishing architectural characteristics;
- (4) Identification of the building or structure as the work of an architect or master builder whose individual work has influenced the development of the city, county, state or nation;
- (5) Its embodiment of elements of architectural design, detail, materials or craftsmanship which represents a significant architectural innovation;
- (6) Its relationship to other distinctive buildings, sites or areas that are eligible for preservation according to a plan based on architectural, historic or cultural motif;
- (7) That the building or structure was the site of a significant historic event;
- (8) Its identification with a persons who significantly contributed to the culture and development of the city, county, state or nation; or
- (9) Its value as an aspect of community sentiment or public pride.

(Code 1987, ch. 11, subch. G, art. IV, § 8; Code 1995, § 14.02.128; Ord. No. 2019-10-16-14 , § 2, 10-16-2019)

### **Sec. 107-38. Multilevel parking structures.**

No multilevel parking structure shall be constructed within the city unless approved by the city council.

(Code 1987, ch. 11, subch. G, art. IV, § 10; Code 1995, § 14.02.130)

### **Secs. 107-39—107-66. Reserved.**

## ***DIVISION 2. RESIDENTIAL ZONING DISTRICT (R)***

### **Sec. 107-67. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in the residential district (R).

(Code 1987, ch. 11, subch. G, art. V, § 1; Code 1995, § 14.02.201)

### **Sec. 107-68. Permitted uses; restrictions on dwellings.**

- (a) No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered, except for one or more of the following uses:
  - (1) Dwellings;
  - (2) Accessory buildings or structures;
  - (3) Home occupations;
  - (4) Any use otherwise authorized in a residential zoning district pursuant to applicable state or federal law, including community homes pursuant to V.T.C.A., Human Resources Code ch. 123 and, as applicable,

religious assembly uses pursuant to the Texas Religious Freedom and Restoration Act which are operated in conformance with those applicable laws and in compliance with this Code;

- (5) The following shall be permitted provided that such use of property has continued without interruption or change in ownership of the property since 12 months after the original adoption of this article, but not otherwise:
  - a. Parks, playgrounds, recreation buildings, city buildings, nonprofit libraries or museums, or fire stations;
  - b. Public water or wastewater facilities, including reservoirs, filler beds, surface or below surface tanks, artesian wells, pumping plants, wastewater disposal facilities, or city administration buildings; and
  - c. Subdivision sales offices.
- (b) Notwithstanding the permitted use of a dwelling as provided in subsection (a), a permitted use of a dwelling shall not include the following:
  - (1) Occupancy by a fraternity or sorority;
  - (2) Residence in a dwelling by three or more persons unrelated to each other by blood, marriage, or adoption;
  - (3) Occupancy of a dwelling that has been subdivided into two or more living areas with separate kitchen and bathroom facilities that are segregated by permanent wall(s) or partition(s), two or more of which living areas have separate and exclusive means of ingress and egress to the exterior of the dwelling.
- (c) As used in this section, "resident" and "residents" shall mean a person or persons who primarily lives, sleeps, and maintains possessions in the dwelling, or for which rent is paid for the person's use or occupancy, whether pursuant to a lease agreement, month-to-month tenancy or other agreement.
- (d) The number of residents in a dwelling, regardless of relationship by blood, marriage, or adoption, may not exceed the lowest number of residents derived from the following with any resulting fraction for the number of residents being rounded down:
  - (1) The total gross square footage of air-conditioned space in the dwelling divided by 300 square feet;
  - (2) The number of areas in the dwelling intended as sleeping quarters meeting the requirements of minimum room areas as defined by the most recent International Residential Code adopted by the city and having at least one attached closet, multiplied by two;
  - (3) A maximum of ten residents.
- (e) Each person who enters into a lease or other contract that authorizes or provides for residence or occupancy of a dwelling proscribed by subsections (b)(1) and (3), including an owner of the affected property, shall be deemed to have violated the restriction on use applicable to a residential zoning district.
- (f) An owner or sub-lessor of a dwelling who enters into an oral or written lease or other agreement (directly or through an agent) that authorizes or permits a residency or occupancy of a dwelling in violation of this section shall be guilty of an unauthorized occupancy of a dwelling when such a residency or occupancy actually occurs.

(Code 1995, § 14.02.202; Ord. No. 2013-12-18(B), 12-18-2013; Ord. No. 2015-12-16(B), § 2, 12-16-2015; Ord. No. 2019-08-21(A), § 2, 8-21-2019)



### **Sec. 107-69. Prohibited uses.**

- (a) All uses not expressly permitted or authorized in the residential district by this article are prohibited. By way of example, but not in limitation, the following are prohibited:
- (1) Storage or accumulation within the public view of any salvage materials, discarded material, compost piles, lumber, waste products or scrap material, debris or junk;
  - (2) Parking or storing any regulated vehicle;
  - (3) Any use that constitutes a nuisance by reason of dust, noise, glare or other conditions that are offensive or detrimental to other property in a residential district or the occupants of that property;
  - (4) The display within the public view of any products, materials, motor vehicles, equipment or other personal property for sale, lease, rent, trade, exchange or other disposition, except in connection with a garage or yard sale conducted by the resident of the home where such goods are displayed and provided that any such garage or yard sale is neither conducted for more than two consecutive days nor held more frequently than two times on any lot in any calendar year. Substantially all of the items offered for sale at an allowed garage or yard sale must be owned by (not consigned, loaned or entrusted to) the resident of the affected lot;
  - (5) The display within the public view of any signs, except as permitted by chapter 24, article II; and
  - (6) The offer for sale of goods, furnishings, appliances, or fixtures in or around a home by a person who does not reside in the home, including such arrangements as the sale of furnishings or estate sale items by a third party in connection with the marketing of real property for sale. This prohibition does not include:
    - a. An incidental offer for sale of items by third parties in connection with an allowed garage or yard sale described in subsection (a)(4) of this section; or
    - b. A sale of items, where the net sale proceeds will be earned by or contributed to a nonprofit charitable, religious, civic, or political entity or organization that is exempt from income taxes pursuant to the Internal Revenue Code.
- (b) Notwithstanding anything to the contrary in subsection (a) of this section, the following are permitted uses in a residential zoning district:
- (1) Storage of construction debris and construction materials generated or stored in connection with activity authorized by a valid building or demolition permit issued by the building official, subject to all regulations and restrictions applicable to the issuance of such permit; for the avoidance of doubt, upon the expiration, revocation, or suspension of a building permit, materials and debris must be removed from the property;
  - (2) Parking or storing a regulated vehicle if:
    - a. The regulated vehicle is located behind an opaque fence, hedge, or other allowed screening structure that is at least six feet high that substantially screens the regulated vehicle from view from a public street;
    - b. The regulated vehicle is not otherwise visible from a public street (as, for example, when it is stored behind the home on the lot); or
    - c. The regulated vehicle is located on a driveway on the property, so long as it is not on such property during any part of the hours 9:00 p.m. to 7:00 a.m. the following day for more than two consecutive nights;

- (3) Parking or storing a recreational vehicle on a lawfully installed driveway for not more than ten total days in any six-month period; and
- (4) Parking or storing a vehicle other than a regulated vehicle in any yard within public view, is permitted if the vehicle:
  - a. Is on a lawfully installed driveway;
  - b. Is operable; and
  - c. Bears such indicia of a current and valid registration, inspection, and license as may be required by applicable law for operation or transport on a public street.
- (c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Recreational vehicle* means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own mode of power or is mounted on or towed by another vehicle and is for personal use.

*Regulated vehicle* means any motor vehicle, camper, trailer, recreational vehicle, or boat, other than a conventional passenger vehicle, motorcycle, golf cart, or NEV.

(Code 1995, § 14.02.203; Ord. No. 2013-12-18(A), 12-18-2013; Ord. No. 2015-12-16(B), § 3, 12-16-2015; Ord. No. 2019-02-20(A), § 2, 2-20-2019)

### **Sec. 107-70. Reserved.**

Editor's note(s)—Ord. No. 2019-08-21(A), § 2, adopted August 21, 2019, repealed § 107-70, which pertained to special uses and derived from the 1987 Code, ch. 11, subch. G, art. V, § 4; and the 1995 Code, § 14.02.204.

### **Sec. 107-71. Maximum permissible height.**

No portion of any building or structure (except a chimney, attic vent, lightning rod, or any equipment required by the city building code) may exceed 35 feet in height. Except as may be required by applicable codes, no chimney, attic vent, lightning rod or required equipment may extend more than three feet above the highest point of the following: the coping of a flat roof, the deck line of a mansard roof, or the gable of a pitched or hipped roof.

(Code 1987, ch. 11, subch. G, art. V, § 5; Code 1995, § 14.02.205)

### **Sec. 107-72. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. V, § 6; Code 1995, § 14.02.206)

### **Sec. 107-73. Minimum ground floor area.**

Each dwelling shall contain at least 1,800 square feet of floor space. The ground floor of each two-story dwelling shall contain at least 1,000 square feet of floor space.

(Code 1987, ch. 11, subch. G, art. V, § 7; Code 1995, § 14.02.207)

**Sec. 107-74. Reserved.**

Editor's note(s)—Ord. No. 2019-10-16-14 , § 2, adopted October 16, 2019, repealed § 107-74, which pertained to construction and derived from the 1987 Code, ch. 11, subch. G, art. V, § 8; and the 1995 Code, § 14.02.208.

**Sec. 107-75. Yards generally.**

- (a) Each lot shall have a front yard, two side yards and a rear yard.
- (b) On each lot, the rear yard shall be to the rear of the front yard.
- (c) The building official shall determine the street address, and thus the front yard, of each corner lot.

(Code 1987, ch. 11, subch. G, art. V, § 9; Code 1995, § 14.02.209)

**Sec. 107-76. Minimum required depth and width of yards.**

- (a) In order to determine compliance with the minimum yard depth and width requirements of this section, measurements shall be made from the closest point on the foundation line of a "qualified building," as the term is defined in this section, to either the lot line or street right-of-way line, whichever results in the shortest distance.
- (b) The front yard of each lot shall have a minimum depth of 30 feet. For purposes of this subsection, "qualified building" means either a main building, a garage, or a covered front porch or covered front terrace.
- (c) The side yard of each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts another lot, except that the sum total of the two side yards of any lot shall not be less than 25 feet;
  - (2) Thirty feet, when the lot borders a street other than described in subsection (c)(3) of this section;
  - (3) Twenty feet, when two lots extend the length of one block and have abutting rear lot lines.

For purposes of this section, the term "qualified building" means a main building or accessory building.

- (d) The rear yard of each lot shall have a minimum depth of 20 feet. For purposes of this subsection, "qualified building" means an accessory building, or a main building or any projection thereof other than a projection of uncovered steps, unenclosed balconies or unenclosed porches.

(Code 1987, ch. 11, subch. G, art. V, § 10; Code 1995, § 14.02.210; Ord. No. 2009-05-07B, § 2, 5-7-2009)

**Sec. 107-77. Accessory buildings.**

- (a) No more than one accessory building may be located on a lot.
- (b) An accessory building may be located only in a rear yard or in a side yard that does not border a street.
- (c) An accessory building may not:
  - (1) Exceed one story in height;
  - (2) Exceed the height of the main building located on the same lot; or
  - (3) Exceed 500 square feet in area.
- (d) The exterior of an accessory building used as a detached garage shall match the exterior of the main building.

- (e) An accessory building may not be constructed until after commencement of construction of the main building, nor may an accessory building be used unless the main building on the lot is also being used.

(Code 1987, ch. 11, subch. G, art. V, § 11; Code 1995, § 14.02.211)

### **Sec. 107-78. Temporary buildings.**

- (a) No more than one temporary building may be located on a lot.
- (b) A temporary building shall be located only in a rear yard or in a side yard that does not border a street.
- (c) A temporary building shall not:
  - (1) Be attached to a main building; or
  - (2) Exceed ten feet in height nor 120 square feet in area.

(Code 1987, ch. 11, subch. G, art. V, § 12; Code 1995, § 14.02.212)

### **Sec. 107-79. Subdivision sales office.**

A subdivision sales office may be maintained for a period of one year from the date it was erected or until 75 percent of the territory in the subdivision is sold, whichever occurs first. The limitation may be waived by the board of adjustment upon application by the owner of the subdivision tract, or his agent, for a special exception to continue the use of the office.

(Code 1987, ch. 11, subch. G, art. V, § 13; Code 1995, § 14.02.213)

### **Secs. 107-80—107-101. Reserved.**

## ***DIVISION 3. C-1 AND C-2 ZONING DISTRICTS***

### **Sec. 107-102. Applicability.**

The regulations set forth in this division shall apply to land, buildings and structures located in the professional and business office district (C-1) or the business district (C-2).

(Code 1987, ch. 11, subch. G, art. VI, § 1; Code 1995, § 14.02.271)

### **Sec. 107-103. Maximum height of buildings/structures.**

- (a) No portion of any building or structure within 300 feet of a residential district shall exceed 30 feet in height or two stories and no portion of any other building or structure shall exceed 35 feet in height or two stories (except as allowed in subsections (b) and (c) of this section). No parking structure shall be higher than the original native ground surface, and all buildings or structures must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12).
- (b) A building or structure other than a personal wireless telephone service facility (commonly known as a cell phone tower or facility) may be three stories, provided that it satisfies all of the following conditions:
  - (1) It does not exceed 40 feet in height;

- (2) It is located at least 150 feet from any lot in a residential district;
  - (3) It is located on a lot or contiguous lots under common or affiliated ownership at least ten acres in size;
  - (4) It is located on property that was the subject of an application for a preliminary plat filed after September 1, 1997, and before March 16, 2000;
  - (5) That preliminary plat did not expire during that time nor was a final plat recorded for the property during that time; and
  - (6) Any final plat includes all public facilities identified on the preliminary plat and the final plat is processed or the public facilities are dedicated to the city by July 31, 2000.
- (c) A personal wireless telephone service facility for which a special use permit has been issued may be up to five feet in elevation above the highest point of any building located on the same lot, if the lot has frontage on Bee Caves Road. The personal wireless telephone service facility must be located at a distance not less than 150 feet from any lot in a residential district if it:
- (1) Is freestanding and not attached to a building having an independent use; or
  - (2) Has an elevation higher than the highest point of any building located on the same lot.

(Code 1995, § 14.02.272; Ord. No. 2014-05-21(E), § 1, 5-21-2014)

#### **Sec. 107-104. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. VI, § 3; Code 1995, § 14.02.273)

#### **Sec. 107-105. Minimum floor area.**

- (a) Except as provided under subsection (b) of this section, each building shall be at least 1,800 square feet in area.
- (b) Separate commercial buildings of at least 800 square feet may be constructed on a lot of one acre or larger size upon approval by the city council of the development plans for the lot.

(Code 1987, ch. 11, subch. G, art. VI, § 4; Code 1995, § 14.02.274)

#### **Sec. 107-106. Development plan approval for commercial buildings.**

- (a) Each application for approval of development plans for commercial buildings shall include the following information, prepared and sealed where applicable by a registered professional engineer or registered professional land surveyor:
  - (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
  - (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
  - (3) Drainage plan: The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The

- drainage plan shall include, as a minimum: determination of stormwater flows will be according to the drainage criteria manual.
- (4) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
  - (5) A comprehensive grading plan shall be included with the development plan.
    - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
    - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
    - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e. commercial, industrial or multifamily lots).
    - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection (5)c of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
    - e. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
    - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
    - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements.
    - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
  - (6) The location and type of proposed drainage features, drainage systems, detention ponds and filtration ponds;
  - (7) Erosion control: brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;

- (8) The shape, size, location, height and floor area of all existing and proposed buildings and structures;
  - (9) The location and size of existing and proposed streets, private drives, driveways and parking spaces; and
  - (10) The size and location of all existing and proposed public and private utilities.
- (b) Each application for approval of development plans shall first be submitted to the commission, and shall be subject to all of the notice, hearing and other procedures provided under this article for proposed changes in zoning.

(Code 1987, ch. 11, subch. G, art. VI, § 5; Code 1995, § 14.02.275)

### **Sec. 107-107. Reserved.**

Editor's note(s)—Ord. No. 2019-10-16-14 , § 2, adopted October 16, 2019, repealed § 107-107, which pertained to construction materials and derived from the 1987 Code, ch. 11, subch. G, art. VI, § 6; and the 1995 Code, § 14.02.276.

### **Sec. 107-108. Minimum setbacks.**

- (a) No building may be located closer than 20 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) There is no setback requirement with respect to side lot lines.
- (c) No building may be constructed or extended into an area that is closer than 100 feet from any lot line of a lot within a residential district.
- (d) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1987, ch. 11, subch. G, art. VI, § 7; Code 1995, § 14.02.277)

### **Sec. 107-109. Buffers between abutting commercial and residential lots.**

Any lot in a commercial district which abuts a lot in a residential district shall be developed in accordance with the following requirements:

- (1) A 100-foot greenbelt, measured horizontally, shall be provided between the boundary of a residential district and the impervious cover, including parking and buildings, on every lot located in a professional and business office district (C-1) or a business district (C-2). The 100-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council. Notwithstanding anything contained herein to the contrary, the building official will, upon application by the owner thereof, issue a permit for repair, remodeling or reconstruction of the building or structure and its related parking, provided that the use (as defined in the zoning ordinance) of such building or structure will not be changed and the repair, remodeling or reconstruction conforms with the construction materials standards set forth in section 107-107. A nonconforming building or structure and its related parking may not be enlarged or otherwise altered in a manner that increases the square footage of the building or structure or the square footage of the building or structure's parking or the extent of their nonconformity.

- (2) In areas where terrain and other features do not provide a visual screen between a lot in a commercial district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet high, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.
- (3) No fences or landscaping required under this section shall be constructed without prior approval of the construction plans by the city council and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. VI, § 8; Code 1995, § 14.02.278)

### **Sec. 107-110. Parking spaces.**

- (a) Except as otherwise provided in section 107-317, off-street parking shall be provided in the ratio of not less than one parking space:
  - (1) For each 250 square feet of gross floor area in the particular building in a C-1 district; and
  - (2) For each 200 square feet of gross floor area in the particular building in a C-2 district.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. VI, § 9; Code 1995, § 14.02.279)

### **Sec. 107-111. Signs.**

Except as otherwise provided under this article, signs shall be governed by the regulations of the city sign ordinance.

(Code 1987, ch. 11, subch. G, art. VI, § 10; Code 1995, § 14.02.280)

### **Sec. 107-112. Other requirements.**

Each permitted use shall:

- (1) Be conducted wholly within an enclosed building appropriate to such use (except in the case of a personal wireless telephone service facility for which a special use permit is issued); and
- (2) Provide for the temporary storage of solid waste in an unobtrusive manner approved by the building official.



(Code 1995, § 14.02.281; Ord. No. 2014-05-21(E), § 2, 5-21-2014)

### **Sec. 107-113. Prohibitions.**

The following are specifically prohibited:

- (1) Accessory or temporary buildings;
- (2) The manufacture of any product for sale;
- (3) Activities involving the conduct of major automobile repairs, body repair or painting, welding, storage of dismantled or nonoperational vehicles, sale of used automobile parts, or the sale of new or used motor vehicles;
- (4) The use of parking lots or front yards for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (5) The wholesale processing of food;
- (6) Activities which create odors, excessive light, electronic interference, smoke, dust, dirt, noise, fumes, glare, vibration, the presence of vermin or rodents, or other undesirable or hazardous conditions;
- (7) The provision of personal services, or the display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the city; or
- (8) Retail establishments, other than restaurants, may not be open to the public between the hours of 10:00 p.m. and 7:00 a.m. the following day. These restrictions do not apply to automated retail services, including, but not limited to, automated teller machines and gasoline pumps. Restaurants will be subject to hours of operation as set forth in the special use permit.

(Code 1987, ch. 11, subch. G, art. VI, § 12; Code 1995, § 14.02.282)

### **Sec. 107-114. Use and buildings.**

Notwithstanding any provision in this division, any use that would be permitted in a residential district, but which is conducted in a commercial district, shall comply only with the regulations that would be applicable to the use if it were conducted in the residential district, to the extent applicable.

(Code 1987, ch. 11, subch. G, art. VI, § 13; Code 1995, § 14.02.283)

### **Sec. 107-115. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a commercial district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. VI, § 14; Code 1995, § 14.02.284)

### **Sec. 107-116. Compatibility standards.**

- (a) *Trash disposal, storage and mechanical equipment.* All trash disposal areas, storage areas and mechanical equipment must be screened from view from any residential district and any public street by wood fencing (with a smooth side of the fencing facing the residential district or public right-of-way), or brick, limestone, or other native stone walls for ground-level facilities, and an enclosure constructed of the same exterior materials as the building for any mechanical equipment located on the roof.
- (b) *Roof design.* Except for buildings with a ground floor area of 8,000 square feet or more, all roofs of buildings must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12). For buildings with a ground floor area of 8,000 square feet or more, all roofs of buildings must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12) or have architectural elements that give the appearance of pitched-roof construction. Roofs generally must be a combination of pitched, gabled or sloped elements, and the materials used must be compatible and complementary to the masonry. These pitched areas may be metal with nonreflective finishes or nonmetallic clay or concrete tile. Except for buildings less than 8,000 square feet of floor space, composition or wood shakes and shingles may not be utilized. Exposed metal roof decks that reflect light in a glaring manner, such as galvanized steel sheets, are specifically prohibited. Pitched and "flat" roof areas must be designed and arranged to provide maximum aesthetic appeal and provide screening of undesirable roof surfaces, equipment and accessories from any view from a lot in a residential district of the city and any view from Bee Cave Road. All mechanical equipment must be located in the following manner: under the roof; contained within the building; on the ground; or shielded from view as approved by the city council.
- (c) *Lighting.* Lighting fixtures installed to illuminate parking lots, buildings or other structures may not exceed the height of the buildings or structures, if attached thereto, or, if pole-mounted, a height of 24 feet. All exterior lighting must be shielded and down-turned to direct light away from nearby dwellings and to concentrate the light within the lot. Exterior lightbulbs may not exceed 400 watts.
- (d) *Landscaping buffers.* A ten-foot landscaping buffer is required between buildings on separate lots in a professional and business office district (C-1) or the business district (C-2) with a minimum of five feet of such buffer located on each such lot, as well as between all parking lots in a commercial district and any public right-of-way. The landscaping buffer must consist of shrubs or trees with a mature height of at least six feet planted at sufficient density to visually disrupt the outlines of buildings, pavement, and other structures; provided, however, that plant material located at the front of a site or between buildings (as determined by the building official) may consist of shrubs or trees with a mature height of at least three feet.

(Code 1987, ch. 11, subch. G, art. VI, § 15; Code 1995, § 14.02.285)

### **Secs. 107-117—107-145. Reserved.**

## ***DIVISION 4. PROFESSIONAL AND BUSINESS OFFICE ZONING DISTRICT (C-1)***

### **Sec. 107-146. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a professional and business office district (C-1).

(Code 1987, ch. 11, subch. G, art. VII, § 1; Code 1995, § 14.02.341)

**Sec. 107-147. Purpose.**

This district is intended to provide sites for quiet, low-density commercial office uses.

(Code 1987, ch. 11, subch. G, art. VII, § 2; Code 1995, § 14.02.342)

**Sec. 107-148. Permitted uses.**

No area, building or structure within the land may be used, constructed or altered, except as follows:

- (1) Uses permitted in a residential district, excluding dwelling uses or subdivision sales offices;
- (2) Administrative, professional and business offices and services, including account, architecture, attorney, computer services (including research and design) engineer, physician, veterinary services, broker, consultant, insurance agent, property management, investment, personnel, travel, secretarial, telephone answering, photocopy and reproduction, real estate agent, or similar administrative, professional business offices.
- (3) Accessory structures, other than buildings, and uses customarily incidental to these administrative, professional or business offices.

(Code 1987, ch. 11, subch. G, art. VII, § 3; Code 1995, § 14.02.343; Ord. No. 2019-10-16-05 , § 3, 10-16-2019)

**Sec. 107-149. Special uses.**

Subject to approval by the city council, the following special uses may be permitted in a C-1 district:

- (1) Facilities for assembling of and testing electronics components;
- (2) Child day care facilities, provided this is the only use on the particular lot;
- (3) Banks or savings and loan associations;
- (4) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot; and
- (5) For lots with frontage on Bee Caves Road, a personal wireless telephone service facility.

(Code 1995, § 14.02.344)

**Secs. 107-150—107-166. Reserved.*****DIVISION 5. BUSINESS ZONING DISTRICT (C-2)*****Sec. 107-167. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a business district (C-2).

(Code 1987, ch. 11, subch. G, art. VIII, § 1; Code 1995, § 14.02.401)

**Sec. 107-168. Permitted uses.**

No area, building or structure may be used, constructed or altered, except as follows:

- (1) Uses permitted in a C-1 zoning district;
- (2) Retail bakeries;
- (3) Barbershops or beauty shops;
- (4) Craft or hobby shops;
- (5) Department, sporting goods, novelty, variety or toy stores;
- (6) Drugstores;
- (7) Laundry pickup and dry cleaning pickup stations;
- (8) Florist shops;
- (9) Antique stores;
- (10) Household or office furniture, furnishings, or appliance stores;
- (11) Jewelry or optical goods stores;
- (12) Shoe repair shops;
- (13) Variety stores;
- (14) Wearing apparel shops; and
- (15) Retail uses which supply the everyday shopping needs of residents of the city.

(Code 1987, ch. 11, subch. G, art. VIII, § 2; Code 1995, § 14.02.402)

**Sec. 107-169. Special uses.**

Subject to approval by the city council, the following special uses may be permitted in a C-2 district:

- (1) Research laboratories;
- (2) Other special uses that meet the criteria set forth in this article;
- (3) Cafes, cafeterias or restaurants;
- (4) Convenience stores;
- (5) Grocery or food specialty stores;
- (6) Package liquor stores;
- (7) Automotive service stations;
- (8) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;
- (9) Camera or photography supply stores;
- (10) Clinics without overnight facilities;
- (11) Hardware stores;
- (12) Art and photography studios;

(13) Facilities for assembling computer software products; and

(14) For lots with frontage on Bee Caves Road, a personal wireless telephone service facility.

(Code 1995, § 14.02.403; Ord. No. 2014-05-21(E), § 4, 5-21-2014)

### **Sec. 107-170. Prohibited uses.**

All uses not specifically permitted under section 107-168 or 107-169 are prohibited, including, but not limited to, the following:

- (1) Temporary buildings;
- (2) The manufacture of any product for sale;
- (3) Activities involving the conduct of major automobile repairs, body repair or painting, welding, storage of dismantled or nonoperational vehicles, sale of used automobile parts, or the sale of new or used motor vehicles;
- (4) The use of parking lots or other outdoor areas for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (5) The wholesale processing of food;
- (6) Activities which create a nuisance;
- (7) Veterinarian services and kennel services;
- (8) The repair, sale, resale, manufacture, refurbishment or storage of boats, trailers, mobile homes or recreational or sport vehicles;
- (9) Laundries or dry cleaning plants;
- (10) Music studios;
- (11) Monument sales or funeral homes and related services;
- (12) Warehouses or the rental of storage space for personal or commercial property;
- (13) Pawnshops;
- (14) Junkyards;
- (15) Painting sales or service, except to the extent incidental to an otherwise permissible use;
- (16) Assisted living, retirement, nursing home or convalescent services or facilities;
- (17) Tire retread facilities;
- (18) Sexually oriented businesses, including, but not limited to, modeling studios and dating or escort services businesses;
- (19) The display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the residents of the city;
- (20) Hotel and motel; and
- (21) Dwelling uses or subdivision sales offices.

(Code 1987, ch. 11, subch. G, art. VIII, § 4; Code 1995, § 14.02.404)

**Secs. 107-171—107-193. Reserved.***DIVISION 6. GOVERNMENTAL AND INSTITUTIONAL ZONING DISTRICT (GI)***Sec. 107-194. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a governmental and institutional district.

(Code 1987, ch. 11, subch. G, art. IX, § 1; Code 1995, § 14.02.451)

**Sec. 107-195. Purpose.**

This district is intended to provide appropriate areas for uses that provide important community services. An appropriate site should contain adequate space for required off-street parking and buffering.

(Code 1987, ch. 11, subch. G, art. IX, § 2; Code 1995, § 14.02.452)

**Sec. 107-196. Permitted uses.**

No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered except for one or more of the following uses:

- (1) Uses permitted in a residential district;
- (2) Churches;
- (3) Facilities owned and operated by the federal government, the state or political subdivisions thereof;
- (4) Fire stations; and
- (5) Accessory uses customarily incidental to any of the foregoing.

(Code 1987, ch. 11, subch. G, art. IX, § 3; Code 1995, § 14.02.453)

**Sec. 107-197. Special uses.**

Special uses permitted in the governmental and institutional zoning district (GI) include the following:

- (1) Schools;
- (2) Child day care facilities;
- (3) Uses required by public utilities; and
- (4) Special uses permitted in a residential district upon authorization of the city council.

(Code 1987, ch. 11, subch. G, art. IX, § 4; Code 1995, § 14.02.454)

**Sec. 107-198. Maximum permissible height.**

No building or structure shall be more than two stories in height, except that in no event shall the height of the building or structure exceed 35 feet.

(Code 1987, ch. 11, subch. G, art. IX, § 5; Code 1995, § 14.02.455)

### **Sec. 107-199. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. IX, § 6; Code 1995, § 14.02.456)

### **Sec. 107-200. Construction.**

- (a) At least 80 percent of the exterior surface of each building shall be constructed of glass and masonry.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1987, ch. 11, subch. G, art. IX, § 7; Code 1995, § 14.02.457)

### **Sec. 107-201. Minimum setbacks.**

- (a) No building may be located closer than 30 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) The side setback required on each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts to another lot;
  - (2) 30 feet, when the lot borders a street; or
  - (3) 20 feet, when two lots extend the length of a block and have abutting rear lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official will designate the front lot line.

(Code 1987, ch. 11, subch. G, art. IX, § 8; Code 1995, § 14.02.458)

### **Sec. 107-202. Buffers between abutting residential and governmental and institutional lots.**

Each lot in a governmental and institutional district which abuts a lot in a residential district shall be developed in compliance with the following requirements:

- (1) A 30-foot greenbelt zone, measured horizontally, shall be provided between the boundary line of the residential district and the impervious cover, including parking and buildings, on the lot location in the governmental and institutional district. The 30-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a governmental and institutional district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet in height, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.

- (3) No fences or landscaping required under this section shall be installed without prior approval of the plans by the city council, and the installation shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. IX, § 9; Code 1995, § 14.02.459)

### **Sec. 107-203. Parking spaces.**

- (a) Off-street parking shall be provided in the ratio of not less than one parking space for each 200 square feet of gross floor area in the particular building.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. IX, § 10; Code 1995, § 14.02.460)

### **Sec. 107-204. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a governmental and institutional district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the city council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. IX, § 11; Code 1995, § 14.02.461)

### **Sec. 107-205. Development plan approval for commercial buildings in the GI zoning district.**

Each application for approval of development plans for multiple commercial buildings shall include the following information:

- (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
- (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
- (3) The centerlines of existing watercourses;
- (4) The location and type of proposed drainage systems, detention ponds and filtration ponds;
  - a. Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above



the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum: determination of stormwater flows will be according to the drainage criteria manual.

- b. A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
- c. A comprehensive grading plan shall be included with the development plan.
  1. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
  2. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
  3. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
  4. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection (4)c.3 of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
  5. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal: vertical) unless otherwise accepted by the city engineer.
  6. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  7. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements.
  8. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches and is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (5) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes.

(Code 1987, ch. 11, subch. G, art. IX, § 12; Code 1995, § 14.02.462)

**Secs. 107-206—107-233. Reserved.**

***DIVISION 7. PARK ZONING DISTRICT (P)***

**Sec. 107-234. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a park district.

(Code 1987, ch. 11, subch. G, art. X, § 1; Code 1995, § 14.02.511)

**Sec. 107-235. Purpose.**

This district is intended to provide areas for community parks and recreational areas.

(Code 1987, ch. 11, subch. G, art. X, § 2; Code 1995, § 14.02.512)

**Sec. 107-236. Permitted uses.**

No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered except for one or more of the following uses:

- (1) Athletic fields and sports facilities such as baseball, football and soccer fields and other sports-related facilities;
- (2) Picnic areas;
- (3) Playgrounds;
- (4) Recreational centers;
- (5) Swimming pools; and
- (6) Accessory uses customarily incidental to any of the foregoing permitted uses.

(Code 1987, ch. 11, subch. G, art. X, § 3; Code 1995, § 14.02.513)

**Sec. 107-237. Special uses.**

Subject to city council approval, the following special uses may be permitted in a park district:

- (1) Concession stands;
- (2) Special events; and
- (3) Other special uses permitted upon approval of the city council.

(Code 1987, ch. 11, subch. G, art. X, § 4; Code 1995, § 14.02.514)

**Sec. 107-238. Maximum permissible height.**

No building or structure shall be more than two stories in height, except that in no event shall the height of any building exceed 30 feet.

(Code 1987, ch. 11, subch. G, art. X, § 5; Code 1995, § 14.02.515)

**Sec. 107-239. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. X, § 6; Code 1995, § 14.02.516)

**Sec. 107-240. Construction.**

- (a) At least 80 percent of the exterior surface of each building shall be constructed of glass and masonry.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1987, ch. 11, subch. G, art. X, § 7; Code 1995, § 14.02.517)

**Sec. 107-241. Minimum setbacks.**

- (a) No building may be located closer than 30 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) The side setback required on each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts another lot;
  - (2) Thirty feet, when the lot borders a street; or
  - (3) Twenty feet, when two lots extend the length of one block and have abutting rear lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1987, ch. 11, subch. G, art. X, § 8; Code 1995, § 14.02.518)

**Sec. 107-242. Buffers between abutting park and residential lots.**

Each lot in a park district which abuts a lot in a residential district shall be developed in compliance with the following requirements:

- (1) A 30-foot greenbelt zone, measured horizontally, shall be provided between the line of the residential zone and the impervious cover, including parking and buildings, on the lot located in the park district. The 30-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a park district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet in height, with its smooth side facing the residential lot. If the building official

determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.

- (3) No fences or landscaping required under this section shall be installed without prior approval of the plans by the city council, and the installation shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. X, § 9; Code 1995, § 14.02.519)

### **Sec. 107-243. Parking spaces.**

- (a) Off-street parking shall be provided in the ratio of not less than one parking space for each 200 square feet of gross floor area in the particular building.
- (b) No athletic fields shall be constructed or expanded without prior approval of the off-street parking plans by the city council, and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (c) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. X, § 10; Code 1995, § 14.02.520)

### **Sec. 107-244. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a park district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the city council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. X, § 11; Code 1995, § 14.02.521)

### **Secs. 107-245—107-266. Reserved.**

## ***DIVISION 8. H ZONING DISTRICTS***

**Sec. 107-267. Applicability.**

The regulations set forth in this division shall apply to land, buildings and structures located in the hospital district (H).

(Code 1987, ch. 11, subch. G, art. X-A, § 1; Code 1995, § 14.02.571)

**Sec. 107-268. Permitted uses.**

- (a) No land, building or structure will be hereafter constructed or altered, except for one or more of the following uses:
  - (1) Hospital facilities;
  - (2) Offices for an accountant, architect, attorney, engineer, physician, broker, consultant, insurance agency, real estate agent, or similar professional occupation; and
  - (3) Accessory structures and uses customarily incidental to the foregoing permitted uses.
- (b) For purposes of this article, the term "hospital facilities" means an establishment that offers medical or surgical services, facilities and beds for individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy, and is licensed under V.T.C.A., Health and Safety Code ch. 241 or any successor provision thereto (each as amended from time to time), provided that the facility is operated and held out to the public as a "special" or "general" hospital under V.T.C.A., Health and Safety Code ch. 241 or any successor provision thereto (as amended from time to time) and the facility contains no more than 30 inpatient beds, and no identifiable part of such facility may be devoted primarily to the diagnosis, treatment, and care for persons with mental illness or chemical dependency; provided that health services (such as emergency first aid) delivered in such facility which are required by law to be provided by a hospital licensed under V.T.C.A., Health and Safety Code ch. 241 shall not be a violation of the limitation contained in this subsection but any emergency room facility shall only be constructed, operated, and maintained in a manner that meets, but does not exceed, the minimum state of federal standards. Permitted accessory uses for a hospital facility use include clinics, ambulatory surgery centers and educational facilities and as customarily found in hospitals, general merchandise retail shops, pharmacies, cafeteria, laundry facilities and food service facilities.

(Code 1987, ch. 11, subch. G, art. X-A, § 2; Code 1995, § 14.02.572)

**Sec. 107-269. Maximum permissible height of buildings/structures.**

- (a) Except as provided in subsection (b) of this section, no building or structure shall exceed 35 feet in height, calculated in accordance with section 107-3.
- (b) A personal wireless telephone service facility for which a special use permit is issued may be up to five feet in elevation above the highest point of any building located on the same lot, if the lot has frontage on Bee Caves Road. The personal wireless telephone service facility must be located at a distance not less than 150 feet from any lot in a residential district if it:
  - (1) Is freestanding and not attached to a building having an independent use; or
  - (2) Has an elevation higher than the highest point of any building located on the same lot.

(Code 1995, § 14.02.573; Ord. No. 2014-05-21(E), § 5, 5-21-2014)

**Sec. 107-270. Minimum lot size.**

Each lot shall be at least five acres in area.

(Code 1987, ch. 11, subch. G, art. X-A, § 4; Code 1995, § 14.02.574)

**Sec. 107-271. Minimum floor area.**

- (a) Except as provided under subsection (b) of this section, the principal building shall be at least 40,000 square feet in area.
- (b) Separate commercial buildings of at least 800 square feet may be constructed on a lot of five acres or larger size upon approval by the city council of the development plans for the lot.

(Code 1987, ch. 11, subch. G, art. X-A, § 5; Code 1995, § 14.02.575)

**Sec. 107-272. Development plan approval for commercial buildings in H Zoning District.**

- (a) Each application for approval of development plans for multiple commercial buildings shall include the following information:
  - (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
  - (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
  - (3) The centerlines of existing watercourses;
  - (4) The location and type of proposed drainage systems, detention ponds and filtration ponds;
  - (5) Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum a determination of stormwater flows which will be according to the drainage criteria manual;
  - (6) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
  - (7) A comprehensive grading plan shall be included with the development plan;
    - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
    - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
    - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
    - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection c of this section

have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.

- e. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
  - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The subdivider shall be responsible for determining any special fill requirements.
  - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (8) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;
- (9) The shape, size, location, height and floor area of all existing and proposed buildings and structures;
- (10) The location and size of existing and proposed streets, private drives, driveways and parking spaces; and
- (11) The size and location of all existing and proposed public and private utilities.
- (b) Each application for approval of development plans shall first be submitted to the commission, and shall be subject to all of the notice, hearing and other procedures provided under this article for proposed changes in zoning.

(Code 1987, ch. 11, subch. G, art. X-A, § 6; Code 1995, § 14.02.576)

### **Sec. 107-273. Construction materials.**

- (a) Except for a personal wireless telephone facility for which a special use permit is issued at least 80 percent of the exterior surface of each building shall be constructed of glass, masonry or stucco.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1995, § 14.02.577; Ord. No. 2014-05-21(E), § 6, 5-21-2014)

**Sec. 107-274. Minimum setbacks.**

- (a) No building may be located closer than 20 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) Except as otherwise set forth in section 107-275 or in section 107-269(b), there is no setback requirement with respect to side lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1995, § 14.02.578; Ord. No. 2014-05-21(E), § 7, 5-21-2014)

**Sec. 107-275. Buffers between abutting commercial and residential lots.**

Any lot in a district which abuts a lot in a residential district (or other residential lots) shall be developed in accordance with the following requirements:

- (1) A ten-foot greenbelt, measured horizontally, shall be provided between the boundary line of the residential district (or other residential lots) and the impervious cover, including parking and buildings, on every lot located in the hospital district. The ten-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a hospital district and an abutting lot in a residential district (or other residential lots), screening shall be provided by a cedar or redwood privacy fence at least eight feet high, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.
- (3) No fences or landscaping required under this section shall be constructed without prior approval of the construction plans by the city council and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.

(Code 1987, ch. 11, subch. G, art. X-A, § 9; Code 1995, § 14.02.579)

**Sec. 107-276. Lighting.**

Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures and shall be installed in a manner which directs or shields the light away from any residential dwellings.

(Code 1987, ch. 11, subch. G, art. X-A, § 10; Code 1995, § 14.02.580)

**Sec. 107-277. Parking spaces.**

- (a) Except as otherwise provided in section 107-317, off-street parking for:
  - (1) Hospital facilities shall be provided in the ratio of not less than:



- a. Two parking spaces for each bed within a particular hospital facilities building; plus
  - b. One parking space for each 250 square feet of gross floor area within any portion of a hospital facilities building constituting office space (including medical offices and examining rooms applicable to a particular medical office, if any) but excluding administrative areas directly supporting hospital patient care.
- (2) All uses permitted in an H district other than hospital facilities shall be provided in the ratio of not less than one parking space for each 250 square feet of gross floor area in the particular building.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. X-A, § 11; Code 1995, § 14.02.581)

### **Sec. 107-278. Signs.**

Except as otherwise provided under this article, signs shall be governed by the regulations of the city sign ordinance.

(Code 1987, ch. 11, subch. G, art. X-A, § 12; Code 1995, § 14.02.582)

### **Sec. 107-279. Other requirements.**

Each permitted use shall:

- (1) Except for a personal wireless telephone facility for which a special use permit is issued, be conducted wholly within an enclosed building appropriate to such use;
- (2) Provide the temporary storage of solid waste in an unobtrusive manner approved by the building official; and
- (3) Provide for the temporary storage and disposal of biomedical waste and other hazardous waste in accordance with applicable laws and in an unobtrusive manner approved by the building official.

(Code 1995, § 14.02.583; Ord. No. 2014-05-21(E), § 8, 5-21-2014)

### **Sec. 107-280. Prohibition.**

The following are specifically prohibited:

- (1) Accessory or temporary buildings;
- (2) The manufacture of any product for sale;
- (3) The use of parking lots or front yards for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (4) The wholesale processing of food;
- (5) Activities which create odors, excessive light, electronic interference, smoke, dust, dirt, noise, fumes, glare, vibration, the presence of vermin or rodents, or other undesirable or hazardous conditions; or

- (6) The display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the city.

(Code 1987, ch. 11, subch. G, art. X-A, § 14; Code 1995, § 14.02.584)

### **Sec. 107-281. Impervious cover.**

- (a) Impervious cover shall not exceed 60 percent of the total area of any lot in a hospital district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. X-A, § 15; Code 1995, § 14.02.585)

### **Sec. 107-282. Special uses.**

On lots with frontage on Bee Caves Road, a personal wireless telephone service facility is permitted as a special use.

(Code 1995, § 14.02.586; Ord. No. 2014-05-21(E), § 9, 5-21-2014)

### **Secs. 107-283—107-312. Reserved.**

## ***DIVISION 9. PLANNED UNIT DEVELOPMENTS***

### **Sec. 107-313. Purpose.**

A planned unit development (PUD) is a permitted use within the C-1 district or the C-2 district, the purpose of which is to encourage planned developments as a means of creating a superior community environment through unified planning and building operations; to provide adequate community facilities well located with respect to needs; to protect the natural beauty of the landscape; to encourage the preservation and more efficient use of open space; and to offer an opportunity for greater flexibility and, consequently, more creative and imaginative design for the development of the city than is generally possible under the zoning regulations established elsewhere in this article.

(Code 1987, ch. 11, subch. G, art. XI, § 1; Code 1995, § 14.02.641)

### **Sec. 107-314. General regulations.**

Regulations that apply in a C-1 district or a C-2 district shall apply to planned unit developments except as otherwise provided in this division.

(Code 1987, ch. 11, subch. G, art. XI, § 2; Code 1995, § 14.02.642)

### **Sec. 107-315. Minimum size of PUD.**

A PUD shall be at least five acres in area.

(Code 1987, ch. 11, subch. G, art. XI, § 3; Code 1995, § 14.02.643)

### **Sec. 107-316. Permitted uses.**

Except for uses permitted in a residential district, all uses permitted in a C-1 district or a C-2 district shall be permitted in a PUD, and all special uses permitted in a C-1 district or a C-2 district, subject to the procedures for application and approval, and any restrictions provided therefor, shall be permitted in a PUD.

(Code 1995, § 14.02.644; Ord. No. 2014-05-21(E), § 10, 5-21-2014)

### **Sec. 107-317. Mixed use zoning.**

Limited C-2 zoning may be granted for specified areas within the buildings or structures located in C-1 zoning. A property owner unable to comply with parking requirements may designate one or more specific areas within the buildings or structures for storage or warehouse purposes. Such areas designated as storage or warehouse areas shall have parking spaces allocated in a ratio of one parking space for each 1,000 feet of storage or warehouse area.

(Code 1987, ch. 11, subch. G, art. XI, § 5; Code 1995, § 14.02.645)

### **Sec. 107-318. Minimum floor space.**

Each building or structure (other than a personal wireless telephone facility for which a special permit is issued) shall be at least 1,600 square feet in area.

(Code 1995, § 14.02.646; Ord. No. 2014-05-21(E), § 11, 5-21-2014)

### **Sec. 107-319. Application procedures.**

- (a) An application for creation of a PUD shall be processed according to the same procedures provided under this article for proposed changes in zoning.
- (b) In addition to all other requirements of this article relative to applications for zoning changes, any person requesting creation of a PUD shall submit a development plan which shows the following:
  - (1) Date, scale, north point, title, name of the owners of the property encompassed within the PUD and the name of the person preparing the plan;
  - (2) A legal description of the property encompassed within the PUD including a deed reference, a plat reference, and where applicable, a metes and bounds description;
  - (3) A description of the proposed development of property encompassed within the district;
  - (4) Delineation of existing and proposed uses within the PUD and delineation of the lines of existing and proposed lots;
  - (5) The location and size of existing and proposed streets, private drives, driveways and parking places;
  - (6) The shape, size, location, height and floor area of all existing and proposed buildings, structures and other land facilities;
  - (7) The centerlines of all existing watercourses and the location, types, and sizes of existing and proposed drainage facilities;

- (8) Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum, determination of stormwater flows will be according to the drainage criteria manual;
- (9) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
- (10) A comprehensive grading plan shall be included with the development plan.
  - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
  - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
  - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
  - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection c of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
  - e. Unless demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
  - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements,
  - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (11) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;

- (12) Delineation of all areas to be conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and other public and semipublic uses;
- (13) The size and location of all existing and proposed public and private utilities;
- (14) Delineation of all areas reserved for off-street parking and off-street loading, the location and size of points of ingress and egress, and the ratio of parking space to floor space;
- (15) A representation of the general use and character of all property located within 200 feet of the boundaries of the PUD; and
- (16) A copy of all covenants, grants, easements, or other restrictions which govern, or will govern, the use, maintenance and continued protection of the PUD and any common open space therein.

(Code 1987, ch. 11, subch. G, art. XI, § 7; Code 1995, § 14.02.647)

### **Sec. 107-320. Commission evaluation and action.**

- (a) In evaluating a development plan for a proposed PUD, the commission shall consider the following:
  - (1) Whether the plan includes buffer zones, protective areas and other features necessary to prevent detriment to any adjoining properties not in the PUD;
  - (2) Whether the provisions of the plan relative to yard spaces, height of structures, distances between structures, usable open space, off-street parking and other matters will overload utilities and generate more traffic than streets in the vicinity can carry without congestion;
  - (3) Whether the combination of different building and structure types or the variety of land uses in the PUD will complement each other and harmonize with existing and proposed land uses in the vicinity; and
  - (4) Whether the overall nature and character of the proposed PUD conforms to the needs and characteristics of the city.
- (b) Following the public hearing on a proposed PUD, the commission shall either:
  - (1) Recommend approval of the plan as submitted;
  - (2) Recommend approval of the plan subject to specified conditions not included in the plan as submitted or modified; or
  - (3) Recommend disapproval of the plan.

(Code 1987, ch. 11, subch. G, art. XI, § 8; Code 1995, § 14.02.648)

### **Sec. 107-321. Creation.**

- (a) The city council, after considering the recommendation of the commission, may authorize the creation of the proposed PUD.
- (b) In the ordinance creating the PUD, the city council may specify maximum height, floor area ratio, density, minimum off-street parking and loading standards, and other standards appropriate for the PUD, and may establish requirements with respect to lots, signs, building spacing, site coverage, access, screening walls or landscaping, building area, open space, pedestrian ways, streets and other matters.

(Code 1987, ch. 11, subch. G, art. XI, § 9; Code 1995, § 14.02.649)

### **Sec. 107-322. Compliance required.**

In carrying out the development of a PUD, all conditions imposed by the city council shall be complied with and such conditions as are specified for the development of a PUD shall not be construed as conditions precedent to the approval of the change, but shall be construed as conditions precedent to the granting of building permits and certificates of occupancy.

(Code 1987, ch. 11, subch. G, art. XI, § 10; Code 1995, § 14.02.650)

### **Sec. 107-323. PUD agreement and restrictive covenant.**

Attached as appendix 1 to the ordinance from which this article is derived are:

- (1) The PUD agreement and restrictive covenant (the "Towne Centre PUD"); and
- (2) The first amendment to PUD agreement and restrictive covenant (the "first amendment"), and the second amendment to PUD agreement and restrictive covenant (the "second amendment") which provide for the zoning regulations, restrictions, and requirements applicable to the real property described therein and known as the Towne Centre Planned Unit Development. Each of the first and second amendments shall control over any inconsistent provision of the Towne Centre Planned Unit Development.

(Code 1995, § 14.02.651; Ord. No. 2018-04-05, 4-5-2018)

### **Secs. 107-324—107-339. Reserved.**

## ***DIVISION 10. LANDSCAPING***

### **Subdivision 1. Non-Residential Regulations**

### **Sec. 107-340. Removal of vegetation from right-of-way.**

Any excavation, grading or site clearance of a lot zoned for commercial use, including planned unit development, which involves the removal of vegetation from the city's right-of-way is prohibited without prior written approval of the city building official. Damaged, destroyed or removed trees having a height of 11 feet or more shall be restored in accordance with the landscape provisions of section 107-341 of this division.

(Ord. No. 2019-02-20(B) , § 1(3.05.001), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-341. Landscape requirements.**

- (a) The provisions of this section are applicable to every lot zoned for a use other than residential, with respect to which a building permit for any new structure or enlargement of any existing structure is issued.
- (b) 20 percent of the total area of each lot shall be devoted to landscaped open space, with one tree being required for each 2,000 square feet of area, or fraction thereof, of each lot. Each required tree shall be at least 12 feet high when planted and shall be maintained in a healthy condition. Said trees shall not be pruned

except either to remove dead wood, or to prevent growth or to remove existing growth lower than 15 feet above the ground. Existing trees having a height of at least 11 feet may be counted as required trees, provided that the ground beneath the canopy remains unimproved. Any species of tree which does not normally grow to a height of 15 feet in the city, as determined by the city arborist or other competent person designated by the city administrator, shall not qualify as a required tree under this section.

- (c) When off-street parking for ten or more vehicles is provided, there shall be landscaped open space within the perimeter of the parking area or areas, in the minimum amount of 18 square feet for each parking space. Said landscaped open space need not be contiguous, but there shall be at least one tree in each separate area. Said trees shall be included in computing the number of trees required in subsection (b) of this section.
- (d) All required tree plantings shall be installed prior to the occupancy or use of property. Where compliance is not practicable due to the season of the year, the building official shall grant an appropriate delay. Any certificate of occupancy may be revoked, after 30 days' written notice to the occupant and the owner of the affected property, if tree plantings are not undertaken or maintained as required under this article.
- (e) A nonresidential lot that is adjacent to a public street or right-of-way or that is adjacent to a residential property line shall have a landscaped greenbelt at least 20 feet in width measured from the property line parallel with and adjacent to each such street, right-of-way or residential property line. An exception may be approved by the city council for the location of a driveway in such required landscaped greenbelt if the city council finds that special traffic conditions affect the property, and that the interest of safety of the driving public and pedestrians would better be protected by the location of a driveway in the area of the required greenbelt. Such greenbelt shall contain a minimum of one tree, not less than 12 feet in height, for every 500 square feet of greenbelt.

(Ord. No. 2019-02-20(B) , § 1(3.05.002), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-342. Variances.**

The city council is authorized, upon written appeal of a property owner or developer subject to the requirements of this division, to grant a variance from the requirements of this division as will not be contrary to the public interest, where, due to special conditions, literal enforcement of the requirements of this division will result in unnecessary hardship, and so that the spirit of this division shall be observed and substantial justice done. In considering any proposed variance, the following rules shall be observed:

- (1) The applicant for the variance must present to the city council a set of plans setting out the applicant's proposal and the nature of the proposed variance.
- (2) The proposed variance may not substantially adversely affect any adjoining property or the general welfare of the community.
- (3) The city council must find that the granting of the variance will not merely serve as a convenience to the applicant but will serve to alleviate some demonstrable and unusual hardship or difficulty based on the condition of the affected property or surrounding areas.

(Ord. No. 2019-02-20(B) , § 1(3.05.003), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Secs. 107-343—107-368. Reserved.**

## **Subdivision 2. Residential Tree Canopy Management**

**Sec. 107-369. Purpose.**

- (a) The tree code regulations protect the health, safety, and general welfare of the citizens of the city. In doing so, the appearance of the city is enhanced and important ecological, cultural, and economic resources are protected for the benefit of the city's residents, businesses, and visitors.
- (b) The sections within this subdivision address trees in both development and non-development situations and seek to enhance the quality of the tree canopy and optimize the benefits that trees provide.
- (c) For development situations, additional requirements to this subdivision are designated in [section] 107-376. (Ord. No. 2019-02-20(B) , § 1(3.05.004), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

**Sec. 107-370. Applicability.**

This subdivision applies to property in the residential zoning district and to any other property to which section 107-341 of this Code does not apply.

(Ord. No. 2019-02-20(B) , § 1(3.05.005), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

**Sec. 107-371. Definitions.**

In this subdivision:

- (a) *Protected species* means:
  - (1) Ash, Texas
  - (2) Cypress, Bald
  - (3) Elm, American
  - (4) Elm, Cedar
  - (5) Madrone, Texas
  - (6) Maple, Bigtooth
  - (7) All Oaks
  - (8) Pecan
  - (9) Walnut, Arizona
  - (10) Walnut, Eastern Black
- (b) *Protected tree* means a tree that has a trunk with a diameter of 12 inches or more, measured four and one-half feet above ground, and is one of the protected species;
- (c) *Replacement species* means:
  - (1) For trees planted within 20 feet of an above-ground power, cable, or telephone line:
    - a. Anacacho Orchid Tree
    - b. Common Tree Senna
    - c. Crape Myrtle (dwarf)



- d. Desert Willow
- e. Evergreen Sumac
- f. Eve's Necklace
- g. Flameleaf Sumac
- h. Goldenball Leadtree
- i. Mexican Buckeye
- j. Mexican Plum
- k. Possumhaw Holly
- l. Rough Leaf Dogwood
- m. Texas Mountain Laurel
- n. Texas Persimmon
- o. Texas Pistache
- p. Texas Redbud
- q. Wax Myrtle
- r. Yaupon Holly
- s. Cherry Laurel

(2) For all other trees planted within a property, a protected species.

(d) *Replacement tree* means:

- (1) For the replacement species listed in subsection (c)(1), a tree at least eight feet high when planted, which shall be maintained in a healthy condition after planting;
- (2) For the replacement species listed in subsection (c)(2), a tree with a diameter equal to not less than one-fourth the diameter of the protected tree it replaces up to a maximum diameter of six inches, which shall be maintained in a healthy condition after planting. The diameter of protected and replacement trees shall be measured four and one-half feet above the ground when planted.

(e) *Removal* means an act that causes or may be reasonably expected to cause a tree to die, including:

- (1) Uprooting;
- (2) Severing the main trunk;
- (3) Damaging the root system, including, but not limited to:
  - a. Adjusting the grading of a lot to cover or uncover a tree trunk or root system to the extent that the adjusted grading causes or may be reasonably expected to cause the tree to die; or
  - b. Placing fixtures over the root system to the extent that the placement of the fixtures causes or may be reasonable expected to cause the tree to die.
- (4) Excessive pruning, including, but not limited to, pruning that exceeds 25 percent of the canopy of the tree.

(f) *Certified arborist* means an ISA certified arborist.

(Ord. No. 2019-02-20(B) , § 1(3.05.006), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-372. Administration.**

- (a) A city arborist shall be appointed by the city council to assist in promulgating forms for use under this subdivision and to decide all applications for removal of a protected tree.
- (b) If an applicant requests a variance as permitted under this subdivision, the city arborist shall direct the request to the city council and make a recommendation to the city council whether to approve the variance request.
- (c) The list of eligible protected tree species under subsection 107-371(a) and the list of eligible replacement tree species under [subsection] 107-371(c) may be supplemented by approval of the city council, in consultation with the city arborist or as provided by subsection (e).
- (d) An applicant may satisfy a tree replacement requirement by planting the required replacement tree(s) on the property affected by the protected tree removal, or on one or more other property(s) approved by the arborist or other designated agent of the city if:
  - (1) The benefit to residents of the city would be as great as replacement on the property affected by the protected tree removal; and
  - (2) The owner(s) of such other property(s) agree in writing to maintain the replacement trees in a healthy condition and replace same with like trees, as necessary as a result of a death of such tree(s), for a period of not less than three years.
- (e) For purposes of subsections 107-372(c) and (d) the city and the owner may consult with an academic organization, state agency, nonprofit organization, or the city arborist to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality within and outside of the city limits.
- (f) The city council shall provide for fees payable for review of applications for permits and variances pursuant to this division.

(Ord. No. 2019-02-20(B) , § 1(3.05.007), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-373. Removal of protected trees.**

- (a) A person may not remove a protected tree without a tree removal permit for the removal and compliance with the terms of this subdivision.
  - (1) During removal of protected trees the tree removal permit shall be displayed on the construction board for the site in present or otherwise displayed on a sign within the first five feet of the front yard setback and if the house is not under construction the permit for tree removal shall be placed on the dashboard of the permitted vendor's vehicle.
- (b) Emergency pruning or removal. Notwithstanding subsection 107-373(a), a person may perform emergency pruning or removal of a protected tree as follows:
  - (1) When the condition or location of a protected tree presents a clear and immediate danger to a structure or to the health and safety of the public, the hazardous portion of the protected tree may be removed without first obtaining a required tree removal permit.
  - (2) In the course of performing emergency repairs to a road or water, wastewater, or drainage facilities, agents or contractors of the city may trim, prune or remove a protected tree as required to perform such work without first obtaining a tree removal permit. If such activities occur during normal business

hours, the city shall first attempt to contact the city arborist to determine if the city arborist can provide immediate guidance and assistance. If such assistance is not immediately available, then the pruning or removal may occur in accordance with the requirements under chapter 18, article V of this Code.

- (3) Any person who prunes or removes a protected tree under the provisions of this subsection shall, within 14 days of such action or as soon as practicable if there is a coinciding declaration of a state of emergency in the city, apply for a tree removal permit providing for replacement trees as required by this subdivision. The application shall include photographs or other documentation to demonstrate the requisite clear and immediate danger. The city arborist will evaluate the information to determine whether a clear and immediate danger existed. A failure to submit an application or a failure to submit information demonstrating the clear and immediate danger shall constitute a violation of this subdivision.
- (c) The requirements of this subdivision apply to trees on public and private property. To the extent of conflict with another section of the Code, this subdivision applies.

(Ord. No. 2019-02-20(B) , § 1(3.05.008), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

#### **Sec. 107-374. Application for protected tree removal and tree removal permits.**

- (a) An applicant may request a tree removal permit application from the city by phone, U.S. mail, fax, email or in person.
- (b) An application for removal of a protected tree located on public property, a right-of-way or a public easement may be submitted by:
  - (1) An agent of the city, a public utility, or another political subdivision with the authority to install the public facilities and perform the work necessitating the removal of the protected tree; or
  - (2) The owner of the property adjoining the site of the protected tree.
- (c) An application for removal of a protected tree on private property may be submitted by or on behalf of the owner of the property on which the tree is located.
- (d) An application for removal of one or more protected tree(s) must be submitted to the city secretary and approved prior to removal of the protected tree. If the application is approved as provided for in this subdivision, a permit shall be issued indicating each protected tree that is approved for removal and indicating the location(s) and size(s) of any required replacement trees and the dates by which replacement trees must be planted.
- (e) An application that proposes removal of a protected tree shall include the required permit application fee.
- (f) An application for removal of a protected tree shall include any proposal for type(s) and location(s) of replacement trees on a site plan of affected property(s).
- (g) A permit for removal of a protected tree expires one year after its effective date except that if any building permit issued for the associated property expires or is revoked for any reason, the permit for removal of a tree shall expire as well. Subject to applicable expiration, a permit for removal of tree(s) is transferable to a subsequent owner of the affected property, provided that any obligation in the permit with respect to replacement trees is assumed by the transferee.

(Ord. No. 2019-02-20(B) , § 1(3.05.009), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-375. Conditions for approval.**

- (a) If the protected tree is located within a setback area and the total width of the setback area is greater than ten feet from the edge of a property, the protected tree shall be replaced with a total of three replacement trees that may include a selection of replacement trees under subsections 107-371(d)(l) and (d)(2), and shall include at least one replacement trees under subsection 107-371(d)(2).
- (b) If the protected tree is not located within an area specified in subsection 107-374(a), the protected tree shall be replaced by one replacement tree under either subsection 107-371(d)(l) or subsection 107-371(d)(2).
- (c) If the protected tree trunk straddles an area specified in subsection 107-374(a), the protected tree is deemed to be in the area specified in subsection 107-374(a) if more than half of the diameter of the tree is within the area specified in subsection 107-374(a).
- (d) If the city arborist determines under subsection 107-373(b)(3) that an emergency existed at the time of removal that necessitated expedited removal or an applicant provides documentation from a certified arborist that a protected tree is diseased, dead, or poses an imminent or immediate threat to persons or property due to natural causes only and the protected tree falls under subsection 107-375(a), the city arborist may reduce the replacement tree requirement to one replacement tree under either subsection 107-371(d)(1) or subsection 107-371(d)(2).
- (e) If the city arborist determines that an applicant provides sufficient documentation from a certified arborist that a protected tree is diseased, dead, or poses an imminent or immediate threat to persons or property due to natural causes only, and also not as a result of intentional bleaching, root cutting, or pruning more than 25 percent of the canopy, and that the certified arborist has documented at least two prior actions performed by the certified arborist within the previous three years to mitigate the condition, the city arborist may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (f) If a protected tree is required to be removed under section 18-209, the city arborist may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (g) The mayor may act to waive the replacement tree requirement under this subsection 107-374(d) for a storm event, wildfire or other calamity that causes widespread or costly damage to multiple protected trees throughout the city.
- (h) For a permit filed with an application for development of any improvements or structures, if the density of protected trees in an area described in subsection 107-374(b) is greater than seven protected trees, the number of replacement trees required under subsection 107-374(b) for a removal from such area is capped at seven replacement trees, at least three of which shall meet the requirements of subsection 107-371(d)(2).
- (i) If a protected tree has a trunk on a first property and roots and canopy that extend into a second property, the owner of the second property is required to obtain a tree removal permit for removal of the protected tree prior to performing any actions that constitute removal under subsection 107-371(f) on the second property. For purposes of determining removal under this subsection for 107-371(f), damage to the root system is assessed within the area that is a number of feet in diameter from the outer edge of the tree trunk at four and one-half feet from the ground based on a ratio of one foot for each inch of diameter of the tree trunk. If the actions by the owner of the second property as to the protected tree trigger a requirement for the owner of the first property to apply for a tree removal permit for the protected tree, the application review fee as to the protected tree on the first property is waived.

(Ord. No. 2019-02-20(B) , § 1(3.05.009), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-376. Development application requirements.**

- (a) An application for a building permit must:
  - (1) Include a tree survey and protection plan of all existing trees on the property that are at least 12 inches in diameter measured four and one-half feet above the ground;
  - (2) Include a grading and tree protection plan for protecting all protected trees that are not approved for removal;
  - (3) Demonstrate that the design will preserve the existing natural character of the landscape as to any protected trees not approved for removal; and
  - (4) Include a tree removal permit application with required fees for review of each proposed removal of a protected tree.
- (b) The building official may not release or renew a building permit until the city arborist issues a tree removal permit for each protected tree proposed to be removed.

(Ord. No. 2019-02-20(B) , § 1(3.05.010), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-377. Administrative variance.**

- (a) The city council may grant an administrative variance from the requirements of this division if the city council determines by a simple majority that owing to special conditions pertaining to the affected property, literal enforcement of the provisions of this division will result in unnecessary hardship, and the granting of the variance will not be contrary to the public interest.
- (b) In considering any proposed variance, the following rules shall be observed:
  - (1) The applicant for the variance must present to the city council a set of plans prepared by a certified arborist setting out the applicant's proposal and the nature of the proposed variance;
  - (2) The proposed variance may not unreasonably affect any adjoining property or the general welfare of the community; and
  - (3) The city council must find that the applicant did not create the condition necessitating the variance.
- (c) If the city council grants a variance under this subdivision, the city arborist may issue a tree removal permit with terms consistent with any terms and conditions of the granted variance.

(Ord. No. 2019-02-20(B) , § 1(3.05.011), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-378. Replacement procedure.**

- (a) Whenever replacement trees are required by the terms of this subdivision, the owner shall submit to the city arborist for approval a replacement site plan showing the locations, species and sizes of all replacement trees and vegetation for final approval by the city arborist. If during installation, the owner is unable to conform to the approved replacement site plan because conformance is not feasible due to subsurface conditions that could not reasonably have been foreseen that make the viability of the tree in the planned location unlikely, then the owner must submit an amended site plan to the city arborist within seven days of the discovery of unforeseen subsurface conditions for approval by the city arborist. An amended site plan must provide for no fewer replacement trees or cumulative size of replacement trees than provided in the originally approved replacement plan.

- (b) Installation of the replacement trees must be completed within the time period designated by the city arborist in the tree removal permit, however, in no event will the time period be longer than one year, however this time period is abated while a property is under construction where replacement trees are required.
- (c) The owner shall notify the city arborist upon completion of the installation. If more than one protected tree has been replaced, the city arborist may then inspect for compliance with the approved replacement plan.
- (d) All replacement trees must survive at least three years. The city arborist may contact the owner during this three year period to arrange for a site visit by the city arborist in order to confirm the replacement trees have survived. Replacement trees that do not survive for three years must be removed and replaced with similar species and sized trees.
- (e) The owner of property from which the removal of one or more protected trees was permitted shall arrange for the transferee(s) of such property to submit to the city secretary a written transfer to and assumption by such transferee(s) of the permit and all obligations of such permit with respect to required replacement trees, if all such obligations have not been satisfied at the time of transfer of the property.

(Ord. No. 2019-02-20(B) , § 1(3.05.013), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-379. Violations/penalties.**

- (a) It shall be an offense for a person:
  - (1) To fail to perform an act required by the provisions of this subdivision;
  - (2) To fail to timely comply with any term of a permit issued pursuant to this division, including terms regarding the planting and maintenance of required replacement trees;
  - (3) To hire, engage, or permit any person engaged in the business tree planting, maintenance, or removal to perform such services on property in the city without a permit issued by the city pursuant to section 18-217 of this Code;
  - (4) Except as expressly allowed pursuant to this subdivision, to remove or to cause the removal of a protected tree without first obtaining a permit therefor;
  - (5) To transfer property from which the removal of a protected tree has been permitted if all obligations with respect to replacement trees pursuant to the permit for such removal are not then fulfilled unless the transferee of the property agrees in a writing submitted to the city secretary to assume such permit and all obligations with respect to the planting and maintenance of required replacement trees;
  - (6) To fail to submit an application for a permit as required pursuant to subsection (b) of this section or pursuant to subsection 107-373(b)(3); or
  - (7) To fail to submit photographs or other documentation to demonstrate a requisite clear and immediate danger pursuant to subsection 107-373(b)(3) in connection with an unpermitted removal of a protect tree.
- (b) An offense shall constitute a Class C misdemeanor punishable by a fine not to exceed \$500.00. An offense committed intentionally, knowingly, recklessly, or with criminal negligence shall be punishable by a fine not to exceed \$2000.00 per offense. Each protected tree removed in violation of this division shall constitute a separate offense, and a failure to plant and maintain each replacement tree shall constitute a separate offense. Each day a violation continues shall constitute a separate offense.
- (c) The owner of affected property and each person who causes or directs another person to remove a protected tree without a permit shall immediately submit an application for a permit pursuant to this subdivision, including a proposal for the provision of replacement tree(s) in compliance with this subdivision.

- (d) The building official shall issue a stop work order in connection with any permitted development of the property from which a protected tree is removed upon the occurrence of a violation of this subdivision or any term of a permit issued pursuant to this subdivision.
- (e) No certificate of occupancy shall be issued for a building or other structure that is not then in compliance with any permit issued pursuant to this subdivision for removal of a protected tree.

(Ord. No. 2019-02-20(B) , § 1(3.05.014), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-380. Requirements for conduct of tree removal businesses.**

Any person engaged in the business of tree maintenance by pruning, trimming, or removing of trees in the city, whether a tree trimming business or a demolition business, shall comply with all applicable provisions of this subdivision and shall secure an annual permit to do so from the city secretary.

(Ord. No. 2019-02-20(B) , § 1(3.05.015), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Secs. 107-381—107-396. Reserved.**

## ***ARTICLE III. SPECIAL USES***

### **Sec. 107-397. Applicability.**

The regulations set forth in this article shall apply to land, buildings and structures located in a professional and business office district (C-1), a business district (C-2), a government and institutional zoning district (GI), a park zoning district (P), a hospital zoning district (H), and a PUD.

(Code 1995, § 14.02.701; Ord. No. 2014-05-21(E), § 12, 5-21-2014)

### **Sec. 107-398. Special uses; approval required.**

Special uses may be approved by the city council only as authorized under this article.

(Code 1987, ch. 11, subch. G, art. XII, § 2; Code 1995, § 14.02.702)

### **Sec. 107-399. Special use permits.**

- (a) *Permit required.* No special use shall be established, operated, or maintained except as authorized by a special use permit approved in accordance with the requirements of this article.
- (b) *Special use permit approved by city council.* A special use permit may be approved only for the special uses specified in this article, and only for the districts wherein such uses are authorized. A special use permit may be approved by the city council acting after a public hearing and after the council has received a recommendation from the commission relative to the proposed permit.
- (c) *Application.* An application for a special use permit shall be made in writing in a form prescribed by the city secretary, and shall be accompanied by such information as may be requested (including a site plan, if required) in order to provide for proper review of the proposed use. Such information may include, but is not limited to, site and building plans, drawings and elevations, traffic plans prepared by a licensed professional engineer with experience in traffic safety that includes an analysis of traffic to be generated by the proposed

use and indicates the impact on existing traffic conditions within the city, including residential areas, and provides information on the potential congestion caused by ingress and egress, and operational data.

- (d) *Report by city secretary or city inspector.* The city secretary or city inspector shall visit the site of the proposed special use and the surrounding area, and thereafter submit his written findings to the commission and the city council.
- (e) *Notice—Public hearing by commission.*
  - (1) The commission shall hold a public hearing on each application for a special use permit.
  - (2) Written notice of such hearing shall be given to the owners of all real property located within 250 feet in all directions of the property that is the subject of the hearing. Notice shall be given not less than 30 days prior to the date of the hearing either by personal service or by mailing a copy of the notice to each owner at his address shown on the current city tax roll.
  - (3) Such notice shall state the purpose, date, time, and place of the hearing, together with a brief description of the proposed development, including its nature, scope, and location. The notice shall also describe any variances the applicant has requested and state the location and times at which the special use permit application and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the city council will be available at a later date.
  - (4) The applicant shall be responsible for drafting the notice and serving it after the notice has been approved by the city secretary as to form and content. An affidavit of proof of service shall be filed by the applicant with the city secretary prior to the hearing.
- (f) *Review and recommendation of the commission.*
  - (1) The commission shall review each application for a special use permit to determine whether the proposed special use complies with each of the general criteria in section 107-400, and with each of the specific criteria in section 107-401 applicable to the proposed use, and shall make a separate finding thereon for each criterion.
  - (2) The commission shall not recommend approval of an application unless it finds that the proposed special use as presented or as modified by the commission complies with each applicable general and specific criterion. A recommendation of approval may be conditioned on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.
  - (3) The commission shall forward its findings and recommendations to the city council in writing.
- (g) *Hearing before city council.* The city council shall review an application for a special use permit at a public hearing after receiving the findings and recommendations of the commission.
- (h) *Review and action by city council.*
  - (1) The city council shall determine whether the proposed special use complies with each of the general criteria in section 107-400 and with each of the special criteria in section 107-401 applicable to the proposed use, and shall make separate findings thereon or adopt the findings made by the commission.
  - (2) The city council may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.



- (3) The city council shall not grant a special use permit unless it finds that the proposed special use, as presented or as modified by the council, complies with each applicable general and specific criterion; otherwise it shall deny the application.

(Code 1987, ch. 11, subch. G, art. XII, § 3; Code 1995, § 14.02.703; Ord. No. 2009-05-07B, §§ 4, 5, 5-7-2009)

### **Sec. 107-400. General criteria applicable to all special uses.**

A proposed special use must comply with all the following criteria:

- (1) The appearance, size, density and operating characteristics of the proposed special use shall be compatible with the surrounding neighborhood and uses;
- (2) The proposed use will not have an adverse effect on the value of surrounding properties nor impede their proper development;
- (3) The proposed use will not create a nuisance nor otherwise interfere with the neighbors' enjoyment of their property or operation of their business;
- (4) The traffic that the proposed use can reasonably be expected to generate on existing streets will not create nor add significantly to congestion, safety hazards, nor parking problems in the area, nor will it disturb the peace and quiet of the neighborhood; and
- (5) The proposed use complies with all other applicable city ordinances and regulations.

(Code 1987, ch. 11, subch. G, art. XII, § 4; Code 1995, § 14.02.704)

### **Sec. 107-401. Criteria applicable to individual special uses.**

- (a) Alcoholic beverages sold in a restaurant for on-premises consumption. A proposal to sell alcoholic beverages in a restaurant for on-premises consumption must comply with the following specific criteria and conditions, as well as the general criteria prescribed under section 107-400:
  - (1) The restaurant where alcoholic beverages are proposed to be sold is not located within 300 feet of a church or school;
  - (2) The restaurant where alcoholic beverages are proposed to be sold is not located on property, two or more sides of which abut property in a residential district;
  - (3) The gross receipts derived from the sale of alcoholic beverages shall not exceed the gross receipts derived from the sale of food; and
  - (4) The permit shall be reviewed annually by the city secretary and if reissued, reissued at the end of the city's fiscal year.
- (b) Alcoholic beverages sold in grocery stores for off-premises consumption.
  - (1) The grocery store where the alcoholic beverages are proposed to be sold is not located within 300 feet of a church or school;
  - (2) The grocery store where the alcoholic beverages are proposed to be sold is not located on property, two or more sides of which abut property in a residential district;
  - (3) The permit shall be reviewed annually by the city secretary and if reissued, reissued at the end of the city's fiscal year;

- (4) Additional fees are to be collected after three years' operation in accordance with alcoholic beverage commission permit rules; and
- (5) A permit shall only be granted if:
  - a. The applicant agrees that all litter associated with off-premises consumption of alcoholic beverages within 200 feet of the applicant's premises is presumed to be the applicant's; and
  - b. The applicant agrees to collect and dispose of all litter within 200 feet of the boundary line of the premises from which alcoholic beverages are sold.
- (c) Banks/savings and loan associations in C-1 districts. A proposed bank or savings and loan association in a C-1 district must comply with the following specific criteria and conditions, as well as the general criteria prescribed under section 107-400:
  - (1) The site plan must provide adequate stack space for motor vehicles;
  - (2) The site shall be designed and developed in a manner that will not impede the flow of traffic in the vicinity of the bank or savings and loan association;
  - (3) The site plan shall provide for adequate landscaping and the maintenance of landscaped areas shall be governed by the provisions of restrictive covenants enforceable by the city; and
  - (4) There shall be no more than one curb cut for access to the office complex unless otherwise approved by the city council.
- (d) Personal wireless telephone service facility in certain parts of a C-1, C-2, and H district, and a PUD. A proposed personal wireless telephone service facility on a lot with frontage on Bee Caves Road in a C-1, C-2, or H district or in a PUD must comply with the following specific criteria and conditions as well as the general criteria prescribed under section 107-400:
  - (1) The facility shall have a design and appearance that mimics other uses and ancillary structures in the vicinity, such as a flagpole, tree trunk or other object compatible with surrounding buildings and uses, or, in lieu thereof, the lower 15 feet of a freestanding facility shall be screened by vegetation;
  - (2) The use or operation of the facility shall not be attended by noise or light that is incompatible with surrounding uses, or other attributes constituting a nuisance to surrounding uses;
  - (3) The facility will at all times be operated in compliance with applicable federal and state law, including law regulating radio frequencies, microwaves, and other electronic or magnetic emissions or transmissions; and
  - (4) No auxiliary generator or power source producing excessive noise or polluting emissions shall be included.

(Code 1987, ch. 11, subch. G, art. XII, § 5; Code 1995, § 14.02.705; Ord. No. 2009-05-07B, §§ 6, 7, 5-7-2009; Ord. No. 2014-05-21(E), § 13, 5-21-2014)

### **Sec. 107-402. General requirements for all special uses.**

- (a) *Adherence to approved plans and regulations.* Each special use shall be established, operated and maintained in accordance with the plans, terms, conditions, and limitations contained in the permit approved by the city council.
- (b) *Duration.* The duration or life of a special use permit shall be prescribed by the city council.
- (c) *Revocation.* The city council, after notice and public hearing, may revoke any special use permit for one or more of the following reasons:

- (1) A substantial violation of any of the plans, terms, conditions, or limitations applicable to the special use;
  - (2) A substantial violation of any applicable ordinance or regulation;
  - (3) Operation or maintenance of the special use in a manner that is detrimental to the public health or safety, or so as to constitute a nuisance; or
  - (4) Discontinuance of the use.
- (d) *Lapse of permit.* A special use permit shall automatically expire if the use has not been commenced within one year of the date the permit was issued. If the particular special use requires the construction of a building or structure, a special use permit shall automatically expire if the construction of such building or structure has not been commenced within one year of the date the permit was issued.
- (e) *Transfer.* A special use permit is only transferable within one year of the date the permit is originally issued, provided that none of the following occurs:
- (1) Any change of the plans, terms, conditions, or limitations applicable to the special use;
  - (2) Any violation of any applicable ordinance or regulation;
  - (3) Operation or maintenance of the special use in a manner that is detrimental to the public health or safety, or so as to constitute a nuisance; or
  - (4) Discontinuance of the use.
- (f) *Termination.* A special use permit shall cease upon the sale of the property unless transferred in accordance with subsection (e) of this section, or a change in the use of the property, or the expiration of the lease under which the property is held.

(Code 1987, ch. 11, subch. G, art. XII, § 6; Code 1995, § 14.02.706)

**Secs. 107-403—107-418. Reserved.**

## **ARTICLE IV. NONCONFORMING STRUCTURES AND USES**

**Sec. 107-419. Intent.**

It is the intent of this article to permit nonconforming premises and uses to continue until they are removed, but not to encourage their continuation indefinitely. Nonconforming premises and uses are declared by this article to be incompatible with permitted uses in the zoning districts created under this article. It is further the intent of this article that nonconformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other buildings, structures or uses prohibited elsewhere in the same district.

(Code 1995, § 14.02.921; Ord. No. 2009-05-07D, art. XVI, § 1, 5-7-2009)

**Sec. 107-420. 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:

*Fences* means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

*Nonconforming fences* means a fence, the height or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which they are located.

(Code 1995, § 14.02.922; Ord. No. 2009-05-07D, art. XVI, § 2, 5-7-2009)

### **Sec. 107-421. Continuation of nonconforming buildings, structures, uses or lots.**

- (a) Except as otherwise provided under this article, any nonconforming building, structure, use or lot may be continued after the adoption of this article or amendments thereto.
- (b) The right to continue a nonconforming building, structure, lot or use shall be subject to regulations intended to protect adjacent properties by preventing the creation of nuisances.

(Code 1995, § 14.02.923; Ord. No. 2009-05-07D, art. XVI, § 3, 5-7-2009)

### **Sec. 107-422. Nonconforming buildings, structures.**

Any nonconforming building or structure may, so long as it remains otherwise lawful, be continued subject to the following requirements and limitations:

- (1) Except as otherwise required by ordinance or law, a nonconforming building or structure may not be altered in a manner that increases the extent of its nonconformity.
- (2) Except as otherwise required by ordinance or law, a nonconforming building or structure must be brought into conformity if:
  - a. Fifty percent of the square footage of the building or structure is demolished, excluding a permit for interior construction or remodeling only; or
  - b. If the nonconforming building or structure is moved, it shall conform to the regulations for the district within or into which it is moved.
- (3) The provisions of subsection (2)a of this section do not apply to the demolition of the roof of a building or structure.
- (4) If the nonconforming building or structure, other than a dwelling, is damaged or destroyed by fire or other accident or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure, provided that the repair or reconstruction conforms with the construction materials standards set forth in section 107-107, the compatibility standards set forth in section 107-116, and will not increase the extent of the nonconformity of the building or structure.
- (5) If the nonconforming building or structure that is a dwelling is damaged or destroyed by fire or other accidental or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure if the repair or reconstruction will not increase the extent of the nonconformity of the building or structure.
- (6) Nothing in this article shall be deemed to:
  - a. Prevent ordinary repairs to nonconforming buildings or structures;
  - b. Prevent alterations of or extensions to nonconforming building or structures as required by law or ordinance; or

- c. Prevent the restoration to a safe condition of any nonconforming building or structure, or portion thereof, declared to be unsafe by the building official or other duly authorized official.

(Code 1995, § 14.02.924; Ord. No. 2017-09-13, 9-13-2017)

### **Sec. 107-423. Nonconforming uses.**

A nonconforming use may be continued after the adoption of this article or amendments thereto, subject to the following requirements and limitations:

- (1) A nonconforming building or structure may not be moved or altered in any manner except for the purpose of bringing the use of the structure or building into conformance with the requirements of this article.
- (2) A nonconforming use may be extended into portions of a building or structure that were manifestly designed and constructed for such use prior to the adoption of this article or amendments thereto; provided that a nonconforming use may not be extended to occupy any land outside of the building or structure in which the use is conducted.
- (3) A nonconforming use may be changed to another nonconforming use if:
  - a. No structural alterations are made; and
  - b. The board finds that the proposed use is equally or more appropriate to the district than the existing use. If the board authorizes the change of one nonconforming use to another nonconforming use, the board may impose requirements as a condition of such change.
- (4) If a nonconforming use is superseded or replaced by a permitted use, neither the particular nonconforming use nor any other nonconforming use shall thereafter be conducted at the same premises.
- (5) If a nonconforming use of land, buildings or structures is abandoned, any subsequent use of the premises shall conform to the regulations applicable to the district in which the use is located. Any nonconforming use which is discontinued a period of 90 days shall be deemed to have been abandoned whether or not so intended. Provided, that when a nonconforming use is discontinued, for whatever period of time, for the purpose of making repairs to the particular building or structure, such use shall not be deemed to have been abandoned.
- (6) For a nonconforming use of a dwelling in a residential zoning district that results from restrictions on residence or occupancy of the dwelling pursuant to section 107-68(b), if the residence or occupancy of the dwelling is pursuant to one or more leases for use of the dwelling, the nonconforming use shall be deemed discontinued at the end of the term of each lease or option term (if such option is exercised) in effect on the effective date of the ordinance from which this section 107-68(b) is derived. A nonconforming month-to-month tenancy in effect on the effective date of section 107-68(b) shall be deemed discontinued on the first day of the month that is three months after the effective date of section 107-68(b).

(Code 1995, § 14.02.925; Ord. No. 2011-11-16(A), 11-16-2011; Ord. No. 2009-05-07D, art. XVI, § 5, 5-7-2009)

### **Sec. 107-424. Nonconforming lots.**

- (a) A dwelling may be constructed on any lot existing prior to the adoption of the ordinance from which this article is derived in a residential district which fails to meet the minimum lot size of this article.

- (b) A dwelling shall not be constructed on any lot in a residential district which fails to meet the setback requirements of this article.

(Code 1995, § 14.02.926; Ord. No. 2009-05-07D, art. XVI, § 6, 5-7-2009)

### **Sec. 107-425. Nonconforming fences.**

- (a) A nonconforming fence may be continued, and may be maintained, except as provided in this article or otherwise provided by law. No person shall add on to a nonconforming fence in any manner which increases its nonconformance, including, but not limited to, adding additional height or adding additional fence length.
- (b) Loss of nonconforming status. Any side-yard or front-yard nonconforming fence which is located on a corner lot loses its nonconforming status and becomes an illegal fence if:
- (1) The fence is damaged or deteriorated to such an extent that 50 percent or more of the fence must be rebuilt or repaired;
  - (2) The fence is moved to any extent unless the moving was due to installation, maintenance or repair of public streets or utilities;
  - (3) The fence has been altered in any way except for normal wear and tear, routine painting, or routine pruning of plant materials; or
  - (4) More than 50 percent of the entire fence existing on such property has been moved, replaced or repaired within a period of one year or less.

Should any fence lose its nonconforming status, the illegal fence shall not be reconstructed or rebuilt except in conformance with the provisions of the city's ordinances.

(Code 1995, § 14.02.927; Ord. No. 2009-05-07D, art. XVI, § 7, 5-7-2009)

### **Secs. 107-426—107-441. Reserved.**

## ***ARTICLE V. ADMINISTRATION AND ENFORCEMENT***

### ***DIVISION 1. GENERALLY***

### **Sec. 107-442. Penalty for violation.**

- (a) If any building or structure is constructed or altered, or if any premises are used in violation of the provisions of this article, the building official is authorized and directed to institute any appropriate action to put an end to such violation.
- (b) Any person who violates or fails to comply with any of the requirements of this article shall be guilty of a misdemeanor and shall be liable to a fine not to exceed \$2,000.00. Each day any such violation occurs shall constitute a separate offense.
- (c) The owner or owners of any land, building or structure, or part thereof, where anything in violation of this article shall be placed or shall exist, and any person employed in connection therewith and who assists in the commission of such violation, shall be guilty of a misdemeanor and shall be liable to a fine not to exceed \$2,000.00.

- (d) Nothing herein contained shall prevent the city from taking such other lawful action as necessary to prevent or remedy any violation of this article.

(Code 1987, ch. 11, subch. G, art. XIX, § 1; Code 1995, § 14.02.1061)

**Secs. 107-443—107-459. Reserved.**

***DIVISION 2. PLANNING AND ZONING COMMISSION***

**Sec. 107-460. Creation.**

- (a) The city has created a planning and zoning commission consisting of seven members who are residents of the city.
- (b) Members of the commission will be appointed by the city council and will be appointed to staggered terms. Members of the city council or board of adjustment are not eligible for appointment to the commission.

(Code 1987, ch. 11, subch. G, art. XIII, § 1; Code 1995, § 14.02.751)

**Sec. 107-461. Officers.**

- (a) The chairperson of the commission shall be elected by majority vote of the members of the commission.
- (b) The chairperson and secretary shall serve a term of one year, commencing on January 1 and ending December 31 of the following year, except that upon expiration of his term the chairperson shall continue to serve until his successor is elected.

(Code 1987, ch. 11, subch. G, art. XIII, § 2; Code 1995, § 14.02.752)

**Sec. 107-462. Terms.**

- (a) Each member of the commission shall serve a two-year term, commencing on January 1 and ending December 31 of the following year, except that upon expiration of their terms, members of the commission shall continue to serve until their successors are appointed and qualified.
- (b) Commission members serving upon the effective date of this division shall continue to serve, and this division shall be deemed to carry forward and continue the terms of office of such members.

(Code 1987, ch. 11, subch. G, art. XIII, § 3; Code 1995, § 14.02.753)

**Sec. 107-463. Filling vacancies.**

Any vacancy on the commission shall be filled by the city council for the unexpired term of the member whose position becomes vacant.

(Code 1987, ch. 11, subch. G, art. XIII, § 4; Code 1995, § 14.02.754)

**Sec. 107-464. Meetings.**

- (a) Meetings of the commission shall be held at the call of the chairperson or upon petition of a majority of the members of the commission.
- (b) Four members of the commission shall constitute a quorum.
- (c) Meetings of the commission shall comply with the provisions of the state open meetings act, V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to adequately inform the public of the time, location and substance of business to be undertaken. Meetings closed to the public or executive sessions are normally not appropriate for the commission and will not be conducted without the advice and consent of the city attorney.
- (d) When the commission considers an application relative to a permit, site plan, subdivision, or amendments to this division, including, but not limited to, amendments proposing to change district boundaries or district rules or regulations, the commission's hearings on such applications or amendments may be held jointly with the city council, provided notice of such hearings is published as required by law. Nothing herein shall authorize the city council to take action on such applications or proposed amendments until at least five days after the council has received a final report on same from the commission.
- (e) Minutes and records shall be kept of all proceedings by the secretary, who shall forward all records of meetings to the city secretary for distribution to the city council.

(Code 1987, ch. 11, subch. G, art. XIII, § 5; Code 1995, § 14.02.755)

**Sec. 107-465. Duties.**

The commission shall advise the city council on planning-related matters, and conduct hearings, make recommendations, and perform such other duties required by law or this division or as may be assigned to the commission from time to time by the city council.

(Code 1987, ch. 11, subch. G, art. XIII, § 6; Code 1995, § 14.02.756)

**Sec. 107-466. Removal.**

- (a) A regular or alternate member of the commission may be removed from office by the city council for just cause and upon written charges.
- (b) Upon request of the person against whom removal proceedings are pending, a public hearing shall be conducted to determine the merits of the written charges submitted.

(Code 1987, ch. 11, subch. G, art. XIII, § 7; Code 1995, § 14.02.757)

**Secs. 107-467—107-482. Reserved.*****DIVISION 3. BOARD OF ADJUSTMENT<sup>1</sup>***


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<sup>1</sup>Editor's note(s)—Ord. No. 2022-01-19-03 , § 2(Exh. A), adopted January 19, 2022, repealed div. 3, §§ 107-483—107-499, and enacted a new div. 3, §§ 107-483—107-497, as set out herein. The former division pertained to



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similar subject matter and derived from the Code of 1987, ch. 11, subch. G, art. XIV, §§ 1—17; the Code of 1995, §§ 14.02.801—14.02.817; and Ord. No. 2019-10-16-03 , § 2, adopted Oct. 16, 2019.

**Sec. 107-483. Creation.**

- (a) The city has created a board of adjustment consisting of five members who are residents of the city.
- (b) Members of the board shall be appointed by the mayor, subject to confirmation by the city council. Members of the city council and planning and zoning commission are not eligible for appointment to the board.
- (c) The mayor also shall appoint, subject to confirmation by the city council, four alternate members of the board who shall be residents of the city, but who shall not be members of the city council or planning and zoning commission. Alternate members shall, upon request by the chairperson of the board, serve on the board in the absence of one or more regular members, so that all cases heard by the board will always be heard by at least four members of the board, and not more than five members of the board, regular or alternate.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-484. Terms.**

- (a) Each member and alternate member of the board shall serve a two-year term, commencing on January 1 and ending on December 31 of the following year. The terms of board members shall be staggered.
- (b) Regular and alternate board members serving upon the effective date of this division shall continue to serve, and this division shall be deemed to carry forward and continue the terms of office of such members.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-485. Removal.**

- (a) A regular or alternate member of the board may be removed from office by the city council for just cause and upon written charges being presented to the member.
- (b) Upon request of the person against whom removal proceedings are pending, a public hearing shall be conducted to determine the merits of the written charges submitted.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-486. Filling vacancies.**

Any vacancy on the board shall be filled by appointment by the mayor and confirmation by the city council for the unexpired term of the regular or alternate member whose position becomes vacant.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-487. Organization.**

- (a) The chairperson of the board shall be elected by majority vote of the members of the board.
- (b) The chairperson shall serve a term of one year, commencing on January 1 and ending on December 31, except that upon expiration of his term the chairperson shall continue to serve until his successor is elected.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-488. Meetings.**

- (a) Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine.
- (b) Meetings of the board shall comply with the provisions of the state open meetings act, V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to adequately inform the public of the time, location and substance of business to be undertaken. Meetings closed to the public or executive sessions are normally not appropriate for the board and will not be conducted without the advice and consent of the city attorney.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-489. Rules and regulations.**

- (a) The board shall adopt rules necessary to the conduct of its affairs and shall furnish a copy of such rules to the building official. Rules adopted by the board shall be consistent with the provisions of this division.
- (b) All orders and other enactments adopted by the board shall be in accordance with its rules and regulations.
- (c) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be promptly filed in the office of the board and shall be a public record. The office of the board shall be the office of the city administrator where such records shall repose.
- (d) The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official or to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-490. Powers of the board.**

The board shall, pursuant to the provisions provided for herein, have the power to:

- (1) Hear and decide an appeal where it is alleged that there is an error in any order, requirement, decision or determination made by the building official in the enforcement of this chapter;
- (2) Hear and decide special exceptions as authorized in this chapter;
- (3) Authorize a variance to the regulations as provided for in this chapter; and
- (4) Determine, in cases of uncertainty, the classification of any use not specifically named in this chapter.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-491. Special exceptions.**

- (a) The board may, in a specific case, where the board makes the findings required under subsection (c) herein, grant the following special exceptions from the requirements of this division:
  - (1) Permit the reconstruction of a nonconforming building or structure that has been damaged by fire or other cause;

- (2) Permit the enlargement or extension of a nonconforming use or nonconforming building upon the lot occupied by such use or building at the time of the passage of this division;
  - (3) In undeveloped sections of the city, grant temporary and conditional permits for not more than two years, provided that the grant of a temporary or conditional permit shall not be reason or cause for extension of such permit;
  - (4) Permit such modifications of yard, open space, lot area, or lot width regulations as may be necessary to improve a parcel of land, if the parcel is of such restricted size that it cannot be appropriately improved without such modification; or
  - (5) Permit a public utility or public service building of a ground area or height at variance with those provided for the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.
- (b) The board may grant such other special exceptions as may be provided for elsewhere in this division, subject to the terms and conditions therein set out.
  - (c) Prior to granting a special exception, the board shall make a finding that it is empowered under this chapter to grant the special exception, that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.
  - (d) In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this division.
  - (e) The board shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to comply with the time limits set by the board shall void the special exception.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-492. Variances.**

- (a) The board may authorize upon appeal, in specific cases, such variances from the terms of this chapter, where the board finds that the variance 1) will not be contrary to the public interest, 2) where, owing to special conditions, literal enforcement of the provisions of this chapter will result in unnecessary hardship, and 3) the spirit of this chapter will be observed and substantial justice done.
- (b) Prior to granting a variance in a zoning district other than a residential district, the board must find, in concert with the findings required in subsection (a), that:
  - (1) The variance is the minimum variance necessary to alleviate the unnecessary hardship;
  - (2) Granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;
  - (3) The special conditions with respect to which a variance is sought are not the result of an action of the applicant;
  - (4) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and

- (5) Granting the variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable and unnecessary hardship which is created by the literal enforcement of the provisions of this chapter.
- (c) Prior to granting a variance in a residential district, in concert with the findings required in subsection (a), the board must find that:
  - (1) A special individual reason makes the literal enforcement of this chapter result in an unnecessary hardship;
  - (2) Granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;
  - (3) The granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to the property in the area;
  - (4) There are special circumstances or conditions such as topography, natural obstructions, aesthetic or environmental considerations affecting the land involved such that the strict application of the provisions of this chapter would impose an unnecessary hardship which is created by the literal enforcement of the provisions of this chapter;
  - (5) The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this chapter;
  - (6) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and
  - (7) The circumstances or conditions from which relief is sought are not solely of an economic nature.
- (d) In granting a variance, the board may prescribe appropriate conditions and safeguards in conformity with this chapter.
- (e) In considering a variance as applied to a structure, the board may, in addition to other relevant considerations, consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
  - (1) The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under V.T.C.A., Tax Code, § 26.01;
  - (2) Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
  - (3) Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (4) Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (5) The municipality considers the structure to be a nonconforming structure.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-493. Appeals based on error.**

- (a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) A person aggrieved by the decision; or
- (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (b) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:
  - (1) A person who:
    - a. Filed the application that is the subject of the decision;
    - b. Is the owner or representative of the owner of the property that is the subject of the decision; or
    - c. Is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
  - (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (c) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed. The appeal must be accompanied by payment of a filing fee in the amount established by the city council and set forth in the fee schedule on file with the city.
- (d) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property.
- (e) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing as provided in this division and, in addition, give due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

#### **Sec. 107-494. Notice of hearing.**

- (a) The board shall fix a date and time to conduct a hearing on each appeal, request for a variance, application for a special exception filed with it, or other action authorized under this chapter and shall mail notices of such hearing at least 30 days before the hearing.
- (b) The notice must be mailed to the following persons at the address shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance with this requirement:
  - (1) The petitioner;
  - (2) The owners of the property located within 250 feet of any point of the lot, or portion thereof, with respect to which the appeal, request for a variance or application for special exception is taken;
  - (3) If the appeal, request for a variance or application for a special exception relates to a lot that is not in a residential district, all owners of property located within the city shown on the current tax rolls of the city.
- (c) In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within

three feet of the curb or the pavement, or as prescribed by the city administrator at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof, except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBA meeting, the applicant's case shall be withdrawn and rescheduled. If a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per the city fee schedule. The sign shall include the name of the applicant, the variance or special exception being requested, and the date, time, and location of the public hearing.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-495. Decision by board.**

With the exception of a decision on an appeal based on an error, which decision shall be determined as provided for in section 107-493, the board shall make a decision within 45 days of the hearing related to said decision.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-496. Limitations.**

- (a) No appeal, request for a variance nor application for a special exception or other previous application, may be filed by the same applicant within 180 days of the date upon which the board denied such appeal, request or application, unless other property in the immediate vicinity has, within the 180-day period, been changed or acted on by the board or city council so as to alter the facts and conditions upon which the previous board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the board prior to the expiration of the 180-day period, but such conditions shall in no way have any force in law to compel the board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.
- (b) Any appeal, request or application approved by the board, either under the provisions of this division or under the authority granted to the board under the statutes of the state, shall authorize the issuance of a building permit or a certificate of occupancy, as the case may be, for a period of 90 days from the date of the favorable action on the part of the board, unless the board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupant is not filed within the 90-day period or such extended period as the board may specifically approve, then the approval of the appeal, variance or special exception shall be deemed waived and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the board in accordance with the rules and regulations herein contained.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-497. Appeals from the board of adjustment.**

- (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:
    - (1) A person aggrieved by a decision of the board;
    - (2) A taxpayer; or
    - (3) An officer, department, board, or bureau of the municipality.
  - (b) The petition must be presented within ten days after the date the decision is filed in the board's office.
- (Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Secs. 107-498—107-515. Reserved.*****DIVISION 4. CHANGES IN REGULATIONS OR ZONING DISTRICT BOUNDARIES*****Sec. 107-516. Changes initiated by city council or commission.**

The city council or commission may, from time to time, on its own motion, initiate (without payment of application or petition fee) amendments, supplements, changes, or modifications to the city's zoning regulations, boundaries or classifications. Any such proposed change will be subject to the hearings and procedures prescribed by this division.

(Code 1987, ch. 11, subch. G, art. XVII, § 1; Code 1995, § 14.02.981)

**Sec. 107-517. Applications and petitions.**

- (a) Any property owner (or such property owner's authorized agent) applying to or petitioning the city for a change in zoning boundaries or classifications applicable to such applicant's property shall do so upon forms provided by the city. All petitions or applications for changes in zoning boundaries or classifications shall be filed with the city together with all applicable fees.
- (b) Each such petition or application shall:
  - (1) Contain the petitioner's/applicant's name, address and interest in the petition/application; and
  - (2) Include a survey prepared by a registered surveyor in the state and a properly recorded subdivision plat which accurately shows the location and boundaries of the property for which the change is requested, the current zoning classification of the property, and the names and addresses of all owners of property lying within 200 feet of the subject property (as reflected on the current city tax roll).
- (c) The commission may make nonmandatory requests for supplemental information from the applicant or petitioner with regard to a zoning change request including, but not limited to, a preliminary plat plan of the anticipated use and improvement of the property.
- (d) A zoning change application includes a properly recorded subdivision plat of the applicable property which is the subject of such application. In lieu thereof, a property owner may simultaneously process a subdivision application to properly subdivide the property provided that the zoning change will not be approved until a subdivision plat of the property has been approved. A city council or commission initiated change does not



require that the property be subject to a properly recorded subdivision plat nor does it require a survey of such property.

(Code 1987, ch. 11, subch. G, art. XVII, § 2; Code 1995, § 14.02.982)

### **Sec. 107-518. Hearing and notice.**

- (a) The commission will hold a public hearing on all proposed changes on zoning regulations or boundaries.
- (b) Not less than 16 days prior to the hearing, notice of the date, time and location thereof will be published in the official newspaper of the city or in a newspaper of general circulation in the city. In addition, in the case of a proposed change in zoning classification, written notice of a public hearing will be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax roll) lying within 250 feet of the property that is the subject of the proposed zoning classification change. If the application for a change in zoning classification requests a change to a zoning district other than residential district or park district, the notice must be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax roll) within the city. The notice may be served by depositing it in the U.S. mail with the proper address and postage.

(Code 1987, ch. 11, subch. G, art. XVII, § 3; Code 1995, § 14.02.983; Ord. No. 2019-08-21(D) , § 1, 8-21-2019)

### **Sec. 107-519. Commission recommendation.**

- (a) After the public hearing, the commission will make its recommendation regarding the change in zoning regulations or boundaries.
- (b) The recommendation made by the commission will be submitted to the city council, in writing, and the applicant/petitioner will be notified of the action of the commission.
- (c) The city will establish and maintain a separate file for each petition/application received, and will record the names and addresses of all persons to whom notices were mailed, including the date of mailing and the persons by whom notices were mailed. All records and files herein provided will be made part of the official files of the city.

(Code 1987, ch. 11, subch. G, art. XVII, § 4; Code 1995, § 14.02.984)

### **Sec. 107-520. Procedure before the city council.**

- (a) After receiving the recommendation of the commission, the city council will, at the earliest practicable time, hold a public hearing on the application/petition, at which parties in interest and citizens will have an opportunity to be heard. Notice of the hearing will be given in the manner required under section 107-518(b).
- (b) If the commission recommends approval of the change in zoning regulations or boundaries requested in the application/petition, the city council may, by majority vote, either accept, reject or take other action on the application/petition.
- (c) If the commission recommends disapproval of the change in zoning regulations or boundaries requested in the application/petition, or if there is filed with the city a written protest against such change, signed by the owners of 20 percent or more, either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extended 200 feet therefrom, such change will not be approved except by the favorable vote of at least four/fifths of the whole number of members of the city council.

- (d) The city council may approve, at such time as a zoning change requested by a property owner (or the property owner's authorized agent) is granted, a development agreement between the city and the applicant containing such assurances as the city council may determine are reasonably necessary regarding the development of the property, including, but not limited to, development of the property substantially in accordance with a preliminary plat plan, in form reasonably satisfactory to the city council (the "development agreement"). The city council may require that the development agreement be recorded in the real property records of the county and constitute covenants running with the land. Thereafter, any requested modifications, amendments or variances to the development agreement must be considered by and receive the prior approval of the city council. All representations, whether written or oral, made by an applicant or his agent in connection with a zoning change request at any of the public hearings held in connection therewith will be binding upon such applicant and the property which is subject to the zoning classification change. It will be unlawful for the applicant to vary or breach any of such representations without first obtaining the prior written approval of the city council.
- (e) Any change in zoning regulations or boundaries must be enacted in the form of an ordinance amending this article.
- (f) If a zoning change application filed by or on behalf of a property owner with regard to such property is denied by the city council, then a zoning application for such property requesting a change to the same zoning classification previously requested may not be filed with the city for a period of six months from the date of the prior denial by city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 5; Code 1995, § 14.02.985)

#### **Sec. 107-521. Suspending issuance of permits and approval of site plans pending amendments.**

No application for site plan approval will be accepted for filing nor processed, and no building, site clearance, or grading permit will be issued for any work, other than in connection with a single-family residential use, for a period of no more than 90 days on land which is being considered for a change in zoning classification or is subject to an amendment to the zoning ordinance being considered by the city council. Such 90-day period will begin on the date the proposed zoning classification change or proposed zoning ordinance amendment is published for public hearing by the commission. Properties with respect to which building permits or final site plans have been approved prior to such date are excepted from this restriction. The time period for such restriction will expire upon the earlier to occur of expiration of such 90-day period or final determination of such zoning change or amendment by the city council. The foregoing notwithstanding, a site plan may be approved by the city council (and a building permit may be issued) simultaneously with the approval of a zoning change classification or an amendment to the zoning ordinance by the city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 6; Code 1995, § 14.02.986)

#### **Secs. 107-522—107-530. Reserved.**

### ***DIVISION 5. REASONABLE ACCOMMODATIONS***

#### **Sec. 107-531. Purpose.**

It is the policy of the city, pursuant to the Fair Housing Act, also called Title VII of the Civil Rights Act of 1968, as amended in 1988 ("FHA"), the Americans with Disabilities Act Amendments, 2008 ("ADAA") and applicable state

laws, to provide individuals with disabilities reasonable accommodations (including modifications or exceptions) in the city's zoning, land use and other regulations, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling.

This division provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of applicable laws, including federal laws, in making a reasonable accommodation.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-532. Applicability.**

- (a) The provisions of this division apply to residential uses within a dwelling that will be used by persons with disabilities.
- (b) The accommodation granted shall be considered personal to the individual(s) and shall not run with the land. If the structure is sold, or otherwise changes ownership, an accommodation granted to the previous owner is not transferable to the new owner. Notwithstanding, the accommodation shall be in force and effect if the person(s) or group of persons with disabilities for whom the accommodation was sought resides on the property that is the subject of the accommodation. It is the duty of the owner to notify the city administrator of this event. The city shall allow the new owner an opportunity to renew and/or modify a granted reasonable accommodation in accordance with this division. If the reasonable accommodation is not renewed or modified within 60 days from the date of change in ownership, the accommodation will lapse, and the structure will have to comply with all otherwise applicable requirements.
- (c) Nothing in this division will require the city to expend any funds to achieve a reasonable accommodation except and to the extent required by state or federal law.
- (d) Nothing in this division will alter a person with disabilities' obligation to comply with other applicable federal, state and city regulations.
- (e) The city shall prominently display a notice advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this division. A copy of the notice shall be available upon request.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-533. Definitions.**

The following definitions apply:

*City administrator* means that individual employed by the city council to perform duties and as determined by the city council and with the authority to administer, implement, or enforce a requirement that is the basis of the request for reasonable accommodation.

*Disability* means a disability as defined in 42 U.S.C. § 12102.

*Dwelling* means a building which:

- (1) Is designed and constructed for occupancy as a residence;
- (2) Includes bathroom facilities; and

- (3) Includes facilities for food preparation and sleeping.

*Operator* means the person in control of a dwelling operating under the provisions of this division.

*Owner* means an individual:

- (1) Who has an ownership interest in a corporation or other legal entity owning any dwelling; or
- (2) Who is the owner of any real property seeking or obtaining accommodation under this division.

*Person with disabilities* for the purposes of this division, has the meaning set forth in the FHA and ADAA, as amended from time-to-time, and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of such impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of controlled substances is not.

*Reasonable accommodation permit* means the written document issued by the city approving the act or acts of making a dwelling readily accessible to and usable by a person with disabilities, through the removal of constraints in the city's land use, zoning, building and other regulations, policies, practices and procedures including processing procedures, in accordance with this division.

*Requirement* means a provision of this Code or an administrative policy, program or procedure.

*Resident* means a person who is residing in a dwelling.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-534. Effect.**

A reasonable accommodation controls over a conflicting city regulation or requirement.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-535. Notification of change of information.**

The permit holder shall notify the city administrator within ten days after any material change in the factual circumstances which were included in the application for a reasonable accommodation permit, other than temporary changes in the number of residents living at a property.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-536. Application for reasonable accommodations.**

- (a) The city intends to ensure that all persons with a disability have equal opportunity to use and enjoy a dwelling by providing such persons with reasonable accommodations in rules, policies, practices, and procedures promulgated under this division consistent with the FHA and the ADAA, as amended.
- (b) The method of submitting a request for reasonable accommodation permit is as follows:
  - (1) A request for a reasonable accommodation permit may be submitted at any time that the accommodation may be necessary to ensure equal access to housing.
  - (2) A request for a reasonable accommodation permit may be submitted by an individual with a disability, the person's representative, or a permit holder providing housing for one or more individuals with disabilities.

- (3) A request for a reasonable accommodation permit must be submitted in writing to the city administrator on the form provided by the city or in the form of a letter.
- (4) If an individual needs assistance in making a request for a reasonable accommodation permit, the city will provide assistance to ensure that the application process is accessible to the individual.
- (c) An applicant shall submit the following information before an application for a reasonable accommodation permit is considered to be complete:
  - (1) The applicant's name, mailing address, street address, telephone number, and email address;
  - (2) The applicant's relation to the individual(s) with a disability, if applicable;
  - (3) The address of the property to which the requested reasonable accommodation permit would apply;
  - (4) A disability determination by the Social Security Administration or the Department of Veteran's Affairs, or other substantially equivalent medical determination, that substantiates that the individual who would obtain the benefit of the reasonable accommodation is a person with a disability;
  - (5) The section(s) of this Code or other applicable regulation from which a reasonable accommodation permit is being requested;
  - (6) A brief explanation of why the requested accommodation permit is necessary for the person(s) with a disability to have equal access to housing;
  - (7) Description of the disability at issue, the requested accommodation permit, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing.
  - (8) Any other information the city administrator concludes is necessary in order to make the findings required by section 107-538 to the extent permissible under applicable local, state and federal laws. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry (see Joint Statement of The Department of Housing & Urban Development & The Department of Justice; Reasonable Accommodations Under the Fair Housing Act, 2008).
- (d) Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or person with a disability and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city administrator. The applicant need provide only the information necessary for the city to evaluate the reasonable accommodation permit request.
- (e) If the person with the disability needs assistance to make a request for a reasonable accommodation permit, the city administrator will provide assistance, including transcribing a verbal request into a written request.
- (f) A fee shall not be required for an application for a reasonable accommodation permit.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-537. Issuance or denial of permit.**

- (a) Upon receipt of a complete application for a reasonable accommodation permit, the city administrator, consistent with the requirements of this division, shall review the application and issue a written ruling that grants, grants with conditions, or denies the application.
- (b) A request for a reasonable accommodation permit shall be reviewed, and a determination made, by the city administrator, using the criteria set forth in this division and the statutes referenced.
- (c) The city administrator shall issue a written decision on a request, promptly but not more than 30 calendar days from:
  - (1) The time the complete application for a reasonable accommodation permit was filed;
  - (2) From the date of their completed inspection of the property, facility, and its records, as requested by the city administrator; or
  - (3) From the city administrator's receipt of all additional requested information.
- (d) The city administrator's written decision must explain in detail the basis of the decision. The city administrator may either grant, grant with alterations or conditions, or deny a request for a reasonable accommodation permit in accordance with the required findings.
- (e) If necessary, to reach a determination on the request for a reasonable accommodation permit, the city administrator may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city administrator. If a request for additional information is made, the running of the 30 calendar day period to issue a decision is stayed until the applicant responds to the request.
- (f) Before deciding, the city administrator may request an inspection of the property and structures. If the city administrator makes such a request, the applicant must make the property, the structure, and records relevant to the application available for the inspection, within ten days after the date of the request.
- (g) If the city administrator deems it necessary to request additional information from the applicant consistent with federal and state law, the city administrator shall contact the applicant in writing and specify the additional information that is required. If the city administrator makes such a request, the applicant must provide the additional information to the city administrator within 20 days after the date of the request or the application is automatically denied.
- (h) All proposed decisions of the city administrator must be submitted to the city attorney for legal review to determine compliance with local, state, and federal laws and regulations.
- (i) The city administrator may impose reasonable conditions on any reasonable accommodation permit request granted consistent with the purpose of this division.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-538. Required findings.**

The written decision must be consistent with the FHA and based on a consideration of the following factors:

- (1) Whether the dwelling that is the subject of the request for a reasonable accommodation permit will be used by a person with a disability protected under the applicable laws.
- (2) Whether the requested reasonable accommodation permit is necessary to make a dwelling available to a person with disabilities protected under the applicable laws.
- (3) Whether the requested reasonable accommodation permit would pose an undue financial or administrative burden on the city. The determination of undue financial and administrative burden will be done on a case-by-case basis.
- (4) Whether the requested reasonable accommodation permit would require a fundamental alteration in the nature of a city program or law, including but not limited to zoning and land use.
- (5) In making findings, the city administrator may grant with alterations or conditions, reasonable accommodation permit, if the city administrator determines that the applicant's initial request would impose an undue financial or administrative burden on the city, or fundamentally alter a city program or law. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to enabling the person(s) with a disability to use and enjoy the dwelling and making the provision of housing for person(s) with a disability financially or practically feasible.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-539. Written decision.**

- (a) The written decision of the city administrator on an application for a reasonable accommodation permit shall explain in detail the basis of the decision, including the city administrator's findings on the criteria set forth in section 107-538. The notice of the decision shall be sent to the applicant by certified mail and electronic mail, if the applicant's electronic mail address is known to the city.
- (b) The written decision of the city administrator shall be final. Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for a reasonable accommodation permit based on additional grounds or changed circumstances. Nor shall this provision be construed to affect in any way the rights of a person to challenge the denial of a request for reasonable accommodation as violating the FHA, the ADAA or any other applicable state, federal or local law.
- (c) If the city administrator fails to render a written decision on the request for a reasonable accommodation permit within the 30 calendar day period established in section 107-537, the reasonable accommodation permit request shall be deemed granted.
- (d) A request for a reasonable accommodation permit stays all proceedings in furtherance of the enforcement of any requirement that is the subject of the request. A reasonable accommodation permit request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.
- (e) The city administrator shall retain, for the duration of the reasonable accommodation permit and at least five years thereafter, written records of each request and all related records, including the city's responses and decisions.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-540. Suspension of permit; prohibition of new residents.**

- (a) The city administrator may suspend a reasonable accommodation permit for a period not to exceed 30 days if the city administrator finds that the permit holder has:

- (1) Failed to comply, after actual notice and a full and fair opportunity to cure any non-compliance, as to any provision of this division, any other ordinance, or any state or federal law applicable to the use of the property;
- (2) Intentionally or knowingly impeded or refused to allow an inspection by the city administrator authorized under this division.
- (b) A dwelling with a reasonable accommodation permit under this ordinance may not admit any new residents during the time the permit is suspended.
- (c) In lieu of suspending a reasonable accommodation permit the city administrator may enter into a compliance agreement with a permit holder if the city administrator determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a suspension.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-541. Revocation of permit.**

- (a) Except as provided in subsection (b), the city administrator shall revoke any reasonable accommodation permit if the city administrator determines that:
  - (1) The permit holder intentionally made a false statement as to a material matter in the application or in a hearing concerning the permit, which false statement or information is material to the right or eligibility permitted;
  - (2) The permit holder has violated conditions of the permit and has failed to remedy or comply within ten days after notice has been provided; or
  - (3) The factual basis for the approval has changed or no longer exists to support the right or eligibility previously approved.
- (b) In lieu of revoking a permit for a reasonable accommodation permit, the city administrator, at their sole discretion, may enter into a compliance agreement with a permit holder if the city administrator determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a revocation.
- (c) Before revoking a reasonable accommodation permit under subsection (a), the city administrator shall notify the permit holder in writing by certified mail, return receipt requested, that the permit is being considered for revocation. The notice must include the reason for the proposed revocation, action the permit holder must take to prevent the revocation, and a statement that the permit holder has ten days to comply with the notice.
- (d) If after ten days from the date of the notice required in subsection (c) was sent or delivered, whichever is later, the permit holder has not complied with required actions listed in the notice, the city administrator shall revoke the reasonable accommodation permit and notify the permit holder in writing of the revocation. The notice must include the reason for the revocation and a statement informing the permit holder of the right of appeal.
- (e) If a reasonable accommodation permit has been revoked, the permit holder has ten days from the date the notice was sent or delivered, whichever is later, to relocate the residents and cease operations. An appeal of the revocation does not suspend or toll this deadline.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)



**Sec. 107-542. Non-transferability.**

A reasonable accommodation permit is not transferable to another location, or to another owner.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-543. Inspection.****(a) Required inspections.**

- (1) The initial inspection in connection with an application under this division.
- (2) Annual inspection for compliance with the city's building codes, to include the fire code.

**(b) Other inspections.** The city may inspect any property permitted under this division, for the purpose of ascertaining whether violations of this division or any other city ordinances exist. The city administrator or their designee is authorized at a reasonable time to inspect:

- (1) The exterior of a structure and the surrounding premises; and
- (2) The interior of a structure if the permission of the owner, occupant, or person in control is given or a search warrant is obtained.

**(c) Re-inspections.** Whenever a dwelling is inspected by the city administrator and a violation of this Code is found, the building or premises will, after the expiration of any time limit for compliance given in the notice or order issued because of the violation, be re-inspected by the city administrator to determine that the violation has been eliminated.
**(d) Re-inspection fee.** The permit holder shall pay the city administrator a fee for each re-inspection after the first inspection that the violation is determined to be eliminated, including any other applicable fees.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-544. Violations; penalty.**

- (a) A permit holder other person who violates any provision of this division, or who fails to perform a duty required by this division, commits an offense.
- (b) A permit holder, operator, or owner who intentionally or knowingly fails to comply with the conditions of a permit under this division, commits an offense,
- (c) An offense under this division is punishable by a fine not to exceed \$500.00 unless the offense is a violation of a fire safety, zoning or public health and sanitation regulation in which case the offense shall be punishable by a fine not to exceed \$2,000.00. A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.
- (d) If the city administrator finds a violation of the standards prescribed by this division and the violations create an immediate threat to the health and safety of a resident in the facility, the city administrator may order immediate closing of all or part of the facility. An order of immediate closure is effective immediately on providing written notice of the order to the owner or operator by facsimile, email, or hand-delivery. The order of closure of all or part of a boarding home facility is valid for ten days after its effective date.
- (e) The city attorney may petition the appropriate court for civil penalties and for injunctive relief to restrain a continuing violation of the standards or permit requirements for a property permitted under this division.

- (f) The remedies and procedures in this section and in other laws are cumulative law, and the use of any remedy or procedure does not prevent the enforcement of any other law.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

## Chapter 107 ZONING

### ARTICLE I. IN GENERAL

#### Sec. 107-1. Purpose.

The purpose of this chapter is to promote the health, safety and general welfare of the residents and property owners of city. The regulations herein are designed to lessen traffic congestion, secure safety from fire and other dangers, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and facilitate the adequate provision of water, parks and other public requirements. These regulations have been made with reasonable consideration, among other things, for the character of each zoning district, and its peculiar suitability for the particular uses specified, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city consistent with the residential character and mature development of the city.

(Code 1987, ch. 11, subch. G, art. I, § 2; Code 1995, § 14.02.002)

#### Sec. 107-2. Minimum requirements.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

(Code 1987, ch. 11, subch. G, art. I, § 3; Code 1995, § 14.02.003)

#### Sec. 107-3. 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:

*Accessory building or structure* means a building or structure which does not share a common roof or common wall, including, but not limited to, a toolhouse, home workshop, greenhouse, garage, carport, children's playhouse, or swimming pool house, which:

- (1) Is located on the same lot as a dwelling;
- (2) Is subordinate in area to the dwelling and is used for a purpose customarily incidental to the dwelling;
- (3) Is detached from the dwelling except that a connected foundation or walkway may exist with the dwelling;
- (4) Does not provide complete independent living facilities for one or more persons which include permanent provisions for living, sleeping, and sanitation facilities; and
- (5) Is not used for lease or rental, or for a commercial purpose other than a home occupation by a resident of the main dwelling.

*Addition* means a construction project that causes an existing structure to increase in total square footage.

*Alley* means a minor public or private right-of-way which:

- (1) Is used primarily for vehicular traffic to the rear or side of properties which abut a public street; and
- (2) Affords secondary means of access to abutting property.

*Block* means a parcel or tract of land entirely surrounded by streets, and occupied by or intended for occupancy by buildings or structures.

*Board* means the board of adjustment of the city.

*Building* means any structure which is:

- (1) Permanently affixed to the land;
- (2) Has a roof supported by columns or walls; and
- (3) Is built for the enclosure, shelter or protection of persons, animals or property of any kind.

*Building footprint* means the horizontal surface area measured by taking the aggregate outside horizontal dimensions of the building and covered structures, including garages, carports, and covered porches and/or decks. Uncovered decks are not included in the measurement.

*Building height, nonresidential*, means the vertical distance from the lowest finished floor elevation (including a garage floor) to the highest part of the following: the coping of a flat roof; the deck line of a mansard roof; or the gable of a pitched or hipped roof, where, due to topographical or other conditions, the lowest finished floor elevation of a building differs from one part to another, the maximum permissible height shall be computed separately for each portion of such building containing a differing lowest finished floor elevation. If the lowest finished floor elevation is more than four feet directly above the point where the foundation intersects the natural grade, then the vertical distance must be measured from a point that is four feet directly above the point where the foundation intersects the natural grade to the highest point described above.

*Building height, residential*, means the vertical distance above a reference datum measured to the highest point of the building. The reference datum shall be selected by either of the following, whichever yields a greater height of the building:

- (1) The elevation of the highest adjoining original native ground surface within a five-foot horizontal distance of the exterior wall of the building when such original native ground surface is not more than ten feet above the lowest grade; or
- (2) An elevation of ten feet higher than the lowest grade when the original native ground surface described in subsection (1) of this section is more than ten feet above lowest grade.

*Certificate of occupancy* means a document issued by the building official which:

- (1) Certifies that the construction of a building or structure or use of premises complies with the requirements of this article and other applicable city ordinances; and
- (2) Authorizes the occupancy or use of the premises for which the certificate is issued.

*Commercial district* means a C-1 (professional and business office) zoning district or C-2 (business) zoning district.

*Commission* means the planning and zoning commission of the city.

*Demolition* means the taking down of a building while carefully preserving valuable elements for reuse. The term "demolition" may also include the total and complete deconstruction and removal of a building and its foundation to make room for the construction of a new building.

*District* means a zoned section of the city for which regulations governing the area, height or use of buildings and premises are uniform for each type and class of structure.

*Dwelling.*

- (1) The term "dwelling" means a building which:
  - a. Is designed and constructed for occupancy as a residence;
  - b. Includes bathroom facilities;
  - c. Includes facilities for food preparation and sleeping; and
  - d. Is not attached to any other building by any means.
- (2) A dwelling's extent consists of all aspects of the structure that share:
  - a. A common framed, decked, and sheathed roof; and
  - b. A common concrete slab-on-grade or wood framed and decked floor.

*Easement* means a privilege, or right of use or enjoyment, granted on, above, under or across a particular tract of land by one party to another.

*Fence* means a fixed-in-place physical barrier, including a wall, that wholly or partially encloses, screens, separates, or establishes a border for a portion of real property (e.g., yard or field) and is commonly used to control access, to confine, or to mark a boundary. Unless otherwise specifically provided, the term "fence" does not include temporary barriers, including, but not limited to, silt fencing or other erosion controls, or temporary construction barriers.

*Front-yard fence* means that portion of a fence that extends beyond the front foundation line of the primary residential structure located on the property toward the front building setback line (or for unplatted property, toward the street from which the front building setback line would be measured). In the case of undeveloped property, a front-yard fence is:

- (1) The portion of a fence located closer to a street fronting the property than the front setback line of a platted lot; or
- (2) For an unplatted property, the portion of a fence located closer to a street than the front setback line that would be required by this Code if the property were being platted pursuant to the regulations of this Code at the time of installation of such fence.

*Garage, detached* means an accessory building, separated and independent of the main building on a lot, designed to shelter motor vehicles.

*Gate* means a movable door or obstruction that closes an opening in a wall, fence, or other barrier.

*Grade* means the elevation of the original or finished surface of the ground, paving or sidewalk within the area between setback lines of the lot.

*Greenbelt* means an open area not occupied by any structures or impervious surfaces which:

- (1) Is left undisturbed in its natural state; or
- (2) Is landscaped as required under the city's landscaping regulations; provided that the width of all greenbelts shall be maintained as required under this article, notwithstanding the provisions of the city's landscape ordinance.

*Ground floor area* means the floor area of a building or structure measured by taking the aggregate outside horizontal dimensions of the building or structure, at foundation level, excluding the floor area of garages, basements, or open or screened porches.

*Home occupation* means an activity or occupation, including, but not limited to, an accountant, engineer, architect, music teacher, tailor, artist, or activity associated with management of property or assets, which is performed in a dwelling for gain, whether or not paid or provided by a third party, and which:

- (1) Is conducted by a members of the family residing in the dwelling;
- (2) Is conducted as a use that is clearly incidental and secondary to the use of the dwelling for ordinary residential purposes;
- (3) Does not require structural alterations in the dwelling or the installation of machinery or equipment other than that customary to ordinary household activities;
- (4) Does not involve the display of a sign to advertise the occupation;
- (5) Is not detrimental or injurious to adjoining property by reason of the creation of noise or other obnoxious conditions, such as the emission of odor or generation of light, smoke or other objectionable conditions;
- (6) Does not generate a substantial increase in motor vehicle traffic; and
- (7) Is conducted in the single-family residence where the operator of the home occupation resides.

*Impervious cover* means any area where the natural absorption of runoff water by the land is prevented by site development.

*Job trailer* means an enclosed building or structure, including a mobile or relocatable office unit, the use of which is incidental to construction work being done under a valid building permit on the premises, which:

- (1) Is erected on a temporary foundation, such as skids or plywood;
- (2) Is located on the same lot as an existing main building or a main building under construction;
- (3) Does not contain plumbing or sanitation facilities;
- (4) Is not connected to any city water, wastewater or gas utility service; and
- (5) Is removed upon completion or cessation of the activity for which the structure was erected.

*Lot* means a portion of a subdivision or other parcel of land designated as a unit for transfer of ownership or for development.

*Lot, area of,* means the total area encompassed within the lines of a lot, excluding any street or alley rights-of-way.

*Lot, corner,* means a lot located at the angle of two intersecting streets.

*Lot line* means the boundary of a lot.

*Lot line, front,* means the front line of a lot, which is also the right-of-way line of the street abutting such lot.

*Lot line, rear,* means the lot line most nearly opposite and most distant from the front lot line.

*Lot line, side,* means any lot line other than a front or rear lot line.

*Main building* means a building (not including an accessory building) within which is conducted the principal use of the site upon which the building is located. In a residential district, all dwellings are deemed to be main buildings.

*Masonry* means clay brick, concrete, hollow clay tile, natural stone, stucco, marble, or any combination of these materials, on the exterior surface of a building.

*Mayor* means the mayor of the city.

*Mirrored glass* means glass with a reflectivity factor of 20 percent or greater.

*Motor vehicle* means a vehicle, motor home, trailer, boat, mobile home, camper, travel trailer, bus, tractor, commercial vehicle, truck, recreational vehicle or other vehicle that either has its own motive power, including a sailboat, or is mounted on or towed by another vehicle.

*New construction* means a construction project that begins on a vacant lot or on a lot in which the walls and foundation of a preexisting building and any related structures have been demolished completely and removed from the lot.

*Nonconforming building or structure* means a building or structure, the size, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which they are located.

*Nonconforming lot* means a lot, the area, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

*Nonconforming use* means a use or activity which was lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

*Parking space* means a paved area of at least 180 square feet (measuring not less than nine feet wide and not less than 18 feet in length), enclosed or unenclosed, having a paved driveway which connects the parking space with a street or alley and which permits ingress or egress of motor vehicles. The term "parking space" does not include a driveway, aisle or any area on a public street.

*Personal wireless telephone service facility* means a tower and related fixtures and equipment for the provision of wireless cellular telephone signals by one or more commercial operators of wireless telephone services.

*Planned unit development* means a tract of land developed as a single entity, pursuant to a unified site design which makes provisions for common open spaces and variegated building types and land uses, and which provides for the calculation of densities over the entire development, rather than on an individual lot-by-lot basis.

*Premises* means land, together with any buildings or structures occupying it.

*Public view* means the view as seen from any private property in a residential district or public street within the city.

*Reconstruction* means a construction project that constitutes the rebuilding, using the original building footprint, of a building, or structure, whether a dwelling or other that is damaged or destroyed by fire or other accidental or natural means.

*Remodel* means any addition or alteration to an existing building or its foundation or any component thereof, including, but not limited to, the addition or alteration of any porch, deck, or garage.

*Residence, resident or reside* means to have residence in, to be a resident of, or to reside in a dwelling, the dwelling must be the place where the person primarily lives, sleeps, bathes, and maintains personal possessions such as clothing.

*Residential plot plan or residential site plan* means a site plan drawn to a scale of one inch to 50 feet depicting existing and proposed contours in two-foot elevations on the property, the existing and proposed drainage patterns and the 50- and 100-year floodplains if they exist on the property.

*Resubdivision* means the division of an existing subdivision, together with any change of lot sizes therein, or with the relocation of any street lines.

*Retaining wall* means any fence or wall built or designed to retain or restrain lateral forces of soil or other materials, said materials being similar in height to the height of the soil or other materials being retained.

*Setback* means the minimum horizontal distance between a lot line and the closest wall or face of a building or foundation or projection thereof, excluding uncovered steps or unenclosed balconies or porches, or cantilevered roof cornices, eaves, or facias, located on the lot.

*Setback line* means a line within a lot, which is parallel to and is measured from a corresponding lot line, which governs the placement of structures and uses on the lot.

*Special exception* means a use that is not permitted in a particular district under this article, but which is permitted in such district following approval by the board of adjustment, upon a showing that the use will comply with all of the conditions prescribed by the board for such use.

*Special use* means a use that may be authorized by the city council in the district in which it is allowed.

*Square feet of floor space* means the square footage of a building computed from the exterior perimeter footprint of each story of such building, or portion thereof. Provided, that when the term "square feet of floor" is used with reference to a dwelling, the computation of square footage shall not include attached garages, attics, basements or porches. Provided further, that when the term "square feet of floor" is used with reference to a building that is not a dwelling, the computation shall include, but not be limited to, atriums, vents, elevator shafts, exterior balconies and porches, mechanical and storage rooms, elevator lobbies, halls and corridors, but shall exclude courtyards.

*Story* means that portion of a building, other than a basement, open or screened porch, attached garage or attic, which is included between the surface of one floor and the surface of the floor next above it, or, if there is only one floor, the term "story" means the space between such floor and the ceiling above it.

*Street* means a public thoroughfare, other than an alley, which has been improved and dedicated for use as a roadway and provides principal vehicular and pedestrian access to adjacent properties.

*Structure* means anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but not limited to, signs, and excepting utility poles, berms, fences, mailboxes and retaining walls.

*Subdivision* means a division of any tract of land situated within the city limits, or within one-half mile of such limits, in two or more parts for the purpose of laying out any subdivision of any tract of land, or for laying out suburban lots or building lots, or any lots, streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" includes resubdivision. The term "subdivision" includes those parcels being platted in accordance with section 105-23(b).

*Subdivision sales office* means a temporary building or structure, including a mobile or relocatable office unit, used as an office to sell property in a new or developing subdivision tract.

*Temporary building* means an enclosed building or structure which is erected on a temporary foundation, such as skids; is located on the same lot as an existing main building or a main building under construction; does not contain plumbing or sanitation facilities; and is not connected to any electrical, water, wastewater or gas utility service.

*Use of property* means the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

*Use, principal*, means the main use of land or buildings as distinguished from the subordinate or accessory use of such land or buildings.

*Variance* means an authorization by the board of adjustment granting specific relief from the literal enforcement of the provisions of this chapter.



*Veterinary services* means an establishment which provides care for small domestic animals for treatment; but excluding overnight convalescence boarding, pet grooming facilities, animal training centers and clubs, and facilities where animals are boarded during the day or overnight.

*Wall* means a masonry structure enclosing real property (e.g., a yard or field).

*Yard* means an unoccupied space on a lot which:

- (1) Is open and unobstructed from the ground upward to the sky except for fencing, walls, or permitted projections, such as cornices, eaves, porches or landscaping;
- (2) Extends between a main building and the lines of the lot upon which the main building is located; and
- (3) Has a depth between the front, side or rear lot lines and the main building as required for the district in which the lot is located.

*Yard, front*, means a yard which faces a street, is located between the main building on a lot and the street easement or front line of the lot, and extends across the front of a lot between the side lot lines.

*Yard, rear*, means a yard which is located between the main building on a lot and the rear line of the lot, and extends across the rear of the lot between the side lot lines.

*Yard, side*, means a yard which is located between the main building on a lot and the side lines of the lot, and extends across the side of a lot between the front yard and the rear yard.

(Code 1987, ch. 11, subch. G, art. II, § 1; Code 1995, § 14.02.051; Ord. No. 2011-11-16(A), 11-16-2011; Ord. No. 2012-10-17(A), § 1, 10-17-2012; Ord. No. 2015-12-16(B), § 1, 12-16-2015; Ord. No. 2017-01-18, 1-18-2017; Ord. No. 2017-09-13, 9-13-2017; Ord. No. 2018-02-21(B), §§ 1, 2, 2-21-2018; Ord. No. 2018-09-19(A), § 1, 9-19-2018; Ord. No. 2019-08-21(A), § 2, 8-21-2019; Ord. No. 2019-10-16-05, § 2, 10-16-2019; Ord. No. 2021-10-20-06, § 2, 10-20-2021)

**Secs. 107-4—107-24. Reserved.**

## ***ARTICLE II. DISTRICT REGULATIONS***

### ***DIVISION 1. GENERALLY***

#### **Sec. 107-25. Districts designated.**

- (a) The city is hereby divided into the following zoning districts:
- (1) Residential District (R);
  - (2) Professional and Business Office District (C-1);
  - (3) Business District (C-2);
  - (4) Park District (P); and
  - (5) Governmental and Institutional District (GI).
  - (6) Hospital District (H).
  - (7) Planned Unit Development District (PUD).

- (b) These zoning districts are of such shape and area as have been deemed best suited to carry out the purposes of V.T.C.A., Local Government Code ch. 211. Within such districts, this article hereby regulates and restricts the construction, alteration and use of buildings and structures, and the use of land, as herein set forth. While the regulations applicable in each of the districts differ, all such regulations are uniform in each district.
- (c) Any portion of land within the city not specifically zoned C-1, C-2, P, GI, H, or PUD is hereby expressly zoned R.

(Code 1987, ch. 11, subch. G, art. III, § 1; Code 1995, § 14.02.081)

### **Sec. 107-26. Official zoning map.**

- (a) The boundaries of the zoning districts set out herein are as delineated on the official zoning district map of the city (hereinafter referred to as zoning district map). The lines of demarcation between the districts as shown on the zoning district map are more particularly described by the field note descriptions in appendix A1 through A4 on file with the city. The field note descriptions and the official zoning district map, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this article.
- (b) The official zoning district map shall be identified by the signature of the mayor, attested by the city secretary, and bear 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 Code of Ordinances of the City of Rollingwood, Texas."
- (c) The official zoning district map shall be maintained by the city secretary and kept current to reflect changes in zoning or changes in zoning district boundaries. No change shall become effective until it has been approved by the city council and duly entered upon the map, and each such entry shall be dated and shall be signed by the mayor and attested by the city secretary. It shall be the responsibility of the city secretary to deliver to a licensed surveyor, designated by the city council, any change in zoning or change in zoning district boundaries not later than 15 days from the date the same was approved by the city council. The surveyor shall, upon receipt of the change, modify the zoning district map including appropriate field notes describing such change and return an updated reproducible Mylar to the city secretary within 15 days from the date the change was received by the surveyor, and the additional field note description thereupon will become a part of this article. The surveyor shall note the date the revision was made by showing the following on the zoning district map "Revised (date)."
- (d) No change shall be made on the official zoning district map except in conformity with the procedures set forth in this article. An unauthorized change of any kind is prohibited.
- (e) Regardless of the existence of purported copies of the zoning district map which may from time to time be made or published, the official zoning district map maintained by the city secretary shall be the final authority with respect to the current zoning status of land, buildings and structures in the city.
- (f) If the official zoning district map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes, the city council may, by resolution, adopt a new official zoning district map which shall supersede the prior map. The new official zoning district map may correct drafting mistakes or other errors or omissions in the prior map, but no such correction shall have the effect of amending the original official zoning district map or any subsequent amendment thereof. The new official zoning district map shall be identified by the signature of the mayor, attested by the city secretary.
- (g) The city secretary shall maintain zoning district map replicas which clearly delineate duly authorized changes in zoning or changes in zoning district boundaries. These replicas shall be reproduced in reduced size and made available to the public for a reasonable fee.

(Code 1987, ch. 11, subch. G, art. III, § 2; Code 1995, § 14.02.082)

#### **Sec. 107-27. Minimum regulations.**

The regulations established by this article for each zoning district shall be minimum regulations and shall apply uniformly and particularly to each class or kind of land, building or structure, except as otherwise provided.

(Code 1987, ch. 11, subch. G, art. IV, § 1; Code 1995, § 14.02.121)

#### **Sec. 107-28. Compliance required.**

No land, building or structure shall hereafter be used or occupied, and no building or structure or part thereof, shall hereafter be constructed, altered or moved, except in conformance with all of the regulations specified in this article for the district in which such land, building or structure is located.

(Code 1987, ch. 11, subch. G, art. IV, § 2; Code 1995, § 14.02.122)

#### **Sec. 107-29. Vacation of streets.**

Whenever any street or other public way is vacated by official action of the city council, the zoning district adjoining each side of the public way shall be extended to the center of the vacated area, and thereafter all land included in the vacated area shall be subject to all zoning regulations applicable in the extended district. Notwithstanding the foregoing, if South Crest Drive or any portion thereof shall ever be vacated, then the vacated portion of South Crest Drive shall be included in the residential district.

(Code 1987, ch. 11, subch. G, art. III, § 3; Code 1995, § 14.02.083)

#### **Sec. 107-30. Designation of newly annexed territory.**

- (a) All territory hereafter annexed to the city shall be temporarily zoned residential until permanently zoned by the city council.
- (b) Within 60 days after the effective date of the annexation of any territory to the city, the planning and zoning commission shall institute proceedings to permanently zone the territory. If the commission fails to institute proceedings within the prescribed 60-day period, the owners of the property in the newly annexed territory may make a written request to the commission to give the territory a permanent zoning classification.
- (c) The procedure for establishing permanent zoning for newly annexed territory shall conform to the procedures established by law for the adoption of original zoning regulations.

(Code 1987, ch. 11, subch. G, art. III, § 4; Code 1995, § 14.02.084)

#### **Sec. 107-31. Building or structures per lot; no more than one main building per lot.**

Each building or structure hereafter constructed in the city shall be located on a lot. No more than one main building shall be located on a lot except as provided in this article.

(Code 1987, ch. 11, subch. G, art. IV, § 3; Code 1995, § 14.02.123)

**Sec. 107-32. Vision clearance.**

- (a) On a corner lot, any tree and any vegetation with a height greater than 36 inches above top of curb may not be placed, planted, or maintained within 15 feet of the intersection of the street surfaces of the two streets bordering the lot.
- (b) A tree existing prior to January 1, 2017, is exempt from the requirements of subsection (a) of this section; provided, however, that the foliage of an exempted tree shall be maintained at a height no lower than 96 inches above the top of curb.
- (c) New plantings, including trees, shall not impede vision of approaching traffic through the intersection.
- (d) On a corner lot, no structure, fence, retaining wall, or berm with a height greater than 36 inches above the top of the curb may be constructed, placed, planted, maintained or allowed to grow within 15 feet of the intersection of the right-of-way lines of the two streets bordering the lot.

(Code 1987, ch. 11, subch. G, art. IV, § 4; Code 1995, § 14.02.124; Ord. No. 2018-02-21(B) , § 3, 2-21-2018)

**Sec. 107-33. Retaining walls.**

- (a) No retaining wall, or portion of a retaining wall with a height greater than 36 inches above the street curb level may be constructed within 15 feet of a front lot line, or side lot line adjacent to the street of a corner lot.
- (b) If a retaining wall is constructed at a distance greater than 15 feet from a front lot line, or a side lot line adjacent to the street of a corner lot, the maximum allowable height of the retaining wall above the street curb level may be increased by 12 inches for each additional five feet of distance between the retaining wall and the applicable lot line.
- (c) The height of a retaining wall is defined as the vertical distance measured from a reference datum, which may vary with the elevation of the curb at the street, to the top of the retaining wall at the point where the measurement is taken. The reference datum shall be the point where a line, which is level with the top and perpendicular to the face of the curb at the street, intersects the vertical face of the retaining wall.

(Ord. No. 2018-02-21(B) , § 4, 2-21-2018)

**Sec. 107-34. Fences.**

- (a) Except as otherwise provided in this section, no front-yard fence may be erected or maintained.
- (b) A front-yard fence complying with the criteria provided in this subsection (b) of this section is allowed on property in a residential zoning district. The following criteria shall apply to such a fence:
  - (1) The height shall not exceed three feet measured perpendicular from the adjacent finish grade;
  - (2) Piers or posts may exceed the maximum height and fencing adjacent to the pier or post by four inches;
  - (3) On sloped lots, to accommodate variations in elevation of the ground beneath a fence segment between two piers or posts, a fence may exceed the maximum height by up to six inches, provided that the average height of such fence segment does not exceed the maximum height;
  - (4) The fence shall be constructed of such materials or in a manner to allow for an average of 80 percent visibility through the fence;

- (5) All fence components shall be a minimum of 15 feet from the curb, or edge of the street pavement where there is no curb;
  - (6) The fence shall have columns, posts, or supports that are metal, brick, rock, stone, or wood;
  - (7) If only one side of the fence is stained wood or other finished material, the finished side shall face away from the interior of the property; if support components are provided on only one side of the fence, such support components shall be on the side facing the interior of the property;
  - (8) If a fence crosses a driveway or means of vehicular access to the property, the fence and any gate shall be located so that entering vehicles will be completely off the street when stopped for the gate to open, and such gate shall open parallel to or away from the street;
  - (9) No chain link, barbed wire, or electrified fences shall be installed or maintained;
  - (10) No fence, including decorative or ornamental fence tops, shall be designed to include or be constructed of barbed wire, broken glass or any exposed sharp or pointed materials that may penetrate or impale persons or animals.
- (c) On a corner lot, a fence may be erected and maintained in a side yard and rear yard adjacent to a street, but may be located no closer than 15 feet from:
    - (1) The edge of the street curb closest to the property, if the street has a curb; or
    - (2) The edge of the street pavement, if there is no curb.
  - (d) If a fence along the side or rear of a lot or property is erected to the property line, adequate access to utility lines and meters shall be provided.
  - (e) In no event may a fence be erected or maintained in or upon a city right-of-way or public right-of-way, except when installed by the city or its agents for municipal purposes.
  - (f) All fences shall be maintained in good condition.

(Code 1995, § 14.02.125; Ord. No. 2012-10-17(A), § 2, 10-17-2012; Ord. No. 2018-03-18, 3-21-2018)

### **Sec. 107-35. Swimming pools and tennis courts.**

- (a) A swimming pool or tennis court may only be constructed on a lot within the residential or park zoning districts.
- (b) No swimming pool or tennis court shall be constructed or maintained in the area between the front lot line and the front setback line of a lot.
- (c) On a corner lot, no swimming pool or tennis court shall be constructed or maintained in the area between the side setback line and the side lot line that borders a street.
- (d) No swimming pool or tennis court shall be constructed or maintained:
  - (1) In the area between the side setback line and a side lot line that does not border a street; nor
  - (2) In the area between the rear setback line and a rear lot line.
- (e) A deck or apron designed to serve a swimming pool or tennis court shall be located at least five feet from a side lot line and ten feet from a rear lot line.
- (f) Overhead lighting in swimming pool or tennis court areas is prohibited.
- (g) Each outdoor swimming pool erected, constructed or substantially altered after March 1, 1988, shall be completely enclosed by a fence in compliance with all applicable regulations then adopted by the city and in

effect from time to time. From and after April 20, 2016, all such new or substantially altered fences shall comply with the requirements of appendix G, section AG 105.1 of the 2012 International Residential Code, except that no building material may be used in the construction of a fence except as permitted by this Code.

- (h) Following the issuance of a certificate of occupancy for a swimming pool or other improvements that include a swimming pool, the swimming pool fence required by subsection (g) of this section shall be maintained in reasonably good condition and in the manner and configuration required by the applicable regulations of the building code adopted by the city and in effect at the time of the original installation of such fencing. Such obligation to maintain shall continue at all times that the swimming pool is in usable condition or holds water. On an annual basis or such other frequency reasonably determined by the responsible city official, a designated agent of the city may require a visual inspection of a swimming pool and related fencing for which a certificate of occupancy has been issued. Any such inspection shall be conducted only after reasonable written or verbal advance notice has been provided to the owner or occupant of the affected property. If a swimming pool fence is found not to comply with applicable regulations, the designated official shall provide written notice of noncompliance by certified mail forwarded to the address where the swimming pool is located. The owner shall make all repairs and corrections to make the fencing fully compliant not later than 30 days after the date written notice of noncompliance is forwarded as provided in this subsection (h) of this section. The designated official shall conduct an inspection to verify timely compliance.
- (i) A failure to timely correct each noncompliance in a swimming pool fence following notice of noncompliance forwarded as provided in subsection (h) of this section shall constitute a Class C misdemeanor. An offense shall be punishable by a fine of not less than \$25.00 nor more than \$500.00 per day the noncompliance continues. The penalty provided in this subsection shall be cumulative and not exclusive of any other civil or injunctive remedy provided by applicable law.

(Code 1987, ch. 11, subch. G, art. IV, § 6; Code 1995, § 14.02.126; Ord. No. 2016-03-16(B), 3-16-2016)

### **Sec. 107-36. Driveways.**

Each driveway shall be located at least five feet from a side lot line and ten feet from a rear lot line. Each driveway shall be permanently hard-topped with a durable surface and shall be designed and constructed in a manner that will permit ingress and egress of motor vehicles.

(Code 1987, ch. 11, subch. G, art. IV, § 7; Code 1995, § 14.02.127)

### **Sec. 107-37. Buildings or structures of special historical or architectural significance.**

- (a) The city council may designate certain buildings and structures as having special historical or architectural significance. Before making any such designation, the city council shall submit the proposed designation to the commission, which shall consider the proposal and submit a recommendation to the council. The commission shall give notice, conduct a hearing and make recommendations to the city council according to the same procedures provided under this article for proposed changes in zoning. In like manner, the city council shall give notice, hold a hearing and make its determination in the manner provided under this article for changes in zoning.
- (b) In determining whether to designate a building or structure as having special historical or architectural significance, the city council and the commission shall consider one or more of the following criteria, as well as other criteria deemed appropriate by the council or commission with respect to the building or structure:
  - (1) Its value as part of the development, heritage, or culture of the city, county, state, or nation;

- (2) Its recognition as a recorded state historic landmark, a national historical landmark, or entry into the National Register of Historic Places;
- (3) Its distinguishing architectural characteristics;
- (4) Identification of the building or structure as the work of an architect or master builder whose individual work has influenced the development of the city, county, state or nation;
- (5) Its embodiment of elements of architectural design, detail, materials or craftsmanship which represents a significant architectural innovation;
- (6) Its relationship to other distinctive buildings, sites or areas that are eligible for preservation according to a plan based on architectural, historic or cultural motif;
- (7) That the building or structure was the site of a significant historic event;
- (8) Its identification with a persons who significantly contributed to the culture and development of the city, county, state or nation; or
- (9) Its value as an aspect of community sentiment or public pride.

(Code 1987, ch. 11, subch. G, art. IV, § 8; Code 1995, § 14.02.128; Ord. No. 2019-10-16-14 , § 2, 10-16-2019)

### **Sec. 107-38. Multilevel parking structures.**

No multilevel parking structure shall be constructed within the city unless approved by the city council.

(Code 1987, ch. 11, subch. G, art. IV, § 10; Code 1995, § 14.02.130)

### **Secs. 107-39—107-66. Reserved.**

## ***DIVISION 2. RESIDENTIAL ZONING DISTRICT (R)***

### **Sec. 107-67. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in the residential district (R).

(Code 1987, ch. 11, subch. G, art. V, § 1; Code 1995, § 14.02.201)

### **Sec. 107-68. Permitted uses; restrictions on dwellings.**

- (a) No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered, except for one or more of the following uses:
  - (1) Dwellings;
  - (2) Accessory buildings or structures;
  - (3) Home occupations;
  - (4) Any use otherwise authorized in a residential zoning district pursuant to applicable state or federal law, including community homes pursuant to V.T.C.A., Human Resources Code ch. 123 and, as applicable,

religious assembly uses pursuant to the Texas Religious Freedom and Restoration Act which are operated in conformance with those applicable laws and in compliance with this Code;

- (5) The following shall be permitted provided that such use of property has continued without interruption or change in ownership of the property since 12 months after the original adoption of this article, but not otherwise:
  - a. Parks, playgrounds, recreation buildings, city buildings, nonprofit libraries or museums, or fire stations;
  - b. Public water or wastewater facilities, including reservoirs, filler beds, surface or below surface tanks, artesian wells, pumping plants, wastewater disposal facilities, or city administration buildings; and
  - c. Subdivision sales offices.
- (b) Notwithstanding the permitted use of a dwelling as provided in subsection (a), a permitted use of a dwelling shall not include the following:
  - (1) Occupancy by a fraternity or sorority;
  - (2) Residence in a dwelling by three or more persons unrelated to each other by blood, marriage, or adoption;
  - (3) Occupancy of a dwelling that has been subdivided into two or more living areas with separate kitchen and bathroom facilities that are segregated by permanent wall(s) or partition(s), two or more of which living areas have separate and exclusive means of ingress and egress to the exterior of the dwelling.
- (c) As used in this section, "resident" and "residents" shall mean a person or persons who primarily lives, sleeps, and maintains possessions in the dwelling, or for which rent is paid for the person's use or occupancy, whether pursuant to a lease agreement, month-to-month tenancy or other agreement.
- (d) The number of residents in a dwelling, regardless of relationship by blood, marriage, or adoption, may not exceed the lowest number of residents derived from the following with any resulting fraction for the number of residents being rounded down:
  - (1) The total gross square footage of air-conditioned space in the dwelling divided by 300 square feet;
  - (2) The number of areas in the dwelling intended as sleeping quarters meeting the requirements of minimum room areas as defined by the most recent International Residential Code adopted by the city and having at least one attached closet, multiplied by two;
  - (3) A maximum of ten residents.
- (e) Each person who enters into a lease or other contract that authorizes or provides for residence or occupancy of a dwelling proscribed by subsections (b)(1) and (3), including an owner of the affected property, shall be deemed to have violated the restriction on use applicable to a residential zoning district.
- (f) An owner or sub-lessor of a dwelling who enters into an oral or written lease or other agreement (directly or through an agent) that authorizes or permits a residency or occupancy of a dwelling in violation of this section shall be guilty of an unauthorized occupancy of a dwelling when such a residency or occupancy actually occurs.

(Code 1995, § 14.02.202; Ord. No. 2013-12-18(B), 12-18-2013; Ord. No. 2015-12-16(B), § 2, 12-16-2015; Ord. No. 2019-08-21(A), § 2, 8-21-2019)



### **Sec. 107-69. Prohibited uses.**

- (a) All uses not expressly permitted or authorized in the residential district by this article are prohibited. By way of example, but not in limitation, the following are prohibited:
- (1) Storage or accumulation within the public view of any salvage materials, discarded material, compost piles, lumber, waste products or scrap material, debris or junk;
  - (2) Parking or storing any regulated vehicle;
  - (3) Any use that constitutes a nuisance by reason of dust, noise, glare or other conditions that are offensive or detrimental to other property in a residential district or the occupants of that property;
  - (4) The display within the public view of any products, materials, motor vehicles, equipment or other personal property for sale, lease, rent, trade, exchange or other disposition, except in connection with a garage or yard sale conducted by the resident of the home where such goods are displayed and provided that any such garage or yard sale is neither conducted for more than two consecutive days nor held more frequently than two times on any lot in any calendar year. Substantially all of the items offered for sale at an allowed garage or yard sale must be owned by (not consigned, loaned or entrusted to) the resident of the affected lot;
  - (5) The display within the public view of any signs, except as permitted by chapter 24, article II; and
  - (6) The offer for sale of goods, furnishings, appliances, or fixtures in or around a home by a person who does not reside in the home, including such arrangements as the sale of furnishings or estate sale items by a third party in connection with the marketing of real property for sale. This prohibition does not include:
    - a. An incidental offer for sale of items by third parties in connection with an allowed garage or yard sale described in subsection (a)(4) of this section; or
    - b. A sale of items, where the net sale proceeds will be earned by or contributed to a nonprofit charitable, religious, civic, or political entity or organization that is exempt from income taxes pursuant to the Internal Revenue Code.
- (b) Notwithstanding anything to the contrary in subsection (a) of this section, the following are permitted uses in a residential zoning district:
- (1) Storage of construction debris and construction materials generated or stored in connection with activity authorized by a valid building or demolition permit issued by the building official, subject to all regulations and restrictions applicable to the issuance of such permit; for the avoidance of doubt, upon the expiration, revocation, or suspension of a building permit, materials and debris must be removed from the property;
  - (2) Parking or storing a regulated vehicle if:
    - a. The regulated vehicle is located behind an opaque fence, hedge, or other allowed screening structure that is at least six feet high that substantially screens the regulated vehicle from view from a public street;
    - b. The regulated vehicle is not otherwise visible from a public street (as, for example, when it is stored behind the home on the lot); or
    - c. The regulated vehicle is located on a driveway on the property, so long as it is not on such property during any part of the hours 9:00 p.m. to 7:00 a.m. the following day for more than two consecutive nights;

- (3) Parking or storing a recreational vehicle on a lawfully installed driveway for not more than ten total days in any six-month period; and
- (4) Parking or storing a vehicle other than a regulated vehicle in any yard within public view, is permitted if the vehicle:
  - a. Is on a lawfully installed driveway;
  - b. Is operable; and
  - c. Bears such indicia of a current and valid registration, inspection, and license as may be required by applicable law for operation or transport on a public street.
- (c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Recreational vehicle* means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own mode of power or is mounted on or towed by another vehicle and is for personal use.

*Regulated vehicle* means any motor vehicle, camper, trailer, recreational vehicle, or boat, other than a conventional passenger vehicle, motorcycle, golf cart, or NEV.

(Code 1995, § 14.02.203; Ord. No. 2013-12-18(A), 12-18-2013; Ord. No. 2015-12-16(B), § 3, 12-16-2015; Ord. No. 2019-02-20(A), § 2, 2-20-2019)

### **Sec. 107-70. Reserved.**

Editor's note(s)—Ord. No. 2019-08-21(A), § 2, adopted August 21, 2019, repealed § 107-70, which pertained to special uses and derived from the 1987 Code, ch. 11, subch. G, art. V, § 4; and the 1995 Code, § 14.02.204.

### **Sec. 107-71. Maximum permissible height.**

No portion of any building or structure (except a chimney, attic vent, lightning rod, or any equipment required by the city building code) may exceed 35 feet in height. Except as may be required by applicable codes, no chimney, attic vent, lightning rod or required equipment may extend more than three feet above the highest point of the following: the coping of a flat roof, the deck line of a mansard roof, or the gable of a pitched or hipped roof.

(Code 1987, ch. 11, subch. G, art. V, § 5; Code 1995, § 14.02.205)

### **Sec. 107-72. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. V, § 6; Code 1995, § 14.02.206)

### **Sec. 107-73. Minimum ground floor area.**

Each dwelling shall contain at least 1,800 square feet of floor space. The ground floor of each two-story dwelling shall contain at least 1,000 square feet of floor space.

(Code 1987, ch. 11, subch. G, art. V, § 7; Code 1995, § 14.02.207)

**Sec. 107-74. Reserved.**

Editor's note(s)—Ord. No. 2019-10-16-14 , § 2, adopted October 16, 2019, repealed § 107-74, which pertained to construction and derived from the 1987 Code, ch. 11, subch. G, art. V, § 8; and the 1995 Code, § 14.02.208.

**Sec. 107-75. Yards generally.**

- (a) Each lot shall have a front yard, two side yards and a rear yard.
- (b) On each lot, the rear yard shall be to the rear of the front yard.
- (c) The building official shall determine the street address, and thus the front yard, of each corner lot.

(Code 1987, ch. 11, subch. G, art. V, § 9; Code 1995, § 14.02.209)

**Sec. 107-76. Minimum required depth and width of yards.**

- (a) In order to determine compliance with the minimum yard depth and width requirements of this section, measurements shall be made from the closest point on the foundation line of a "qualified building," as the term is defined in this section, to either the lot line or street right-of-way line, whichever results in the shortest distance.
- (b) The front yard of each lot shall have a minimum depth of 30 feet. For purposes of this subsection, "qualified building" means either a main building, a garage, or a covered front porch or covered front terrace.
- (c) The side yard of each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts another lot, except that the sum total of the two side yards of any lot shall not be less than 25 feet;
  - (2) Thirty feet, when the lot borders a street other than described in subsection (c)(3) of this section;
  - (3) Twenty feet, when two lots extend the length of one block and have abutting rear lot lines.

For purposes of this section, the term "qualified building" means a main building or accessory building.

- (d) The rear yard of each lot shall have a minimum depth of 20 feet. For purposes of this subsection, "qualified building" means an accessory building, or a main building or any projection thereof other than a projection of uncovered steps, unenclosed balconies or unenclosed porches.

(Code 1987, ch. 11, subch. G, art. V, § 10; Code 1995, § 14.02.210; Ord. No. 2009-05-07B, § 2, 5-7-2009)

**Sec. 107-77. Accessory buildings.**

- (a) No more than one accessory building may be located on a lot.
- (b) An accessory building may be located only in a rear yard or in a side yard that does not border a street.
- (c) An accessory building may not:
  - (1) Exceed one story in height;
  - (2) Exceed the height of the main building located on the same lot; or
  - (3) Exceed 500 square feet in area.
- (d) The exterior of an accessory building used as a detached garage shall match the exterior of the main building.

- (e) An accessory building may not be constructed until after commencement of construction of the main building, nor may an accessory building be used unless the main building on the lot is also being used.

(Code 1987, ch. 11, subch. G, art. V, § 11; Code 1995, § 14.02.211)

### **Sec. 107-78. Temporary buildings.**

- (a) No more than one temporary building may be located on a lot.
- (b) A temporary building shall be located only in a rear yard or in a side yard that does not border a street.
- (c) A temporary building shall not:
  - (1) Be attached to a main building; or
  - (2) Exceed ten feet in height nor 120 square feet in area.

(Code 1987, ch. 11, subch. G, art. V, § 12; Code 1995, § 14.02.212)

### **Sec. 107-79. Subdivision sales office.**

A subdivision sales office may be maintained for a period of one year from the date it was erected or until 75 percent of the territory in the subdivision is sold, whichever occurs first. The limitation may be waived by the board of adjustment upon application by the owner of the subdivision tract, or his agent, for a special exception to continue the use of the office.

(Code 1987, ch. 11, subch. G, art. V, § 13; Code 1995, § 14.02.213)

### **Secs. 107-80—107-101. Reserved.**

## ***DIVISION 3. C-1 AND C-2 ZONING DISTRICTS***

### **Sec. 107-102. Applicability.**

The regulations set forth in this division shall apply to land, buildings and structures located in the professional and business office district (C-1) or the business district (C-2).

(Code 1987, ch. 11, subch. G, art. VI, § 1; Code 1995, § 14.02.271)

### **Sec. 107-103. Maximum height of buildings/structures.**

- (a) No portion of any building or structure within 300 feet of a residential district shall exceed 30 feet in height or two stories and no portion of any other building or structure shall exceed 35 feet in height or two stories (except as allowed in subsections (b) and (c) of this section). No parking structure shall be higher than the original native ground surface, and all buildings or structures must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12).
- (b) A building or structure other than a personal wireless telephone service facility (commonly known as a cell phone tower or facility) may be three stories, provided that it satisfies all of the following conditions:
  - (1) It does not exceed 40 feet in height;

- (2) It is located at least 150 feet from any lot in a residential district;
  - (3) It is located on a lot or contiguous lots under common or affiliated ownership at least ten acres in size;
  - (4) It is located on property that was the subject of an application for a preliminary plat filed after September 1, 1997, and before March 16, 2000;
  - (5) That preliminary plat did not expire during that time nor was a final plat recorded for the property during that time; and
  - (6) Any final plat includes all public facilities identified on the preliminary plat and the final plat is processed or the public facilities are dedicated to the city by July 31, 2000.
- (c) A personal wireless telephone service facility for which a special use permit has been issued may be up to five feet in elevation above the highest point of any building located on the same lot, if the lot has frontage on Bee Caves Road. The personal wireless telephone service facility must be located at a distance not less than 150 feet from any lot in a residential district if it:
- (1) Is freestanding and not attached to a building having an independent use; or
  - (2) Has an elevation higher than the highest point of any building located on the same lot.

(Code 1995, § 14.02.272; Ord. No. 2014-05-21(E), § 1, 5-21-2014)

#### **Sec. 107-104. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. VI, § 3; Code 1995, § 14.02.273)

#### **Sec. 107-105. Minimum floor area.**

- (a) Except as provided under subsection (b) of this section, each building shall be at least 1,800 square feet in area.
- (b) Separate commercial buildings of at least 800 square feet may be constructed on a lot of one acre or larger size upon approval by the city council of the development plans for the lot.

(Code 1987, ch. 11, subch. G, art. VI, § 4; Code 1995, § 14.02.274)

#### **Sec. 107-106. Development plan approval for commercial buildings.**

- (a) Each application for approval of development plans for commercial buildings shall include the following information, prepared and sealed where applicable by a registered professional engineer or registered professional land surveyor:
  - (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
  - (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
  - (3) Drainage plan: The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The

- drainage plan shall include, as a minimum: determination of stormwater flows will be according to the drainage criteria manual.
- (4) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
  - (5) A comprehensive grading plan shall be included with the development plan.
    - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
    - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
    - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e. commercial, industrial or multifamily lots).
    - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection (5)c of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
    - e. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
    - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
    - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements.
    - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
  - (6) The location and type of proposed drainage features, drainage systems, detention ponds and filtration ponds;
  - (7) Erosion control: brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;

- (8) The shape, size, location, height and floor area of all existing and proposed buildings and structures;
  - (9) The location and size of existing and proposed streets, private drives, driveways and parking spaces; and
  - (10) The size and location of all existing and proposed public and private utilities.
- (b) Each application for approval of development plans shall first be submitted to the commission, and shall be subject to all of the notice, hearing and other procedures provided under this article for proposed changes in zoning.

(Code 1987, ch. 11, subch. G, art. VI, § 5; Code 1995, § 14.02.275)

### **Sec. 107-107. Reserved.**

Editor's note(s)—Ord. No. 2019-10-16-14 , § 2, adopted October 16, 2019, repealed § 107-107, which pertained to construction materials and derived from the 1987 Code, ch. 11, subch. G, art. VI, § 6; and the 1995 Code, § 14.02.276.

### **Sec. 107-108. Minimum setbacks.**

- (a) No building may be located closer than 20 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) There is no setback requirement with respect to side lot lines.
- (c) No building may be constructed or extended into an area that is closer than 100 feet from any lot line of a lot within a residential district.
- (d) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1987, ch. 11, subch. G, art. VI, § 7; Code 1995, § 14.02.277)

### **Sec. 107-109. Buffers between abutting commercial and residential lots.**

Any lot in a commercial district which abuts a lot in a residential district shall be developed in accordance with the following requirements:

- (1) A 100-foot greenbelt, measured horizontally, shall be provided between the boundary of a residential district and the impervious cover, including parking and buildings, on every lot located in a professional and business office district (C-1) or a business district (C-2). The 100-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council. Notwithstanding anything contained herein to the contrary, the building official will, upon application by the owner thereof, issue a permit for repair, remodeling or reconstruction of the building or structure and its related parking, provided that the use (as defined in the zoning ordinance) of such building or structure will not be changed and the repair, remodeling or reconstruction conforms with the construction materials standards set forth in section 107-107. A nonconforming building or structure and its related parking may not be enlarged or otherwise altered in a manner that increases the square footage of the building or structure or the square footage of the building or structure's parking or the extent of their nonconformity.

- (2) In areas where terrain and other features do not provide a visual screen between a lot in a commercial district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet high, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.
- (3) No fences or landscaping required under this section shall be constructed without prior approval of the construction plans by the city council and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. VI, § 8; Code 1995, § 14.02.278)

### **Sec. 107-110. Parking spaces.**

- (a) Except as otherwise provided in section 107-317, off-street parking shall be provided in the ratio of not less than one parking space:
  - (1) For each 250 square feet of gross floor area in the particular building in a C-1 district; and
  - (2) For each 200 square feet of gross floor area in the particular building in a C-2 district.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. VI, § 9; Code 1995, § 14.02.279)

### **Sec. 107-111. Signs.**

Except as otherwise provided under this article, signs shall be governed by the regulations of the city sign ordinance.

(Code 1987, ch. 11, subch. G, art. VI, § 10; Code 1995, § 14.02.280)

### **Sec. 107-112. Other requirements.**

Each permitted use shall:

- (1) Be conducted wholly within an enclosed building appropriate to such use (except in the case of a personal wireless telephone service facility for which a special use permit is issued); and
- (2) Provide for the temporary storage of solid waste in an unobtrusive manner approved by the building official.



(Code 1995, § 14.02.281; Ord. No. 2014-05-21(E), § 2, 5-21-2014)

### **Sec. 107-113. Prohibitions.**

The following are specifically prohibited:

- (1) Accessory or temporary buildings;
- (2) The manufacture of any product for sale;
- (3) Activities involving the conduct of major automobile repairs, body repair or painting, welding, storage of dismantled or nonoperational vehicles, sale of used automobile parts, or the sale of new or used motor vehicles;
- (4) The use of parking lots or front yards for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (5) The wholesale processing of food;
- (6) Activities which create odors, excessive light, electronic interference, smoke, dust, dirt, noise, fumes, glare, vibration, the presence of vermin or rodents, or other undesirable or hazardous conditions;
- (7) The provision of personal services, or the display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the city; or
- (8) Retail establishments, other than restaurants, may not be open to the public between the hours of 10:00 p.m. and 7:00 a.m. the following day. These restrictions do not apply to automated retail services, including, but not limited to, automated teller machines and gasoline pumps. Restaurants will be subject to hours of operation as set forth in the special use permit.

(Code 1987, ch. 11, subch. G, art. VI, § 12; Code 1995, § 14.02.282)

### **Sec. 107-114. Use and buildings.**

Notwithstanding any provision in this division, any use that would be permitted in a residential district, but which is conducted in a commercial district, shall comply only with the regulations that would be applicable to the use if it were conducted in the residential district, to the extent applicable.

(Code 1987, ch. 11, subch. G, art. VI, § 13; Code 1995, § 14.02.283)

### **Sec. 107-115. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a commercial district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. VI, § 14; Code 1995, § 14.02.284)

### **Sec. 107-116. Compatibility standards.**

- (a) *Trash disposal, storage and mechanical equipment.* All trash disposal areas, storage areas and mechanical equipment must be screened from view from any residential district and any public street by wood fencing (with a smooth side of the fencing facing the residential district or public right-of-way), or brick, limestone, or other native stone walls for ground-level facilities, and an enclosure constructed of the same exterior materials as the building for any mechanical equipment located on the roof.
- (b) *Roof design.* Except for buildings with a ground floor area of 8,000 square feet or more, all roofs of buildings must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12). For buildings with a ground floor area of 8,000 square feet or more, all roofs of buildings must be of pitched-type construction (hip or gable-type roofs with a minimum pitch of 3:12) or have architectural elements that give the appearance of pitched-roof construction. Roofs generally must be a combination of pitched, gabled or sloped elements, and the materials used must be compatible and complementary to the masonry. These pitched areas may be metal with nonreflective finishes or nonmetallic clay or concrete tile. Except for buildings less than 8,000 square feet of floor space, composition or wood shakes and shingles may not be utilized. Exposed metal roof decks that reflect light in a glaring manner, such as galvanized steel sheets, are specifically prohibited. Pitched and "flat" roof areas must be designed and arranged to provide maximum aesthetic appeal and provide screening of undesirable roof surfaces, equipment and accessories from any view from a lot in a residential district of the city and any view from Bee Cave Road. All mechanical equipment must be located in the following manner: under the roof; contained within the building; on the ground; or shielded from view as approved by the city council.
- (c) *Lighting.* Lighting fixtures installed to illuminate parking lots, buildings or other structures may not exceed the height of the buildings or structures, if attached thereto, or, if pole-mounted, a height of 24 feet. All exterior lighting must be shielded and down-turned to direct light away from nearby dwellings and to concentrate the light within the lot. Exterior lightbulbs may not exceed 400 watts.
- (d) *Landscaping buffers.* A ten-foot landscaping buffer is required between buildings on separate lots in a professional and business office district (C-1) or the business district (C-2) with a minimum of five feet of such buffer located on each such lot, as well as between all parking lots in a commercial district and any public right-of-way. The landscaping buffer must consist of shrubs or trees with a mature height of at least six feet planted at sufficient density to visually disrupt the outlines of buildings, pavement, and other structures; provided, however, that plant material located at the front of a site or between buildings (as determined by the building official) may consist of shrubs or trees with a mature height of at least three feet.

(Code 1987, ch. 11, subch. G, art. VI, § 15; Code 1995, § 14.02.285)

### **Secs. 107-117—107-145. Reserved.**

## ***DIVISION 4. PROFESSIONAL AND BUSINESS OFFICE ZONING DISTRICT (C-1)***

### **Sec. 107-146. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a professional and business office district (C-1).

(Code 1987, ch. 11, subch. G, art. VII, § 1; Code 1995, § 14.02.341)

**Sec. 107-147. Purpose.**

This district is intended to provide sites for quiet, low-density commercial office uses.

(Code 1987, ch. 11, subch. G, art. VII, § 2; Code 1995, § 14.02.342)

**Sec. 107-148. Permitted uses.**

No area, building or structure within the land may be used, constructed or altered, except as follows:

- (1) Uses permitted in a residential district, excluding dwelling uses or subdivision sales offices;
- (2) Administrative, professional and business offices and services, including account, architecture, attorney, computer services (including research and design) engineer, physician, veterinary services, broker, consultant, insurance agent, property management, investment, personnel, travel, secretarial, telephone answering, photocopy and reproduction, real estate agent, or similar administrative, professional business offices.
- (3) Accessory structures, other than buildings, and uses customarily incidental to these administrative, professional or business offices.

(Code 1987, ch. 11, subch. G, art. VII, § 3; Code 1995, § 14.02.343; Ord. No. 2019-10-16-05 , § 3, 10-16-2019)

**Sec. 107-149. Special uses.**

Subject to approval by the city council, the following special uses may be permitted in a C-1 district:

- (1) Facilities for assembling of and testing electronics components;
- (2) Child day care facilities, provided this is the only use on the particular lot;
- (3) Banks or savings and loan associations;
- (4) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot; and
- (5) For lots with frontage on Bee Caves Road, a personal wireless telephone service facility.

(Code 1995, § 14.02.344)

**Secs. 107-150—107-166. Reserved.*****DIVISION 5. BUSINESS ZONING DISTRICT (C-2)*****Sec. 107-167. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a business district (C-2).

(Code 1987, ch. 11, subch. G, art. VIII, § 1; Code 1995, § 14.02.401)

**Sec. 107-168. Permitted uses.**

No area, building or structure may be used, constructed or altered, except as follows:

- (1) Uses permitted in a C-1 zoning district;
- (2) Retail bakeries;
- (3) Barbershops or beauty shops;
- (4) Craft or hobby shops;
- (5) Department, sporting goods, novelty, variety or toy stores;
- (6) Drugstores;
- (7) Laundry pickup and dry cleaning pickup stations;
- (8) Florist shops;
- (9) Antique stores;
- (10) Household or office furniture, furnishings, or appliance stores;
- (11) Jewelry or optical goods stores;
- (12) Shoe repair shops;
- (13) Variety stores;
- (14) Wearing apparel shops; and
- (15) Retail uses which supply the everyday shopping needs of residents of the city.

(Code 1987, ch. 11, subch. G, art. VIII, § 2; Code 1995, § 14.02.402)

**Sec. 107-169. Special uses.**

Subject to approval by the city council, the following special uses may be permitted in a C-2 district:

- (1) Research laboratories;
- (2) Other special uses that meet the criteria set forth in this article;
- (3) Cafes, cafeterias or restaurants;
- (4) Convenience stores;
- (5) Grocery or food specialty stores;
- (6) Package liquor stores;
- (7) Automotive service stations;
- (8) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;
- (9) Camera or photography supply stores;
- (10) Clinics without overnight facilities;
- (11) Hardware stores;
- (12) Art and photography studios;

(13) Facilities for assembling computer software products; and

(14) For lots with frontage on Bee Caves Road, a personal wireless telephone service facility.

(Code 1995, § 14.02.403; Ord. No. 2014-05-21(E), § 4, 5-21-2014)

### **Sec. 107-170. Prohibited uses.**

All uses not specifically permitted under section 107-168 or 107-169 are prohibited, including, but not limited to, the following:

- (1) Temporary buildings;
- (2) The manufacture of any product for sale;
- (3) Activities involving the conduct of major automobile repairs, body repair or painting, welding, storage of dismantled or nonoperational vehicles, sale of used automobile parts, or the sale of new or used motor vehicles;
- (4) The use of parking lots or other outdoor areas for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (5) The wholesale processing of food;
- (6) Activities which create a nuisance;
- (7) Veterinarian services and kennel services;
- (8) The repair, sale, resale, manufacture, refurbishment or storage of boats, trailers, mobile homes or recreational or sport vehicles;
- (9) Laundries or dry cleaning plants;
- (10) Music studios;
- (11) Monument sales or funeral homes and related services;
- (12) Warehouses or the rental of storage space for personal or commercial property;
- (13) Pawnshops;
- (14) Junkyards;
- (15) Painting sales or service, except to the extent incidental to an otherwise permissible use;
- (16) Assisted living, retirement, nursing home or convalescent services or facilities;
- (17) Tire retread facilities;
- (18) Sexually oriented businesses, including, but not limited to, modeling studios and dating or escort services businesses;
- (19) The display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the residents of the city;
- (20) Hotel and motel; and
- (21) Dwelling uses or subdivision sales offices.

(Code 1987, ch. 11, subch. G, art. VIII, § 4; Code 1995, § 14.02.404)

**Secs. 107-171—107-193. Reserved.***DIVISION 6. GOVERNMENTAL AND INSTITUTIONAL ZONING DISTRICT (GI)***Sec. 107-194. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a governmental and institutional district.

(Code 1987, ch. 11, subch. G, art. IX, § 1; Code 1995, § 14.02.451)

**Sec. 107-195. Purpose.**

This district is intended to provide appropriate areas for uses that provide important community services. An appropriate site should contain adequate space for required off-street parking and buffering.

(Code 1987, ch. 11, subch. G, art. IX, § 2; Code 1995, § 14.02.452)

**Sec. 107-196. Permitted uses.**

No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered except for one or more of the following uses:

- (1) Uses permitted in a residential district;
- (2) Churches;
- (3) Facilities owned and operated by the federal government, the state or political subdivisions thereof;
- (4) Fire stations; and
- (5) Accessory uses customarily incidental to any of the foregoing.

(Code 1987, ch. 11, subch. G, art. IX, § 3; Code 1995, § 14.02.453)

**Sec. 107-197. Special uses.**

Special uses permitted in the governmental and institutional zoning district (GI) include the following:

- (1) Schools;
- (2) Child day care facilities;
- (3) Uses required by public utilities; and
- (4) Special uses permitted in a residential district upon authorization of the city council.

(Code 1987, ch. 11, subch. G, art. IX, § 4; Code 1995, § 14.02.454)

**Sec. 107-198. Maximum permissible height.**

No building or structure shall be more than two stories in height, except that in no event shall the height of the building or structure exceed 35 feet.

(Code 1987, ch. 11, subch. G, art. IX, § 5; Code 1995, § 14.02.455)

### **Sec. 107-199. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. IX, § 6; Code 1995, § 14.02.456)

### **Sec. 107-200. Construction.**

- (a) At least 80 percent of the exterior surface of each building shall be constructed of glass and masonry.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1987, ch. 11, subch. G, art. IX, § 7; Code 1995, § 14.02.457)

### **Sec. 107-201. Minimum setbacks.**

- (a) No building may be located closer than 30 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) The side setback required on each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts to another lot;
  - (2) 30 feet, when the lot borders a street; or
  - (3) 20 feet, when two lots extend the length of a block and have abutting rear lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official will designate the front lot line.

(Code 1987, ch. 11, subch. G, art. IX, § 8; Code 1995, § 14.02.458)

### **Sec. 107-202. Buffers between abutting residential and governmental and institutional lots.**

Each lot in a governmental and institutional district which abuts a lot in a residential district shall be developed in compliance with the following requirements:

- (1) A 30-foot greenbelt zone, measured horizontally, shall be provided between the boundary line of the residential district and the impervious cover, including parking and buildings, on the lot location in the governmental and institutional district. The 30-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a governmental and institutional district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet in height, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.

- (3) No fences or landscaping required under this section shall be installed without prior approval of the plans by the city council, and the installation shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. IX, § 9; Code 1995, § 14.02.459)

### **Sec. 107-203. Parking spaces.**

- (a) Off-street parking shall be provided in the ratio of not less than one parking space for each 200 square feet of gross floor area in the particular building.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. IX, § 10; Code 1995, § 14.02.460)

### **Sec. 107-204. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a governmental and institutional district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the city council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. IX, § 11; Code 1995, § 14.02.461)

### **Sec. 107-205. Development plan approval for commercial buildings in the GI zoning district.**

Each application for approval of development plans for multiple commercial buildings shall include the following information:

- (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
- (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
- (3) The centerlines of existing watercourses;
- (4) The location and type of proposed drainage systems, detention ponds and filtration ponds;
  - a. Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above



the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum: determination of stormwater flows will be according to the drainage criteria manual.

- b. A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
- c. A comprehensive grading plan shall be included with the development plan.
  1. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
  2. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
  3. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
  4. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection (4)c.3 of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
  5. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal: vertical) unless otherwise accepted by the city engineer.
  6. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  7. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements.
  8. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches and is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (5) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes.

(Code 1987, ch. 11, subch. G, art. IX, § 12; Code 1995, § 14.02.462)

**Secs. 107-206—107-233. Reserved.**

***DIVISION 7. PARK ZONING DISTRICT (P)***

**Sec. 107-234. Applicability.**

The regulations set forth in this division shall apply to all land, buildings and structures in a park district.

(Code 1987, ch. 11, subch. G, art. X, § 1; Code 1995, § 14.02.511)

**Sec. 107-235. Purpose.**

This district is intended to provide areas for community parks and recreational areas.

(Code 1987, ch. 11, subch. G, art. X, § 2; Code 1995, § 14.02.512)

**Sec. 107-236. Permitted uses.**

No land, building or structure shall be used, and no building or structure shall be hereafter constructed or altered except for one or more of the following uses:

- (1) Athletic fields and sports facilities such as baseball, football and soccer fields and other sports-related facilities;
- (2) Picnic areas;
- (3) Playgrounds;
- (4) Recreational centers;
- (5) Swimming pools; and
- (6) Accessory uses customarily incidental to any of the foregoing permitted uses.

(Code 1987, ch. 11, subch. G, art. X, § 3; Code 1995, § 14.02.513)

**Sec. 107-237. Special uses.**

Subject to city council approval, the following special uses may be permitted in a park district:

- (1) Concession stands;
- (2) Special events; and
- (3) Other special uses permitted upon approval of the city council.

(Code 1987, ch. 11, subch. G, art. X, § 4; Code 1995, § 14.02.514)

**Sec. 107-238. Maximum permissible height.**

No building or structure shall be more than two stories in height, except that in no event shall the height of any building exceed 30 feet.

(Code 1987, ch. 11, subch. G, art. X, § 5; Code 1995, § 14.02.515)

**Sec. 107-239. Minimum lot size.**

Each lot shall be at least 15,000 square feet in area.

(Code 1987, ch. 11, subch. G, art. X, § 6; Code 1995, § 14.02.516)

**Sec. 107-240. Construction.**

- (a) At least 80 percent of the exterior surface of each building shall be constructed of glass and masonry.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1987, ch. 11, subch. G, art. X, § 7; Code 1995, § 14.02.517)

**Sec. 107-241. Minimum setbacks.**

- (a) No building may be located closer than 30 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) The side setback required on each lot shall have a minimum width of:
  - (1) Ten feet, when the lot abuts another lot;
  - (2) Thirty feet, when the lot borders a street; or
  - (3) Twenty feet, when two lots extend the length of one block and have abutting rear lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1987, ch. 11, subch. G, art. X, § 8; Code 1995, § 14.02.518)

**Sec. 107-242. Buffers between abutting park and residential lots.**

Each lot in a park district which abuts a lot in a residential district shall be developed in compliance with the following requirements:

- (1) A 30-foot greenbelt zone, measured horizontally, shall be provided between the line of the residential zone and the impervious cover, including parking and buildings, on the lot located in the park district. The 30-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a park district and an abutting lot in a residential district, screening shall be provided by a cedar or redwood privacy fence at least eight feet in height, with its smooth side facing the residential lot. If the building official

determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.

- (3) No fences or landscaping required under this section shall be installed without prior approval of the plans by the city council, and the installation shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.
- (5) Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings, and shall be installed in a manner which directs or shields the light away from nearby dwellings.

(Code 1987, ch. 11, subch. G, art. X, § 9; Code 1995, § 14.02.519)

### **Sec. 107-243. Parking spaces.**

- (a) Off-street parking shall be provided in the ratio of not less than one parking space for each 200 square feet of gross floor area in the particular building.
- (b) No athletic fields shall be constructed or expanded without prior approval of the off-street parking plans by the city council, and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (c) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be a valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. X, § 10; Code 1995, § 14.02.520)

### **Sec. 107-244. Impervious cover.**

- (a) Impervious cover shall not exceed 50 percent of the total area of any lot in a park district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the city council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. X, § 11; Code 1995, § 14.02.521)

### **Secs. 107-245—107-266. Reserved.**

## ***DIVISION 8. H ZONING DISTRICTS***

**Sec. 107-267. Applicability.**

The regulations set forth in this division shall apply to land, buildings and structures located in the hospital district (H).

(Code 1987, ch. 11, subch. G, art. X-A, § 1; Code 1995, § 14.02.571)

**Sec. 107-268. Permitted uses.**

- (a) No land, building or structure will be hereafter constructed or altered, except for one or more of the following uses:
  - (1) Hospital facilities;
  - (2) Offices for an accountant, architect, attorney, engineer, physician, broker, consultant, insurance agency, real estate agent, or similar professional occupation; and
  - (3) Accessory structures and uses customarily incidental to the foregoing permitted uses.
- (b) For purposes of this article, the term "hospital facilities" means an establishment that offers medical or surgical services, facilities and beds for individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy, and is licensed under V.T.C.A., Health and Safety Code ch. 241 or any successor provision thereto (each as amended from time to time), provided that the facility is operated and held out to the public as a "special" or "general" hospital under V.T.C.A., Health and Safety Code ch. 241 or any successor provision thereto (as amended from time to time) and the facility contains no more than 30 inpatient beds, and no identifiable part of such facility may be devoted primarily to the diagnosis, treatment, and care for persons with mental illness or chemical dependency; provided that health services (such as emergency first aid) delivered in such facility which are required by law to be provided by a hospital licensed under V.T.C.A., Health and Safety Code ch. 241 shall not be a violation of the limitation contained in this subsection but any emergency room facility shall only be constructed, operated, and maintained in a manner that meets, but does not exceed, the minimum state of federal standards. Permitted accessory uses for a hospital facility use include clinics, ambulatory surgery centers and educational facilities and as customarily found in hospitals, general merchandise retail shops, pharmacies, cafeteria, laundry facilities and food service facilities.

(Code 1987, ch. 11, subch. G, art. X-A, § 2; Code 1995, § 14.02.572)

**Sec. 107-269. Maximum permissible height of buildings/structures.**

- (a) Except as provided in subsection (b) of this section, no building or structure shall exceed 35 feet in height, calculated in accordance with section 107-3.
- (b) A personal wireless telephone service facility for which a special use permit is issued may be up to five feet in elevation above the highest point of any building located on the same lot, if the lot has frontage on Bee Caves Road. The personal wireless telephone service facility must be located at a distance not less than 150 feet from any lot in a residential district if it:
  - (1) Is freestanding and not attached to a building having an independent use; or
  - (2) Has an elevation higher than the highest point of any building located on the same lot.

(Code 1995, § 14.02.573; Ord. No. 2014-05-21(E), § 5, 5-21-2014)

**Sec. 107-270. Minimum lot size.**

Each lot shall be at least five acres in area.

(Code 1987, ch. 11, subch. G, art. X-A, § 4; Code 1995, § 14.02.574)

**Sec. 107-271. Minimum floor area.**

- (a) Except as provided under subsection (b) of this section, the principal building shall be at least 40,000 square feet in area.
- (b) Separate commercial buildings of at least 800 square feet may be constructed on a lot of five acres or larger size upon approval by the city council of the development plans for the lot.

(Code 1987, ch. 11, subch. G, art. X-A, § 5; Code 1995, § 14.02.575)

**Sec. 107-272. Development plan approval for commercial buildings in H Zoning District.**

- (a) Each application for approval of development plans for multiple commercial buildings shall include the following information:
  - (1) Date, scale, north point, title, name of the owner of the property and the name of the person preparing the plans;
  - (2) A legal description of the lot, including a deed reference, a plat reference and, where applicable, a metes and bounds description;
  - (3) The centerlines of existing watercourses;
  - (4) The location and type of proposed drainage systems, detention ponds and filtration ponds;
  - (5) Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum a determination of stormwater flows which will be according to the drainage criteria manual;
  - (6) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
  - (7) A comprehensive grading plan shall be included with the development plan;
    - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
    - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
    - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
    - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection c of this section

have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.

- e. Unless otherwise demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
  - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The subdivider shall be responsible for determining any special fill requirements.
  - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (8) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;
- (9) The shape, size, location, height and floor area of all existing and proposed buildings and structures;
- (10) The location and size of existing and proposed streets, private drives, driveways and parking spaces; and
- (11) The size and location of all existing and proposed public and private utilities.
- (b) Each application for approval of development plans shall first be submitted to the commission, and shall be subject to all of the notice, hearing and other procedures provided under this article for proposed changes in zoning.

(Code 1987, ch. 11, subch. G, art. X-A, § 6; Code 1995, § 14.02.576)

### **Sec. 107-273. Construction materials.**

- (a) Except for a personal wireless telephone facility for which a special use permit is issued at least 80 percent of the exterior surface of each building shall be constructed of glass, masonry or stucco.
- (b) The percentage of glass used on the exterior of any building shall not exceed 40 percent.
- (c) The use of mirrored glass on the exterior surface of any building is prohibited.

(Code 1995, § 14.02.577; Ord. No. 2014-05-21(E), § 6, 5-21-2014)

**Sec. 107-274. Minimum setbacks.**

- (a) No building may be located closer than 20 feet from the front lot line nor closer than 30 feet from the rear lot line.
- (b) Except as otherwise set forth in section 107-275 or in section 107-269(b), there is no setback requirement with respect to side lot lines.
- (c) If there is a question as to which lot line is the front lot line, the building official shall designate the front lot line.

(Code 1995, § 14.02.578; Ord. No. 2014-05-21(E), § 7, 5-21-2014)

**Sec. 107-275. Buffers between abutting commercial and residential lots.**

Any lot in a district which abuts a lot in a residential district (or other residential lots) shall be developed in accordance with the following requirements:

- (1) A ten-foot greenbelt, measured horizontally, shall be provided between the boundary line of the residential district (or other residential lots) and the impervious cover, including parking and buildings, on every lot located in the hospital district. The ten-foot greenbelt shall be left in its undisturbed natural state or shall be landscaped as required by the city council.
- (2) In areas where terrain and other features do not provide a visual screen between a lot in a hospital district and an abutting lot in a residential district (or other residential lots), screening shall be provided by a cedar or redwood privacy fence at least eight feet high, with its smooth side facing the residential lot. If the building official determines that the privacy afforded by such fencing does not meet the minimum reasonable expectations of a typical residential occupant, he may then require, in addition to the privacy fencing, that landscaping be planted and maintained in accordance with specifications prescribed by the city council.
- (3) No fences or landscaping required under this section shall be constructed without prior approval of the construction plans by the city council and the construction shall be in compliance with such approval and with all other applicable requirements of the city.
- (4) No building shall be constructed with windows, porches or other features which provide a view from the building into a dwelling located on an abutting lot.

(Code 1987, ch. 11, subch. G, art. X-A, § 9; Code 1995, § 14.02.579)

**Sec. 107-276. Lighting.**

Any lighting to illuminate parking lots, buildings or other structures shall not exceed the height of such buildings or structures and shall be installed in a manner which directs or shields the light away from any residential dwellings.

(Code 1987, ch. 11, subch. G, art. X-A, § 10; Code 1995, § 14.02.580)

**Sec. 107-277. Parking spaces.**

- (a) Except as otherwise provided in section 107-317, off-street parking for:
  - (1) Hospital facilities shall be provided in the ratio of not less than:



- a. Two parking spaces for each bed within a particular hospital facilities building; plus
  - b. One parking space for each 250 square feet of gross floor area within any portion of a hospital facilities building constituting office space (including medical offices and examining rooms applicable to a particular medical office, if any) but excluding administrative areas directly supporting hospital patient care.
- (2) All uses permitted in an H district other than hospital facilities shall be provided in the ratio of not less than one parking space for each 250 square feet of gross floor area in the particular building.
- (b) Required parking spaces shall be located on the same lot as the building for which the parking spaces are required or within 300 feet of such building. Where required parking spaces are located at a place other than the lot on which the building to which the space pertains is located, there must be valid, binding written commitment that such property shall be used to fulfill the parking requirement in a form acceptable to the city council. Such commitment shall be made enforceable by the city council.

(Code 1987, ch. 11, subch. G, art. X-A, § 11; Code 1995, § 14.02.581)

### **Sec. 107-278. Signs.**

Except as otherwise provided under this article, signs shall be governed by the regulations of the city sign ordinance.

(Code 1987, ch. 11, subch. G, art. X-A, § 12; Code 1995, § 14.02.582)

### **Sec. 107-279. Other requirements.**

Each permitted use shall:

- (1) Except for a personal wireless telephone facility for which a special use permit is issued, be conducted wholly within an enclosed building appropriate to such use;
- (2) Provide the temporary storage of solid waste in an unobtrusive manner approved by the building official; and
- (3) Provide for the temporary storage and disposal of biomedical waste and other hazardous waste in accordance with applicable laws and in an unobtrusive manner approved by the building official.

(Code 1995, § 14.02.583; Ord. No. 2014-05-21(E), § 8, 5-21-2014)

### **Sec. 107-280. Prohibition.**

The following are specifically prohibited:

- (1) Accessory or temporary buildings;
- (2) The manufacture of any product for sale;
- (3) The use of parking lots or front yards for the display, sale or storage of merchandise, motor vehicles, equipment, containers or waste material;
- (4) The wholesale processing of food;
- (5) Activities which create odors, excessive light, electronic interference, smoke, dust, dirt, noise, fumes, glare, vibration, the presence of vermin or rodents, or other undesirable or hazardous conditions; or

- (6) The display, sale or advertisement of any product that adversely affects the health, safety, or general welfare of the city.

(Code 1987, ch. 11, subch. G, art. X-A, § 14; Code 1995, § 14.02.584)

#### **Sec. 107-281. Impervious cover.**

- (a) Impervious cover shall not exceed 60 percent of the total area of any lot in a hospital district.
- (b) Grass-crete set in sand shall be deemed to be 50 percent impervious cover; paving stones, ungrouted, set in sand, are deemed to be 75 percent impervious cover. Revisions to these materials and other materials and applications may be reviewed by the city council and their appropriate impervious cover assigned by the council. An approved and current list of such revisions shall be on file with the city.

(Code 1987, ch. 11, subch. G, art. X-A, § 15; Code 1995, § 14.02.585)

#### **Sec. 107-282. Special uses.**

On lots with frontage on Bee Caves Road, a personal wireless telephone service facility is permitted as a special use.

(Code 1995, § 14.02.586; Ord. No. 2014-05-21(E), § 9, 5-21-2014)

#### **Secs. 107-283—107-312. Reserved.**

### ***DIVISION 9. PLANNED UNIT DEVELOPMENTS***

#### **Sec. 107-313. Purpose.**

A planned unit development (PUD) is a permitted use within the C-1 district or the C-2 district, the purpose of which is to encourage planned developments as a means of creating a superior community environment through unified planning and building operations; to provide adequate community facilities well located with respect to needs; to protect the natural beauty of the landscape; to encourage the preservation and more efficient use of open space; and to offer an opportunity for greater flexibility and, consequently, more creative and imaginative design for the development of the city than is generally possible under the zoning regulations established elsewhere in this article.

(Code 1987, ch. 11, subch. G, art. XI, § 1; Code 1995, § 14.02.641)

#### **Sec. 107-314. General regulations.**

Regulations that apply in a C-1 district or a C-2 district shall apply to planned unit developments except as otherwise provided in this division.

(Code 1987, ch. 11, subch. G, art. XI, § 2; Code 1995, § 14.02.642)

#### **Sec. 107-315. Minimum size of PUD.**

A PUD shall be at least five acres in area.

(Code 1987, ch. 11, subch. G, art. XI, § 3; Code 1995, § 14.02.643)

### **Sec. 107-316. Permitted uses.**

Except for uses permitted in a residential district, all uses permitted in a C-1 district or a C-2 district shall be permitted in a PUD, and all special uses permitted in a C-1 district or a C-2 district, subject to the procedures for application and approval, and any restrictions provided therefor, shall be permitted in a PUD.

(Code 1995, § 14.02.644; Ord. No. 2014-05-21(E), § 10, 5-21-2014)

### **Sec. 107-317. Mixed use zoning.**

Limited C-2 zoning may be granted for specified areas within the buildings or structures located in C-1 zoning. A property owner unable to comply with parking requirements may designate one or more specific areas within the buildings or structures for storage or warehouse purposes. Such areas designated as storage or warehouse areas shall have parking spaces allocated in a ratio of one parking space for each 1,000 feet of storage or warehouse area.

(Code 1987, ch. 11, subch. G, art. XI, § 5; Code 1995, § 14.02.645)

### **Sec. 107-318. Minimum floor space.**

Each building or structure (other than a personal wireless telephone facility for which a special permit is issued) shall be at least 1,600 square feet in area.

(Code 1995, § 14.02.646; Ord. No. 2014-05-21(E), § 11, 5-21-2014)

### **Sec. 107-319. Application procedures.**

- (a) An application for creation of a PUD shall be processed according to the same procedures provided under this article for proposed changes in zoning.
- (b) In addition to all other requirements of this article relative to applications for zoning changes, any person requesting creation of a PUD shall submit a development plan which shows the following:
  - (1) Date, scale, north point, title, name of the owners of the property encompassed within the PUD and the name of the person preparing the plan;
  - (2) A legal description of the property encompassed within the PUD including a deed reference, a plat reference, and where applicable, a metes and bounds description;
  - (3) A description of the proposed development of property encompassed within the district;
  - (4) Delineation of existing and proposed uses within the PUD and delineation of the lines of existing and proposed lots;
  - (5) The location and size of existing and proposed streets, private drives, driveways and parking places;
  - (6) The shape, size, location, height and floor area of all existing and proposed buildings, structures and other land facilities;
  - (7) The centerlines of all existing watercourses and the location, types, and sizes of existing and proposed drainage facilities;

- (8) Drainage plan. The development drainage plan will ensure that for the two-, ten-, 25-, and 100-year frequency storm events, the stormwater runoff peak flow rates shall not be increased above the pre-developed condition and shall not cause increased inundation of any building or roadway surface. The drainage plan shall include, as a minimum, determination of stormwater flows will be according to the drainage criteria manual;
- (9) A topographical survey of the site on two-foot vertical contours showing the centerlines of existing watercourses;
- (10) A comprehensive grading plan shall be included with the development plan.
  - a. The grading plan shall be designed to ensure all lots will adequately drain upon completion of the development improvements.
  - b. The engineer will set the elevation of lot corners in conjunction with preparation of the drainage plan. Lot corner elevations shall be shown on the grading plan.
  - c. All lots shall be graded from rear to front at which point the drainage shall be intercepted by the street. Alternate grading schemes may be utilized if it can be demonstrated by generally accepted engineering practices that grading from rear to front would be detrimental to trees or other natural features; or it would be prohibitive according to generally accepted engineering practice because of the existing topography because of excessive cuts and fills, or future lot development (i.e., commercial, industrial or multifamily lots).
  - d. All lots shall be graded at a minimum of one percent. Grading of lots with existing slopes of one percent or greater will not be required provided the conditions under subsection c of this section have been satisfied and it is demonstrated by generally accepted engineering practice that there are no existing or proposed features that will prevent the lots from adequately draining.
  - e. Unless demonstrated by generally accepted engineering practice, surface swales shall be designed and provided along lot lines when more than two lots will be contributing to stormwater runoff at any given point. Side slopes for swales shall not exceed 3:1 (horizontal:vertical) unless otherwise accepted by the city engineer.
  - f. Minimum finished floor slab elevations shall be shown for all lots. Such elevations shall be a minimum of two feet above the ultimate 100-year floodplain.
  - g. Fills shall be placed in maximum 12-inch lifts and adequately compacted. The permit applicant shall be responsible for determining any special fill requirements,
  - h. Following final grading, all exposed areas shall be permanently stabilized. Earthen areas shall be seeded or sodded and erosion controls shall remain in place until grass growth reaches 1½ inches, is of a density where it can be reasonably expected to be self-sustaining and there are no bare areas in excess of ten square feet.
- (11) Erosion control. Brush berms, silt fences, sedimentation basins, stabilized construction entrances/exits and similar recognized techniques shall be employed during and after construction to prevent point source sedimentation loading of downstream facilities. Such installations shall be in accordance with the approved engineered erosion control plan required by the approved development plan. Additional measures may be required during and after construction if, in the opinion of the city engineer, they are warranted. All disturbed and exposed areas due to construction shall be permanently stabilized. All such areas shall be dressed with topsoil and vegetated by seeding or sodding as appropriate. Where the city engineer determines that future maintenance is materially impaired or erosion is a distinct possibility, the developer shall be required to use concrete or similar permanent cover in lieu of vegetation. Erosion control matting (either pre-seeded or seeded after placement) may also be

required if the city engineer determines that such protection of slopes is required to ensure that seeding or soil will not wash off of slopes;

- (12) Delineation of all areas to be conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and other public and semipublic uses;
- (13) The size and location of all existing and proposed public and private utilities;
- (14) Delineation of all areas reserved for off-street parking and off-street loading, the location and size of points of ingress and egress, and the ratio of parking space to floor space;
- (15) A representation of the general use and character of all property located within 200 feet of the boundaries of the PUD; and
- (16) A copy of all covenants, grants, easements, or other restrictions which govern, or will govern, the use, maintenance and continued protection of the PUD and any common open space therein.

(Code 1987, ch. 11, subch. G, art. XI, § 7; Code 1995, § 14.02.647)

### **Sec. 107-320. Commission evaluation and action.**

- (a) In evaluating a development plan for a proposed PUD, the commission shall consider the following:
  - (1) Whether the plan includes buffer zones, protective areas and other features necessary to prevent detriment to any adjoining properties not in the PUD;
  - (2) Whether the provisions of the plan relative to yard spaces, height of structures, distances between structures, usable open space, off-street parking and other matters will overload utilities and generate more traffic than streets in the vicinity can carry without congestion;
  - (3) Whether the combination of different building and structure types or the variety of land uses in the PUD will complement each other and harmonize with existing and proposed land uses in the vicinity; and
  - (4) Whether the overall nature and character of the proposed PUD conforms to the needs and characteristics of the city.
- (b) Following the public hearing on a proposed PUD, the commission shall either:
  - (1) Recommend approval of the plan as submitted;
  - (2) Recommend approval of the plan subject to specified conditions not included in the plan as submitted or modified; or
  - (3) Recommend disapproval of the plan.

(Code 1987, ch. 11, subch. G, art. XI, § 8; Code 1995, § 14.02.648)

### **Sec. 107-321. Creation.**

- (a) The city council, after considering the recommendation of the commission, may authorize the creation of the proposed PUD.
- (b) In the ordinance creating the PUD, the city council may specify maximum height, floor area ratio, density, minimum off-street parking and loading standards, and other standards appropriate for the PUD, and may establish requirements with respect to lots, signs, building spacing, site coverage, access, screening walls or landscaping, building area, open space, pedestrian ways, streets and other matters.

(Code 1987, ch. 11, subch. G, art. XI, § 9; Code 1995, § 14.02.649)

### **Sec. 107-322. Compliance required.**

In carrying out the development of a PUD, all conditions imposed by the city council shall be complied with and such conditions as are specified for the development of a PUD shall not be construed as conditions precedent to the approval of the change, but shall be construed as conditions precedent to the granting of building permits and certificates of occupancy.

(Code 1987, ch. 11, subch. G, art. XI, § 10; Code 1995, § 14.02.650)

### **Sec. 107-323. PUD agreement and restrictive covenant.**

Attached as appendix 1 to the ordinance from which this article is derived are:

- (1) The PUD agreement and restrictive covenant (the "Towne Centre PUD"); and
- (2) The first amendment to PUD agreement and restrictive covenant (the "first amendment"), and the second amendment to PUD agreement and restrictive covenant (the "second amendment") which provide for the zoning regulations, restrictions, and requirements applicable to the real property described therein and known as the Towne Centre Planned Unit Development. Each of the first and second amendments shall control over any inconsistent provision of the Towne Centre Planned Unit Development.

(Code 1995, § 14.02.651; Ord. No. 2018-04-05, 4-5-2018)

### **Secs. 107-324—107-339. Reserved.**

## ***DIVISION 10. LANDSCAPING***

### **Subdivision 1. Non-Residential Regulations**

### **Sec. 107-340. Removal of vegetation from right-of-way.**

Any excavation, grading or site clearance of a lot zoned for commercial use, including planned unit development, which involves the removal of vegetation from the city's right-of-way is prohibited without prior written approval of the city building official. Damaged, destroyed or removed trees having a height of 11 feet or more shall be restored in accordance with the landscape provisions of section 107-341 of this division.

(Ord. No. 2019-02-20(B) , § 1(3.05.001), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-341. Landscape requirements.**

- (a) The provisions of this section are applicable to every lot zoned for a use other than residential, with respect to which a building permit for any new structure or enlargement of any existing structure is issued.
- (b) 20 percent of the total area of each lot shall be devoted to landscaped open space, with one tree being required for each 2,000 square feet of area, or fraction thereof, of each lot. Each required tree shall be at least 12 feet high when planted and shall be maintained in a healthy condition. Said trees shall not be pruned

except either to remove dead wood, or to prevent growth or to remove existing growth lower than 15 feet above the ground. Existing trees having a height of at least 11 feet may be counted as required trees, provided that the ground beneath the canopy remains unimproved. Any species of tree which does not normally grow to a height of 15 feet in the city, as determined by the city arborist or other competent person designated by the city administrator, shall not qualify as a required tree under this section.

- (c) When off-street parking for ten or more vehicles is provided, there shall be landscaped open space within the perimeter of the parking area or areas, in the minimum amount of 18 square feet for each parking space. Said landscaped open space need not be contiguous, but there shall be at least one tree in each separate area. Said trees shall be included in computing the number of trees required in subsection (b) of this section.
- (d) All required tree plantings shall be installed prior to the occupancy or use of property. Where compliance is not practicable due to the season of the year, the building official shall grant an appropriate delay. Any certificate of occupancy may be revoked, after 30 days' written notice to the occupant and the owner of the affected property, if tree plantings are not undertaken or maintained as required under this article.
- (e) A nonresidential lot that is adjacent to a public street or right-of-way or that is adjacent to a residential property line shall have a landscaped greenbelt at least 20 feet in width measured from the property line parallel with and adjacent to each such street, right-of-way or residential property line. An exception may be approved by the city council for the location of a driveway in such required landscaped greenbelt if the city council finds that special traffic conditions affect the property, and that the interest of safety of the driving public and pedestrians would better be protected by the location of a driveway in the area of the required greenbelt. Such greenbelt shall contain a minimum of one tree, not less than 12 feet in height, for every 500 square feet of greenbelt.

(Ord. No. 2019-02-20(B) , § 1(3.05.002), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-342. Variances.**

The city council is authorized, upon written appeal of a property owner or developer subject to the requirements of this division, to grant a variance from the requirements of this division as will not be contrary to the public interest, where, due to special conditions, literal enforcement of the requirements of this division will result in unnecessary hardship, and so that the spirit of this division shall be observed and substantial justice done. In considering any proposed variance, the following rules shall be observed:

- (1) The applicant for the variance must present to the city council a set of plans setting out the applicant's proposal and the nature of the proposed variance.
- (2) The proposed variance may not substantially adversely affect any adjoining property or the general welfare of the community.
- (3) The city council must find that the granting of the variance will not merely serve as a convenience to the applicant but will serve to alleviate some demonstrable and unusual hardship or difficulty based on the condition of the affected property or surrounding areas.

(Ord. No. 2019-02-20(B) , § 1(3.05.003), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Secs. 107-343—107-368. Reserved.**

## **Subdivision 2. Residential Tree Canopy Management**

**Sec. 107-369. Purpose.**

- (a) The tree code regulations protect the health, safety, and general welfare of the citizens of the city. In doing so, the appearance of the city is enhanced and important ecological, cultural, and economic resources are protected for the benefit of the city's residents, businesses, and visitors.
- (b) The sections within this subdivision address trees in both development and non-development situations and seek to enhance the quality of the tree canopy and optimize the benefits that trees provide.
- (c) For development situations, additional requirements to this subdivision are designated in [section] 107-376. (Ord. No. 2019-02-20(B) , § 1(3.05.004), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

**Sec. 107-370. Applicability.**

This subdivision applies to property in the residential zoning district and to any other property to which section 107-341 of this Code does not apply.

(Ord. No. 2019-02-20(B) , § 1(3.05.005), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

**Sec. 107-371. Definitions.**

In this subdivision:

- (a) *Protected species* means:
  - (1) Ash, Texas
  - (2) Cypress, Bald
  - (3) Elm, American
  - (4) Elm, Cedar
  - (5) Madrone, Texas
  - (6) Maple, Bigtooth
  - (7) All Oaks
  - (8) Pecan
  - (9) Walnut, Arizona
  - (10) Walnut, Eastern Black
- (b) *Protected tree* means a tree that has a trunk with a diameter of 12 inches or more, measured four and one-half feet above ground, and is one of the protected species;
- (c) *Replacement species* means:
  - (1) For trees planted within 20 feet of an above-ground power, cable, or telephone line:
    - a. Anacacho Orchid Tree
    - b. Common Tree Senna
    - c. Crape Myrtle (dwarf)



- d. Desert Willow
- e. Evergreen Sumac
- f. Eve's Necklace
- g. Flameleaf Sumac
- h. Goldenball Leadtree
- i. Mexican Buckeye
- j. Mexican Plum
- k. Possumhaw Holly
- l. Rough Leaf Dogwood
- m. Texas Mountain Laurel
- n. Texas Persimmon
- o. Texas Pistache
- p. Texas Redbud
- q. Wax Myrtle
- r. Yaupon Holly
- s. Cherry Laurel

(2) For all other trees planted within a property, a protected species.

(d) *Replacement tree* means:

- (1) For the replacement species listed in subsection (c)(1), a tree at least eight feet high when planted, which shall be maintained in a healthy condition after planting;
- (2) For the replacement species listed in subsection (c)(2), a tree with a diameter equal to not less than one-fourth the diameter of the protected tree it replaces up to a maximum diameter of six inches, which shall be maintained in a healthy condition after planting. The diameter of protected and replacement trees shall be measured four and one-half feet above the ground when planted.

(e) *Removal* means an act that causes or may be reasonably expected to cause a tree to die, including:

- (1) Uprooting;
- (2) Severing the main trunk;
- (3) Damaging the root system, including, but not limited to:
  - a. Adjusting the grading of a lot to cover or uncover a tree trunk or root system to the extent that the adjusted grading causes or may be reasonably expected to cause the tree to die; or
  - b. Placing fixtures over the root system to the extent that the placement of the fixtures causes or may be reasonably expected to cause the tree to die.
- (4) Excessive pruning, including, but not limited to, pruning that exceeds 25 percent of the canopy of the tree.

(f) *Certified arborist* means an ISA certified arborist.

(Ord. No. 2019-02-20(B) , § 1(3.05.006), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-372. Administration.**

- (a) A city arborist shall be appointed by the city council to assist in promulgating forms for use under this subdivision and to decide all applications for removal of a protected tree.
- (b) If an applicant requests a variance as permitted under this subdivision, the city arborist shall direct the request to the city council and make a recommendation to the city council whether to approve the variance request.
- (c) The list of eligible protected tree species under subsection 107-371(a) and the list of eligible replacement tree species under [subsection] 107-371(c) may be supplemented by approval of the city council, in consultation with the city arborist or as provided by subsection (e).
- (d) An applicant may satisfy a tree replacement requirement by planting the required replacement tree(s) on the property affected by the protected tree removal, or on one or more other property(s) approved by the arborist or other designated agent of the city if:
  - (1) The benefit to residents of the city would be as great as replacement on the property affected by the protected tree removal; and
  - (2) The owner(s) of such other property(s) agree in writing to maintain the replacement trees in a healthy condition and replace same with like trees, as necessary as a result of a death of such tree(s), for a period of not less than three years.
- (e) For purposes of subsections 107-372(c) and (d) the city and the owner may consult with an academic organization, state agency, nonprofit organization, or the city arborist to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality within and outside of the city limits.
- (f) The city council shall provide for fees payable for review of applications for permits and variances pursuant to this division.

(Ord. No. 2019-02-20(B) , § 1(3.05.007), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-373. Removal of protected trees.**

- (a) A person may not remove a protected tree without a tree removal permit for the removal and compliance with the terms of this subdivision.
  - (1) During removal of protected trees the tree removal permit shall be displayed on the construction board for the site in present or otherwise displayed on a sign within the first five feet of the front yard setback and if the house is not under construction the permit for tree removal shall be placed on the dashboard of the permitted vendor's vehicle.
- (b) Emergency pruning or removal. Notwithstanding subsection 107-373(a), a person may perform emergency pruning or removal of a protected tree as follows:
  - (1) When the condition or location of a protected tree presents a clear and immediate danger to a structure or to the health and safety of the public, the hazardous portion of the protected tree may be removed without first obtaining a required tree removal permit.
  - (2) In the course of performing emergency repairs to a road or water, wastewater, or drainage facilities, agents or contractors of the city may trim, prune or remove a protected tree as required to perform such work without first obtaining a tree removal permit. If such activities occur during normal business

hours, the city shall first attempt to contact the city arborist to determine if the city arborist can provide immediate guidance and assistance. If such assistance is not immediately available, then the pruning or removal may occur in accordance with the requirements under chapter 18, article V of this Code.

- (3) Any person who prunes or removes a protected tree under the provisions of this subsection shall, within 14 days of such action or as soon as practicable if there is a coinciding declaration of a state of emergency in the city, apply for a tree removal permit providing for replacement trees as required by this subdivision. The application shall include photographs or other documentation to demonstrate the requisite clear and immediate danger. The city arborist will evaluate the information to determine whether a clear and immediate danger existed. A failure to submit an application or a failure to submit information demonstrating the clear and immediate danger shall constitute a violation of this subdivision.
- (c) The requirements of this subdivision apply to trees on public and private property. To the extent of conflict with another section of the Code, this subdivision applies.

(Ord. No. 2019-02-20(B) , § 1(3.05.008), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

#### **Sec. 107-374. Application for protected tree removal and tree removal permits.**

- (a) An applicant may request a tree removal permit application from the city by phone, U.S. mail, fax, email or in person.
- (b) An application for removal of a protected tree located on public property, a right-of-way or a public easement may be submitted by:
  - (1) An agent of the city, a public utility, or another political subdivision with the authority to install the public facilities and perform the work necessitating the removal of the protected tree; or
  - (2) The owner of the property adjoining the site of the protected tree.
- (c) An application for removal of a protected tree on private property may be submitted by or on behalf of the owner of the property on which the tree is located.
- (d) An application for removal of one or more protected tree(s) must be submitted to the city secretary and approved prior to removal of the protected tree. If the application is approved as provided for in this subdivision, a permit shall be issued indicating each protected tree that is approved for removal and indicating the location(s) and size(s) of any required replacement trees and the dates by which replacement trees must be planted.
- (e) An application that proposes removal of a protected tree shall include the required permit application fee.
- (f) An application for removal of a protected tree shall include any proposal for type(s) and location(s) of replacement trees on a site plan of affected property(s).
- (g) A permit for removal of a protected tree expires one year after its effective date except that if any building permit issued for the associated property expires or is revoked for any reason, the permit for removal of a tree shall expire as well. Subject to applicable expiration, a permit for removal of tree(s) is transferable to a subsequent owner of the affected property, provided that any obligation in the permit with respect to replacement trees is assumed by the transferee.

(Ord. No. 2019-02-20(B) , § 1(3.05.009), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-375. Conditions for approval.**

- (a) If the protected tree is located within a setback area and the total width of the setback area is greater than ten feet from the edge of a property, the protected tree shall be replaced with a total of three replacement trees that may include a selection of replacement trees under subsections 107-371(d)(l) and (d)(2), and shall include at least one replacement trees under subsection 107-371(d)(2).
- (b) If the protected tree is not located within an area specified in subsection 107-374(a), the protected tree shall be replaced by one replacement tree under either subsection 107-371(d)(l) or subsection 107-371(d)(2).
- (c) If the protected tree trunk straddles an area specified in subsection 107-374(a), the protected tree is deemed to be in the area specified in subsection 107-374(a) if more than half of the diameter of the tree is within the area specified in subsection 107-374(a).
- (d) If the city arborist determines under subsection 107-373(b)(3) that an emergency existed at the time of removal that necessitated expedited removal or an applicant provides documentation from a certified arborist that a protected tree is diseased, dead, or poses an imminent or immediate threat to persons or property due to natural causes only and the protected tree falls under subsection 107-375(a), the city arborist may reduce the replacement tree requirement to one replacement tree under either subsection 107-371(d)(1) or subsection 107-371(d)(2).
- (e) If the city arborist determines that an applicant provides sufficient documentation from a certified arborist that a protected tree is diseased, dead, or poses an imminent or immediate threat to persons or property due to natural causes only, and also not as a result of intentional bleaching, root cutting, or pruning more than 25 percent of the canopy, and that the certified arborist has documented at least two prior actions performed by the certified arborist within the previous three years to mitigate the condition, the city arborist may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (f) If a protected tree is required to be removed under section 18-209, the city arborist may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (g) The mayor may act to waive the replacement tree requirement under this subsection 107-374(d) for a storm event, wildfire or other calamity that causes widespread or costly damage to multiple protected trees throughout the city.
- (h) For a permit filed with an application for development of any improvements or structures, if the density of protected trees in an area described in subsection 107-374(b) is greater than seven protected trees, the number of replacement trees required under subsection 107-374(b) for a removal from such area is capped at seven replacement trees, at least three of which shall meet the requirements of subsection 107-371(d)(2).
- (i) If a protected tree has a trunk on a first property and roots and canopy that extend into a second property, the owner of the second property is required to obtain a tree removal permit for removal of the protected tree prior to performing any actions that constitute removal under subsection 107-371(f) on the second property. For purposes of determining removal under this subsection for 107-371(f), damage to the root system is assessed within the area that is a number of feet in diameter from the outer edge of the tree trunk at four and one-half feet from the ground based on a ratio of one foot for each inch of diameter of the tree trunk. If the actions by the owner of the second property as to the protected tree trigger a requirement for the owner of the first property to apply for a tree removal permit for the protected tree, the application review fee as to the protected tree on the first property is waived.

(Ord. No. 2019-02-20(B) , § 1(3.05.009), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-376. Development application requirements.**

- (a) An application for a building permit must:
  - (1) Include a tree survey and protection plan of all existing trees on the property that are at least 12 inches in diameter measured four and one-half feet above the ground;
  - (2) Include a grading and tree protection plan for protecting all protected trees that are not approved for removal;
  - (3) Demonstrate that the design will preserve the existing natural character of the landscape as to any protected trees not approved for removal; and
  - (4) Include a tree removal permit application with required fees for review of each proposed removal of a protected tree.
- (b) The building official may not release or renew a building permit until the city arborist issues a tree removal permit for each protected tree proposed to be removed.

(Ord. No. 2019-02-20(B) , § 1(3.05.010), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019; Ord. No. 2020-12-16-06 , § 1, 12-16-2020)

### **Sec. 107-377. Administrative variance.**

- (a) The city council may grant an administrative variance from the requirements of this division if the city council determines by a simple majority that owing to special conditions pertaining to the affected property, literal enforcement of the provisions of this division will result in unnecessary hardship, and the granting of the variance will not be contrary to the public interest.
- (b) In considering any proposed variance, the following rules shall be observed:
  - (1) The applicant for the variance must present to the city council a set of plans prepared by a certified arborist setting out the applicant's proposal and the nature of the proposed variance;
  - (2) The proposed variance may not unreasonably affect any adjoining property or the general welfare of the community; and
  - (3) The city council must find that the applicant did not create the condition necessitating the variance.
- (c) If the city council grants a variance under this subdivision, the city arborist may issue a tree removal permit with terms consistent with any terms and conditions of the granted variance.

(Ord. No. 2019-02-20(B) , § 1(3.05.011), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-378. Replacement procedure.**

- (a) Whenever replacement trees are required by the terms of this subdivision, the owner shall submit to the city arborist for approval a replacement site plan showing the locations, species and sizes of all replacement trees and vegetation for final approval by the city arborist. If during installation, the owner is unable to conform to the approved replacement site plan because conformance is not feasible due to subsurface conditions that could not reasonably have been foreseen that make the viability of the tree in the planned location unlikely, then the owner must submit an amended site plan to the city arborist within seven days of the discovery of unforeseen subsurface conditions for approval by the city arborist. An amended site plan must provide for no fewer replacement trees or cumulative size of replacement trees than provided in the originally approved replacement plan.

- (b) Installation of the replacement trees must be completed within the time period designated by the city arborist in the tree removal permit, however, in no event will the time period be longer than one year, however this time period is abated while a property is under construction where replacement trees are required.
- (c) The owner shall notify the city arborist upon completion of the installation. If more than one protected tree has been replaced, the city arborist may then inspect for compliance with the approved replacement plan.
- (d) All replacement trees must survive at least three years. The city arborist may contact the owner during this three year period to arrange for a site visit by the city arborist in order to confirm the replacement trees have survived. Replacement trees that do not survive for three years must be removed and replaced with similar species and sized trees.
- (e) The owner of property from which the removal of one or more protected trees was permitted shall arrange for the transferee(s) of such property to submit to the city secretary a written transfer to and assumption by such transferee(s) of the permit and all obligations of such permit with respect to required replacement trees, if all such obligations have not been satisfied at the time of transfer of the property.

(Ord. No. 2019-02-20(B) , § 1(3.05.013), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-379. Violations/penalties.**

- (a) It shall be an offense for a person:
  - (1) To fail to perform an act required by the provisions of this subdivision;
  - (2) To fail to timely comply with any term of a permit issued pursuant to this division, including terms regarding the planting and maintenance of required replacement trees;
  - (3) To hire, engage, or permit any person engaged in the business tree planting, maintenance, or removal to perform such services on property in the city without a permit issued by the city pursuant to section 18-217 of this Code;
  - (4) Except as expressly allowed pursuant to this subdivision, to remove or to cause the removal of a protected tree without first obtaining a permit therefor;
  - (5) To transfer property from which the removal of a protected tree has been permitted if all obligations with respect to replacement trees pursuant to the permit for such removal are not then fulfilled unless the transferee of the property agrees in a writing submitted to the city secretary to assume such permit and all obligations with respect to the planting and maintenance of required replacement trees;
  - (6) To fail to submit an application for a permit as required pursuant to subsection (b) of this section or pursuant to subsection 107-373(b)(3); or
  - (7) To fail to submit photographs or other documentation to demonstrate a requisite clear and immediate danger pursuant to subsection 107-373(b)(3) in connection with an unpermitted removal of a protect tree.
- (b) An offense shall constitute a Class C misdemeanor punishable by a fine not to exceed \$500.00. An offense committed intentionally, knowingly, recklessly, or with criminal negligence shall be punishable by a fine not to exceed \$2000.00 per offense. Each protected tree removed in violation of this division shall constitute a separate offense, and a failure to plant and maintain each replacement tree shall constitute a separate offense. Each day a violation continues shall constitute a separate offense.
- (c) The owner of affected property and each person who causes or directs another person to remove a protected tree without a permit shall immediately submit an application for a permit pursuant to this subdivision, including a proposal for the provision of replacement tree(s) in compliance with this subdivision.

- (d) The building official shall issue a stop work order in connection with any permitted development of the property from which a protected tree is removed upon the occurrence of a violation of this subdivision or any term of a permit issued pursuant to this subdivision.
- (e) No certificate of occupancy shall be issued for a building or other structure that is not then in compliance with any permit issued pursuant to this subdivision for removal of a protected tree.

(Ord. No. 2019-02-20(B) , § 1(3.05.014), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Sec. 107-380. Requirements for conduct of tree removal businesses.**

Any person engaged in the business of tree maintenance by pruning, trimming, or removing of trees in the city, whether a tree trimming business or a demolition business, shall comply with all applicable provisions of this subdivision and shall secure an annual permit to do so from the city secretary.

(Ord. No. 2019-02-20(B) , § 1(3.05.015), 2-20-2019; Ord. No. 2019-08-21(B) , § 3, 8-21-2019)

### **Secs. 107-381—107-396. Reserved.**

## ***ARTICLE III. SPECIAL USES***

### **Sec. 107-397. Applicability.**

The regulations set forth in this article shall apply to land, buildings and structures located in a professional and business office district (C-1), a business district (C-2), a government and institutional zoning district (GI), a park zoning district (P), a hospital zoning district (H), and a PUD.

(Code 1995, § 14.02.701; Ord. No. 2014-05-21(E), § 12, 5-21-2014)

### **Sec. 107-398. Special uses; approval required.**

Special uses may be approved by the city council only as authorized under this article.

(Code 1987, ch. 11, subch. G, art. XII, § 2; Code 1995, § 14.02.702)

### **Sec. 107-399. Special use permits.**

- (a) *Permit required.* No special use shall be established, operated, or maintained except as authorized by a special use permit approved in accordance with the requirements of this article.
- (b) *Special use permit approved by city council.* A special use permit may be approved only for the special uses specified in this article, and only for the districts wherein such uses are authorized. A special use permit may be approved by the city council acting after a public hearing and after the council has received a recommendation from the commission relative to the proposed permit.
- (c) *Application.* An application for a special use permit shall be made in writing in a form prescribed by the city secretary, and shall be accompanied by such information as may be requested (including a site plan, if required) in order to provide for proper review of the proposed use. Such information may include, but is not limited to, site and building plans, drawings and elevations, traffic plans prepared by a licensed professional engineer with experience in traffic safety that includes an analysis of traffic to be generated by the proposed

use and indicates the impact on existing traffic conditions within the city, including residential areas, and provides information on the potential congestion caused by ingress and egress, and operational data.

- (d) *Report by city secretary or city inspector.* The city secretary or city inspector shall visit the site of the proposed special use and the surrounding area, and thereafter submit his written findings to the commission and the city council.
- (e) *Notice—Public hearing by commission.*
  - (1) The commission shall hold a public hearing on each application for a special use permit.
  - (2) Written notice of such hearing shall be given to the owners of all real property located within 250 feet in all directions of the property that is the subject of the hearing. Notice shall be given not less than 30 days prior to the date of the hearing either by personal service or by mailing a copy of the notice to each owner at his address shown on the current city tax roll.
  - (3) Such notice shall state the purpose, date, time, and place of the hearing, together with a brief description of the proposed development, including its nature, scope, and location. The notice shall also describe any variances the applicant has requested and state the location and times at which the special use permit application and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the city council will be available at a later date.
  - (4) The applicant shall be responsible for drafting the notice and serving it after the notice has been approved by the city secretary as to form and content. An affidavit of proof of service shall be filed by the applicant with the city secretary prior to the hearing.
- (f) *Review and recommendation of the commission.*
  - (1) The commission shall review each application for a special use permit to determine whether the proposed special use complies with each of the general criteria in section 107-400, and with each of the specific criteria in section 107-401 applicable to the proposed use, and shall make a separate finding thereon for each criterion.
  - (2) The commission shall not recommend approval of an application unless it finds that the proposed special use as presented or as modified by the commission complies with each applicable general and specific criterion. A recommendation of approval may be conditioned on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.
  - (3) The commission shall forward its findings and recommendations to the city council in writing.
- (g) *Hearing before city council.* The city council shall review an application for a special use permit at a public hearing after receiving the findings and recommendations of the commission.
- (h) *Review and action by city council.*
  - (1) The city council shall determine whether the proposed special use complies with each of the general criteria in section 107-400 and with each of the special criteria in section 107-401 applicable to the proposed use, and shall make separate findings thereon or adopt the findings made by the commission.
  - (2) The city council may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to ensure compliance with the criteria.



- (3) The city council shall not grant a special use permit unless it finds that the proposed special use, as presented or as modified by the council, complies with each applicable general and specific criterion; otherwise it shall deny the application.

(Code 1987, ch. 11, subch. G, art. XII, § 3; Code 1995, § 14.02.703; Ord. No. 2009-05-07B, §§ 4, 5, 5-7-2009)

### **Sec. 107-400. General criteria applicable to all special uses.**

A proposed special use must comply with all the following criteria:

- (1) The appearance, size, density and operating characteristics of the proposed special use shall be compatible with the surrounding neighborhood and uses;
- (2) The proposed use will not have an adverse effect on the value of surrounding properties nor impede their proper development;
- (3) The proposed use will not create a nuisance nor otherwise interfere with the neighbors' enjoyment of their property or operation of their business;
- (4) The traffic that the proposed use can reasonably be expected to generate on existing streets will not create nor add significantly to congestion, safety hazards, nor parking problems in the area, nor will it disturb the peace and quiet of the neighborhood; and
- (5) The proposed use complies with all other applicable city ordinances and regulations.

(Code 1987, ch. 11, subch. G, art. XII, § 4; Code 1995, § 14.02.704)

### **Sec. 107-401. Criteria applicable to individual special uses.**

- (a) Alcoholic beverages sold in a restaurant for on-premises consumption. A proposal to sell alcoholic beverages in a restaurant for on-premises consumption must comply with the following specific criteria and conditions, as well as the general criteria prescribed under section 107-400:
  - (1) The restaurant where alcoholic beverages are proposed to be sold is not located within 300 feet of a church or school;
  - (2) The restaurant where alcoholic beverages are proposed to be sold is not located on property, two or more sides of which abut property in a residential district;
  - (3) The gross receipts derived from the sale of alcoholic beverages shall not exceed the gross receipts derived from the sale of food; and
  - (4) The permit shall be reviewed annually by the city secretary and if reissued, reissued at the end of the city's fiscal year.
- (b) Alcoholic beverages sold in grocery stores for off-premises consumption.
  - (1) The grocery store where the alcoholic beverages are proposed to be sold is not located within 300 feet of a church or school;
  - (2) The grocery store where the alcoholic beverages are proposed to be sold is not located on property, two or more sides of which abut property in a residential district;
  - (3) The permit shall be reviewed annually by the city secretary and if reissued, reissued at the end of the city's fiscal year;

- (4) Additional fees are to be collected after three years' operation in accordance with alcoholic beverage commission permit rules; and
- (5) A permit shall only be granted if:
  - a. The applicant agrees that all litter associated with off-premises consumption of alcoholic beverages within 200 feet of the applicant's premises is presumed to be the applicant's; and
  - b. The applicant agrees to collect and dispose of all litter within 200 feet of the boundary line of the premises from which alcoholic beverages are sold.
- (c) Banks/savings and loan associations in C-1 districts. A proposed bank or savings and loan association in a C-1 district must comply with the following specific criteria and conditions, as well as the general criteria prescribed under section 107-400:
  - (1) The site plan must provide adequate stack space for motor vehicles;
  - (2) The site shall be designed and developed in a manner that will not impede the flow of traffic in the vicinity of the bank or savings and loan association;
  - (3) The site plan shall provide for adequate landscaping and the maintenance of landscaped areas shall be governed by the provisions of restrictive covenants enforceable by the city; and
  - (4) There shall be no more than one curb cut for access to the office complex unless otherwise approved by the city council.
- (d) Personal wireless telephone service facility in certain parts of a C-1, C-2, and H district, and a PUD. A proposed personal wireless telephone service facility on a lot with frontage on Bee Caves Road in a C-1, C-2, or H district or in a PUD must comply with the following specific criteria and conditions as well as the general criteria prescribed under section 107-400:
  - (1) The facility shall have a design and appearance that mimics other uses and ancillary structures in the vicinity, such as a flagpole, tree trunk or other object compatible with surrounding buildings and uses, or, in lieu thereof, the lower 15 feet of a freestanding facility shall be screened by vegetation;
  - (2) The use or operation of the facility shall not be attended by noise or light that is incompatible with surrounding uses, or other attributes constituting a nuisance to surrounding uses;
  - (3) The facility will at all times be operated in compliance with applicable federal and state law, including law regulating radio frequencies, microwaves, and other electronic or magnetic emissions or transmissions; and
  - (4) No auxiliary generator or power source producing excessive noise or polluting emissions shall be included.

(Code 1987, ch. 11, subch. G, art. XII, § 5; Code 1995, § 14.02.705; Ord. No. 2009-05-07B, §§ 6, 7, 5-7-2009; Ord. No. 2014-05-21(E), § 13, 5-21-2014)

### **Sec. 107-402. General requirements for all special uses.**

- (a) *Adherence to approved plans and regulations.* Each special use shall be established, operated and maintained in accordance with the plans, terms, conditions, and limitations contained in the permit approved by the city council.
- (b) *Duration.* The duration or life of a special use permit shall be prescribed by the city council.
- (c) *Revocation.* The city council, after notice and public hearing, may revoke any special use permit for one or more of the following reasons:

- (1) A substantial violation of any of the plans, terms, conditions, or limitations applicable to the special use;
  - (2) A substantial violation of any applicable ordinance or regulation;
  - (3) Operation or maintenance of the special use in a manner that is detrimental to the public health or safety, or so as to constitute a nuisance; or
  - (4) Discontinuance of the use.
- (d) *Lapse of permit.* A special use permit shall automatically expire if the use has not been commenced within one year of the date the permit was issued. If the particular special use requires the construction of a building or structure, a special use permit shall automatically expire if the construction of such building or structure has not been commenced within one year of the date the permit was issued.
- (e) *Transfer.* A special use permit is only transferable within one year of the date the permit is originally issued, provided that none of the following occurs:
- (1) Any change of the plans, terms, conditions, or limitations applicable to the special use;
  - (2) Any violation of any applicable ordinance or regulation;
  - (3) Operation or maintenance of the special use in a manner that is detrimental to the public health or safety, or so as to constitute a nuisance; or
  - (4) Discontinuance of the use.
- (f) *Termination.* A special use permit shall cease upon the sale of the property unless transferred in accordance with subsection (e) of this section, or a change in the use of the property, or the expiration of the lease under which the property is held.

(Code 1987, ch. 11, subch. G, art. XII, § 6; Code 1995, § 14.02.706)

**Secs. 107-403—107-418. Reserved.**

## **ARTICLE IV. NONCONFORMING STRUCTURES AND USES**

### **Sec. 107-419. Intent.**

It is the intent of this article to permit nonconforming premises and uses to continue until they are removed, but not to encourage their continuation indefinitely. Nonconforming premises and uses are declared by this article to be incompatible with permitted uses in the zoning districts created under this article. It is further the intent of this article that nonconformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other buildings, structures or uses prohibited elsewhere in the same district.

(Code 1995, § 14.02.921; Ord. No. 2009-05-07D, art. XVI, § 1, 5-7-2009)

### **Sec. 107-420. 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:

*Fences* means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

*Nonconforming fences* means a fence, the height or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which they are located.

(Code 1995, § 14.02.922; Ord. No. 2009-05-07D, art. XVI, § 2, 5-7-2009)

### **Sec. 107-421. Continuation of nonconforming buildings, structures, uses or lots.**

- (a) Except as otherwise provided under this article, any nonconforming building, structure, use or lot may be continued after the adoption of this article or amendments thereto.
- (b) The right to continue a nonconforming building, structure, lot or use shall be subject to regulations intended to protect adjacent properties by preventing the creation of nuisances.

(Code 1995, § 14.02.923; Ord. No. 2009-05-07D, art. XVI, § 3, 5-7-2009)

### **Sec. 107-422. Nonconforming buildings, structures.**

Any nonconforming building or structure may, so long as it remains otherwise lawful, be continued subject to the following requirements and limitations:

- (1) Except as otherwise required by ordinance or law, a nonconforming building or structure may not be altered in a manner that increases the extent of its nonconformity.
- (2) Except as otherwise required by ordinance or law, a nonconforming building or structure must be brought into conformity if:
  - a. Fifty percent of the square footage of the building or structure is demolished, excluding a permit for interior construction or remodeling only; or
  - b. If the nonconforming building or structure is moved, it shall conform to the regulations for the district within or into which it is moved.
- (3) The provisions of subsection (2)a of this section do not apply to the demolition of the roof of a building or structure.
- (4) If the nonconforming building or structure, other than a dwelling, is damaged or destroyed by fire or other accident or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure, provided that the repair or reconstruction conforms with the construction materials standards set forth in section 107-107, the compatibility standards set forth in section 107-116, and will not increase the extent of the nonconformity of the building or structure.
- (5) If the nonconforming building or structure that is a dwelling is damaged or destroyed by fire or other accidental or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure if the repair or reconstruction will not increase the extent of the nonconformity of the building or structure.
- (6) Nothing in this article shall be deemed to:
  - a. Prevent ordinary repairs to nonconforming buildings or structures;
  - b. Prevent alterations of or extensions to nonconforming building or structures as required by law or ordinance; or

- c. Prevent the restoration to a safe condition of any nonconforming building or structure, or portion thereof, declared to be unsafe by the building official or other duly authorized official.

(Code 1995, § 14.02.924; Ord. No. 2017-09-13, 9-13-2017)

### **Sec. 107-423. Nonconforming uses.**

A nonconforming use may be continued after the adoption of this article or amendments thereto, subject to the following requirements and limitations:

- (1) A nonconforming building or structure may not be moved or altered in any manner except for the purpose of bringing the use of the structure or building into conformance with the requirements of this article.
- (2) A nonconforming use may be extended into portions of a building or structure that were manifestly designed and constructed for such use prior to the adoption of this article or amendments thereto; provided that a nonconforming use may not be extended to occupy any land outside of the building or structure in which the use is conducted.
- (3) A nonconforming use may be changed to another nonconforming use if:
  - a. No structural alterations are made; and
  - b. The board finds that the proposed use is equally or more appropriate to the district than the existing use. If the board authorizes the change of one nonconforming use to another nonconforming use, the board may impose requirements as a condition of such change.
- (4) If a nonconforming use is superseded or replaced by a permitted use, neither the particular nonconforming use nor any other nonconforming use shall thereafter be conducted at the same premises.
- (5) If a nonconforming use of land, buildings or structures is abandoned, any subsequent use of the premises shall conform to the regulations applicable to the district in which the use is located. Any nonconforming use which is discontinued a period of 90 days shall be deemed to have been abandoned whether or not so intended. Provided, that when a nonconforming use is discontinued, for whatever period of time, for the purpose of making repairs to the particular building or structure, such use shall not be deemed to have been abandoned.
- (6) For a nonconforming use of a dwelling in a residential zoning district that results from restrictions on residence or occupancy of the dwelling pursuant to section 107-68(b), if the residence or occupancy of the dwelling is pursuant to one or more leases for use of the dwelling, the nonconforming use shall be deemed discontinued at the end of the term of each lease or option term (if such option is exercised) in effect on the effective date of the ordinance from which this section 107-68(b) is derived. A nonconforming month-to-month tenancy in effect on the effective date of section 107-68(b) shall be deemed discontinued on the first day of the month that is three months after the effective date of section 107-68(b).

(Code 1995, § 14.02.925; Ord. No. 2011-11-16(A), 11-16-2011; Ord. No. 2009-05-07D, art. XVI, § 5, 5-7-2009)

### **Sec. 107-424. Nonconforming lots.**

- (a) A dwelling may be constructed on any lot existing prior to the adoption of the ordinance from which this article is derived in a residential district which fails to meet the minimum lot size of this article.

- (b) A dwelling shall not be constructed on any lot in a residential district which fails to meet the setback requirements of this article.

(Code 1995, § 14.02.926; Ord. No. 2009-05-07D, art. XVI, § 6, 5-7-2009)

### **Sec. 107-425. Nonconforming fences.**

- (a) A nonconforming fence may be continued, and may be maintained, except as provided in this article or otherwise provided by law. No person shall add on to a nonconforming fence in any manner which increases its nonconformance, including, but not limited to, adding additional height or adding additional fence length.
- (b) Loss of nonconforming status. Any side-yard or front-yard nonconforming fence which is located on a corner lot loses its nonconforming status and becomes an illegal fence if:
- (1) The fence is damaged or deteriorated to such an extent that 50 percent or more of the fence must be rebuilt or repaired;
  - (2) The fence is moved to any extent unless the moving was due to installation, maintenance or repair of public streets or utilities;
  - (3) The fence has been altered in any way except for normal wear and tear, routine painting, or routine pruning of plant materials; or
  - (4) More than 50 percent of the entire fence existing on such property has been moved, replaced or repaired within a period of one year or less.

Should any fence lose its nonconforming status, the illegal fence shall not be reconstructed or rebuilt except in conformance with the provisions of the city's ordinances.

(Code 1995, § 14.02.927; Ord. No. 2009-05-07D, art. XVI, § 7, 5-7-2009)

### **Secs. 107-426—107-441. Reserved.**

## ***ARTICLE V. ADMINISTRATION AND ENFORCEMENT***

### ***DIVISION 1. GENERALLY***

### **Sec. 107-442. Penalty for violation.**

- (a) If any building or structure is constructed or altered, or if any premises are used in violation of the provisions of this article, the building official is authorized and directed to institute any appropriate action to put an end to such violation.
- (b) Any person who violates or fails to comply with any of the requirements of this article shall be guilty of a misdemeanor and shall be liable to a fine not to exceed \$2,000.00. Each day any such violation occurs shall constitute a separate offense.
- (c) The owner or owners of any land, building or structure, or part thereof, where anything in violation of this article shall be placed or shall exist, and any person employed in connection therewith and who assists in the commission of such violation, shall be guilty of a misdemeanor and shall be liable to a fine not to exceed \$2,000.00.

- (d) Nothing herein contained shall prevent the city from taking such other lawful action as necessary to prevent or remedy any violation of this article.

(Code 1987, ch. 11, subch. G, art. XIX, § 1; Code 1995, § 14.02.1061)

**Secs. 107-443—107-459. Reserved.**

***DIVISION 2. PLANNING AND ZONING COMMISSION***

**Sec. 107-460. Creation.**

- (a) The city has created a planning and zoning commission consisting of seven members who are residents of the city.
- (b) Members of the commission will be appointed by the city council and will be appointed to staggered terms. Members of the city council or board of adjustment are not eligible for appointment to the commission.

(Code 1987, ch. 11, subch. G, art. XIII, § 1; Code 1995, § 14.02.751)

**Sec. 107-461. Officers.**

- (a) The chairperson of the commission shall be elected by majority vote of the members of the commission.
- (b) The chairperson and secretary shall serve a term of one year, commencing on January 1 and ending December 31 of the following year, except that upon expiration of his term the chairperson shall continue to serve until his successor is elected.

(Code 1987, ch. 11, subch. G, art. XIII, § 2; Code 1995, § 14.02.752)

**Sec. 107-462. Terms.**

- (a) Each member of the commission shall serve a two-year term, commencing on January 1 and ending December 31 of the following year, except that upon expiration of their terms, members of the commission shall continue to serve until their successors are appointed and qualified.
- (b) Commission members serving upon the effective date of this division shall continue to serve, and this division shall be deemed to carry forward and continue the terms of office of such members.

(Code 1987, ch. 11, subch. G, art. XIII, § 3; Code 1995, § 14.02.753)

**Sec. 107-463. Filling vacancies.**

Any vacancy on the commission shall be filled by the city council for the unexpired term of the member whose position becomes vacant.

(Code 1987, ch. 11, subch. G, art. XIII, § 4; Code 1995, § 14.02.754)

**Sec. 107-464. Meetings.**

- (a) Meetings of the commission shall be held at the call of the chairperson or upon petition of a majority of the members of the commission.
- (b) Four members of the commission shall constitute a quorum.
- (c) Meetings of the commission shall comply with the provisions of the state open meetings act, V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to adequately inform the public of the time, location and substance of business to be undertaken. Meetings closed to the public or executive sessions are normally not appropriate for the commission and will not be conducted without the advice and consent of the city attorney.
- (d) When the commission considers an application relative to a permit, site plan, subdivision, or amendments to this division, including, but not limited to, amendments proposing to change district boundaries or district rules or regulations, the commission's hearings on such applications or amendments may be held jointly with the city council, provided notice of such hearings is published as required by law. Nothing herein shall authorize the city council to take action on such applications or proposed amendments until at least five days after the council has received a final report on same from the commission.
- (e) Minutes and records shall be kept of all proceedings by the secretary, who shall forward all records of meetings to the city secretary for distribution to the city council.

(Code 1987, ch. 11, subch. G, art. XIII, § 5; Code 1995, § 14.02.755)

**Sec. 107-465. Duties.**

The commission shall advise the city council on planning-related matters, and conduct hearings, make recommendations, and perform such other duties required by law or this division or as may be assigned to the commission from time to time by the city council.

(Code 1987, ch. 11, subch. G, art. XIII, § 6; Code 1995, § 14.02.756)

**Sec. 107-466. Removal.**

- (a) A regular or alternate member of the commission may be removed from office by the city council for just cause and upon written charges.
- (b) Upon request of the person against whom removal proceedings are pending, a public hearing shall be conducted to determine the merits of the written charges submitted.

(Code 1987, ch. 11, subch. G, art. XIII, § 7; Code 1995, § 14.02.757)

**Secs. 107-467—107-482. Reserved.*****DIVISION 3. BOARD OF ADJUSTMENT<sup>1</sup>***


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<sup>1</sup>Editor's note(s)—Ord. No. 2022-01-19-03 , § 2(Exh. A), adopted January 19, 2022, repealed div. 3, §§ 107-483—107-499, and enacted a new div. 3, §§ 107-483—107-497, as set out herein. The former division pertained to



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similar subject matter and derived from the Code of 1987, ch. 11, subch. G, art. XIV, §§ 1—17; the Code of 1995, §§ 14.02.801—14.02.817; and Ord. No. 2019-10-16-03 , § 2, adopted Oct. 16, 2019.

**Sec. 107-483. Creation.**

- (a) The city has created a board of adjustment consisting of five members who are residents of the city.
- (b) Members of the board shall be appointed by the mayor, subject to confirmation by the city council. Members of the city council and planning and zoning commission are not eligible for appointment to the board.
- (c) The mayor also shall appoint, subject to confirmation by the city council, four alternate members of the board who shall be residents of the city, but who shall not be members of the city council or planning and zoning commission. Alternate members shall, upon request by the chairperson of the board, serve on the board in the absence of one or more regular members, so that all cases heard by the board will always be heard by at least four members of the board, and not more than five members of the board, regular or alternate.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-484. Terms.**

- (a) Each member and alternate member of the board shall serve a two-year term, commencing on January 1 and ending on December 31 of the following year. The terms of board members shall be staggered.
- (b) Regular and alternate board members serving upon the effective date of this division shall continue to serve, and this division shall be deemed to carry forward and continue the terms of office of such members.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-485. Removal.**

- (a) A regular or alternate member of the board may be removed from office by the city council for just cause and upon written charges being presented to the member.
- (b) Upon request of the person against whom removal proceedings are pending, a public hearing shall be conducted to determine the merits of the written charges submitted.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-486. Filling vacancies.**

Any vacancy on the board shall be filled by appointment by the mayor and confirmation by the city council for the unexpired term of the regular or alternate member whose position becomes vacant.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-487. Organization.**

- (a) The chairperson of the board shall be elected by majority vote of the members of the board.
- (b) The chairperson shall serve a term of one year, commencing on January 1 and ending on December 31, except that upon expiration of his term the chairperson shall continue to serve until his successor is elected.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-488. Meetings.**

- (a) Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine.
- (b) Meetings of the board shall comply with the provisions of the state open meetings act, V.T.C.A., Government Code ch. 551, including posting notices and agendas so as to adequately inform the public of the time, location and substance of business to be undertaken. Meetings closed to the public or executive sessions are normally not appropriate for the board and will not be conducted without the advice and consent of the city attorney.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-489. Rules and regulations.**

- (a) The board shall adopt rules necessary to the conduct of its affairs and shall furnish a copy of such rules to the building official. Rules adopted by the board shall be consistent with the provisions of this division.
- (b) All orders and other enactments adopted by the board shall be in accordance with its rules and regulations.
- (c) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be promptly filed in the office of the board and shall be a public record. The office of the board shall be the office of the city administrator where such records shall repose.
- (d) The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official or to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-490. Powers of the board.**

The board shall, pursuant to the provisions provided for herein, have the power to:

- (1) Hear and decide an appeal where it is alleged that there is an error in any order, requirement, decision or determination made by the building official in the enforcement of this chapter;
- (2) Hear and decide special exceptions as authorized in this chapter;
- (3) Authorize a variance to the regulations as provided for in this chapter; and
- (4) Determine, in cases of uncertainty, the classification of any use not specifically named in this chapter.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

**Sec. 107-491. Special exceptions.**

- (a) The board may, in a specific case, where the board makes the findings required under subsection (c) herein, grant the following special exceptions from the requirements of this division:
  - (1) Permit the reconstruction of a nonconforming building or structure that has been damaged by fire or other cause;

- (2) Permit the enlargement or extension of a nonconforming use or nonconforming building upon the lot occupied by such use or building at the time of the passage of this division;
  - (3) In undeveloped sections of the city, grant temporary and conditional permits for not more than two years, provided that the grant of a temporary or conditional permit shall not be reason or cause for extension of such permit;
  - (4) Permit such modifications of yard, open space, lot area, or lot width regulations as may be necessary to improve a parcel of land, if the parcel is of such restricted size that it cannot be appropriately improved without such modification; or
  - (5) Permit a public utility or public service building of a ground area or height at variance with those provided for the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety or general welfare.
- (b) The board may grant such other special exceptions as may be provided for elsewhere in this division, subject to the terms and conditions therein set out.
  - (c) Prior to granting a special exception, the board shall make a finding that it is empowered under this chapter to grant the special exception, that the public convenience and welfare will not be substantially or permanently injured in the granting of the special exception, and that the grant of the special exception will not adversely affect the public health, convenience, safety or general welfare.
  - (d) In granting a special exception, the board may prescribe appropriate conditions and safeguards in conformity with this division.
  - (e) The board shall prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. Failure to comply with the time limits set by the board shall void the special exception.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-492. Variances.**

- (a) The board may authorize upon appeal, in specific cases, such variances from the terms of this chapter, where the board finds that the variance 1) will not be contrary to the public interest, 2) where, owing to special conditions, literal enforcement of the provisions of this chapter will result in unnecessary hardship, and 3) the spirit of this chapter will be observed and substantial justice done.
- (b) Prior to granting a variance in a zoning district other than a residential district, the board must find, in concert with the findings required in subsection (a), that:
  - (1) The variance is the minimum variance necessary to alleviate the unnecessary hardship;
  - (2) Granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;
  - (3) The special conditions with respect to which a variance is sought are not the result of an action of the applicant;
  - (4) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and

- (5) Granting the variance will not merely serve as a convenience to the applicant but will alleviate some demonstrable and unnecessary hardship which is created by the literal enforcement of the provisions of this chapter.
- (c) Prior to granting a variance in a residential district, in concert with the findings required in subsection (a), the board must find that:
  - (1) A special individual reason makes the literal enforcement of this chapter result in an unnecessary hardship;
  - (2) Granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjoining properties or the neighborhood, or be otherwise detrimental to the public welfare;
  - (3) The granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to the property in the area;
  - (4) There are special circumstances or conditions such as topography, natural obstructions, aesthetic or environmental considerations affecting the land involved such that the strict application of the provisions of this chapter would impose an unnecessary hardship which is created by the literal enforcement of the provisions of this chapter;
  - (5) The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this chapter;
  - (6) If applicable, there is sufficient water and wastewater capacity and fire service available to serve the applicant's land as developed under the variance without detriment to the other property within the city; and
  - (7) The circumstances or conditions from which relief is sought are not solely of an economic nature.
- (d) In granting a variance, the board may prescribe appropriate conditions and safeguards in conformity with this chapter.
- (e) In considering a variance as applied to a structure, the board may, in addition to other relevant considerations, consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
  - (1) The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under V.T.C.A., Tax Code, § 26.01;
  - (2) Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
  - (3) Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (4) Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (5) The municipality considers the structure to be a nonconforming structure.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-493. Appeals based on error.**

- (a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) A person aggrieved by the decision; or
  - (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (b) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:
- (1) A person who:
    - a. Filed the application that is the subject of the decision;
    - b. Is the owner or representative of the owner of the property that is the subject of the decision; or
    - c. Is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
  - (2) Any officer, department, board, or bureau of the municipality affected by the decision.
- (c) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed. The appeal must be accompanied by payment of a filing fee in the amount established by the city council and set forth in the fee schedule on file with the city.
- (d) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property.
- (e) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing as provided in this division and, in addition, give due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

#### **Sec. 107-494. Notice of hearing.**

- (a) The board shall fix a date and time to conduct a hearing on each appeal, request for a variance, application for a special exception filed with it, or other action authorized under this chapter and shall mail notices of such hearing at least 30 days before the hearing.
- (b) The notice must be mailed to the following persons at the address shown on the current tax rolls of the city and deposit of the notices in the U.S. mail will be deemed compliance with this requirement:
  - (1) The petitioner;
  - (2) The owners of the property located within 250 feet of any point of the lot, or portion thereof, with respect to which the appeal, request for a variance or application for special exception is taken;
  - (3) If the appeal, request for a variance or application for a special exception relates to a lot that is not in a residential district, all owners of property located within the city shown on the current tax rolls of the city.
- (c) In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within

three feet of the curb or the pavement, or as prescribed by the city administrator at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof, except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBA meeting, the applicant's case shall be withdrawn and rescheduled. If a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per the city fee schedule. The sign shall include the name of the applicant, the variance or special exception being requested, and the date, time, and location of the public hearing.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-495. Decision by board.**

With the exception of a decision on an appeal based on an error, which decision shall be determined as provided for in section 107-493, the board shall make a decision within 45 days of the hearing related to said decision.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-496. Limitations.**

- (a) No appeal, request for a variance nor application for a special exception or other previous application, may be filed by the same applicant within 180 days of the date upon which the board denied such appeal, request or application, unless other property in the immediate vicinity has, within the 180-day period, been changed or acted on by the board or city council so as to alter the facts and conditions upon which the previous board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the board prior to the expiration of the 180-day period, but such conditions shall in no way have any force in law to compel the board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.
- (b) Any appeal, request or application approved by the board, either under the provisions of this division or under the authority granted to the board under the statutes of the state, shall authorize the issuance of a building permit or a certificate of occupancy, as the case may be, for a period of 90 days from the date of the favorable action on the part of the board, unless the board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupant is not filed within the 90-day period or such extended period as the board may specifically approve, then the approval of the appeal, variance or special exception shall be deemed waived and all rights thereunder terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the board in accordance with the rules and regulations herein contained.

(Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Sec. 107-497. Appeals from the board of adjustment.**

- (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:
    - (1) A person aggrieved by a decision of the board;
    - (2) A taxpayer; or
    - (3) An officer, department, board, or bureau of the municipality.
  - (b) The petition must be presented within ten days after the date the decision is filed in the board's office.
- (Ord. No. 2022-01-19-03 , § 2(Exh. A), 1-19-2022)

### **Secs. 107-498—107-515. Reserved.**

## ***DIVISION 4. CHANGES IN REGULATIONS OR ZONING DISTRICT BOUNDARIES***

### **Sec. 107-516. Changes initiated by city council or commission.**

The city council or commission may, from time to time, on its own motion, initiate (without payment of application or petition fee) amendments, supplements, changes, or modifications to the city's zoning regulations, boundaries or classifications. Any such proposed change will be subject to the hearings and procedures prescribed by this division.

(Code 1987, ch. 11, subch. G, art. XVII, § 1; Code 1995, § 14.02.981)

### **Sec. 107-517. Applications and petitions.**

- (a) Any property owner (or such property owner's authorized agent) applying to or petitioning the city for a change in zoning boundaries or classifications applicable to such applicant's property shall do so upon forms provided by the city. All petitions or applications for changes in zoning boundaries or classifications shall be filed with the city together with all applicable fees.
- (b) Each such petition or application shall:
  - (1) Contain the petitioner's/applicant's name, address and interest in the petition/application; and
  - (2) Include a survey prepared by a registered surveyor in the state and a properly recorded subdivision plat which accurately shows the location and boundaries of the property for which the change is requested, the current zoning classification of the property, and the names and addresses of all owners of property lying within 200 feet of the subject property (as reflected on the current city tax roll).
- (c) The commission may make nonmandatory requests for supplemental information from the applicant or petitioner with regard to a zoning change request including, but not limited to, a preliminary plat plan of the anticipated use and improvement of the property.
- (d) A zoning change application includes a properly recorded subdivision plat of the applicable property which is the subject of such application. In lieu thereof, a property owner may simultaneously process a subdivision application to properly subdivide the property provided that the zoning change will not be approved until a subdivision plat of the property has been approved. A city council or commission initiated change does not



require that the property be subject to a properly recorded subdivision plat nor does it require a survey of such property.

(Code 1987, ch. 11, subch. G, art. XVII, § 2; Code 1995, § 14.02.982)

#### **Sec. 107-518. Hearing and notice.**

- (a) The commission will hold a public hearing on all proposed changes on zoning regulations or boundaries.
- (b) Not less than 16 days prior to the hearing, notice of the date, time and location thereof will be published in the official newspaper of the city or in a newspaper of general circulation in the city. In addition, in the case of a proposed change in zoning classification, written notice of a public hearing will be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax roll) lying within 250 feet of the property that is the subject of the proposed zoning classification change. If the application for a change in zoning classification requests a change to a zoning district other than residential district or park district, the notice must be mailed, not less than 30 days prior to the hearing, to all owners of property (as such ownership is shown on the current city tax roll) within the city. The notice may be served by depositing it in the U.S. mail with the proper address and postage.

(Code 1987, ch. 11, subch. G, art. XVII, § 3; Code 1995, § 14.02.983; Ord. No. 2019-08-21(D) , § 1, 8-21-2019)

#### **Sec. 107-519. Commission recommendation.**

- (a) After the public hearing, the commission will make its recommendation regarding the change in zoning regulations or boundaries.
- (b) The recommendation made by the commission will be submitted to the city council, in writing, and the applicant/petitioner will be notified of the action of the commission.
- (c) The city will establish and maintain a separate file for each petition/application received, and will record the names and addresses of all persons to whom notices were mailed, including the date of mailing and the persons by whom notices were mailed. All records and files herein provided will be made part of the official files of the city.

(Code 1987, ch. 11, subch. G, art. XVII, § 4; Code 1995, § 14.02.984)

#### **Sec. 107-520. Procedure before the city council.**

- (a) After receiving the recommendation of the commission, the city council will, at the earliest practicable time, hold a public hearing on the application/petition, at which parties in interest and citizens will have an opportunity to be heard. Notice of the hearing will be given in the manner required under section 107-518(b).
- (b) If the commission recommends approval of the change in zoning regulations or boundaries requested in the application/petition, the city council may, by majority vote, either accept, reject or take other action on the application/petition.
- (c) If the commission recommends disapproval of the change in zoning regulations or boundaries requested in the application/petition, or if there is filed with the city a written protest against such change, signed by the owners of 20 percent or more, either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extended 200 feet therefrom, such change will not be approved except by the favorable vote of at least four/fifths of the whole number of members of the city council.

- (d) The city council may approve, at such time as a zoning change requested by a property owner (or the property owner's authorized agent) is granted, a development agreement between the city and the applicant containing such assurances as the city council may determine are reasonably necessary regarding the development of the property, including, but not limited to, development of the property substantially in accordance with a preliminary plat plan, in form reasonably satisfactory to the city council (the "development agreement"). The city council may require that the development agreement be recorded in the real property records of the county and constitute covenants running with the land. Thereafter, any requested modifications, amendments or variances to the development agreement must be considered by and receive the prior approval of the city council. All representations, whether written or oral, made by an applicant or his agent in connection with a zoning change request at any of the public hearings held in connection therewith will be binding upon such applicant and the property which is subject to the zoning classification change. It will be unlawful for the applicant to vary or breach any of such representations without first obtaining the prior written approval of the city council.
- (e) Any change in zoning regulations or boundaries must be enacted in the form of an ordinance amending this article.
- (f) If a zoning change application filed by or on behalf of a property owner with regard to such property is denied by the city council, then a zoning application for such property requesting a change to the same zoning classification previously requested may not be filed with the city for a period of six months from the date of the prior denial by city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 5; Code 1995, § 14.02.985)

#### **Sec. 107-521. Suspending issuance of permits and approval of site plans pending amendments.**

No application for site plan approval will be accepted for filing nor processed, and no building, site clearance, or grading permit will be issued for any work, other than in connection with a single-family residential use, for a period of no more than 90 days on land which is being considered for a change in zoning classification or is subject to an amendment to the zoning ordinance being considered by the city council. Such 90-day period will begin on the date the proposed zoning classification change or proposed zoning ordinance amendment is published for public hearing by the commission. Properties with respect to which building permits or final site plans have been approved prior to such date are excepted from this restriction. The time period for such restriction will expire upon the earlier to occur of expiration of such 90-day period or final determination of such zoning change or amendment by the city council. The foregoing notwithstanding, a site plan may be approved by the city council (and a building permit may be issued) simultaneously with the approval of a zoning change classification or an amendment to the zoning ordinance by the city council.

(Code 1987, ch. 11, subch. G, art. XVII, § 6; Code 1995, § 14.02.986)

#### **Secs. 107-522—107-530. Reserved.**

### ***DIVISION 5. REASONABLE ACCOMMODATIONS***

#### **Sec. 107-531. Purpose.**

It is the policy of the city, pursuant to the Fair Housing Act, also called Title VII of the Civil Rights Act of 1968, as amended in 1988 ("FHA"), the Americans with Disabilities Act Amendments, 2008 ("ADAA") and applicable state

laws, to provide individuals with disabilities reasonable accommodations (including modifications or exceptions) in the city's zoning, land use and other regulations, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling.

This division provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of applicable laws, including federal laws, in making a reasonable accommodation.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-532. Applicability.**

- (a) The provisions of this division apply to residential uses within a dwelling that will be used by persons with disabilities.
- (b) The accommodation granted shall be considered personal to the individual(s) and shall not run with the land. If the structure is sold, or otherwise changes ownership, an accommodation granted to the previous owner is not transferable to the new owner. Notwithstanding, the accommodation shall be in force and effect if the person(s) or group of persons with disabilities for whom the accommodation was sought resides on the property that is the subject of the accommodation. It is the duty of the owner to notify the city administrator of this event. The city shall allow the new owner an opportunity to renew and/or modify a granted reasonable accommodation in accordance with this division. If the reasonable accommodation is not renewed or modified within 60 days from the date of change in ownership, the accommodation will lapse, and the structure will have to comply with all otherwise applicable requirements.
- (c) Nothing in this division will require the city to expend any funds to achieve a reasonable accommodation except and to the extent required by state or federal law.
- (d) Nothing in this division will alter a person with disabilities' obligation to comply with other applicable federal, state and city regulations.
- (e) The city shall prominently display a notice advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this division. A copy of the notice shall be available upon request.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-533. Definitions.**

The following definitions apply:

*City administrator* means that individual employed by the city council to perform duties and as determined by the city council and with the authority to administer, implement, or enforce a requirement that is the basis of the request for reasonable accommodation.

*Disability* means a disability as defined in 42 U.S.C. § 12102.

*Dwelling* means a building which:

- (1) Is designed and constructed for occupancy as a residence;
- (2) Includes bathroom facilities; and

- (3) Includes facilities for food preparation and sleeping.

*Operator* means the person in control of a dwelling operating under the provisions of this division.

*Owner* means an individual:

- (1) Who has an ownership interest in a corporation or other legal entity owning any dwelling; or
- (2) Who is the owner of any real property seeking or obtaining accommodation under this division.

*Person with disabilities* for the purposes of this division, has the meaning set forth in the FHA and ADAA, as amended from time-to-time, and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of such impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of controlled substances is not.

*Reasonable accommodation permit* means the written document issued by the city approving the act or acts of making a dwelling readily accessible to and usable by a person with disabilities, through the removal of constraints in the city's land use, zoning, building and other regulations, policies, practices and procedures including processing procedures, in accordance with this division.

*Requirement* means a provision of this Code or an administrative policy, program or procedure.

*Resident* means a person who is residing in a dwelling.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-534. Effect.**

A reasonable accommodation controls over a conflicting city regulation or requirement.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-535. Notification of change of information.**

The permit holder shall notify the city administrator within ten days after any material change in the factual circumstances which were included in the application for a reasonable accommodation permit, other than temporary changes in the number of residents living at a property.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-536. Application for reasonable accommodations.**

- (a) The city intends to ensure that all persons with a disability have equal opportunity to use and enjoy a dwelling by providing such persons with reasonable accommodations in rules, policies, practices, and procedures promulgated under this division consistent with the FHA and the ADAA, as amended.
- (b) The method of submitting a request for reasonable accommodation permit is as follows:
  - (1) A request for a reasonable accommodation permit may be submitted at any time that the accommodation may be necessary to ensure equal access to housing.
  - (2) A request for a reasonable accommodation permit may be submitted by an individual with a disability, the person's representative, or a permit holder providing housing for one or more individuals with disabilities.

- (3) A request for a reasonable accommodation permit must be submitted in writing to the city administrator on the form provided by the city or in the form of a letter.
- (4) If an individual needs assistance in making a request for a reasonable accommodation permit, the city will provide assistance to ensure that the application process is accessible to the individual.
- (c) An applicant shall submit the following information before an application for a reasonable accommodation permit is considered to be complete:
  - (1) The applicant's name, mailing address, street address, telephone number, and email address;
  - (2) The applicant's relation to the individual(s) with a disability, if applicable;
  - (3) The address of the property to which the requested reasonable accommodation permit would apply;
  - (4) A disability determination by the Social Security Administration or the Department of Veteran's Affairs, or other substantially equivalent medical determination, that substantiates that the individual who would obtain the benefit of the reasonable accommodation is a person with a disability;
  - (5) The section(s) of this Code or other applicable regulation from which a reasonable accommodation permit is being requested;
  - (6) A brief explanation of why the requested accommodation permit is necessary for the person(s) with a disability to have equal access to housing;
  - (7) Description of the disability at issue, the requested accommodation permit, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing.
  - (8) Any other information the city administrator concludes is necessary in order to make the findings required by section 107-538 to the extent permissible under applicable local, state and federal laws. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry (see Joint Statement of The Department of Housing & Urban Development & The Department of Justice; Reasonable Accommodations Under the Fair Housing Act, 2008).
- (d) Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or person with a disability and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city administrator. The applicant need provide only the information necessary for the city to evaluate the reasonable accommodation permit request.
- (e) If the person with the disability needs assistance to make a request for a reasonable accommodation permit, the city administrator will provide assistance, including transcribing a verbal request into a written request.
- (f) A fee shall not be required for an application for a reasonable accommodation permit.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-537. Issuance or denial of permit.**

- (a) Upon receipt of a complete application for a reasonable accommodation permit, the city administrator, consistent with the requirements of this division, shall review the application and issue a written ruling that grants, grants with conditions, or denies the application.
- (b) A request for a reasonable accommodation permit shall be reviewed, and a determination made, by the city administrator, using the criteria set forth in this division and the statutes referenced.
- (c) The city administrator shall issue a written decision on a request, promptly but not more than 30 calendar days from:
  - (1) The time the complete application for a reasonable accommodation permit was filed;
  - (2) From the date of their completed inspection of the property, facility, and its records, as requested by the city administrator; or
  - (3) From the city administrator's receipt of all additional requested information.
- (d) The city administrator's written decision must explain in detail the basis of the decision. The city administrator may either grant, grant with alterations or conditions, or deny a request for a reasonable accommodation permit in accordance with the required findings.
- (e) If necessary, to reach a determination on the request for a reasonable accommodation permit, the city administrator may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city administrator. If a request for additional information is made, the running of the 30 calendar day period to issue a decision is stayed until the applicant responds to the request.
- (f) Before deciding, the city administrator may request an inspection of the property and structures. If the city administrator makes such a request, the applicant must make the property, the structure, and records relevant to the application available for the inspection, within ten days after the date of the request.
- (g) If the city administrator deems it necessary to request additional information from the applicant consistent with federal and state law, the city administrator shall contact the applicant in writing and specify the additional information that is required. If the city administrator makes such a request, the applicant must provide the additional information to the city administrator within 20 days after the date of the request or the application is automatically denied.
- (h) All proposed decisions of the city administrator must be submitted to the city attorney for legal review to determine compliance with local, state, and federal laws and regulations.
- (i) The city administrator may impose reasonable conditions on any reasonable accommodation permit request granted consistent with the purpose of this division.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

### **Sec. 107-538. Required findings.**

The written decision must be consistent with the FHA and based on a consideration of the following factors:

- (1) Whether the dwelling that is the subject of the request for a reasonable accommodation permit will be used by a person with a disability protected under the applicable laws.
- (2) Whether the requested reasonable accommodation permit is necessary to make a dwelling available to a person with disabilities protected under the applicable laws.
- (3) Whether the requested reasonable accommodation permit would pose an undue financial or administrative burden on the city. The determination of undue financial and administrative burden will be done on a case-by-case basis.
- (4) Whether the requested reasonable accommodation permit would require a fundamental alteration in the nature of a city program or law, including but not limited to zoning and land use.
- (5) In making findings, the city administrator may grant with alterations or conditions, reasonable accommodation permit, if the city administrator determines that the applicant's initial request would impose an undue financial or administrative burden on the city, or fundamentally alter a city program or law. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to enabling the person(s) with a disability to use and enjoy the dwelling and making the provision of housing for person(s) with a disability financially or practically feasible.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-539. Written decision.**

- (a) The written decision of the city administrator on an application for a reasonable accommodation permit shall explain in detail the basis of the decision, including the city administrator's findings on the criteria set forth in section 107-538. The notice of the decision shall be sent to the applicant by certified mail and electronic mail, if the applicant's electronic mail address is known to the city.
- (b) The written decision of the city administrator shall be final. Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for a reasonable accommodation permit based on additional grounds or changed circumstances. Nor shall this provision be construed to affect in any way the rights of a person to challenge the denial of a request for reasonable accommodation as violating the FHA, the ADAA or any other applicable state, federal or local law.
- (c) If the city administrator fails to render a written decision on the request for a reasonable accommodation permit within the 30 calendar day period established in section 107-537, the reasonable accommodation permit request shall be deemed granted.
- (d) A request for a reasonable accommodation permit stays all proceedings in furtherance of the enforcement of any requirement that is the subject of the request. A reasonable accommodation permit request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.
- (e) The city administrator shall retain, for the duration of the reasonable accommodation permit and at least five years thereafter, written records of each request and all related records, including the city's responses and decisions.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-540. Suspension of permit; prohibition of new residents.**

- (a) The city administrator may suspend a reasonable accommodation permit for a period not to exceed 30 days if the city administrator finds that the permit holder has:

- (1) Failed to comply, after actual notice and a full and fair opportunity to cure any non-compliance, as to any provision of this division, any other ordinance, or any state or federal law applicable to the use of the property;
- (2) Intentionally or knowingly impeded or refused to allow an inspection by the city administrator authorized under this division.
- (b) A dwelling with a reasonable accommodation permit under this ordinance may not admit any new residents during the time the permit is suspended.
- (c) In lieu of suspending a reasonable accommodation permit the city administrator may enter into a compliance agreement with a permit holder if the city administrator determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a suspension.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

#### **Sec. 107-541. Revocation of permit.**

- (a) Except as provided in subsection (b), the city administrator shall revoke any reasonable accommodation permit if the city administrator determines that:
  - (1) The permit holder intentionally made a false statement as to a material matter in the application or in a hearing concerning the permit, which false statement or information is material to the right or eligibility permitted;
  - (2) The permit holder has violated conditions of the permit and has failed to remedy or comply within ten days after notice has been provided; or
  - (3) The factual basis for the approval has changed or no longer exists to support the right or eligibility previously approved.
- (b) In lieu of revoking a permit for a reasonable accommodation permit, the city administrator, at their sole discretion, may enter into a compliance agreement with a permit holder if the city administrator determines that the compliance agreement would eliminate the noncompliance that would otherwise justify a revocation.
- (c) Before revoking a reasonable accommodation permit under subsection (a), the city administrator shall notify the permit holder in writing by certified mail, return receipt requested, that the permit is being considered for revocation. The notice must include the reason for the proposed revocation, action the permit holder must take to prevent the revocation, and a statement that the permit holder has ten days to comply with the notice.
- (d) If after ten days from the date of the notice required in subsection (c) was sent or delivered, whichever is later, the permit holder has not complied with required actions listed in the notice, the city administrator shall revoke the reasonable accommodation permit and notify the permit holder in writing of the revocation. The notice must include the reason for the revocation and a statement informing the permit holder of the right of appeal.
- (e) If a reasonable accommodation permit has been revoked, the permit holder has ten days from the date the notice was sent or delivered, whichever is later, to relocate the residents and cease operations. An appeal of the revocation does not suspend or toll this deadline.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)



**Sec. 107-542. Non-transferability.**

A reasonable accommodation permit is not transferable to another location, or to another owner.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-543. Inspection.**

(a) *Required inspections.*

- (1) The initial inspection in connection with an application under this division.
- (2) Annual inspection for compliance with the city's building codes, to include the fire code.

(b) *Other inspections.* The city may inspect any property permitted under this division, for the purpose of ascertaining whether violations of this division or any other city ordinances exist. The city administrator or their designee is authorized at a reasonable time to inspect:

- (1) The exterior of a structure and the surrounding premises; and
- (2) The interior of a structure if the permission of the owner, occupant, or person in control is given or a search warrant is obtained.

(c) *Re-inspections.* Whenever a dwelling is inspected by the city administrator and a violation of this Code is found, the building or premises will, after the expiration of any time limit for compliance given in the notice or order issued because of the violation, be re-inspected by the city administrator to determine that the violation has been eliminated.

(d) *Re-inspection fee.* The permit holder shall pay the city administrator a fee for each re-inspection after the first inspection that the violation is determined to be eliminated, including any other applicable fees.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

**Sec. 107-544. Violations; penalty.**

- (a) A permit holder other person who violates any provision of this division, or who fails to perform a duty required by this division, commits an offense.
- (b) A permit holder, operator, or owner who intentionally or knowingly fails to comply with the conditions of a permit under this division, commits an offense,
- (c) An offense under this division is punishable by a fine not to exceed \$500.00 unless the offense is a violation of a fire safety, zoning or public health and sanitation regulation in which case the offense shall be punishable by a fine not to exceed \$2,000.00. A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.
- (d) If the city administrator finds a violation of the standards prescribed by this division and the violations create an immediate threat to the health and safety of a resident in the facility, the city administrator may order immediate closing of all or part of the facility. An order of immediate closure is effective immediately on providing written notice of the order to the owner or operator by facsimile, email, or hand-delivery. The order of closure of all or part of a boarding home facility is valid for ten days after its effective date.
- (e) The city attorney may petition the appropriate court for civil penalties and for injunctive relief to restrain a continuing violation of the standards or permit requirements for a property permitted under this division.

- (f) The remedies and procedures in this section and in other laws are cumulative law, and the use of any remedy or procedure does not prevent the enforcement of any other law.

(Ord. No. 2019-10-16-15 , § 2, 10-16-2019)

## Chapter 101 BUILDINGS AND CONSTRUCTION

### ARTICLE I. IN GENERAL

#### Sec. 101-1. 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:

*Board of appeals* means the board of adjustment of the city.

(Code 1987, ch. 11, subch. A, § 2; Code 1995, § 3.02.002)

#### Sec. 101-2. Adoption of codes.

- (a) The codes adopted in this section, together with the remaining provisions of this chapter and the fire code and regulations of chapter 10, shall constitute the city construction regulations. The city construction regulations will apply to all construction within the city, except as otherwise specifically provided in this Code.
- (b) The city adopts the following codes as though fully set forth in this chapter, copies of which are on file in the office of the city secretary:
  - (1) International Administrative Code, 2006 Edition, published by the International Code Council.
  - (2) International Building Code, 2015 Edition, published by the International Code Council, subject to the amendments set forth in subsection (d) of this section.
  - (3) International Residential Code, 2015 Edition, published by the International Code Council, with amendments and section AG105 of appendix G.
  - (4) International Energy Conservation Code, 2015 Edition, published by the International Code Council.
  - (5) International Mechanical Code, 2015 Edition, published by the International Code Council.
  - (6) International Plumbing Code, 2015 Edition, published by the International Code Council.
  - (7) National Electrical Code, 2014 Edition, published by the National Fire Protection Association, subject to the amendments set forth in subsection (d) of this section.
  - (8) Uniform Code for the Abatement of Dangerous Buildings, 2015 Edition, published by the International Conference of Building Officials.
- (c) The International Building Code adopted herein is amended as follows:
  - (1) By adding a new section 1505.6.1, which follows immediately after section 3202(c), to read as follows:

Section 1505.6.1. Wood shingles. Notwithstanding any other provision in this code, it is specifically provided that wood shakes, wood shingles, or any wooden roof covering is hereby prohibited to be used as a roof covering within the city.
  - (2) By amending the definition of "height of building" to read as follows:

*Building height, nonresidential.* The vertical distance from the lowest finished floor elevation (including a garage floor) to the highest part of the following: the coping of a flat roof, the deck line of a mansard roof, or the gable of a pitched or hipped roof. Where, due to topographical or other conditions, the lowest finished floor elevation of a building differs from one part to another, the maximum permissible height shall be computed separately for each portion of such building containing a differing lowest finished floor elevation. If the lowest finished floor elevation is more than four feet directly above the point where the foundation intersects the natural grade, then the vertical distance must be measured from a point that is four feet directly above the point where the foundation intersects the natural grade to the highest point described above.

*Building height, residential.* The vertical distance above a reference datum measured to the highest point of the building. The reference datum shall be selected by either of the following, whichever yields a greater height of the building:

1. The elevation of the highest adjoining original native ground surface within a five-foot horizontal distance of the exterior wall of the building when such original native ground surface is not more than ten feet above the lowest grade; or
2. An elevation of ten feet higher than the lowest grade when the original native ground surface described in subsection 1 of this definition is more than ten feet above lowest grade.

- (d) The National Electrical Code adopted in this section is amended by adding a new section 308, which follows immediately after section 307, to read as follows:

Section 308. Notwithstanding any other provision of this code, the use of aluminum wiring as a conductor of electricity in branch circuit wiring, or in service conductors smaller than six, is hereby prohibited.

(Code 1987, ch. 11, subch. A, §§ 5, 5(a)(3); Code 1995, §§ 3.02.007, 3.02.051, 3.02.101—3.02.103, 3.02.151, 3.02.201, 3.02.251, 3.02.301, 3.02.351, 3.02.352, 3.02.401; Ord. No. 2013-02-20(B), §§ 1, 5, 2-20-2013; Ord. No. 2016-11-16(A), 11-16-2016)

Editor's note(s)—See chapter 10 of this Code for adoption of the city fire code and regulations.

### **Sec. 101-3. Conflicting regulations.**

If there is a conflict between this Code and codes that form the city construction regulations, the most restrictive provision will prevail.

(Code 1987, ch. 11, subch. A, § 13; Code 1995, § 3.02.004)

### **Sec. 101-4. Area of applicability.**

This chapter and the city construction regulations are applicable and in full force and effect within the corporate limits of the city.

(Code 1987, ch. 11, subch. A, § 4; Code 1995, § 3.02.006)

### **Secs. 101-5—101-26. Reserved.**

## **ARTICLE II. ADMINISTRATION AND ENFORCEMENT**

**Sec. 101-27. Generally.**

The procedures established in this article and in the city construction regulations will be administered by the building official, who may authorize the use of persons, equipment, and facilities as necessary to implement and enforce the provisions hereof.

(Code 1987, ch. 11, subch. A, § 3; Code 1995, § 3.02.005)

**Sec. 101-28. Fees.**

Permit and other fees associated with this article and codes adopted by reference in this article shall be as provided in the city fee schedule.

(Code 1987, ch. 11, subch. A, § 8; Code 1995, § 3.02.009)

**Sec. 101-29. Building official; right of entry.**

The building official or his designee may enter any land, building or structure at any reasonable time in order to perform any duty imposed upon him by this article.

(Code 1987, ch. 11, subch. G, art. XV, § 15; Code 1995, § 14.02.865)

**Sec. 101-30. Third-party inspections.**

If the city contracts with a person to perform the inspections required by the city building code, an inspection performed by such person shall be considered an inspection by the building official; provided, however, that building permits and certificates of occupancy shall be issued only by the city building official. If the city has not contracted with a licensed plumbing inspector to conduct inspections within the city, a nonresidential property owner must secure the services of a licensed plumbing inspector for the city and pay all costs incurred by the city for such inspection services.

(Code 1987, ch. 11, subch. A, § 11; Code 1995, § 3.02.011)

**Sec. 101-31. Stop-work orders.**

- (a) Whenever any work is being performed in violation of the requirements of this article or the site plan filed pursuant to section 101-94, or a drainage plan approved pursuant to chapter 103, article IV, the building official shall give written notice to the person performing the work or causing the work to be performed directing the person to immediately stop-work on the project (a "stop-work order"), and, if applicable, show cause why the work should not be ordered stopped. No one may continue any work that is the subject of a stop-work order without written revocation or suspension of the stop-work order.
- (b) Any person served with notice may, within five days after service, show cause to the building official why a stop-work order should not be issued. If the person fails to show good cause, the stop-work order shall continue in effect until the building official terminates the stop-work order as a result of a correction or cessation of the violations, or the building official's action is overturned on appeal.
- (c) When a stop-work order is issued, it shall be immediately posted at the premises where the work is being performed in violation of this article.

(Code 1995, § 14.02.866; Ord. No. 2016-11-16, 11-16-2016)

**Sec. 101-32. Appeal of stop-work order.**

- (a) A person aggrieved by the building official's issuance of a stop-work order under this article may appeal the order by giving written notice to the board of adjustment and the building official no later than three days after the order is posted. The notice of appeal must contain the following information:
- (1) The name and address of the person bringing the appeal;
  - (2) The facts surrounding the issuance of the order;
  - (3) The technical reasons why the order should be set aside;
  - (4) The board of adjustment will hear the appeal at its next regularly scheduled meeting following receipt of the notice of appeal.
- (b) An appeal under this section will not stay the stop-work order. All approved plans or permits will be suspended during the appeal. No development or construction that is affected by the appeal may occur until final disposition of the appeal.

(Code 1987, ch. 11, subch. G, art. XV, § 17; Code 1995, § 14.02.867)

**Sec. 101-33. Discontinuance orders.**

- (a) Whenever any land, building or structure is being used or occupied in violation of the provisions of this article, the building official shall serve written notice to the person using or causing such use or occupancy, ordering the person to show cause why such use or occupancy should not be ordered discontinued.
- (b) Any person served with notice may, within five days after service, show cause to the building official why he should not order the use or occupancy discontinued.
- (c) If the person served with notice fails to show cause, the building official shall order the use or occupancy discontinued by written notice served upon the person using or causing such use or occupancy. Within ten days following receipt of the order, such person shall either vacate, or cause to be vacated, such land, building or structure, or make the land, building or structure comply with the requirements of this article.
- (d) When a discontinuance order is issued, it shall be immediately posted at the land, building or structure being use or occupied in violation of this article.
- (e) The show-cause procedure provided under this section may be waived when the building official finds that an unlawful use or occupancy could cause imminent peril to life or property.

(Code 1987, ch. 11, subch. G, art. XV, § 18; Code 1995, § 14.02.868)

**Sec. 101-34. Penalty.**

Any person who violates any provision of this article will be guilty of a misdemeanor and, upon conviction, will be subject to a fine not to exceed \$2,000.00. Each day of violation will constitute a separate offense. This penalty will be cumulative of any other rights or remedies the city may have.

(Code 1987, ch. 11, subch. A, § 14; Code 1995, § 3.02.003)

**Secs. 101-35—101-56. Reserved.**

PART II - LAND DEVELOPMENT CODE  
Chapter 101 - BUILDINGS AND CONSTRUCTION  
ARTICLE III. PERMITS AND CERTIFICATES

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## **ARTICLE III. PERMITS AND CERTIFICATES**

### **DIVISION 1. GENERALLY**

#### **Sec. 101-57. Demolition permit.**

No person shall remove or demolish any building or structure, or any portion thereof, or cause the same to be done without first obtaining a demolition permit from the city. An applicant for a demolition permit must submit a completed application in a form acceptable to the building official. The building official will verify that issuance of the demolition permit is not in conflict with zoning, subdivision and site plan approval requirements or any other provisions of this article.

(Code 1987, ch. 11, subch. G, art. XV, § 21; Code 1995, § 14.02.871)

#### **Sec. 101-58. Emergency and utility construction permit.**

A permit for the installation, relocation, or modification of water, sewer, gas, or electrical conductors or fixtures, including service lines and solar installations which are separate from and independent of any other work described in this article may be issued as a utility construction permit. A utility construction permit shall be subject to all applicable codes and regulations but are exempt from the requirements of section 101-92(4) and section 101-93.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(k); Ord. No. 2017-01-18, 1-18-2017)

#### **Secs. 101-59—101-89. Reserved.**

### **DIVISION 2. BUILDING PERMITS**

#### **Sec. 101-90. Required, generally.**

- (a) No person shall construct, alter or move any building, structure, gas line, or fence, or any portion thereof, or store building materials or equipment on property, or cause the same to be done, without first obtaining a building permit, as required under the city construction regulations from the building official; provided, however, that no person shall be required to obtain a building permit for the application or installation of new or replacement flooring, appliances (except for water heaters for which a building permit is required unless it is installed by a licensed plumber), light fixtures, wallpaper or wall coverings, tile work, plumbing fixtures, hardware, glazing, paint, stain or plaster, trim work, cabinetry or shelves, insulation, counter tops, doors, garage doors, drywall (except drywall for garage separation), tile work, trim work, plaster, gutters and downspouts, exterior doors or windows (except windows in sleeping areas), roofing materials and all other materials and equipment necessary of the proper completion thereof.
- (b) Except as otherwise authorized in a written order approved by the board, a building permit shall not be issued except in conformity with the provisions of this article.

- (c) The city council shall adopt a schedule of building permit fees. Such schedule of fees shall remain in force until changed by the city council.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(a)—(c); Ord. No. 2017-01-18, 1-18-2017)

### **Sec. 101-91. Required for construction in newly annexed territory.**

- (a) No person shall construct or alter any building or structure, or any portion thereof, or store building materials or equipment on property, or cause the same to be done, in any territory annexed by the city without first obtaining a building permit as required under the city construction regulations from the building official.
- (b) No permit for the construction of a building or structure or use of land in newly annexed territory shall be issued by the building official other than a permit to allow the construction of a building or structure or use of land permitted in a residential district, until such territory has been classified in a zoning district other than a residential district by the city council in the manner provided by law except as provided in subsection (c) of this section.
- (c) An application for a permit for any other use than that specified in subsection (b) of this section shall be made to the building official, who shall submit it to the commission for consideration and recommendation to the city council. The commission shall, within ten days of receiving the application, determine whether the application should be approved or disapproved, and submit its recommendation to the city council. If the commission fails to act on the application within the prescribed time, the city council shall consider the application without recommendation at the council's next regular meeting following expiration of the ten-day period.
- (d) No person shall continue or proceed with the construction of any building or structure, or cause the same to be done in any newly annexed territory without first obtaining a building permit. The application for such permit shall be filed with the building official, who shall submit it to the commission for consideration. The commission shall, within 45 days of receiving the application, determine whether it should be approved or disapproved, and submit its recommendation to the city council. If the commission fails to act on the application within the prescribed time, the city council shall consider the application without recommendation at its next regular meeting following the expiration of the 45-day period. The construction for which the building permit application is filed shall be suspended until a building permit is issued.

(Code 1987, ch. 11, subch. G, art. XV, § 20; Code 1995, § 14.02.870)

### **Sec. 101-92. Application for permit.**

- (a) All applications for building permit, will serve as the basis for issuing both a building permit and a certificate of occupancy. Each application for a building permit must be accompanied by:
- (1) A check in the amount of required fees;
  - (2) An application for certificate of occupancy;
  - (3) Three copies of a site plan submitted in compliance with the requirements of section 101-94;
  - (4) One copy of a recorded subdivision plat of the property in compliance with the requirements of chapter 105 and one copy of the letter of acceptance required under section 105-67(a);
  - (5) Information relative to the existing and proposed use of the lot and buildings or the structures on the lot, conditions on the lot and abutting properties and provisions for parking;



- (6) Unless waived by the city council, for property other than property in the residential district, if the application requests authorization to construct a new building after the adoption of this provision or to expand a building or change the use in such a way that increases the utility usage by more than ten percent from the usage level when this provision was adopted, information demonstrating to the satisfaction of the city, consistent with generally accepted engineering principles that providing water or wastewater service to the improvements located on that property will not materially impact water or centralized wastewater service to areas in the city that are residentially zoned as of the date of the application, existing or previously approved commercial businesses in the city, or undeveloped areas in the city zoned for commercial use as of the date of the application.
  - (7) If the application requests authorization to renovate or demolish a public or commercial building, evidence acceptable to the city that an asbestos survey, as required by the Texas Asbestos Health Protection Act, V.T.C.A., Occupations Code ch. 1954, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under the act to perform a survey or a certification from a licensed engineer or architect, stating that:
    - a. The engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with the Texas Asbestos Health Protection Act, V.T.C.A., Occupations Code ch. 1954; and
    - b. In the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.
  - (8) Any additional information required by the building official.
- (b) Additionally, applications for new construction, reconstruction, remodels and additions budgeted to cost \$20,000.00 or more shall be accompanied by:
- (1) Four copies of construction plans sealed by a licensed architect, licensed engineer, licensed interior designer, or certified building designer.
  - (2) Four copies of all construction documents required by chapter 1, section 106 of the International Building Code, including, but not limited to, sealed plans for new foundations or changes to existing foundations, construction plans for framing, masonry, electrical, plumbing, mechanical and roofing.
  - (3) Four copies of an as-built survey of the property, which must include trees six inches in diameter or greater on the property and any improvements constructed or installed on the property, certified by a licensed surveyor.
  - (4) Four copies each of the front, rear and both side elevations, including site sections.
  - (5) Detailed information showing:
    - a. Heated square footage;
    - b. First-floor square footage (including garages and carports, but excluding porches, stairs and decks);
    - c. Impervious cover (excluding swimming pools), masonry percentages, building footprint to property area ratio; and
    - d. The required state license numbers for the homebuilder or general contractor, and all mechanical, electrical, and plumbing contractors or subcontractors working on the construction project.

In the case of new construction or proposed construction in which the footprint or roof plan of an existing building or structure on the property increases, four copies of a drainage site plan which depicts the existing and proposed contours in two-foot elevations on the property, the existing and proposed drainage patterns and the 50- and 100-year floodplains if they exist on the property.

- (c) Additionally, applications for new construction, reconstruction and additions budgeted to cost less than \$20,000.00, shall be accompanied by four copies of contractor-drawn construction plans (or owner-drawn construction plans if the homeowner is the contractor). Applications for additions, reconstructions and new construction in a commercial district shall also include five copies of the site plan and the documents required by chapter 1, section 106 of the International Building Code.

(Code 1987, ch. 11, subch. G, art. XV, § 3; Code 1995, § 14.02.853(1)—(11); Ord. No. 2009-05-07B, § 8, 5-7-2009; Ord. No. 2011-03-09(C), 3-9-2011; Ord. No. 2013-08-21(F), 8-21-2013; Ord. No. 2014-07-30(C), § 3, 7-30-2014)

### **Sec. 101-93. Notice of application.**

- (a) Except as provided in subsection (h) of this section, written notice of building permit application shall be given to owners, as they appear on the last approved tax roll of the city, of real property lying within 250 feet of the boundaries of the tract or lot for which a building permit is requested. The application shall not be considered as having been filed with the city until such notice has been delivered in accordance with this section and the statement required by this section been submitted to the city.
- (b) Every notice required by this subsection may be served by delivering a copy of the notice to the person to be served, or their duly authorized agent, either in person or by registered or certified mail and by U.S. First Class Mail, postage prepaid to their last-known address. Alternatively, the notice may be given in such other manner reasonably calculated to give notice and approved by the city. Whenever the notice is served by mail, three days shall be added to the prescribed period.
- (c) The burden shall be upon the applicant to give notice as required in this subsection. A sworn written statement by the applicant showing service of a notice shall be required to be submitted with the building permit application. Such sworn statement shall also serve as prima facie evidence of the fact of service. A copy of this statement shall be attached to the building permit application.
- (d) The notice shall consist of:
  - (1) A written statement in plain and concise language sufficient to give fair notice of the proposed building permit application;
  - (2) Information as to where the application may be inspected; and
  - (3) The building official will act on the application within no less than 15 nor more than 45 days after the date the application was filed.
- (e) The building official shall provide applicants with a sample form of the notice and shall assist the applicants in identifying the addresses to which the notice shall be mailed.
- (f) The building official shall provide a copy of each application to the city secretary, who shall post a summary of the same on the city's website.
- (g) The applicant will post a sign of the type specified by the building official in the yard of the property.
- (h) Notice of an application for a building permit shall not be required for the following work or improvements:
  - (1) Residential interior remodel where no work of any kind is to be done to the exterior of any improvement, the size of the affected improvement will not be altered, and the contour or footprint of the affected improvement will not be altered;

- (2) Replacement of residential bedroom emergency egress windows;
- (3) Commercial tenant finish-out where all work to be done in conjunction with the permit is to be confined to the interior of the building.
- (i) For new construction, reconstruction and additions (excluding that occurring inside an existing structure) on land in the city that is located over the Edwards Aquifer Recharge Zone and which is subject to 30 Tex. Admin. Code ch. 213, the applicant shall furnish, as part of the application submitted, written proof of compliance with such regulations.

(Code 1987, ch. 11, subch. G, art. XV, § 3; Code 1995, § 14.02.853(12), (13); Ord. No. 2009-05-07B, § 8, 5-7-2009; Ord. No. 2011-03-09(C), 3-9-2011; Ord. No. 2013-08-21(F), 8-21-2013; Ord. No. 2014-07-30(C), § 3, 7-30-2014)

### **Sec. 101-94. Site plan requirements.**

- (a) Except as required in chapter 103, article III, division 4, a site plan will not be required for the construction of, alteration to or an addition to a single-family residential structure, or an accessory thereto, where only one single-family structure is constructed on a subdivided lot and no proposed improvement is located in the 100-year floodplain ("residential improvements"). Prior to the issuance of a building permit, an applicant for the construction of residential improvements must submit to the city a plot plan of the applicable property reflecting existing and proposed structures and the location of all building setback lines and easements and the septic tank and field serving the property, if any (the "residential plot plan"). The residential plot plan for construction of a new residence on the property must be prepared on a survey of the property prepared by a registered surveyor showing setback lines and easements.
- (b) An approved site plan is required for the construction of any primary structure or accessory structure or facility thereto (other than exempted in subsection (a) of this section). The site plan must be drawn to scale and submitted in duplicate to the city, together with such additional copies as the city may determine to be necessary for review by other city officials. The site plan shall contain the following:
  - (1) A legal description of the land; the date, scale, north point, title, and the name of the person preparing the plan;
  - (2) The names, addresses and telephone numbers of the owner, the engineer and the designer/architect;
  - (3) Lot and block number and the street number as approved by the U.S. Postal Service;
  - (4) The actual shape, location and dimensions of the land, an arrow pointing north and the land area of the land included in the site plan;
  - (5) Natural features such as woodlots, watercourses, springs and ponds, both before and after construction of proposed improvements;
  - (6) Location and dimensions of easements and setback requirements;
  - (7) Floodplain elevations which show the floodway and portions of the land that are located in the 100-year floodplain as determined by FEMA; the centerline of all existing watercourses and drainage features;
  - (8) Location of existing and proposed walks, driveways, loading areas, off-street parking design, access roads and ingress and egress locations;
  - (9) Location and dimensions of all components of all private sewage facilities located on the land and their distance from floodplains, wells, lakes, creeks, faults, and water lines within 100 feet of the land;
  - (10) The existing and intended use of the land and of all building and structures upon it;

- (11) Existing and proposed grades and drainage systems and structures with topographic contours at intervals not exceeding two feet;
  - (12) The architectural design, shape, size, dimensions and location of all buildings or other structures to be erected, altered, or moved, and of any buildings or other structures already on the lot; a calculation of proposed impervious cover of the land;
  - (13) Site clearance excavation plans, including data on the amount of cut and fill;
  - (14) Landscaping plans;
  - (15) Exterior lighting plans;
  - (16) Location of all trash receptacles and air-conditioning and heating units; and
  - (17) All other information required in the development plan called for in the applicable zoning district.
- (c) If the proposed project is within the professional and business office district (C-1), business district (C-2) or planned unit development district (PUD), the site plan must be accompanied by a traffic impact analysis prepared by a professional approved by the city, indicating the impact of the project on existing traffic conditions and information on the potential congestion caused by ingress and egress.
  - (d) The site plan shall be accompanied by an approval from the state department of transportation, if applicable, with regard to the location of points of ingress and egress.
  - (e) The site plan shall show such other information concerning the land or adjoining land as may be deemed necessary by the city for determining compliance with the provisions of this Code.
  - (f) Unless waived by the city council, the site plan must be accompanied by information demonstrating to the satisfaction of the city, consistent with generally accepted engineering principles that providing water or wastewater service to the improvements located on that property will not materially impact water or centralized wastewater service to:
    - (1) Areas in the city that are residentially zoned as of the date of the application;
    - (2) Existing or previously approved commercial businesses in the city; or
    - (3) Undeveloped areas in the city zoned for commercial use as of the date of the application.
  - (g) The applicant will submit the site plan to the city. The city administrator will ensure that the site plan is reviewed by city staff and shall make a final report to the city council recommending approval or disapproval. The city administrator's report to the city council will consider the following:
    - (1) Whether the proposed improvements show compliance with all applicable city ordinances;
    - (2) Whether the proposed improvements would adversely impact the efficient flow of traffic within the city;
    - (3) Whether any aspect of the proposed development would create a financial obligation on the part of the city (for example, creek retaining walls, retaining ponds, sedimentation filtration systems, etc.).

(Code 1987, ch. 11, subch. G, art. XV, § 4; Code 1995, § 14.02.854; Ord. No. 2017-01-18, 1-18-2017)

## **Sec. 101-95. Site plan approval.**

After receipt of a report from the city administrator with regard to the site plan application, the city council will consider the site plan for approval. No site plan will be approved or released unless the proposed use is authorized by the zoning classification attributable to such property. The city council may, at its discretion, grant one or more variances to site plan requirements. A site plan will expire as to improvements not yet constructed

within three years from the approval thereof by the city council. The city council, at its discretion, may grant one or more extensions to such site plan expiration date.

(Code 1987, ch. 11, subch. G, art. XV, § 5; Code 1995, § 14.02.855)

### **Sec. 101-96. Correction of errors in plans.**

The issuance of a permit upon approval of plans and specifications does not prevent the building official from thereafter requiring the correction of errors in the plans and specifications found to be in violation of the code or any other ordinance of the city.

(Code 1987, ch. 11, subch. A, § 7; Code 1995, § 3.02.008)

### **Sec. 101-97. Permit issuance or denial.**

- (a) If the building official finds that the work described in the permit application and site plan conforms to the requirements of this article and that any subdivision improvements have been constructed and accepted as required under section 105-67(a), he shall mark one copy of the plans "approved," sign the copy, and return it to the applicant.
- (b) If the building official finds that the work described in the permit application and site plan does not conform to the requirements of this article, he shall mark one copy of the plans "disapproved," sign the copy, and return it, together with a statement describing the specific reasons for such disapproval, to the applicant.
- (c) One copy of each building permit application and site plan shall be maintained in a file by the building official. One copy of each building permit and site plan, stamped "approved" by the building official, shall be maintained on the construction site until a certificate of occupancy is issued.

(Code 1987, ch. 11, subch. G, art. XV, § 6; Code 1995, § 14.02.856; Ord. No. 2009-05-07B, § 9, 5-7-2009)

### **Sec. 101-98. Expiration of building permits.**

Except as otherwise provided under this section, a building permit authorizing the construction or alteration of a building or structure in the residential district expires 365 days following the date of its issuance and a building permit authorizing the construction or alteration of a building or structure in a C-1 district, C-2 district, GI district or PUD district expires 365 days following the date of its issuance. If a project is found by the building official to be in compliance with this division, work may be continued into a 15-day grace period following the expiration of the permit period.

(Code 1987, ch. 11, subch. G, art. XV, § 7; Code 1995, § 14.02.857)

### **Sec. 101-99. Building permit renewals.**

- (a) Upon expiration of a building permit, the permittee may, within 15 days of the date upon which the permit expired, apply for a renewal of the permit. The application shall be in a form prescribed by the building official, and shall state the permittee's reason for failing to complete the work authorized under the permit within the prescribed time. The application shall be accompanied by a check in the amount of the permit renewal fee established in the fee schedule on file with the city.
- (b) The building official shall evaluate the application for a building permit renewal on the basis of the following factors:

- (1) The applicant's diligence in attempting to complete the project;
  - (2) The applicant's compliance with the city's building code and applicable ordinances, and his compliance with agreements with the city for the benefit of the city or neighborhood groups; and
  - (3) The applicant's demonstrated willingness to progress toward timely completion of the work that would be authorized under the permit renewal.
- (c) Upon finding reasonable justification for issuing a building permit renewal, the building official shall issue the permit. The building official may issue additional permit renewals to the applicant if:
- (1) The applicant applies for each permit renewal within 15 days following the date of expiration of the preceding permit renewal;
  - (2) The applicant files a permit renewal application and pays a permit renewal fee; and
  - (3) The building official, upon completing the evaluation required under this section, finds reasonable justification for issuing a permit renewal.
- (d) Upon finding no reasonable justification for issuing a building permit renewal, the building official shall deny such permit renewal.

(Code 1987, ch. 11, subch. G, art. XV, § 8; Code 1995, § 14.02.858; Ord. No. 2017-01-18, 1-18-2017)

#### **Sec. 101-100. City council action on building permit renewals.**

- (a) Upon request of an applicant, the city council shall consider and act upon an application for a building permit renewal when:
- (1) A building permit has been revoked pursuant to section 101-101;
  - (2) The building official, pursuant to section 101-99, disapproves an application for a building permit renewal; or
  - (3) An applicant has failed to apply for a building permit renewal within 15 days of the expiration date of a building permit or a building permit renewal.
- (b) Any person who received a new building permit or a permit renewal pursuant to the provisions of this section shall pay such fee as shall be established by the city council from time to time.

(Code 1987, ch. 11, subch. G, art. XV, § 9; Code 1995, § 14.02.859; Ord. No. 2009-05-07B, § 10, 5-7-2009)

#### **Sec. 101-101. Revocation of building permits.**

- (a) Whenever work is being performed in violation of the requirements of the city's building code or site plan filed with the city, the building official shall give written notice to the person performing or causing work to be performed, directing such person to show cause why the building permit authorizing the work should not be revoked.
- (b) Any person served with notice may, within five days after service, show cause to the building official why the building permit should not be revoked. If the person fails to show good cause, the building official shall revoke the building permit and give written notice of the revocation to the person.
- (c) A building permit revocation order shall be posted upon the building or structure where work is being performed.

- (d) The show-cause procedure provided under this section may be waived by the building official when the building official finds that the work being performed in violation of the city's building code could cause imminent peril to life or property.

(Code 1995, § 14.02.869; Ord. No. 2017-01-18, 1-18-2017)

**Secs. 101-102—101-130. Reserved.**

*DIVISION 3. CERTIFICATE OF OCCUPANCY*

**Sec. 101-131. Certificate of occupancy required.**

- (a) It is unlawful to use, occupy, or permit the use or occupancy of any land, building or structure, or part thereof, constructed, altered or moved, until a certificate of occupancy has been issued by the building official stating that the premises and the proposed use of the premises comply with the requirements of this division. The building official shall provide a duplicate original of the signed certificate of occupancy to the property owner.
- (b) No nonconforming building, structure or use shall be maintained, renewed, changed or extended, nor shall a permanent water, electrical or gas utility connection be made to any land, building or structure, until a certificate of occupancy has been issued by the building official.

(Code 1987, ch. 11, subch. G, art. XV, § 10; Code 1995, § 14.02.860)

**Sec. 101-132. Application for certificate of occupancy.**

An application for a certificate of occupancy shall be made on a form prescribed by the building official and filed together with the application for a building permit.

(Code 1987, ch. 11, subch. G, art. XV, § 11; Code 1995, § 14.02.861)

**Sec. 101-133. Certificate of occupancy approval/disapproval.**

- (a) The building official shall issue a certificate of occupancy within ten days after the later to occur of the date the building official has determined that the land, building or structure conforms to the requirements of this division or the date the building official has been notified in writing and determined that all construction materials and construction equipment have been removed from the premises, and the land, building or structure is ready for occupancy.
- (b) If the building official finds that the land, building or structure does not conform to the requirements of this division, the building official shall notify the applicant in writing of the specific reasons for such disapproval.
- (c) If the building official finds that the land, building or structure does not conform to the requirements of this division, he shall disapprove the application and notify the applicant, in writing, of the specific reasons for such disapproval.

(Code 1987, ch. 11, subch. G, art. XV, § 12; Code 1995, § 14.02.862)

### **Sec. 101-134. Temporary certificates of occupancy.**

The building official may issue a temporary certificate of occupancy, pending completion of the construction or alteration of any building or structure. A temporary certificate of occupancy is valid for not more than 180 days following its issuance, and may not be renewed. A temporary certificate of occupancy shall not be construed to alter the duty or obligation of any person with respect to the use or occupancy of land, buildings or structures covered under this division.

(Code 1987, ch. 11, subch. G, art. XV, § 13; Code 1995, § 14.02.863)

### **Sec. 101-135. Occupancy permit records.**

The building official shall maintain a record of all occupancy permits, both approved and disapproved. Copies of certificates of occupancy in the custody of the building official shall be furnished upon request to any person having a proprietary or tenancy interest in the particular land, building or structure. No fee shall be charged for an original certificate; a fee shall be charged for each copy of an original certificate as established in the fee schedule on file with the city.

(Code 1987, ch. 11, subch. G, art. XV, § 14; Code 1995, § 14.02.864)

### **Secs. 101-136—101-153. Reserved.**

## ***ARTICLE IV. UNSAFE BUILDINGS***

### **Sec. 101-154. 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:

*Responsible party* means the owner, occupant or person in custody of the building or structure.

*Unsafe building* means any building or structure in or about which any or all of the following conditions exist:

- (1) Walls or other vertical structural members list, lean, or buckle;
- (2) Damage or deterioration exists to the extent that the building is unsafe;
- (3) Loads on floors or roofs are improperly distributed or the floors or roofs are of insufficient strength to be reasonably safe for the purposes used;
- (4) Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city;
- (5) The building or structure is so dilapidated, substandard, decayed, unsafe, unsanitary, or otherwise lacking in the amenities essential to decent living that the same is unfit for human habitation or is likely to cause sickness, disease or injury or otherwise to constitute a detriment to the health, morals, safety, or general welfare of those persons assembled, working, or living therein or is a hazard to the public health, safety and welfare;
- (6) Light, air, and sanitation facilities are inadequate to protect the health, morals, safety, or general welfare of persons who assemble, work, or live therein;
- (7) Stairways, fire escapes, and other facilities of egress in case of fire or panic are inadequate; or



- (8) Parts or appendages of the building or structure are so attached that they are likely to fall and injure persons or property.

(Code 1987, ch. 5, subch. H, § 1; Code 1995, § 3.03.001)

### **Sec. 101-155. Unsafe building prohibited; declared nuisance.**

- (a) It is unlawful for any person to maintain or permit the existence of any unsafe building in the city, and it is unlawful for any person to permit same to remain in such condition. All unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this article.
- (b) A building is unsafe if a condition renders the building or structure unsafe, unsanitary, or otherwise detrimental to the health, safety, morals, or welfare of the people of the city.

(Code 1987, ch. 5, subch. H, § 2; Code 1995, § 3.03.002)

### **Sec. 101-156. Applicability to preexisting structures.**

A responsible party may continue to use and occupy any building located within the city, regardless of the date the building was constructed, if such building meets the applicable minimum standards for buildings prescribed in this Code and is not in violation of this article.

(Code 1987, ch. 5, subch. H, § 1; Code 1995, § 3.03.001)

### **Sec. 101-157. Inspections.**

The building official shall inspect, or cause to be inspected, every building, or portion thereof, reported to be unsafe. If such building, or any portion thereof, is determined to be unsafe, the building official shall give the responsible party notice in accordance with the requirements set forth in sections 101-158 and 101-159.

(Code 1987, ch. 5, subch. H, § 3; Code 1995, § 3.03.003)

### **Sec. 101-158. Notice requirements.**

Whenever the building official determines that a building is unsafe, he shall give notice of such determination to the responsible party. Such notice shall:

- (1) Be in writing;
- (2) Identify the specific conditions upon which such determination was based;
- (3) Specify the corrective measures required;
- (4) Provide a reasonable time for compliance;
- (5) Advise the responsible party that there will be conducted a public hearing before the city council to determine whether a building complies with the standards set out in section 101-155(a) and (b). Said notice shall inform the responsible party of the date, time and place of the hearing; and
- (6) Be served upon the responsible party as set out in this article.

(Code 1987, ch. 5, subch. H, § 4; Code 1995, § 3.03.004)

**Sec. 101-159. Sufficiency of notice.**

Notice given pursuant to this article shall be deemed properly served upon the responsible party if a copy thereof is served:

- (1) By personal delivery, by certified mail with return receipt requested, or by delivery by the U.S. Postal Service using signature confirmation service, to the record owners of the affected property, and each holder, etc.; and
- (2) To all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable

(Code 1995, § 3.03.005)

**Sec. 101-160. Public hearing.**

- (a) The purpose of the public hearing is to determine whether or not the building is unsafe in accordance with the standards set forth in section 101-155(a) and (b).
- (b) The matter shall be set for hearing before the city council at the earliest practicable date and notice of the hearing shall be served on the responsible party and the building official not less than ten days prior to date of the hearing. All interested persons shall have the opportunity to be heard and may introduce evidence to the city council for its members' consideration.
- (c) After the public hearing, the city council shall make such findings and orders as it shall deem appropriate.
- (d) After the public hearing, if a building is found in violation of standards set out in section 101-155(a) and (b), the city council may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time. The city council also may order that the occupants be relocated within a reasonable time. If the responsible party does not take the ordered action within the allotted time, the city council shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or in the property on which the building is located. The city secretary shall send to each identified mortgagee and lienholder a notice containing:
  - (1) An identification and address of the building and the property on which it is located;
  - (2) A description of the violation of this Code that is present at the building; and
  - (3) A statement that the municipality 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.
- (e) As an alternative to the procedure prescribed by subsection (d) of this section, the city council shall make a diligent effort to discover each mortgagee and lienholder before conducting the public hearing and shall give them a notice of and an opportunity to comment at the hearing. If the city proceeds under this subsection, the order issued by the city council shall specify a reasonable time for the building to be vacated, secured, repaired, removed, or demolished by the responsible party or for the occupants to be relocated by the responsible party and an additional reasonable time for the ordered action to be taken by any of the mortgagees or lienholders in the event the responsible party fails to comply with the order within the time provided for action by the responsible party. Under this subsection, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the responsible party fails to timely take the ordered action.
- (f) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated, within the allotted time, the city may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

- (g) If the city incurs expenses under subsection (f) 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 or is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses. The lien arises and attaches to the property at the time the notice of the lien is 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.
- (h) If the notice is given and the opportunity to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by subsections (d) or (e) of this section, the lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the city's lien attaches.

(Code 1987, ch. 5, subch. H, § 6; Code 1995, § 3.03.006)

### **Sec. 101-161. Assessment of expenses and penalties.**

- (a) If the city council has held a hearing pursuant to section 101-160(b) and the time allotted for the repair, removal or demolition of a building under section 101-160(d) or 101-160(e) has expired, then the city council may, in addition to the authority granted under V.T.C.A., Local Government Code § 214.001, and section 101-160:
  - (1) Order the repair of the building at the city's expense and assess the expenses on the land on which the building stands or to which it is attached; or
  - (2) Assess a civil penalty against the responsible party for failure to repair, remove, or demolish the building.

The city's building official shall invite at least two or more building contractors to make estimates pertaining to the needed repair, removal or demolition of a building. The building official shall cause to be made an assessment of expenses or civil penalty based on such estimates. The building official shall endeavor to minimize the expenses of any building repairs, removal or demolition ordered pursuant to this article.

- (b) The city may repair a building under subsection (a) of this section only to the extent necessary to bring the building into compliance with the minimum standards of the city and only if the building is a residential building with ten or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum standards prescribed by the city.
- (c) The city shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the state constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the city shall file for record, in recordable form in the office of the county clerk, a written notice of the imposition of the lien. The notice shall contain a legal description of the land.
- (d) Except as provided by section 101-160, the city's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the city's lien attaches if the mortgage lien was filed for record in the office of the county clerk before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the city. The city's lien is superior to all other previously recorded judgment liens.
- (e) Any civil penalty or other assessment imposed under this section accrues interest at the rate of ten percent per year from the date of the assessment until paid in full.

- (f) In any judicial proceeding regarding enforcement of municipalities under this section, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.
  - (g) A lien acquired under this section by the city for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.
- (Code 1987, ch. 5, subch. H, § 7; Code 1995, § 3.03.007)

#### **Sec. 101-162. Posting of warnings.**

- (a) In the event the city council makes a determination after the public hearing that the building is deemed to be an unsafe building, the building official shall cause to be posted at each entrance to such building a notice to read:  
  
DANGEROUS, DO NOT ENTER, UNSAFE TO OCCUPY, Building Official of the City of Rollingwood.
- (b) Such notice shall remain posted until required repairs, demolition, or removal is completed and such premises have been rendered safe. Such notice shall not be removed without written permission of the building official, and no person shall enter the building except for making inspections or required repairs or to demolish such building.

(Code 1987, ch. 5, subch. H, § 8; Code 1995, § 3.03.008)

#### **Secs. 101-163—101-192. Reserved.**

### ***ARTICLE V. ANTENNAS***

#### ***DIVISION 1. GENERALLY***

#### **Sec. 101-193. 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:

*Antenna* means the arrangement of wires or metal rods used for sending or receiving electromagnetic waves.

*Antenna height* means the overall vertical length of an antenna support structure abovegrade, or, if such system is located on a building, then the overall vertical length includes the height of the building upon which the structure is mounted.

*Antenna support structure* means any structure, mast, pole, tripod, or tower utilized for the purpose of supporting an antenna or antennas for the purpose of transmission or reception of electromagnetic waves by federally licensed amateur radio or citizens band radio operators.

*Grade* means the native natural ground surface of the land upon which is placed the base or foundation of the antenna support structure.

(Code 1987, ch. 5, subch. J, § 1; Code 1995, § 3.07.001)

**Sec. 101-194. Commercial radio and television antennas; television dish antennas.**

- (a) Nothing herein shall authorize the erection of television or commercial radio antennas in violation of the terms of existing Code provisions.
- (b) Television dish antennas are permitted within the city, provided that:
  - (1) The foundations for such antennas are affixed to the ground;
  - (2) Such antennas do not exceed 12 feet in diameter; and
  - (3) Such antennas are located within setback lines, are painted earth tone colors to blend in with existing natural landscapes, and are not visible from any public street.

(Code 1987, ch. 5, subch. J, § 9; Code 1995, § 3.07.002)

**Secs. 101-195—101-211. Reserved.***DIVISION 2. AMATEUR RADIO ANTENNAS***Sec. 101-212. Permit required; exceptions.**

- (a) It is unlawful for any person to install, construct or increase the height of any antenna support structure without first obtaining a building permit, except that no permit shall be required:
  - (1) For any antenna support structure which is less than 12 feet in height (excluding the height of any building to which the antenna support structure is attached); or
  - (2) For any installation which is erected on the ground and is less than 30 feet in height.
- (b) Antenna permits provided for herein shall be issued only for the purpose of allowing the erection of radio antennas to facilitate the activities of amateur radio communications conducted in accordance with the Federal Communications Commission's rules and regulations.

(Code 1987, ch. 5, subch. J, § 2; Code 1995, § 3.07.041)

**Sec. 101-213. Application for permit.**

An application for a building permit required in section 101-212 shall be made upon a form prescribed by the building official and shall have attached thereto the following items:

- (1) A location plan for the antenna support structure;
- (2) Manufacturer's specifications for the antenna support structure and details of footings, guys and braces. In cases where the manufacturer's specifications and drawings are unavailable, detailed sketches may be substituted to show pertinent structural details;
- (3) A copy of the applicant's homeowner's liability or renter's insurance policy showing a minimum of \$200,000.00 general liability insurance coverage;
- (4) A permit fee as specified in the fee schedule on file with the city; and
- (5) A copy of the applicant's amateur radio operator's license issued by the federal communications commission.

(Code 1987, ch. 5, subch. J, § 3; Code 1995, § 3.07.042)

#### **Sec. 101-214. Height limitation.**

No antenna support structure shall be installed, constructed, or increased to exceed 70 feet abovegrade. In no event shall the antenna support structure together with the length of the antenna exceed the height of 80 feet above grade.

(Code 1987, ch. 5, subch. J, § 4; Code 1995, § 3.07.043)

#### **Sec. 101-215. Location on property.**

The base of the antenna support structure shall be in compliance with all setback requirements of chapter 107 and shall not be closer than one foot to an easement. Beam (array) type of antennas shall not extend closer than five feet to an official right-of-way line or closer than one foot to an easement. In no case shall any part of an antenna structure, antenna component or element protrude over adjoining property without written permission of the adjoining property owner. No antenna shall protrude over the public right-of-way (mobile and handheld antennas excluded). The base of ground-mounted antenna structures shall not be located in the front yard, and on corner lots such antenna structures shall not be on the side yard of the applicant's lot.

(Code 1987, ch. 5, subch. J, § 5; Code 1995, § 3.07.044)

#### **Sec. 101-216. Construction requirements.**

- (a) *Materials generally; mounting.* Antenna support structures shall be constructed of the following materials: aluminum, galvanized steel, or equally weather-resistant steel. All ground-mounted antenna support structures exceeding 35 feet in height shall be mounted or securely affixed to a concrete base, and erected in such a manner so as to be able to withstand a wind velocity of 80 miles per hour (impact pressure of 25 pounds per square foot).
- (b) *Steel and tubing.* The thickness of steel used in nontubular antenna support structures shall be not less than one-eighth inch when galvanized. If not galvanized, steel shall be not less than one-fourth inch in thickness when used structurally. Where antenna support structures are constructed of tubing, the minimum wall thickness of the tubing shall be not less than one-sixteenth inch, and such tubing, if steel, shall be galvanized on the exterior.

(Code 1987, ch. 5, subch. J, § 6; Code 1995, § 3.07.045)

#### **Sec. 101-217. Electrical regulations; grounding; clearance from electrical wires.**

- (a) All antenna installations shall conform to the requirements of the National Electrical Code and FCC regulations governing amateur radio services. The installation shall maintain a minimum of eight feet clearance from:
  - (1) Power lines over 250 volts; and
  - (2) All high voltage primary lines, including the beam elements or any part thereof.
- (b) All antenna support structures, whether ground or roof mounted, shall be grounded in accordance with the provisions of the National Electrical Code. Ground-mounted towers shall consist of a minimum of one ground rod at least five-eighths inch in diameter and eight feet in length. Where specific conditions do not support the installation of a single rod of this length, multiple shorter rods may be located about the periphery of the

base. The grounding system will be joined to the support structure with a ground conductor which shall be a minimum of #10 gauge copper or equivalent. In no case shall the ground conductor or rod be poured in a structural concrete base.

(Code 1987, ch. 5, subch. J, § 7; Code 1995, § 3.07.046)

### **Sec. 101-218. Applicability to existing structures.**

This division shall not affect any existing antenna support structure, utilized by federally licensed amateur radio operators, which has been constructed and which is in place prior to the date of the passage of this division; provided, however, that such antenna support structures must comply with the grounding requirements of section 101-217(b); and further provided that owners of existing antenna support structures submit to the building department, within 90 days of the date of this division, the documentation required by section 101-213, less the required fee.

(Code 1987, ch. 5, subch. J, § 8; Code 1995, § 3.07.047)

### **Secs. 101-219—101-244. Reserved.**

## **ARTICLE VI. MANNER OF CONDUCTING CONSTRUCTION RESTRICTED**

### **Sec. 101-245. Copy of plans and specifications to be kept at job site.**

A set of plans and specifications, stamped or otherwise marked as approved by the building official, shall be kept on the job site at all times. No change or alteration shall be made in any plans or specifications without approval of the building official or his designee. The building official's approval of any plans or specifications shall not be held to permit or approve a violation of any city ordinance or state law.

(Code 1987, ch. 11, subch. A, § 10; Code 1995, § 3.02.010)

### **Sec. 101-246. Job trailer use on construction site.**

During construction or remodeling of a building in the city, a job trailer may be located on the lot. A valid building permit must be in force before the job trailer is delivered. The job trailer may be removed at any time but must be removed within ten days of the expiration of the building permit. A job trailer may not exceed ten feet in height nor 120 square feet in area.

(Code 1995, § 14.02.129)

### **Sec. 101-247. Conduct of construction restricted.**

- (a) *Declaration of nuisances.* Except as permitted or excepted from regulation pursuant to this section, construction and demolition activities, and the use and maintenance of portable toilets and receptacles described in this section are hereby declared to be a nuisance.
- (b) *Prohibited days and hours/signage.* Except as provided in subsection (f) of this section, construction or demolition activities shall not be permitted on weekends or city holidays, or between the hours of 7:00 p.m. and the following 7:00 a.m. on weekdays. Except in connection with activity excepted by subsection (f) of this section, the building permit holder shall post on the affected site a sign prescribed by the building official or

other designee of the city council site providing notice of the restrictions provided in this subsection. At the permit holder's election, the building official may provide the prescribed sign to be posted and may charge a reasonable fee therefor, based on the cost of production to the city, to be added to the building permit fee.

- (c) *Prohibited receptacles.* The location or maintenance of the following receptacles on any part of a property that is visible from a public street or another property is prohibited unless expressly allowed pursuant to subsection (e) of this section:
  - (1) Any movable receptacle (other than a permitted storage shed or other outbuilding) commonly used or actually used for storage of materials or personal property, such as receptacles used for moving and temporarily storing furnishings and personal property in connection with a move of residency or temporary vacation of a residence during a renovation project; and
  - (2) Any movable receptacle commonly or actually used for disposal or storage of construction waste, such as roll-off containers and dumpsters.
- (d) *Prohibited portable toilets.* The location or maintenance of a portable toilet on any property is prohibited unless expressly allowed pursuant to subsection (e) of this section.
- (e) *Exceptions applicable to prohibited receptacles and portable toilets.* A receptacle or portable toilet is permitted:
  - (1) During the pendency of a building permit affecting the property but not longer than a period of ten days after active and progressing construction work pursuant to such building permit for such property ceases. Construction work shall be deemed not to be active and progressing if such work ceases or no substantial progress is made for more than four consecutive weeks; and
  - (2) During the pendency, not to exceed 90 days, of construction, renovation or landscaping activity for which no building permit is required pursuant to the terms of this Code, if the owner of the affected property first submits a registration to the city secretary on a form promulgated by the building official indicating the nature of the work and the number of receptacles or portable toilets to be used and the commencement date for their use.
- (f) *Exceptions to prohibited days and hours of construction and demolition.*
  - (1) *Minor construction.* Minor construction and demolition activities include maintenance and repair work normally associated with home or business ownership and occupancy, landscaping, mowing, fencing, or painting, provided that no such activity creates a nuisance condition related to noise, traffic, odor, dust, or other conditions and is not in violation of any other city ordinance.
  - (2) *Interior construction activities.* Between the hours of 10:00 a.m. and 4:00 p.m. on Saturdays, interior construction activities are permitted provided the activities:
    - a. Take place wholly within a dried-in structure (i.e., for which exterior veneer and roof are substantially complete);
    - b. Do not require large equipment such as cement trucks, dozers, cranes or dump trucks;
    - c. Do not create a nuisance condition related to noise, traffic, odor, dust, or other conditions and are not in violation of any other city ordinance.
  - (3) *Emergency work or work on public utilities.* Emergency work or work on public service utilities or work in the interest of public safety, as may be approved by the city administrator or his designee, is permitted.
- (g) *Variance.* The city council is authorized, upon written application, to grant a variance from the requirements of this section as will not be contrary to the public interest, where, due to special conditions or circumstances, literal enforcement of the requirements of this section will result in unnecessary hardship, or



a variance therefrom will result a diminished inconvenience to the public and occupants of surrounding properties, and so that the spirit of this section shall be observed and substantial justice done. The city council must be satisfied that the grant of the variance will not merely serve as a convenience to the applicant but will serve to alleviate some demonstrable and unusual hardship or difficulty or will result in a tangible diminishment of inconvenience to the public and occupants of surrounding properties.

- (h) *Enforcement.* If the building official or the police department determines that there is a violation of this section, such building official or police officer may issue a ticket or citation.
- (i) *Penal.* A violation of this section shall constitute a class C misdemeanor that, upon conviction, may result in a fine not exceeding \$500.00 per violation. Each day that such violation continues shall constitute a separate offense.

(Code 1995, § 3.01.001; Ord. No. 2013-03-20, 3-20-2013; Ord. No. 2014-05-21(C), 5-21-2014; Ord. No. 2016-05-18(A), § 2, 5-18-2016; Ord. No. 2019-12-18-29 , § 1, 12-18-2019)

### **Sec. 101-248. Nonconformity arising from dedication of right-of-way for Bee Cave Road.**

- (a) *Continuation of existing use, structure, or lot.* A lawful use, building, structure, or lot existing prior to a dedication of right-of-way that is rendered nonconforming due to a voluntary dedication of right-of-way for Bee Cave Road may be continued after the dedication as if the dedication had not occurred.
- (b) *Completion of approved development.* A proposed use, building, structure, or lot for which a preliminary plat, building permit, site plan, certificate of occupancy or other similar application for development approval was approved prior to a voluntary dedication of right-of-way for Bee Cave Road may be completed in accordance with the approved plan or application as if the dedication had not occurred.
- (c) *Calculation of impervious cover.* If a property owner voluntarily dedicates right-of-way for Bee Cave Road, the property owner will be entitled to calculate impervious cover based upon the property owned prior to the dedication, as if the dedication had not occurred.
- (d) *Adjustment of setbacks, parking requirements, etc.* If a property owner voluntarily dedicates right-of-way for Bee Cave Road, the property owner will be entitled to reduced setbacks and reduced parking requirements and other adjustments approved by the city council in order, to the extent possible, to place the property owner in the same position as if the dedication had not occurred. These reduced setbacks, parking requirements and other adjustments may be approved by the city council upon a finding that they are necessary in order to place the property owner in the same position as if the dedication had not occurred.
- (e) *Repair or reconstruction.* If a building or structure rendered nonconforming due to voluntary dedication of right-of-way for Bee Cave Road is destroyed by fire or other means, the owner may repair or reconstruct the building or structure regardless of the extent of the damage, but may not increase the degree of nonconformity beyond that existing immediately prior to the destruction. The owner must obtain a building permit before initiating repair or reconstruction.
- (f) *Conflicting regulations.* In the event of a conflict between this section and any other provision of chapters 105, 107 or this chapter, this section will control to the extent of the conflict.
- (g) *Applicability.* This section will only apply to right-of-way necessary for the widening of Bee Cave Road (RM 2244) and which is accepted by the city and the state department of transportation.

(Code 1987, ch. 11, subch. I, §§ 1—7; Code 1995, § 3.01.002)

**Sec. 101-249. Designated routes for construction vehicles.**

- (a) At the time of issuance of a building permit, the building official or other designee authorized by the city council shall prescribe in writing the routes on streets or parts of streets in the city to be used by all regulated vehicles in connection with the improvement of property authorized by such building permit, which written prescription shall constitute a term of the building permit. The building official or authorized designee shall determine the streets to be used based on the condition of affected streets, the minimization of traffic congestion, other anticipated or regular uses of city streets, and the efficiency and convenience of travel to and from the worksite.
- (b) As used in this section, the term "regulated vehicles" means:
  - (1) Commercial motor vehicles, semitrailers, and trailers as those terms are defined in V.T.C.A., Transportation Code § 621.001;
  - (2) Ready-mixed concrete trucks as defined in V.T.C.A., Transportation Code § 622.011; and
  - (3) Any heavy construction vehicles (including, but not limited to, tractors, dump trucks, graders, bulldozers, and container trucks for removal of fill or rock), and vehicles used to transport heavy equipment, such as drilling and other vehicular equipment. The term "regulated vehicles" shall not include passenger cars or pickup trucks.
- (c) At or before the time of issuance of a building permit, the applicant shall submit a written designation of responsible person for overseeing compliance with routes of travel designated pursuant to this section (the "designated responsible person"). Such designation shall be signed by the designated responsible person (which person may be an agent of the applicant's contractor, architect or other person overseeing the construction work). The designated responsible person shall be responsible to ensure compliance with the designated routes by all regulated vehicles performing work or providing materials or equipment in connection with the improvement of property pursuant to the building permit.
- (d) A designated responsible person commits an offense if any regulated vehicle performing services or delivering materials or equipment in connection with the building permit travels to or from the site on a street in the city that is not part of a route authorized by the building official or authorized designee. The building official or any peace officer of the city may issue a ticket or citation to the permit holder for a violation of this section.
- (e) A violation of this section shall constitute a class C misdemeanor that, upon conviction, may result in a fine not exceeding \$500.00 per violation. Each day that such violation continues shall constitute a separate offense.
- (f) Signage alerting the public to the restriction on regulated vehicles may be installed in such locations determined by the police chief and director of public works in consultation with the mayor.

(Code 1995, § 3.01.003; Ord. No. 2017-04-19(A), 4-19-2017)

**Sec. 101-250. Storage of dirt, gravel and other pervious materials.**

The holder of a building permit, or the owner of a property for projects where permit is not required, shall enclose with a silt fence or securely cover with a water-resistant tarp or other material any dirt, fill, gravel or other pervious material stored on the site for a period in excess of eight hours. All landscaping by which soil disruption may, in the building official's discretion, result in unreasonable silt discharge off the subject property is required to be enclosed by silt fencing or similar protection for the project duration and until sod, turf, or other site stabilizing material has been installed.

(Code 1995, § 3.01.004; Ord. No. 2016-05-18(A), 5-18-2016; Ord. No. 2018-08-15 , § 2, 8-15-2018; Ord. No. 2021-10-20-05 , § 2, 10-20-2021)

### **Sec. 101-251. Designation of responsible person for compliance.**

- (a) When an applicant for a building permit is a corporation, partnership, limited liability company, or other entity, the applicant shall include in its application for a building permit a written designation of the responsible person for overseeing compliance with applicable regulations and terms and conditions of the building permit throughout the construction of the improvements authorized by the building permit. Such designation shall be signed by the designated responsible person (which person may be an agent of the applicant's contractor, architect or other person overseeing the construction work). The designated responsible person shall be responsible to ensure compliance with applicable regulations in connection with the improvement of property pursuant to the building permit.
- (b) A holder of a building permit may, subject to approval by the building official, substitute another person for the designated responsible person. In reviewing a proposed substitution, the building official shall consider whether the proposed substituted person is an owner of the affected property or a person directly and materially involved in overseeing the completion of the improvements pursuant to the building permit. A designation of a substituted responsible person shall be signed by the substituted responsible person and by an authorized agent of the permit holder.
- (c) A designated responsible person commits an offense if, in connection with the construction of improvements pursuant to the building permit, a violation of a regulation provided in chapters 101 and 107. Such offense shall be punishable by fine as provided in this Code for the applicable violation. Each day that such a violation continues shall constitute a separate offense. Nothing in this subsection (c) of this section shall be construed to relieve any other person, including a building permit holder, of responsibility or culpability for an offense occurring in connection with the construction of improvements pursuant to a building permit.

(Ord. No. 2018-08-15 , § 1, 8-15-2018; Ord. No. 2018-09-19(B) , § 1, 9-19-2018)

### **Sec. 101-252. Storage of job site materials and equipment.**

Building materials and equipment may only be stored on the property and within view of the public or an adjoining property as long as the building permit has not expired and construction work is active and progressing. If active construction work ceases or no substantial progress is made for more than four consecutive weeks, all building materials and equipment stored on the property must be removed from the property within ten days after the end of such four-week period. The penalty for violating this subsection may not exceed \$100.00 per day that the materials or equipment remain on the property.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(d); Ord. No. 2017-01-18, 1-18-2017)

### **Sec. 101-253. Construction sites to be kept clean.**

- (a) All construction sites must be kept clean. Trash and debris associated with any construction may not be allowed to migrate to other lots, properties, or rights-of-way. Each construction site or lot must have a solid-sided trash container of sufficient size to contain the trash and debris generated on the site. The trash container must be located on the site, unless otherwise allowed in writing by the city. The trash in the container must be removed and properly disposed of without allowing the container to be overfilled. All trash or debris that drifts or spills onto the site, other lots, properties or rights-of-way must be picked up and securely placed in the trash container or otherwise properly disposed of on a daily basis.

- (b) All building materials, equipment and fill must be stored and accessed from staging areas that are clearly marked on the site plan. These areas shall be designated in places on the lot that are outside the canopy and drip zone of existing trees that are six inches in diameter and greater. If compliance with this requirement is not possible due to the location or size of trees on the property or the size or configuration of the property, the building official will designate the staging areas on the property.
- (c) At least 24 hours prior to commencement of any properly permitted demolition and new construction or construction in which the footprint of an existing building or structure on a property or the roof plan of an existing building or structure on a property will increase, the permit holder shall post a notice of permit, in a form prescribed by the city, in a location five feet behind the curb on the subject property. Such notice of permit shall remain in place until completion of the permitted demolition or construction. Such notice of permit shall be provided, as a courtesy only, in an effort to promote good will and an understanding of activity in the neighborhood.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(e)—(g); Ord. No. 2017-01-18, 1-18-2017)

#### **Sec. 101-254. Citations to be reported to contractor; effect of multiple violations.**

Citations issued to professional contractors or subcontractors for violations of this provision will be reported to the general contractor responsible for the worksite. If a general contractor receives more than three citations on different calendar days, or two on the same day, for violations of this provision in any 90-day period, the city council may direct the building official to refrain from issuing any additional building permits to such general contractor or to the person for whom the contractor is working for a period of up to 180 days.

(Code 1987, ch. 11, subch. G, art. XV, § 2; Code 1995, § 14.02.852(j); Ord. No. 2017-01-18, 1-18-2017)

Link to Comprehensive Plan:

<https://www.rollingwoodtx.gov/planning-development/page/comprehensive-plan-0>