SUPPLEMENT NO. 11
July 2014

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 833, enacted June 24, 2014.

See the Code Comparative Table for further information.

Remove Old Pages	*Insert New Pages*
xv, xvi	xv, xvi
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
SH:1, SH:2	SH:1, SH:2
CD2:1—CD2:4.1	CD2:1—CD2:4.1
CD10:23, CD10:24	CD10:23, CD10:24
CD34:1, CD34:2	CD34:1, CD34:2
CD34:31, CD34:32	CD34:31—CD34:33
CCT:7	CCT:7, CCT:8
CDi:4.1—CDi:10	CDi:5—CDi:10.1

Insert and maintain this instruction sheet in front of this publication. File removed pages for reference.

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SUPPLEMENT NO. 10
June 2014

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 830, enacted June 3, 2014.

See the Code Comparative Table for further information.

Remove Old Pages	*Insert New Pages*
Title page	Title page
xiii—xvi	xiii—xvi
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
SH:1	SH:1, SH:2
CD11:1	CD11:1—CD11:5
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CD44:15—CD44:18.3	CD44:15—CD44:18.3
CCT:7	CCT:7
SLT:1—SLT:4	SLT:1—SLT:4
CDi:1—CDi:4.1	CDi:1—CDi:4.1
CDi:7—CDi:10	CDi:7—CDi:10

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SUPPLEMENT NO. 9
June 2013

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 808, enacted January 22, 2013.

See the Code Comparative Table for further information.

Remove Old Pages	*Insert New Pages*
xiii—xvi	xiii—xvi
Checklist of Up-to-Date Pages	Checklist of Up-to-Date Pages (following Table of Contents)
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SUPPLEMENT NO. 8
July 2012

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 798, enacted May 22, 2012.

See the Code Comparative Table for further information.

Remove Old Pages	*Insert New Pages*
xv, xvi	xv, xvi
Checklist of Up-to-Date Pages	Checklist of Up-to-Date Pages (following Table of Contents)
SH:1	SH:1
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SUPPLEMENT NO. 7
May 2012

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 794, enacted March 27, 2012.

See the Code Comparative Table for further information.

Remove Old Pages	*Insert New Pages*
xiii—xvi	xiii—xvi
Checklist of Up-to-Date Pages	Checklist of Up-to-Date Pages (following Table of Contents)
SH:1	SH:1
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SUPPLEMENT NO. 6
April 2011

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 768, enacted February 22, 2011.

See the Code Comparative Table—Ordinances for further information.

Remove Old Pages	*Insert New Pages*
xiii—xvi	xiii—xvi
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents) SH:1(following checklist of up-to-date pages)
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SUPPLEMENT NO. 5
April 2010

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 750, enacted December 8, 2009.

See the Code Comparative Table—Ordinances for further information.

Remove old pages	*Insert new pages*
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
CD18:5—CD18:10	CD18:5—CD18:10.1
CCT:7	CCT:7

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SUPPLEMENT NO. 4
August 2009

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 744, enacted July 28, 2009.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
CD6:3—CD6:10	CD6:3—CD6:10
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SUPPLEMENT NO. 3
April 2009

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 740, enacted March 24, 2009.

See the Code Comparative Table—Ordinances for further information.

Remove old pages	*Insert new pages*
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Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
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SUPPLEMENT NO. 2
September 2008

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 722, enacted July 15, 3008.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
xiii, xiv	xiii, xiv
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
CD2:1, CD2:2	CD2:1, CD2:2
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CD44:13, CD44:14	CD44:13—CD44:14.1
CCT:5, CCT:6	CCT:5, CCT:6
SLT:3, SLT:4	SLT:3, SLT:4

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SUPPLEMENT NO. 1
March 2008

CODE OF ORDINANCES

City of

HUNTERS CREEK VILLAGE, TEXAS

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 711, enacted January 15, 2008.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
	xi, xii
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	Checklist of up-to-date pages (following Table of Contents)
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CD10:1—CD10:4	CD10:1—CD10:4.2
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CCT:5, CCT:6	CCT:5, CCT:6
CDi:1—CDi:13	CDi:1—CDi:14

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CODE OF ORDINANCES

CITY OF

HUNTERS CREEK VILLAGE, TEXAS

Published in 2007 by Order of the City Council

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OFFICIALS

of the

CITY OF

HUNTERS CREEK VILLAGE, TEXAS

AT THE TIME OF THIS RECODIFICATION

J. Robert Dodson III
Mayor

Michael E. Cokinos
Peggy S. Burck
Art Casper
Roger N. Stark
David A. Wegner
City Council

Deborah L. Loesch
City Secretary

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Hunters Creek Village, Texas.

Source materials used in the preparation of the Code were the 2002 Code, as supplemented, and ordinances subsequently adopted by the City Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 2002 Code, as supplemented, and any ordinance included herein.

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

Chapter and Section Numbering System

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

Page Numbering System

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

Index

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

Looseleaf Supplements

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

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

Acknowledgments

This publication was under the direct supervision of Bill Carroll, Senior Code Attorney, and K. Barrington, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

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

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ments include, but are not limited to: organization; table of contents; section catchlines; prechapter section analyses; editor's notes; state law references; numbering system; code comparative table; state law reference table; and index. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the City of Hunters Creek Village, Texas.

ORDINANCE NO. 710

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE OF ORDINANCES FOR THE CITY OF HUNTERS CREEK VILLAGE, TEXAS; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED IN THE CODE; PROVIDING PENALTIES FOR VIOLATIONS OF THE CODE; PROVIDING FOR THE MANNER OF AMENDING THE CODE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT

* * * * *

WHEREAS, the City Council is authorized, under Section 53.001 of the Texas Local Government Code, to adopt by ordinance a codification of its civil and criminal ordinances, together with appropriate penalties for the violations of the ordinances; and

WHEREAS, the City Council believes it necessary and advisable to adopt a new Code of Ordinances for the City and to establish appropriate penalties for violations;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTERS CREEK VILLAGE, TEXAS:

Section 1. The printed volume entitled "Code of Ordinances, City of Hunters Creek Village, Texas", published by Municipal Code Corporation, consisting of chapters 1 through 44, each inclusive, and as corrected and on file in the office of the City Secretary (the "Code"), is adopted. The City Secretary shall endorse the first page of one copy of the Code on file with her office with the number of this Ordinance, its date of passage, and her name, and shall maintain that copy in the City's records without alteration.

Section 2. The previous codification adopted by Ordinance No. 603, as amended to date ("the Prior Code"), is repealed and replaced in its entirety by the new Code.

Section 3. The repeal provided for in section 2 is not intended to revive any ordinance, or part, that was repealed by: a) the ordinance enacting the Prior Code; or b) any subsequent ordinance that amended or added to the Prior Code.

Section 4. (a) Unless another penalty is expressly provided in the Code, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted under authority of the Code shall be punished by a fine. The maximum fines for single offenses are as follows:

(1) for violations of provisions that govern fire safety, zoning, or public health and sanitation, including dumping of refuse, the maximum fine shall not exceed two thousand dollars ($2,000.00) for each offense;

(2) for violations of traffic laws that are punishable as Class C misdemeanors the maximum fine shall not exceed two hundred dollars ($200.00); and

(3) for violations of all other provisions, the maximum fine shall not exceed the lesser of five hundred dollars ($500.00); or, where the same or similar offence is defined under state law, the maximum penalty provided by state law.

Each act of violation, and each day upon which a violation shall continue or occur, shall constitute a separate offense punishable by a separate fine.

The provisions of this section governing penalties for violations of the Code shall apply to any provisions of the Code that are amended or added in the future, unless such amendments or additions contain express provisions to the contrary, and it shall not be necessary to repeat the language of this section in future ordinances amending the Code.

Section 5. Any reference to the Code shall be deemed to include any amendments or additions to the Code. Future ordinances amending the Code should make specific reference, by chapter and section number, to the provisions of the Code that are to be amended.

Section 6. Any ordinance adopted after November 6, 2007 and prior to the effective date of this Ordinance adopting the Code shall be construed to amend, or refer to, the corresponding provision in the Code, if any.

Section 7. The City Secretary shall cause a copy of this Ordinance to be published in the City's official newspaper. This Ordinance shall become effective when the publication requirement is satisfied.

PASSED, APPROVED, AND ADOPTED this 15th day of January , 2008.

_____
J. Robert Dodson III
Mayor

ATTEST:

_____
Deborah L. Loesch, TRMC
City Secretary

TABLE OF CONTENTS

CODE OF ORDINANCES

Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code and are considered "Omitted."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ord. No.	Date Adopted	Included/Omitted
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762	12- 7-2010	Included
764	1-25-2011	Included
765	1-25-2011	Included
766	1-25-2011	Included
767	1-25-2011	Included
768	2-22-2011	Included
Supp. No. 7		
779	11- 8-2011	Included
783	1-24-2012	Included
786	3-27-2012	Included
787	3-27-2012	Included
788	3-27-2012	Included
789	3-27-2012	Included
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791	3-27-2012	Included
792	3-27-2012	Included
793	3-27-2012	Included
794	3-27-2012	Included
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796	5-22-2012	Included
797	5-22-2012	Included
798	5-22-2012	Included
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773	5-24-2011	Included
818	12-10-2013	Included
824	4-22-2014	Included

Ord. No.	Date Adopted	Included/Omitted
828	5-27-2014	Included
830	6- 3-2014	Included
Supp. No. 11		
831	6-24-2014	Included
832	6-24-2014	Included
833	6-24-2014	Included

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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

The ordinances embraced in this and the following chapters, articles and sections shall constitute and be designated the "Code of Ordinances, City of Hunters Creek Village, Texas," and may be so cited.
(Code 2002, § 1.102)

State law reference—Authority of municipality to codify ordinances, V.T.C.A., Local Government Code, ch. 53.

Sec. 1-2. Definitions and rules of construction.

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

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

Chief of police and *police chief*. The terms "chief of police" and "police chief" mean the police chief of the Memorial Villages Police Department.

City. The term "city" means the City of Hunters Creek Village, Texas.

City administrator, city secretary, or *other city officers or departments*. The term "city administrator," "city secretary," "or other city officers or departments" shall be construed to mean the city administrator, city secretary, or such other municipal officers or departments, respectively, of the City of Hunters Creek Village, Texas, or their authorized designated representatives.

Code. The term "Code" means the Code of Ordinances, City of Hunters Creek Village, Texas, as designated in section 1-1.

Council. Whenever the term "council" or "this council" or "the council" is used, they refer to the city council of the City of Hunters Creek Village, Texas. The city council of the City of Hunters Creek Village, Texas, consists of the mayor and five councilmembers.

County. The term "county" or "this county" shall mean the County of Harris, Texas.

Fire chief. The term "fire chief" means the Fire Chief of the Memorial Villages Fire Department.

Fire marshal. The term "fire marshal" means the Fire Marshal of the Memorial Villages Fire Department.

Gender. Words importing the masculine gender shall include the feminine and neuter.

May. The term "may" is permissive.

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

Must and *shall*. The terms "must" and "shall" are each mandatory.

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

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

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

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

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

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

Public health officer. The term "public health officer" means the public health officer with jurisdiction in the city.

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

Shall. The term "shall" is mandatory.

Sidewalk. The term "sidewalk" means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

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

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

Street. The term "street" shall have its commonly accepted meaning and shall include highways, sidewalks, alleys, avenues, recessed parking areas and other public rights-of-way including the entire right-of-way.

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

V.T.C.S., V.T.P.C., V.T.C.C.P., and V.T.C.A. The abbreviations V.T.C.S., V.T.P.C., V.T.C.C.P., and V.T.C.A. refer to the divisions of Vernon's Texas Statutes Annotated, as amended or revised.

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

Year. The term "year" shall mean a calendar year.
(Code 2002, § 1.104)

Sec. 1-3. Article and section catchline; history notes and state law references.

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

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate legislative history. State law references that appear in this Code after sections or subsections, or that otherwise appear in footnote form, are provided for the convenience of the user of the Code and have no legal effect.
(Code 2002, § 1.103)

Sec. 1-4. Severability of parts of Code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the city council without the incorporation in the Code of any such unconstitutional phrase, clause, sentence, paragraph or section.
(Code 2002, § 1.105)

Sec. 1-5. Repeal of ordinances.

The repeal of an ordinance or any portion thereof shall not repeal the repealing clause of an ordinance or revive any ordinance which has been previously repealed.
(Code 2002, § 1.106)

Sec. 1-6. Amendments or additions to Code.

All ordinances of a general and permanent nature, and amendments to such ordinances, hereinafter enacted or presented to the city council for enactment, shall be drafted, so far as possible, as specific amendments of, or additions to, the Code of Ordinances. Amendments to this Code shall be made by reference to the chapter and section of the Code which is to be amended, and additions shall bear an appropriate designation of chapter, article and section; provided, however, the failure so to do shall in no way affect the validity or enforceability of such ordinances.
(Code 2002, § 1.107)

Sec. 1-7. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city coun-

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

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

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

(1) Organize the ordinance material into appropriate subdivisions;

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

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

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this section," "this subsection," etc., as the case may be; and

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

(Code 2002, § 1.108)

Sec. 1-8. General penalty for violations of Code; continuing violations.

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

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

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

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

(b) Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. Any violation of any provision of this Code of Ordinances which constitutes an immediate danger to the health, safety, and welfare of the public may be enjoined in a suit brought by the city for such purposes.

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

(d) Unless otherwise specifically stated within the provisions of this Code, any violation of this Code or of any ordinance set forth herein that is punishable by a fine that exceeds $500.00 shall

require a culpable mental state of intentionally, knowingly, recklessly or with criminal negligence. (Code 2002, § 1.109; Ord. No. 653, § 2, 11-15-2005)

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

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

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

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of such Code;

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

(3) Any contract or obligation assumed by the city;

(4) Any right or franchise granted by the city;

(5) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city;

(6) Any ordinance relating to municipal street maintenance agreements with the state;

(7) Any ordinance establishing or prescribing grades for streets in the city;

(8) Any appropriation ordinance or ordinance consistent with this Code providing for the levy of taxes or for an annual budget;

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

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

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

(12) Ordinances or resolutions prescribing traffic regulations for specific streets, such as ordinances or resolutions designating one-way streets, no-parking areas, truck routes, stop intersections, intersections where traffic is to be controlled by signals, etc.;

(13) Any ordinance establishing or imposing any rates, charges or fees for utility services or connections;

(14) Ordinances relating to personnel or the amounts of retirement annuities and service credits;

(15) Any ordinance zoning or rezoning specific property;

(16) Any special ordinance or temporary ordinance;

(17) Any administrative ordinance;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

Chapter 2

ADMINISTRATION*

Article I. In General

Article II. City Council

Article III. Officers and Employees

Article IV. Boards and Commissions

Division 1. Generally

Division 2. Planning and Zoning Commission

Article V. Finance

Division 1. Generally

Division 2. Notice of Claims

Article VI. Records Management

***State law references—**Type A general law municipality, V.T.C.A., Local Government Code §§ 5.001, 6.001 et seq.; provisions and powers of type A general law municipalities, V.T.C.A., Local Government Code §§ 51.011—51.018; type A municipality may adopt necessary ordinances not inconsistent with state law, V.T.C.A., Local Government Code § 51.011.

ARTICLE I. IN GENERAL

Sec. 2-1. Title 28 adopted.

(a) The city is incorporated as a Type A General Law Municipality.

(b) The city shall hereafter be known as the City of Hunters Creek Village, Texas.

(Code 2002, § 1.200; Ord. No. 1, §§ 1—3, 2-9-1955)

Editor's note—This section was kept for historical purposes to show the initial incorporation of the city.

Secs. 2-2—2-20. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-21. Place system.

(a) The five offices of councilmember within and for the city, for which officers an election will be held on April 7, 1959, are hereby designated as follows: councilmember position no. 1, councilmember position no. 2, councilmember position no. 3, councilmember position no. 4 and councilmember position no. 5.

(b) The initial terms of office of councilmember position no. 1, councilmember position no. 2 and councilmember position no. 3 shall each be for one year; thereafter, at the elections to be held on alternate years thereafter, such terms of office shall be for two years.

(c) The term of office of councilmember position no. 4 and councilmember position no. 5 shall be in each instance for a term of two years, to be staggered with the terms of councilmember position no. 1, councilmember position no. 2 and councilmember position no. 3.

(d) Each candidate for any of the offices of councilmember shall designate in the announcement of his candidacy and in the request to have his name placed on the official ballot, the number of the position for which he is a candidate, such as councilmember position no. 1; and the names of all candidates for the office of councilmember shall be printed beneath the title of the office and the number of the position so designated on the official ballot. No person shall be a candidate for more than one of such positions.

(Code 2002, § 1.500; Ord. No. 86, 2-9-1959)

State law reference—Aldermanic form of government, V.T.C.A., Local Government Code ch. 22.

Sec. 2-22. Meetings.

(a) *Regular.* Article 1.300 of the Code of Ordinances of the city is deleted in its entirety by Ordinance No. 692 dated 7-17-2007.

(b) *Special.* Special meetings of the city council may be called in the manner provided by V.T.C.A., Local Government Code § 22.038.

(Code 2002, § 1.301, 1.302; Ord. No. 292, §§ 1, 2, 12-15-1976; Ord. No. 692, § 1, 7-17-2007)

State law references—Meetings of governing body, V.T.C.A., Local Government Code § 22.038; quorum requirements, V.T.C.A., Local Government Code § 22.039.

Secs. 2-23—2-49. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

Sec. 2-50. City council's authority over employees.

The city council reserves to itself the sole right to hire or discharge any employee of the city, as it determines to be in the best interests of the city.

(Ord. No. 721, § 1, 6-17-2008)

Sec. 2-51. Reserved.

Editor's note—Ord. No. 833, § 1, adopted June 24, 2014, repealed § 2-51, which pertained to management of city staff and consultants and derived from Ord. No. 721, § 1, adopted June 17, 2008.

Secs. 2-52—2-93. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Sec. 2-94. Removal of appointed members for meeting absences.

The city council may remove a member of any board or commission whose members are ap-

*__State law reference—__Matters affecting public officers and employees, V.T.C.A., Local Government Code ch. 141 et seq.

pointed by the city council if the member is absent from three consecutive regular meetings or five nonconsecutive regular meetings per two-year term.
(Code 2002, § 14.104; Ord. No. 647, 9-20-2005)

Secs. 2-95—2-116. Reserved.

DIVISION 2. PLANNING AND ZONING COMMISSION*

Sec. 2-117. Created; composition.

There is hereby created and established for the city a planning and zoning commission, which shall be composed of five members. The members shall be resident citizens, taxpayers and qualified voters of the city, all of whom shall be appointed by the city council to serve for terms of two years, which terms shall run concurrently with that of the mayor. All vacancies shall be filled for the unexpired term in the same manner as provided for the original appointments. All expired terms shall be filled for terms as provided for the original appointments and in the same manner. In addition to the five regular members, there shall be two alternate members, having the same qualifications as regular members, and appointed in the same manner for the same terms as regular members. Alternate members shall serve in the absence of one or more regular members when requested to do so by the mayor. Members of the commission, whether regular or alternate, may be removed by the mayor with the consent of the city council after public hearing and for cause assigned in writing. All members of the commission shall serve without compensation.
(Code 2002, § 14.101; Ord. No. 644, § 1, 9-16-2005)

Sec. 2-118. Officers.

The planning and zoning commission shall elect a chairman and vice-chairman from its membership, and shall have power to employ such qualified persons as may be necessary for the proper conduct and undertakings of the commission and to pay for their services and such other necessary expenses; provided that the cost of such services and expenses shall not exceed the amount appropriated by the city council for the use of the commission. The chairman shall serve in that capacity for a term of two years. It shall also have the power to make rules, regulations and bylaws for its own government which shall conform as nearly as possible with those governing the city council and same shall be subject to approval by such council. Such bylaws shall include, among other items, provisions for:

(1) Regular and special meetings, open to the public;

(2) Records of its proceedings, to be open for inspection by the public;

(3) Reporting to the city council and the public from time to time and annually; and

(4) For the holding of public hearings on its recommendations.

(Code 2002, § 14.102; Ord. No. 403, § 2, 2-18-1986)

Sec. 2-119. Powers and duties.

The planning and zoning commission shall have the power and it shall be its duty to make and recommend for adoption a master plan, as a whole or in parts, for the future development and redevelopment of the municipality and its environs; and shall have power and it shall be its duty to prepare a comprehensive plan and ordinance for zoning the city in accordance with V.T.C.A., Local Government Code ch. 211 et seq. The commission shall perform such other duties as may be prescribed by ordinance or state law.
(Code 2002, § 14.103; Ord. No. 3, § 3, 2-9-1955)

Secs. 2-120—2-136. Reserved.

*__State law reference—__Authority of municipality to establish planning and zoning commission, V.T.C.A., Local Government Code § 211.007.

ARTICLE V. FINANCE*

DIVISION 1. GENERALLY

Sec. 2-137. Copying costs.

Charges for the copying of public records shall be made in accordance with the most current regulations of the state general services commission.
(Code 2002, § 1.1100)

Secs. 2-138—2-159. Reserved.

*__State law references—__V.T.C.A., Finance Code ch. 1 et seq.; finances, V.T.C.A., Local Government Code ch. 101 et seq.

DIVISION 2. NOTICE OF CLAIMS*

Sec. 2-160. Required.

(a) The city shall never be liable for any claim for property damage or for personal injury, whether such personal injury results in death or not, unless the person damaged or injured, or someone in his behalf, or in the event the injury results in death, the person who may have a cause of action under the law by reason of such death or injury, shall, within 90 days from the date the damage or injury was received, give notice in writing to the mayor and city council of the following facts:

(1) The date and time when the injury or damage occurred and the specific place where the injured person or property was at the time when the injury was received.

(2) The nature of the damage or injury sustained.

(3) The apparent extent of the damage or injury sustained.

(4) A specific and detailed statement of how and under what circumstances the damage or injury occurred.

(5) The amount for which each claimant will settle.

(6) The actual place of residence of each claimant by street, number, city and state on the date the claim is presented.

(7) In the case of personal injury or death, the names and addresses of all persons who, according to the knowledge or information of the claimant, witnessed the happening of the injury or any part thereof and the names of the doctors, if any, to whose care the injured person is committed.

(8) In the case of property damage, the location of the damaged property at the time the claim was submitted along with the names and addresses of all persons who witnessed the happening of the damage or any part thereof.

(b) No suit of any nature whatsoever shall be instituted or maintained against the city, unless the plaintiff therein shall aver and prove that previous to the filing of the original petition, the plaintiff applied to the city council for redress, satisfaction, compensation or relief as the case may be, and that the same was by vote of the city council refused.

(Code 2002, § 1.801; Ord. No. 381, §§ 1, 2, 7-19-1983)

Sec. 2-161. Location for filing.

All notices required by this division shall be effectuated by serving them upon the city secretary at the following location: #1 Hunters Creek Place, Houston, Texas 77024, and all such notices shall be effective only when actually received by the city secretary.

(Code 2002, § 1.802; Ord. No. 381, § 3, 7-19-1983)

Sec. 2-162. No authority to waive provisions.

Neither the mayor, nor a city councilmember, nor any other officer or employee of the city shall have the authority to waive any of the provisions of this division.

(Code 2002, § 1.803; Ord. No. 381, § 4, 7-19-1983)

Sec. 2-163. Notice to be sworn.

The written notice required under this division shall be sworn to by the person claiming the damage or injuries or by someone authorized by him/her to do so on his behalf. Failure to swear to the notice, as required herein, shall not render the notice fatally defective; but failure to so verify the notice may be considered by the city council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein.

(Code 2002, § 1.804; Ord. No. 381, § 5, 7-19-1983)

Secs. 2-164—2-194. Reserved.

ARTICLE VI. RECORDS MANAGEMENT†

Sec. 2-195. Article cited; policy and purpose.

This article shall be known and be cited as the "Records and Information Management Article

*__State law reference—__Texas Tort Claims Act, V.T.C.A., Civil Practice and Remedies Code ch. 101.

†__State law reference—__Local Government Records Act, V.T.C.A., Local Government Code ch. 201.

for the City of Hunters Creek Village, Texas." It is hereby declared to be the policy of the city to develop a records and information management program that provides for efficient, economical and effective control over the creation, distribution, organization, maintenance, use and disposition of all city records through comprehensive integrated procedures for the management of records from creation to ultimate disposition.
(Code 2002, § 1.1001; Ord. No. 460, § 1, 10-12-1990)

Sec. 2-196. Definitions.

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

City record shall have the same meaning as a "local government record" as set forth in V.T.C.A., Local Government Code § 201.003(8).

Director and *librarian* mean the executive and administrative officers of the state library and archives commission.

Records coordinator refers to that person so designated by his department head in accordance with section 2-200.

Records custodian refers to that person charged with the responsibility for a designated portion of the city's records.

Records management officer refers to the city secretary.
(Code 2002, § 1.1002; Ord. No. 460, § 2, 10-12-1990)

Sec. 2-197. City records declared public property.

All city records, as defined in section 2-196, are hereby declared to be property of the city. No city officer or employee shall have, by virtue of his office or employment, any personal or property right to any such records even though he may have developed or compiled them. No person shall destroy, remove or use any city record except as authorized by law, this article or the policies and procedures of the city. Provided however, no policy or procedures regarding use, removal or destruction of city records shall be adopted which conflict with this article or applicable state or federal law. Provided further, nothing contained herein shall be construed to authorize the disclosure of city records which are exempt from disclosure under state or federal law.
(Code 2002, § 1.1003; Ord. No. 460, § 3, 10-12-1990)

Sec. 2-198. Program established; administrative responsibility.

There is hereby established a records and information management program. The city secretary shall administer the records and information management program and shall be responsible for citywide files management. In addition, the city secretary shall have direction and control of the city's records disposition program.
(Code 2002, § 1.1004; Ord. No. 460, § 4, 10-12-1990)

Sec. 2-199. Duties of city secretary.

The city secretary shall:

(1) Assist in establishing and developing policies and procedures for a records management program for the city;

(2) Administer the records management program and provide assistance to custodians for the purposes of reducing the costs and improving the efficiency of recordkeeping;

(3) In cooperation with the custodians of the records:

a. Prepare and file with the director and librarian, the records control schedules and amended schedules required by V.T.C.A., Local Government Code § 203.041, and the list of obsolete records as provided by V.T.C.A., Local Government Code § 203.044; and

b. Prepare or direct the preparation of requests for authorization to destroy records not on an approved control schedule as provided by V.T.C.A., Local Government Code § 203.045, or requests to destroy the originals

of permanent records that have been microfilmed as provided by V.T.C.A., Local Government Code § 204.008, and of electronic storage authorization requests as provided by V.T.C.A., Local Government Code § 205.007;

(4) In cooperation with custodians, identify and take adequate steps to protect essential city records;

(5) In cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of city records is carried out in accordance with the policies and procedures of the city's records management program, this article, and rules adopted pursuant hereto;

(6) Disseminate to the city council and custodians information concerning state laws, administrative rules and the policies of the government relating to local government records; and

(7) In cooperation with custodians, establish procedures to ensure that the handling of city records by the records management officer or those under the officer's authority is carried out in compliance with the records management program and with due regard for:

a. The duties and responsibilities of custodians that may be imposed by law; and

b. The confidentiality of information in records to which access is restricted by law.

(Code 2002, § 1.1005; Ord. No. 460, § 5, 10-12-1990)

Sec. 2-200. Responsibilities—City department heads.

All city department heads are responsible for the implementation and operation of effective files operations, records transfers and dispositions and other activities in accordance with the provisions of this article within their areas of responsibility. They shall designate records coordinators within their offices and provide the city secretary the names of such designees and of all file stations and file custodians under their supervision. Persons designated as records coordinators shall report directly to the head of their department on matters relating to the records management program and should have appropriate access to all files in their department.
(Code 2002, § 1.1006; Ord. No. 460, § 6, 10-12-1990)

Sec. 2-201. Same—Records coordinators.

Each records coordinator shall coordinate the records management program between the city secretary and personnel in the records coordinator's office to ensure that the provisions of this article are followed. This responsibility shall include overseeing the application of records schedules within the office or department.
(Code 2002, § 1.1007; Ord. No. 460, § 7, 10-12-1990)

Sec. 2-202. Records retention and disposition schedules adopted.

All city offices and departments shall adopt records retention and disposition schedules and destroy, transfer or otherwise dispose of records only according to such schedules.
(Code 2002, § 1.1008; Ord. No. 460, § 8, 10-12-1990)

Sec. 2-203. Development of records retention and disposition schedules.

(a) Retention periods to be included in records schedules shall be established by the city secretary and department heads, subject to the review of the city attorney and the approval of the city council. The following retention schedules promulgated by the state library and archives commission are hereby in all things approved and adopted:

(1) Local Schedule GR, Retention Schedule for Records Common to all Local Governments (effective November 1, 1995);

(2) Local Schedule PW, Retention Schedule for Records of Public Works and Services (effective November 1, 1995);

(3) Local Schedule EL, Retention Schedule for Elections and Voter Registration (effective February 1, 1992);

(4) Local Schedule LC, Retention Schedule for Records of Justice and Municipal Courts (effective February 1, 1992);

(5) Local Schedule TX, Retention Schedule for Records of Property Taxation (effective February 15, 1993).

(b) When a records retention and disposition schedule is adopted, it shall thenceforth constitute full authority to destroy, transfer, or take other actions, and the city council hereby directs that such actions be taken by the city secretary or under his supervision. The city secretary shall notify the state librarian of the intended destruction, as may be required by law, but no further notice to the city council or other city office shall be required.
(Code 2002, § 1.1009; Ord. No. 460, § 9, 10-12-1990; Ord. No. 673, § 1, 1-16-2007)

Sec. 2-204. Destruction of original city records.

No original city record shall be destroyed if such destruction is contrary to any state or federal law. Prior to the destruction of any original city record, the city secretary shall obtain the advice and consent of the city attorney. Any original city record that is the subject matter of litigations may not be destroyed until such litigation is final.
(Code 2002, § 1.1010; Ord. No. 460, § 10, 10-12-1990)

Sec. 2-205. One time destruction of obsolete records.

Prior to adoption of records schedules for an office, one time destruction of accumulated obsolete records of that office may be made by or under the supervision of the city secretary. Prior to such destruction, the city secretary shall submit lists of records to be destroyed to the department head and the city attorney, who shall give notice, within 30 days, of any records they believe should not be destroyed, and such records shall be retained for a period agreed upon. The city secretary shall also submit notice as required by law to the state librarian. Obsolete records shall include those no longer created by the office or department and no longer needed for administrative, legal, fiscal, or other research purposes.
(Code 2002, § 1.1011; Ord. No. 460, § 11, 10-12-1990)

Sec. 2-206. Records center.

A records center shall be maintained by the city which shall utilize one or more locations to store inactive records, to ensure the security of such records from deterioration, theft or damage during the period of storage, and to permit fast, efficient retrieval of information from stored records.
(Code 2002, § 1.1012; Ord. No. 460, § 12, 10-12-1990)

Sec. 2-207. Permanent preservation of historical records.

The city secretary shall develop procedures to ensure the permanent preservation of historically valuable records of the city. If city-owned facilities are not available, the city secretary shall arrange for the transfer of such records to the state library for perpetual care and preservation in one of its nearby regional historical resource depositories, or shall make other arrangements for their permanent preservation not contrary to law or regulation.
(Code 2002, § 1.1013; Ord. No. 460, § 13, 10-12-1990)

Sec. 2-208. Transfer, destruction of noncurrent records.

Records no longer required in the conduct of current business by any office of the city shall be promptly transferred to the records center or archives or the state library, or be destroyed at the time such action is designated on an approved records schedule. Such records shall not be maintained in current office files or equipment.
(Code 2002, § 1.1014; Ord. No. 460, § 14, 10-12-1990)

Chapter 3

RESERVED

Chapter 4

ALCOHOLIC BEVERAGES*

*__State law reference—__V.T.C.A., Alcoholic Beverage Code ch. 1 et seq.

Sec. 4-1. Mixed beverage permit fee.

(a) There is hereby levied, and the city shall collect from every person issued a mixed beverage permit wherein the licensed premises are located within the city, a mixed beverage permit fee equal to one-half of the fee levied by the state.

(b) This fee levied by the city shall commence and be effective immediately following the third year of the existence of a mixed beverage permit issued by the state.

(Code 2002, § 4.500; Ord. No. 267, 11-20-1974)

State law reference—Authority for this section, V.T.C.A., Alcoholic Beverage Code § 11.38.

Chapter 5

RESERVED

Chapter 6

AMUSEMENTS AND ENTERTAINMENTS*

Article I. In General

Article II. Sexually Oriented Businesses

Division 1. Generally

Division 2. Permits

*__State law reference—__Sports, amusements and entertainment, V.T.C.A., Occupations Code ch. 2001 et seq.

ARTICLE I. IN GENERAL

Secs. 6-1—6-18. Reserved.

ARTICLE II. SEXUALLY ORIENTED BUSINESSES*

DIVISION 1. GENERALLY

Sec. 6-19. Definitions.

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

Achromatic means colorless. The color gray shall be considered achromatic, but the colors white and black shall be excluded from the definition of the term "achromatic."

Adult bookstore means an establishment whose major business is the offering to customers of books, magazines, films or videotapes (whether for viewing off the premises or on the premises by use of motion picture machines or other image-producing devices), periodicals or other printed or pictorial materials which are intended to provide sexual stimulation or sexual gratification to such customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult cabaret means an establishment whose major business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult encounter parlor means an establishment whose major business is the provision of premises where customers either congregate, associate or consort with employees who engage in specified sexual activities with or in the presence of such customers, or who display specified anatomical areas in the presence of such customers with the intent of providing sexual stimulation or sexual gratification to such customers.

Adult modeling studio means an establishment whose business is to provide to customers, figure models whose intent is providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by such customers.

*Adult movie theater m*eans an establishment containing a room with tiers or rows of seats facing a screen or projection area, whose business is the exhibition, for customers, of motion pictures which are intended to provide sexual stimulation or sexual gratification to such customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Advertise means to seek the attraction of or to direct the attention of the public to any goods, services or merchandise whatsoever.

Church or *place of worship* means a building located within or without the city in which persons regularly assemble for religious worship, intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Commercial business means an establishment owned or operated by any entity which invites customers onto its premises and which is operated for profit.

Commercial multiunit center means a building or structure, including a shopping mall or strip shopping center, containing three or more commercial businesses, each of which occupies an enclosed area having its own door or entranceway opening onto public property, a public way or a common area.

*__State law reference__—Authority of municipality to regulate sexually oriented businesses, V.T.C.A., Local Government Code ch. 243.

Customer means any person who:

(1) Is allowed to enter an establishment in return for the payment of an admission fee or any form of consideration or gratuity; or

(2) Enters any establishment for the purpose of purchasing or renting a commodity or service therein.

Display surface means the entire surface of a sign on one side, devoted to exhibiting advertising. The display surface shall not include the sign frame and incidental supports thereto.

Employee means any person who renders any service whatsoever to the customers of an establishment regulated by this article or who works in or about such an establishment and who receives compensation for such service or work from the operator or owner of such establishment or from the customers therein.

Entertainment means any act or performance such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees or customers. The term "entertainment" shall also mean bartenders, waiters, waitresses or other employees exposing specified anatomical areas or engaging in specified sexual activities in the presence of customers.

Existing means in operation on the effective date of the ordinance from which this article is derived.

Exterior portion means any part of the physical structure of an establishment regulated by this article including a wall, veneer, door, fence, roof, roof covering or window which is visible from any public way or public property.

Operator means the manager or other person principally in charge of an establishment regulated by this article.

Residential means pertaining to the use of land for premises such as homes, townhouses, patio homes, mobile homes, duplexes, condominiums and apartment complexes which contain habitable rooms for nontransient occupancy, and which are designated primarily for living, sleeping, cooking and eating therein. Hotels, motels, boarding-houses, nursing homes, hospitals, nursery schools and child daycare facilities shall not be considered to be residential.

School means a building where persons regularly assemble for the purpose of instruction or education, together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term "school" is limited to public and private schools used for primary and secondary education.

Sexually oriented business or *business* includes the definition of the term "sexually oriented business" contained in V.T.C.A., Local Government Code § 243.002, and shall include but not be limited to the following: an adult bookstore, adult cabaret, adult encounter parlor, adult modeling studio, adult movie theater or any establishment whose business may include the offering to customers of a product or service which is intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The city secretary or his successor shall make the final determination of whether a proposed use constitutes a sexually oriented business in accordance with the terms and intent of this article. The term "sexually oriented business" or "business" shall not be construed to include:

(1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists or licensed barbers performing functions authorized under the licenses held;

(2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or

(3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Sign means any display, design, pictorial or other representation, which shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatso-

ever so that the same is visible from the outside of an establishment regulated by this article and is used for advertising such establishment. The term "sign" shall also include such representations painted on or otherwise affixed to any exterior portion of an establishment regulated by this article, as well as, such representations painted on or otherwise affixed to any part of the tract upon which such an establishment is situated.

Specified anatomical areas means the following:

(1) Less than completely and opaquely covered:

a. Human genitals, pubic region or pubic hair;

b. Buttock;

c. Human breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities means:

(1) Human genitals in a discernible state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy; or

(3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or human breast.

Tract means a parcel of land under common ownership located within or without the city.
(Code 2002, § 4.1001; Ord. No. 551, 3-9-1999; Ord. No. 744, § 6, 7-28-2009)

Sec. 6-20. Applicability of provisions to existing businesses.

(a) The provisions of this article shall be applicable to existing businesses.

(b) If a business is ineligible to receive a permit under this article, then such business shall terminate operations within 30 days after the date on which the applicant for such business receives notification of such ineligibility from the mayor.
(Code 2002, § 4.1003; Ord. No. 551, 3-9-1999)

Sec. 6-21. Exterior portions of establishment.

(a) *Visible merchandise, activities.* It shall be unlawful for the merchandise or activities of a sexually oriented business, adult bookstore or adult movie theater to be visible from any point outside such establishment.

(b) *Flashing lights, lettering, pictures.* It shall be unlawful for the exterior portions of a business, adult bookstore or adult movie theater to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(c) *Prohibited coloring.* It shall be unlawful for the exterior portions of a business, adult bookstore or adult movie theater to be painted any color other than a single achromatic color. This section shall not apply to any business, adult bookstore or adult movie theater if the following conditions are met:

(1) The business, adult bookstore or adult movie theater is a part of a commercial multiunit center; and

(2) The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of such business, adult bookstore or adult movie theater, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.

(d) *Unpainted exteriors.* Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a business, adult bookstore or adult movie theater.

(e) *Nonconforming existing businesses.* All nonconforming exterior portions of an existing business, adult bookstore or adult movie theater shall be made to comply with the provisions of this

article within six months after the effective date of the ordinance from which this article is derived.
(Code 2002, § 4.1004; Ord. No. 551, 3-9-1999)

Sec. 6-22. Signs.

(a) Notwithstanding any city ordinance, code or regulation to the contrary, it shall be unlawful for the permittee of a business, the owner of an adult bookstore or the owner of an adult movie theater to erect, construct or maintain more than one sign for such establishment.

(b) Signs shall have not more than two display surfaces and each display surface shall:

(1) Not contain flashing lights;

(2) Be a flat plane, rectangular in shape;

(3) Not exceed 64 square feet in area; and

(4) Not exceed ten feet in height and ten feet in length.

(c) A sign shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

(1) The name of the establishment; and/or

(2) One or more of the following phrases:

a. Adult bookstore;

b. Adult movie theater;

c. Adult encounter parlor;

d. Adult cabaret;

e. Adult novelties; or

f. Adult entertainment.

Signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

(d) Each letter forming a word on a sign shall be of a solid color, and each such letter shall be the same print type, size and color. The background behind such lettering on the display surface of a sign shall be of uniform and solid color.

(e) In case of a conflict between the provisions of this article and the provisions of any ordinance provision pertaining to zoning, the provisions of this article shall govern.

(f) Nothing in this section shall be construed to prohibit the display of the following types of signs:

(1) Legal notices and street numbers;

(2) Signs required by federal, state or local laws; or

(3) Signs setting forth the location of or directions to parking facilities or buildings or regulating the flow of traffic.
(Code 2002, § 4.1005; Ord. No. 551, 3-9-1999)

Sec. 6-23. Persons younger than 17 years of age—Prohibited from entry.

(a) *As customers.* It shall be unlawful to allow a person who is younger than 17 years of age to enter a sexually oriented business, an adult bookstore or an adult movie theater for the purpose of being a customer therein.

(b) *Attendant required at entrance.* An attendant shall be stationed at each public entrance to an establishment described in subsection (a) of this section, during such establishment's regular business hours. The attendant shall not allow a person to enter for the purpose of being a customer until such person presents to the attendant:

(1) A valid operator's, commercial operator's or chauffeur's driver's license; or

(2) A valid personal identification certificate issued by the state department of public safety reflecting that such person is 17 years of age or older; provided that no such driver's license or identification certificate shall be required if it is apparent beyond a reasonable doubt that such person is 17 years of age or older.
(Code 2002, § 4.1006; Ord. No. 551, 3-9-1999)

Sec. 6-24. Same—Prohibited from employment.

It shall be unlawful to allow a person who is younger than 17 years of age to be an employee of a sexually oriented business, an adult bookstore, or an adult movie theater.
(Code 2002, § 4.1007; Ord. No. 551, 3-9-1999)

Sec. 6-25. Notices.

All notices required or permitted under this article shall be in writing and shall be deemed delivered three days after depositing in a United States Postal Service receptacle.
(Code 2002, § 4.1008; Ord. No. 551, 3-9-1999)

Sec. 6-26. Enforcement of article; authority to enter premises.

The chief of police shall have the power to administer and enforce the provisions of this article. Upon presentation of proper identification to the owner, operator, agent or tenant in charge of any premises where a sexually oriented business is located, the chief of police or his representative may at reasonable times enter, for the purposes of inspecting and investigating to ensure compliance with the terms of this article, any building, structure or other premises where a business is located. Whenever the chief of police or his representative is denied permission to inspect any premises, inspection shall be made only under the authority of a warrant to be issued by a magistrate authorizing the inspection for violations of this article.
(Code 2002, § 4.1009; Ord. No. 551, 3-9-1999)

Sec. 6-27. Authority to file suit.

The city attorney is hereby authorized to file suit to enjoin the violation of any regulations of this article.
(Code 2002, § 4.1010; Ord. No. 551, 3-9-1999)

Secs. 6-28—6-57. Reserved.

DIVISION 2. PERMITS

Sec. 6-58. Required.

It shall be unlawful for any person or entity to own or operate a sexually oriented business located within the corporate limits of the city without a permit issued pursuant to the provisions of this division.
(Code 2002, § 4.1011; Ord. No. 551, 3-9-1999)

Sec. 6-59. Application.

(a) Applications for a permit for a sexually oriented business must be submitted to the city secretary by the owner of the business to be covered by such permit. The application forms shall be supplied by the city secretary. The applicant shall be required to give the following information on the application form:

(1) The applicant's name, as follows:

a. If the applicant is an individual, his legal name as well as any aliases;

b. If the applicant is a partnership, the full name of the partnership and the names of all the partners, whether general or limited; or

c. If the applicant is a corporation, the exact corporate name and state of incorporation and the names of all the officers, directors and stockholders holding ten percent or more of the capital stock of the applicant;

(2) The name under which the business is to be operated and a general description of the service to be provided;

(3) The telephone number of the business;

(4) The address and legal description of the parcel of land on which the business is to be located; and

(5) The date on which the applicant became owner of the business for which a permit is sought, and the date on which the business began operations at the location for which a permit is sought.

(b) The application shall be accompanied by the following:

(1) Payment in full for the permit fee;

(2) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act, V.T.C.A., Business and Commerce Code ch. 36, if the applicant is to operate the business under an assumed name;

(3) If the applicant is a state corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(4) If the applicant is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(5) If the applicant is a limited partnership formed under the laws of the state, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the secretary of state under the Texas Revised Limited Partnership Act (V.T.C.S. art. 6132a-1); or

(6) If applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, filed in the office of the secretary of state under the Texas Revised Limited Partnership Act, V.T.C.S. art. 6132a-1.

(c) The application shall contain a written declaration that:

(1) The information contained therein is true and correct; and

(2) The applicant has read the provisions of this article and is in compliance therewith.

(d) If the applicant is an individual, the application shall be signed and verified by the applicant. If the applicant is a partnership, the application shall be signed and verified by all partners thereof. If the application is a corporation or other entity, the application shall be signed and verified by the president of such corporation or entity.
(Code 2002, § 4.1012; Ord. No. 551, 3-9-1999; Ord. No. 744, § 3, 7-28-2009)

Sec. 6-60. Fee.

To defray the actual cost of processing the permit application, the permit fee shall be as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary. No portion of any fee collected under this division shall be returned after a permit has been issued or refused. Each permit shall be effective when issued and shall be renewed annually on the date of such issuance by filing an application as provided in section 6-59 hereof.
(Code 2002, § 4.1013; Ord. No. 551, 3-9-1999)

Sec. 6-61. Issuance or denial.

(a) Within 30 days of receipt of the application, the city secretary shall grant or deny the permit and give written notice of such action to the applicant.

(b) The city secretary shall issue a permit to the applicant unless one or more of the following conditions exist:

(1) The applicant's business is located within 1,000 feet of any residence, public park, public or private school, church or place of worship or licensed daycare center. For purposes of this subsection, measurement shall be made in a straight line without regard to intervening structures or objects, from the property line of the applicant's sexually oriented business to the nearest property line of such residence, public park, public or private school, church or place of worship or licensed daycare facility.

(2) The applicant's business is located within 1,000 feet of any other sexually oriented business. For purposes of this subsection, measurements shall be made in a straight line without regard to intervening structures or objects, from the property line of the applicant's sexually oriented business to the nearest property line of another sexually oriented business.

(3) The applicant failed to supply all of the information requested on the application.

(4) The applicant gave false, fraudulent or untruthful material information on the application.

(5) The applicant's business is not in compliance with sections 6-21 and 6-22 hereof.

(6) The applicant or business does not meet any other requirements of this article or other city ordinances regulating sexually oriented businesses.

(7) The applicant or any owner has been adjudged guilty in a trial court of committing, on the premises of the permitted business, any of the offenses contained in V.T.C.A., Penal Code chs. 21, 25, 43, and §§ 22.011 or 22.021, for which less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or for which less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense.

(8) The applicant is in violation of any health and safety statutes of the state or health and safety ordinances of the city.

(c) If the city secretary determines that an applicant is not eligible for a permit, the applicant shall be notified in writing of the reasons for the denial. An applicant may appeal the denial of the application by filing a written request for a hearing with the mayor within 15 days after receipt of the notification of such denial. The applicant's written request for a hearing shall set out the grounds on which the denial is challenged.

(d) The city council shall hold a hearing and render a written decision within 30 days after receipt of the applicant's written request for a hearing. Each party shall have the right of representation by a licensed attorney, although an attorney is not required. Each party may present witnesses on his own behalf and may cross examine all witnesses. The city council's decision shall be final.
(Code 2002, § 4.1014; Ord. No. 551, 3-9-1999; Ord. No. 744, §§ 2, 4, 7-28-2009)

Sec. 6-62. Revocation.

(a) The city secretary shall have the authority to revoke a permit for one or more of the following reasons:

(1) The owner or operator of the permitted business knowingly allowed a person under 17 years of age to be an employee therein or did not make a reasonable effort to determine the true age of such employee;

(2) The permitted business does not conform to the provisions of this article;

(3) The applicant, owner or three or more persons have been adjudged guilty in a trial court of committing on the premises of the permitted business any of the offenses contained in V.T.C.A., Penal Code chs. 21, 25, 43, and §§ 22.011 or 22.021. Such offenses must have occurred subsequent to the date of the issuance of the permit or subsequent to the most recent date of renewal thereof, whichever is later, and the owner or operator knowingly allowed such offenses to occur or did not make a reasonable effort to prevent the occurrence of such offenses;

(4) The owner of the permitted business knowingly gave false, fraudulent or untruthful information on the application form for such permit.

(b) The owner whose permit is to be revoked shall be given at least ten calendar days written notice of such proposed revocation. If such owner desires to challenge such revocation, he shall be entitled to a hearing and subsequent appeal as provided in subsections (c) and (d) of section 6-61. The written request for a hearing shall be filed with the mayor within ten days after receipt of the notification of such proposed revocation.
(Code 2002, § 4.1015; Ord. No. 551, 3-9-1999; Ord. No. 744, § 5, 7-28-2009)

Sec. 6-63. Other provisions.

(a) A permit issued under this division shall be displayed at all times in an open and conspicuous place on the premises of the business for which it was issued.

(b) A permit issued pursuant to this division is valid only at the location for which it is issued and such permit is neither assignable nor transferable.

(c) It shall be unlawful for any person to counterfeit, forge, change, deface or alter a permit.
(Code 2002, § 4.1016; Ord. No. 551, 3-9-1999)

Sec. 6-64. Lawfully permitted business not rendered unlawful.

Any lawfully permitted business shall not become unlawful or ineligible for a renewal of its permit on the grounds that subsequent to the grant or renewal of such permit, a public park, a public or private school, a church or place of worship or licensed daycare center has located within 1,000 feet of such lawfully permitted business.

(Code 2002, § 4.1017; Ord. No. 551, 3-9-1999)

Chapter 7

RESERVED

Chapter 8

ANIMALS*

Article I. In General

Article II. Dogs

Article III. Horses, Mules, Donkeys and Cattle

Article IV. Wild Animals

Article V. Rabies Control

*__State law references—__V.T.C.A., Agriculture Code ch. 1 et seq.; health and safety of animals, V.T.C.A., Health and Safety Code ch. 821 et seq.

ARTICLE I. IN GENERAL

Sec. 8-1. Prohibition against raising, breeding or keeping animals; exceptions.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot or parcel of land within the city limits, except dogs, cats or other household pets.

Sec. 8-2. Animal control officer.

The Mayor shall appoint a member of city staff to act as the Animal Control Officer.

Secs. 8-3—8-20. Reserved.

ARTICLE II. DOGS

Sec. 8-21. Definitions.

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

At large, running at large, or *to run at large* means:

(1) Any dog upon private property other than private property owned or possessed by the owner or keeper of such dog, without the consent, express or implied, of the person owning or having possession of such private property;

(2) Any dog in or upon public property, unless such dog is in an automobile or other enclosed motor vehicle, is under voice and sight control of its owner or keeper or is under leash control of its owner or keeper.

Cat means any live or dead cat (Felis catis).

City pound means the place designated by the city as the place for the confinement of domestic animals.

Dog means any live or dead dog (Canis familiaris).

Keeper means the person having temporary custody of a domestic animal in the absence of the animal's owner.

Owner refers to that person who actually has the right of control of the dog, the right to sell or otherwise deal with the dog, or if such person is a minor, then the natural or legal guardian of such minor owner. If the dog shall make its home upon any premises within the corporate limits of the city, and no person claims to be the owner of such dog, such dog shall be deemed to be the property of the head of the household of the premises where such dog makes its home.

Vaccination means a proper injection of a rabies vaccine licensed for use in the subject species by the United States Department of Agriculture.

Voice and sight control means a situation where the owner or keeper of a domestic animal has such animal within eye view so that such owner or keeper can notice instantly such animal's behavior and the owner or keeper is within the animal's hearing range so that the owner or keeper can direct such animal's behavior by voice command. It is intended hereby that voice and sight control requires the domestic animal to be in the direct presence of the owner or keeper so that such owner or keeper has present, continuous and immediate control over such animal.
(Code 2002, § 2.301; Ord. No. 410, § 1, 4-15-1986)

Sec. 8-22. Impoundment for running at large.

It shall be unlawful for any person to permit a dog under their control to be at large. Any dog found running at large shall be subject to seizure by the animal control officer. The animal control officer or his deputy shall issue a written summons to the owner or keeper of any dog found to be at large. Such summons shall notify the owner or keeper of the dog of the nature of the violation and the time and place of the violation. The summons shall also inform the accused owner or keeper of the time, date, and place for an appearance in municipal court and shall bear the signature of the accused and the signature of the officer issuing the summons. The allowance for seizure of a dog at large is in addition to and shall in no way affect or limit the authority of the animal control officer or his deputy to issue a summons to a dog owner or keeper for permitting a dog under their care to run at large. A dog need not be at large at the actual time the written summons is

issued. A dog which has been seized by the animal control officer shall be impounded in the city pound. Any dog so impounded shall be registered as to sex, breed, color and approximate weight. It shall be the duty of the animal control officer or his deputy to attempt to notify the owner of any dog seized by him/her within 24 hours after seizure. The animal control officer shall maintain records of all dogs impounded and such records shall be kept current within one working day.
(Code 2002, § 2.303; Ord. No. 410, § 4, 4-15-1986)

Sec. 8-23. Periods of impoundment.

Dogs, wearing identification tags, which have been impounded shall be held for a period of at least seven days after capture before such dogs are disposed of by sale or destruction. Dogs, not wearing identification tags, which do not display symptoms of rabies or vicious tendencies and which have been impounded shall be held for a period of not less than three days after capture prior to being disposed of by sale or destruction. Nothing contained herein shall limit third parties which operate impoundment facilities on behalf of the city from holding animals for longer periods than provided in this article.
(Code 2002, § 2.304; Ord. No. 410, § 5, 4-15-1986)

Sec. 8-24. Redemption by owners.

Any dog or cat which has been impounded may be redeemed by its owner upon payment of the then current impoundment fee and by execution of an affidavit that such person is the owner or keeper of such animal. Fees for the impoundment of domestic animals shall be for such amount as may hereafter be established by the city council.
(Code 2002, § 2.305; Ord. No. 410, § 6, 4-15-1986)

Sec. 8-25. Powers and duties of animal control officer and deputies.

(a) The animal control officer and his deputies shall carry out the provisions of this article as set forth. The animal control officer and/or his deputies shall have the right at any reasonable time to take possession of any dog running at large and to take possession of any animal which the animal control officer or his deputy reasonably suspects to be rabid. The animal control officer and his deputies are hereby given the authority to wear a badge of this office, such badge to be furnished by the city. It is further provided that police or auxiliary police officers of the Memorial Villages Police Department shall have authority to act in the same capacity as the animal control officer in his absence.

(b) It shall be unlawful for any person to release any animal from the custody of the animal control officer and/or his deputies in any manner, or to tamper with or destroy any property used by the animal control officer and/or his deputies for the purpose of enforcing this article.
(Code 2002, § 2.306; Ord. No. 410, § 7, 4-15-1986)

Sec. 8-26. Excepted animals.

The following animals shall be excepted from all sections of this article: trained police dogs under supervision and control of law enforcement officers while in the performance of official duty.
(Code 2002, § 2.307; Ord. No. 410, § 8, 4-15-1986)

Sec. 8-27. Failure to control.

(a) It shall be unlawful for any person, whether as owner or keeper, having control of a dog by voice and sight control or under leash, to fail to control such dog's behavior when such behavior places another person in actual or apparent danger of bodily harm.

(b) It shall be a defense to prosecution under this section that the failure of the owner or keeper to control such dog's behavior was necessary because:

(1) The owner or keeper was in immediate danger of physical harm and such dog's behavior was necessary for such owner or keeper's self-defense;

(2) The owner or keeper of such dog was in immediate danger of loss or destruction of property and such dog's behavior was necessary for the preservation of such property.

(Code 2002, § 2.308; Ord. No. 410, § 9, 4-15-1986)

Secs. 8-28—8-59. Reserved.

ARTICLE III. HORSES, MULES, DONKEYS AND CATTLE

Sec. 8-60. Restrictions.

(a) It shall be unlawful for any person to keep, possess or maintain any horse, mule, donkey or other animal of the equine or bovine family on any parcel of land, unless such parcel of land shall have a minimum area of one acre for one such animal and one acre for each additional animal for a maximum of two animals.

(b) It shall be unlawful for any person to keep, possess or maintain any horse, mule, donkey or other animal of the equine or bovine family within 75 feet of any property line or lot line of the keeper or owner of such animal. If such animal is kept in or confined by any building or structure, such as a stable, barn, shed, pen or fence, such distance of 75 feet shall be measured in a straight line from the nearest points of such building or structure to the nearest point of such property line or lot line.
(Code 2002, § 2.501; Ord. No. 324, § 1, 9-19-1978)

Sec. 8-61. Storage, disposal of manure at stables.

(a) *Receptacle required; specifications.* Every person owning any stable or other building where any horse, mule or donkey or other animal of the equine or bovine family is kept shall maintain a substantial and sufficient receptacle for manure which must be so constructed and kept as to protect the contents from rain and so screened as to prevent access to flies. All manure from such horse, mule or cattle must be placed in such receptacle.

(b) *Frequency of removal.* All persons owning any stable where horses, mules, donkeys or other animals of the equine or bovine family are kept shall have all manure from such animals removed from their premises at least twice in each week. At no time shall the manure be allowed to accumulate in such a manner as to be a nuisance.

(c) *Depositing on streets, public places prohibited.* In no event or circumstance shall any manure be thrown or deposited in any street or public place or suffered to remain in such places. No person hauling manure through the streets shall permit the same to litter the streets.
(Code 2002, § 2.502; Ord. No. 324, § 2, 9-19-1978)

Secs. 8-62—8-80. Reserved.

ARTICLE IV. WILD ANIMALS

Sec. 8-81. Generally.

(a) *Prohibitions and restrictions.* It shall be unlawful, within the corporate limits of the city, for any person to possess, permit, keep, suffer, cause or allow any wild animal within any residence or within 300 feet of any residence or building used for human habitation.

(b) *Defined.* As used herein, the term "wild animal" means and includes any mammal, amphibian, reptile or fowl which is of a species which is wild by nature, and of a species which, due to size, vicious nature or other characteristic is dangerous to human beings. Such animals shall include but not be limited to lions, tigers, leopards, panthers, bears, wolves, raccoons, skunks (whether deodorized or not), apes, gorillas, monkeys, foxes, elephants, rhinoceroses, alligators, crocodiles, and all forms of poisonous reptiles. The term "wild animal," as used herein, shall not include gerbils, hamsters, guinea pigs, mice or rabbits.

(c) Each day any person possesses, permits, keeps, suffers, causes or allows any wild animal within any residence or within 300 feet of any residence or building used for human habitation in violation of this article shall constitute a separate offense. Further, the keeping of more than one such wild animal in violation of this article shall constitute a separate offense for each such animal.
(Code 2002, § 2.600; Ord. No. 336, §§ 1—3, 12-18-1979)

Secs. 8-82—8-105. Reserved.

ARTICLE V. RABIES CONTROL*

Sec. 8-106. 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:

Owner refers to that person who actually has the right of control of the dog or cat, the right to sell or otherwise deal with the dog or cat, or if such person is a minor, then the natural or legal guardian of such minor owner. If the dog or cat shall make its home upon any premises within the corporate limits of the city, and no person claims to be the owner of such dog or cat, such dog or cat shall be deemed to be the property of the head of the household of the premises where such dog or cat makes its home.
(Code 2002, § 2.201; Ord. No. 252, § 1, 9-19-1973)

Sec. 8-107. Vaccination required.

(a) Every dog or cat within the city shall be vaccinated with an antirabies vaccine approved by the United States Department of Agriculture as required by state law.

(b) The fact of antirabies vaccination and the date thereof shall be shown on a tag fastened in some manner to the dog or cat. It shall be unlawful for a dog or cat not to have such vaccination tag fastened in some manner to it. Absence of such vaccination tag shall be prima facie evidence of the fact that the dog or cat has not been so vaccinated.

(c) Every dog or cat, in some manner, shall have fastened to it at all times an identification tag bearing the owner's name, the owner's address and owner's telephone number.
(Code 2002, § 2.202; Ord. No. 252, § 2, 9-19-1973)

State law reference—Vaccination of dogs and cats required, V.T.C.A., Health and Safety Code § 826.021.

*__State law references—__Rabies, V.T.C.A., Health and Safety Code ch. 826; authority of municipalities to establish rabies control programs, V.T.C.A., Health and Safety Code, § 826.015

Sec. 8-108. Dog or cat bites.

(a) The owner of any dog or cat that bites any person not engaged in the commission of a crime on public property or on private property not belonging to the owner shall be guilty of a misdemeanor. Upon conviction for a second violation of this article, the dog or cat which for the second time has bitten a person shall be impounded and destroyed and the owner thereof shall be guilty of a misdemeanor.

(b) The owner of any dog or cat that molests or attempts to bite any person not engaged in the commission of a crime on public property or on private property not belonging to the owner shall be guilty of a misdemeanor.

(c) The owner of any dog or cat that bites, injures or kills any fowl or domestic animal on any public property or on any private property not belonging to the owner shall be guilty of a misdemeanor.
(Code 2002, § 2.203; Ord. No. 252, §§ 4—6, 9-19-1973)

Sec. 8-109. Diseased animals.

The owner of any dog or cat in a contagious diseased condition that is found upon any public property or any private property not belonging to the owner and without permission of the owner of such private property, shall be guilty of a misdemeanor.
(Code 2002, § 2.204; Ord. No. 252, § 7, 9-19-1973)

Sec. 8-110. Animals causing nuisances.

(a) The owner of any dog or cat which is a nuisance shall be guilty of a misdemeanor. A dog or cat shall be a nuisance if it:

(1) Opens or overturns a closed garbage container;

(2) Interrupts a public function on public property; or

(3) Disturbs the peace while congregated in a pack of three or more dogs on private property not belonging to the owners of any such dogs and without the permission of the property owner.

(b) Any peace officer, public health officer or animal control officer of the city is hereby authorized to seize and impound any dog or cat which, in the opinion of such officer, is a nuisance, or which is alleged to be a nuisance by formal complaint.
(Code 2002, § 2.205; Ord. No. 252, § 8, 9-19-1973)

Sec. 8-111. Seizure and impoundment.

(a) Any dog or cat which violates sections 8-107 through 8-110 shall be seized and impounded. The place of impoundment shall be a private veterinary hospital approved by the public health officer. The cost of impoundment and any necessary treatment or vaccination shall be paid for by the owner before the dog or cat is released. The cost of impoundment shall be refunded by the city if the owner is not convicted after being charged and tried for violating sections 8-107 through 8-110. Any dog or cat not claimed by its owner and released from the place of impoundment within five days, exclusive of Saturdays, Sundays or public holidays, after its impoundment, shall thereafter be destroyed by injection of a lethal drug, save and except any dog or cat which has been impounded under suspicion of having violated section 8-109 of this article for which the period of impoundment, before release or destruction, shall be the duration set forth in subsection (c) of this section.

(b) Any person in control or possession of any dog or cat in violation, or suspected or alleged by formal complaint to be in violation of any provision of this article, who fails to release such dog or cat to any peace officer, animal control officer or public health officer of the city, upon demand by such officer, shall be guilty of a misdemeanor.

(c) Every animal that has rabies or symptoms thereof, every animal that has been exposed to rabies and every animal that bites, scratches or otherwise attacks any person within the city shall be impounded at once and held under observation at a private veterinary hospital approved by the public health officer at the owner's expense for such period of time as the public health officer may deem necessary; provided, however, that such period of time shall not be fewer than seven days nor more than 14 days.
(Code 2002, § 2.206; Ord. No. 193, § 1, 6-14-1965; Ord. No. 252, §§ 9, 10, 9-19-1973)

Sec. 8-112. Animals with suspected rabies.

(a) No animal that has rabies shall be allowed at any time on the streets or public ways of the city. No animal that has been suspected of having rabies shall be allowed at any time on the streets or public ways of the city until such animal has been released from observation by the public health officer or his deputy.

(b) The owner, keeper or person in charge of any animal that has rabies or symptoms thereof, that has been exposed to rabies, or that has bitten, scratched or otherwise attacked any person within the city, shall, upon demand, turn over such animal to the city police.

(c) The body of any animal that has died of rabies shall not be disposed of except as directed by the public health officer.
(Code 2002, § 2.207; Ord. No. 193, §§ 2—4, 6-14-1965)

Sec. 8-113. Penalty for violations.

The owner of any dog or cat found in the city, not in compliance with section 8-107(a), shall be guilty of a misdemeanor. The owner of any dog or cat found in the city, off the premises of the owner, not in compliance with section 8-107(b) shall be guilty of a misdemeanor.
(Code 2002, § 2.208; Ord. No. 252, § 3, 9-19-1973)

Chapter 9

RESERVED

Chapter 10

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Article II. Building Code

Article III. Residential Code

Article IV. Energy Conservation Code

Article V. Plumbing Code

Article VI. Mechanical Code

*__State law reference—__Regulation of land use, structures, businesses, and related activities, V.T.C.A., Local Government Code ch. 211 et seq.

Article VII. Electrical Code

Article VIII. Outdoor Lighting

Article IX. Flood Plain Administration

Article X. Fuel Gas Code

Article XI. Existing Building Code

ARTICLE I. IN GENERAL

Sec. 10-1. Permits for construction activity.

(a) *Expiration of permits.* Except as otherwise provided in this Code, any building or other permit that authorizes construction activity in the city shall expire on the second anniversary of the date of its issuance, regardless of the date construction activity was actually commenced and the building official shall have no authority to renew or extend an expired permit.

(b) *Renewal of expired permits.* An expired permit may be renewed or extended by the city council if the applicant pays the applicable fees and demonstrates that: a) good cause exists for extending or renewing the permit; and b) appropriate measures will be taken to mitigate any negative effect of continued construction on nearby property owners or the public.

(c) *Commencement of work.* No building or other permit that authorizes construction activity in the city shall be issued unless the applicant for the permit warrants to the city that the proposed work will commence within 90 days after the date of issuance of the permit.

(d) *Fees and charges.* The city council shall establish the fees and charges for building, plumbing, mechanical, electrical and other permits and inspections. The fees and charges may be amended from time to time by city council. A copy of the schedule of fees and charges shall be maintained in the office of the city secretary.

(e) *Other codes.* The provisions of this section shall govern the issuance of permits under the International Building Code, the International Residential Code, the International Plumbing Code, the International Mechanical Code, and any other building or construction codes adopted by the city. (Code 2002, § 3.700; Ord. No. 608, 12-17-2002; Ord. No. 766, § 1, 1-25-2011)

Sec. 10-2. Building moving.

(a) Moving or causing to be moved any used building, whether residential or otherwise, within, into, out of or through the city is hereby prohibited without written permission of the city.

(b) Each day that a used building is allowed to remain within the city after having been brought to the city shall constitute a separate violation. (Code 2002, § 3.1000; Ord. No. 305, 9-13-1977)

Sec. 10-3. Construction site regulations.

Any person who engages in construction activity, or who is in control of a construction site, within the city shall comply with the following requirements:

(1) *Permit boxes.* All construction permits and any other documents required to be posted at the construction site shall be displayed in a secure, weather-proofed "DOCBOX" or equivalent form of container. The container shall be placed in a location that is easily identifiable and accessible at all times.

(2) *Waste containers.* The site shall be equipped with a commercial solid waste container of adequate size to collect and store any solid waste generated by the construction activity. The container shall be placed in a location that is easily accessible and, if possible, screened from the neighbors. The container must be placed, removed, serviced, and emptied only during legal work hours as provided below in subsection (15) and only within the construction site.

(3) *Policing of site.* All construction related material scraps, trash, rubble, debris, food packages, or any other form of waste located on the construction site or on nearby public or private property must be picked up immediately and placed in a waste container or removed from the site.

(4) *Storage of materials and tools.* All building materials, equipment, and tools that are not in actual use shall be stacked or otherwise secured in an orderly manner.

(5) *Policing of adjacent rights-of-way.* All sidewalks and streets and other public rights-of-way adjoining the construction site shall be kept free of dirt and other construction generated debris and shall be swept on a daily basis if necessary.

(6) *Disposal of garbage.* Garbage, food waste, and similar rapidly biodegradable materials shall be contained in closed, covered containers and the containers shall be emptied no less than twice weekly.

(7) *Construction hazards.* All excavations and holes shall be filled or covered as soon as possible. Any construction site hazards shall be marked and barricaded. Newly poured concrete or similar materials shall be properly secured.

(8) *Portable toilets.* At least one clean and properly serviced portable toilet shall be provided at each construction site. The portable toilet shall be placed no closer than 35 feet from the front property line or 25 feet from any side or rear property line and shall be screened from public view by a wood enclosure at least as tall as the portable toilet. The door to the portable toilet shall face away from street and neighboring property views. The portable toilet shall be serviced regularly to prevent health hazards and offensive odors.

(9) *Site parking.* All vehicles, trailers, or mobile equipment associated with the construction site shall be parked on the site where possible. Otherwise, they shall be parked on the same side of the street as the construction site and in front of or as close to the site as possible. In no event shall any vehicle, trailer, or mobile equipment be parked on a street in such manner as to leave less than fifteen feet of street clearance for other traffic.

(10) *Property damage.* The contractor in charge of the site and the owner of the site shall be jointly liable for any damage to public property or rights-of-way that occurs because of construction activity. Any damage must be repaired immediately. A construction project will not be eligible for final inspection until all necessary repairs are completed.

(11) *Noise.* Radios and other sound amplifying equipment shall not be operated on a construction site.

(12) *Deliveries.* Construction materials may be placed in the public right-of-way only during unloading activities during work hours as provided in subsection (15) and must be relocated to the construction site within two hours.

(13) *Erosion control.* The contractor in charge of the site and the owner of the site shall take whatever measures are necessary to prevent soil or other materials from washing off the site. Storm water runoff shall be controlled so that silt, earth, topsoil, and other materials are not washed onto city streets or into storm drains, drainage easements, ditches or other drainage facilities. No fencing shall be required when construction involves an occupied home.

(14) *Security.* The construction site shall be secured by fencing the perimeter of all areas where construction activity is to occur. The fencing must be maintained in place until all exterior construction activity, other than landscaping, is complete, the structure has been secured against entry, and all on-site materials have been installed or secured within the structure. The fence must be at least six feet in height and constructed of chain-link, wood, or other sturdy materials. No fencing shall be required where the construction activity is on the site of an occupied single-family residence.

(15) *Work hours.* All construction work shall be performed between the hours of 8:00 a.m. and 7:00 p.m. on weekdays, or between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays, except as provided below. No construction work shall be performed on Sundays or on holidays on which the city's offices are closed. On days on which construction work is permitted indoor work may continue until 9:00 p.m. provided that all such work is conducted in an enclosed structure, and is not visible or audible from surrounding properties. The city's building official may permit construction work to be performed at other times if necessary because of emergency conditions. The provisions of this subsection

shall control over any contrary provision in any of the uniform building codes adopted by the city.

(Ord. No. 711, § 1, 1-15-08)

Editor's note—Ord. No. 711, § 1, adopted January 15, 2008, enacted provisions intended for use as subsections (a)—(o). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (1)—(15).

Sec. 10-4. Entry by police on construction sites.

(a) Any property owner who applies, directly or through authorized agents, for a building permit from the city authorizing construction on property located within the city shall be deemed to have consented, subject to the limitations provided below, to the entry on the property where the construction is to occur of police officers employed by the Memorial Villages Police Department or other police agencies for the purpose of deterring or investigating criminal activity.

(b) The consent referenced in subsection (a):

(1) Shall not extend to remodeling, expansion, or renovation projects where the structure being remodeled, expanded, or renovated remains occupied during the construction process; and

(2) Shall not be construed as authorizing a police officer to enter a structure that has been locked or otherwise secured against unauthorized entry.

(c) The city's building official is hereby directed to provide, to all persons receiving building permits, written notice of the provision of this section.

(Ord. No. 686, §§ 2—4, 5-15-2007; Ord. No. 711, § 2, 1-15-2008)

Editor's note—Ord. No. 711, § 2, adopted January 15, 2008, renumbered the former section 26-5 as section 10-4. The historical notation has been preserved for reference purposes.

Secs. 10-5—10-22. Reserved.

ARTICLE II. BUILDING CODE

Sec. 10-23. International Building Code adopted.

The International Building Code, 2009 Edition (nonresidential), hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., as amended in sections 10-24 and 10-25, is hereby adopted and made applicable in the city. A copy of the code shall be maintained in the office of the city secretary.

(Code 2002, § 3.101; Ord. No. 627, 10-19-2004; Ord. No. 786, § 1, 3-27-2012)

State law reference—International Building Code as the commercial building code in this state, V.T.C.A., Local Government Code § 214.216.

Sec. 10-24. Amendments.

(a) Section 103 of the building code adopted in this article is hereby deleted and a new section 103 is substituted therefor as follows:

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

(b) Section 104 of such code is hereby deleted and a new section 104 is substituted therefor as follows:

104. Powers and duties of the building official.

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

interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.

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

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

104.4. Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code, and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity.

The details of any action granting modifications shall be written and recorded and entered in the files of the city.

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

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

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

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

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

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

(c) Sections 105.1, 105.1.1, and 105.1.2 of such code are hereby deleted in their entirety.

(d) Section 105.2 of such code is hereby amended by deleting the exemptions listed 1 through 13 under "Building" and replacing such list as follows:

105.2. Work exempt from permit.

Building:

a. One-story detached accessory structures to be used as tool or storage sheds, playhouse and similar uses,

provided the floor area does not exceed 120 square feet (11.15 m^2) and does not contain electrical, gas, plumbing, or mechanical installations.

b. Sidewalks and decks.

c. Painting, papering, tiling, carpeting, cabinets, countertops or similar finish work.

d. Prefabricated swimming pools accessory to a group R-3 occupancy, which are less than 24 inches deep, do not exceed 5,000 gallons and are installed above ground.

e. Swings and other playground equipment accessory to one- and two-family dwellings.

(e) Section 105.3 of such code is hereby amended by adding a new paragraph 8, which shall provide as follows:

105.3. Application for permit.

8. The site plan shall show the proposed method of handling stormwater runoff within the boundaries of the subject site, lot, or tract of land and also showing the disposition of such stormwater runoff therefrom in accordance with the location and capacity of the then-existing storm drainage system of the city.

(f) Reserved.

(g) Reserved.

(h) Section 105 of such code is hereby amended by adding a new section 105.9, which provides as follows:

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

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

(i) Section 109.2 of such code is hereby deleted and a new section 109.2 is substituted therefor as follows:

109.2. Schedule of permit fees. For buildings, structures or electrical, gas, mechanical and plumbing systems or alterations thereof requiring a permit, a fee for each permit shall be paid as required, as set by resolution or ordinance of the city council from time to time and shall be maintained on file in the office of the city secretary.

(j) Section 109.4 of such code is hereby deleted and a new section 109.4 is substituted therefor as follows:

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

(k) Section 111.1 of such code is hereby deleted and a new section 111.1 is substituted therefor as follows:

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

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

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

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

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

(n) Section 114 of the code is deleted in its entirety and the penalty provision of section 1-8 of the Code of Ordinances is substituted in its place.

(o) Section 903, entitled "Automatic sprinkler systems" is deleted. Automatic sprinkler systems are required as provided by section 20-22.

(p) Sections 1507.8 and 1507.9 of such code are hereby amended by deleting both sections in their entirety and a new section 1507.8 is hereby substituting therefor to provide as follows:

1507.8. Wood shingles and shakes.

a. Allowed roof coverings of any structure regulated by this International Building Code shall be as provided in this section.

b. Wood shingles and shakes are not allowed, shall not be allowed as an alternative material and shall not be installed or used on any new construction or re-roofing of any structure.

c. Existing structures which have wood shingles or shakes may be repaired with fire-retardant shingles or shakes of a comparable grade; however, owners shall have the option of installing any allowed class A, class B or class C roofing material over the existing wood shingles and shakes providing the existing roof structural system is adequate for modification. "Repair" means the replacement of damaged or destroyed shingles or shakes, provided the area repaired does not exceed 25 percent of the square foot surface area of the roof. A wood shingle or shake roof may not be replaced with wood shingles or shakes in increments which are undertaken as repairs.

(q) Section 3303 of such code is hereby amended by adding thereto a new section 3303.7 to provide as follows:

3303.7. Demolition time. The maximum time period for a demolition permit shall be 45 days after the date of issuance of the permit, and thereafter a new permit must be obtained and the permit fees paid.

When demolition is commenced it shall be completed within seven days. The permit may be renewed only once.

(r) Section 503 of such code, entitled "General height and area limitations," is hereby deleted in its entirety.

(s) Section 504.2 of such code is amended by deleting the following sentence:

For Group R buildings equipped throughout with an approved automatic sprinkler system in accordance with section 903.3.1.2, the value specified in table 503 for maximum height is increased by 20 feet (6,096 mm) and the maximum number of stories is increased by one story, but shall not exceed four stories or 60 feet (18,288 mm), respectively.

(Code 2002, § 3.102; Ord. No. 585, 6-19-2001; Ord. No. 627, 10-19-2004; Ord. No. 679, § 1, 2-27-2007; Ord. No. 737, § 1, 3-24-2009; Ord. No. 766, § 2, 1-25-2011; Ord. No. 786, § 1, 3-27-2012)

Sec. 10-25. Appendices.

(a) The following appendices contained in the International Building Code are deleted in their entirety: Appendix A, Employee Qualifications; Appendix B, Board of Appeals; Appendix D, Fire Districts; Appendix H, Signs; and Appendix I, Patio Covers.

(b) Appendices C, E, F, G, and J contained in such code are hereby adopted.

(Code 2002, § 3.103)

Sec. 10-26. Future amendments.

Future amendments of such International Building Code, 2009 Edition, not including clarifications or technical notices of any type, are not adopted by this article and must be subsequently approved and adopted by the city council.
(Code 2002, § 3.104; Ord. No. 627, 10-19-2004; Ord. No. 786, § 1, 3-27-2012)

Sec. 10-27. Effect of code.

The building code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the city council, the city, its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Code 2002, § 3.105)

Secs. 10-28—10-57. Reserved.

ARTICLE III. RESIDENTIAL CODE

Sec. 10-58. International Residential Code adopted.

The International Residential Code, 2009 Edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., as amended in section 10-59, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Code 2002, § 3.201; Ord. No. 628, 10-19-2004; Ord. No. 787, § 1, 3-27-2012)

State law reference—International Residential Code as the municipal residential building code in the state, V.T.C.A., Local Government Code § 214.212.

Sec. 10-59. Amendments.

(a) Section R103 of the residential code adopted in this article is hereby deleted in its entirety and a new section R103 is substituted therefor as follows:

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

(b) Section R104 of such code is hereby deleted in its entirety and a new section R104 is substituted therefor as follows:

R104. Duties and powers of the building official.

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

R104.2. Right of entry. When it is necessary to make an inspection to enforce the provisions of this code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

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

R104.4. Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code and that such modification does not lessen accessibility, health, life and fire safety, or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.

R104.5. Alternate materials, alternative design and methods of construction. The provisions of this code are not intended to prevent the use of a material, alternate design or method of construction not specifically prescribed by this code, provided any alternate has been approved by the building official.

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

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

R104.6. Tests. Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or work does not conform to the requirements of this code, the building official may require tests as proof of compliance to be made at no expense to the city.

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

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

(c) Section R105.2 of such code is hereby amended by deleting exemptions listed as numbers 1 through 5 under the heading "Building."

(d) Reserved.

(e) Reserved.

(f) Section R105 of such code is hereby amended by adding a new section R105.10, which provides as follows:

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

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

(g) Section R108 of the code is amended by adding to section R108.2 the following provision:

R108.2. Schedule of permit fees. Fees shall be charged as set by resolution or ordinance of the city council from time to time and shall be maintained on file in the office of the city secretary.

(h) Section R108 of such code is hereby amended by adding a new section R108.7, which provides as follows:

R108.7. Work commencing before permit issuance. The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(i) Section R110.1 of such code is deleted in its entirety and a new section R110.1 is substituted therefor, which provides as follows:

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

Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city.

Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the city shall not be valid.

(j) Section R112.1 of the code is hereby deleted and new section R112.1 is substituted therefor as follows:

R112.1. Appeals. Appeals of orders, decisions or determinations made by the city's building official in interpreting or applying this code shall be to the city council. The city council may obtain the assistance of persons who are qualified by experience and training on a particular subject under consideration.

(k) Section R112.3 of the code is hereby deleted in its entirety.

(l) Section R113 of the code is deleted in its entirety and the penalty provision of section 1-8 of the Code of Ordinances is substituted in its place.

(m) Sections R905.7 and R905.8 of the code are deleted in their entirety and a new section R905.7 is substituted therefor as follows:

R905.7. Wood shingles and shakes.

a. Allowed roof coverings of any structure regulated by this code shall be as provided in this section.

b. Wood shingles and shakes are not allowed, shall not be allowed as an alternative material and shall not be installed or used on any new construction or re-roofing of any structure.

c. Existing structures which have wood shingles or shakes may be repaired with fire-retardant shingles or shakes of a comparable grade; however, owners shall have the option of installing any allowed class A, class B or class C roofing material over the existing wood shingles and shakes providing the existing roof structural system is adequate for modification. "Repair" means the replacement of damaged or destroyed shingles or shakes, provided the area repaired does not exceed 25 percent of the square foot surface area of the roof. A wood shingle or shake roof may not be replaced with wood shingles or shakes in increments which are undertaken as repairs.

(Code 2002, § 3.202; Ord. No. 588, 6-19-2001; Ord. No. 737, § 1, 3-24-2009; Ord. No. 766, § 2, 1-25-2011; Ord. No. 787, § 1, 3-27-2012)

Sec. 10-60. Automatic sprinkler systems.

Automatic sprinkler systems are required as provided by section 20-22.
(Code 2002, § 3.203; Ord. No. 627, 10-19-2004; Ord. No. 679, § 2, 2-27-2007)

Sec. 10-61. Appendices.

(a) The following appendix contained in the International Residential Code is deleted in its entirety: Appendix E, Manufactured Housing Used As Dwellings.

(b) Appendices A through D and F through K contained in the code are hereby adopted.
(Code 2002, § 3.204; Ord. No. 588, 6-19-2001)

Sec. 10-62. Future amendments.

Future amendments of such International Residential Code, 2009 Edition, not including clarifi-

cations or technical notices of any type, are not adopted by this article and must be subsequently approved and adopted by the city council.
(Code 2002, § 3.205; Ord. No. 627, 10-19-2004; Ord. No. 787, § 1, 3-27-2012)

Sec. 10-63. Effect of code.

The residential code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the city council, the city, its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Code 2002, § 3.206)

Secs. 10-64—10-84. Reserved.

ARTICLE IV. ENERGY CONSERVATION CODE

Sec. 10-85. International Energy Conservation Code adopted.

The International Conservation Energy Code, 2009 Edition, as published by the International Code Council, Inc., hereinafter sometimes referred to as the "code," is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Code 2002, § 3.1501; Ord. No. 788, § 1, 3-27-2012)

Sec. 10-86. Future amendments.

Future amendments, not including clarifications or technical notices of any type, of the International Energy Conservation Code, 2009 Edition, are not adopted by this article, and must be subsequently approved and adopted by the city council.
(Code 2002, § 3.1502; Ord. No. 631, 10-19-2004; Ord. No. 788, § 1, 3-27-2012)

Sec. 10-87. Effect of code.

The energy conservation code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the city council, the city, its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Code 2002, § 3.1503)

Secs. 10-88—10-117. Reserved.

ARTICLE V. PLUMBING CODE

Sec. 10-118. International Plumbing Code adopted.

The International Plumbing Code, 2009 Edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., as amended in section 10-119, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Code 2002, § 3.301; Ord. No. 632, 10-19-2004; Ord. No. 789, § 1, 3-27-2012)

Sec. 10-119. Amendments.

(a) Section 103 of the plumbing code adopted in this article is deleted in its entirety and a new section 103 substituted therefor as follows:

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

(b) Section 104 of such code is deleted in its entirety and a new section 104 substituted therefor as follows:

104. Duties and powers of the building official.

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

104.2. Reserved.

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

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

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

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

The building official shall require that sufficient written evidence or proof be submitted to substantiate any claims that may be made regarding an alternate.

The details of any action granting approval of an alternate shall be written and recorded and entered in the files of the city.

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

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

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

(c) Section 105 of such code is deleted in its entirety.

(d) Reserved.

(e) Section 106.6 of such code is deleted in its entirety and a new section 106.6 is substituted in its place as follows:

> 106.6. Fees. Fees shall be charged as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary. The fee for work commenced without a permit shall be double the fee set forth in the fee schedule adopted by the city.

(f) Section 106.6.3.2 of such code is amended by substituting the figure 75 percent for the words (Specify percentage).

(g) Section 106 of such code is amended by adding a new section 106.6.4, which provides as follows:

> 106.6.4. State license. All persons performing work in the city governed by this code shall be licensed by the state, and shall submit to the city proof of insurance as required by the state or by statute.

(h) Reserved.

(i) Section 106 of such code is amended by adding a new section 106.6.6, which provides as follows:

> 106.6.6. Demolition time. The maximum time period for a demolition permit shall be 45 days after the date of issuance of the permit, and thereafter a new permit must be obtained and the permit fees paid. When demolition is commenced it shall be completed within seven days. The permit may be renewed only once.

(j) Section 108 of such code is deleted in its entirety and the penalty provision of section 1-8 of the Code of Ordinances is substituted in its place.

(k) Section 109 of such code is deleted in its entirety and a new section 109 substituted therefor as follows:

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

(l) Section 605 of such code is amended by deleting any and all references to polybutylene pipe and tubing. Installation of polybutylene pipe and tubing, or use for repair, is prohibited.

(m) Section 702 of such code is amended by deleting any and all references to concrete pipe and asbestos-cement pipe and tubing. Installation of concrete pipe or asbestos-cement pipe and tubing, or use for repair, is prohibited.

(n) Appendix A, plumbing permit fee schedule, contained in the code is deleted its entirety and appendices B through G contained in such code are hereby adopted.
(Code 2002, § 3.302; Ord. No. 589, 6-19-2001; Ord. No. 737, § 1, 3-24-2009; Ord. No. 766, § 2, 1-25-2011; Ord. No. 789, § 1, 3-27-2012)

Sec. 10-120. Future amendments.

Future amendments (not including clarifications or technical notices of any type) of the International Plumbing Code, 2009 Edition, are not adopted by this article, and must be subsequently approved and adopted by the city council.
(Code 2002, § 3.303; Ord. No. 632, 10-19-2004; Ord. No. 789, § 1, 3-27-2012)

Sec. 10-121. Effect of code.

The plumbing code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or properly caused by defects nor shall the city council, the city or its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Code 2002, § 3.304)

Secs. 10-122—10-140. Reserved.

ARTICLE VI. MECHANICAL CODE

Sec. 10-141. International Mechanical Code adopted.

The International Mechanical Code, 2009 Edition, hereinafter sometimes referred to as the

"code," as published by the International Code Council, Inc., as amended in section 10-142, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Code 2002, § 3.401; Ord. No. 629, 10-19-2004; Ord. No. 790, § 1, 3-27-2012)

Sec. 10-142. Amendments.

(a) Section 103 of the mechanical code adopted in this article is deleted in its entirety and a new section 103 substituted therefor as follows:

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

(b) Section 104 of such code is hereby deleted in its entirety and a new section 104 is substituted therefor as follows:

> 104. Duties and powers of the building official.
>
> > 104.1. General. The building official is hereby authorized and directed to enforce all of the provisions of this code. The building official shall have the power to render interpretations of this code and to adopt and enforce written rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.
> >
> > 104.2. Right of entry. When it is necessary to make an inspection to enforce the provisions of this code, or when the building official has reasonable cause to believe that there exists in a building or upon its premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous, or hazardous, the building official may request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.
> >
> > 104.3. Stop orders. Whenever any work is being done contrary to the provisions of this code the building official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop work until authorized in writing by the building official to proceed with the work.
> >
> > 104.4. Modifications. When there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases. The building official must find that a special reason makes the strict letter of this code impractical and that modification is in conformance with the intent and purpose of this code and that such modification does not lessen accessibility, health, life and fire safety or structural integrity. The details of any action granting modifications shall be written and recorded and entered in the files of the city.
> >
> > 104.5. Alternate materials, alternative design and methods of construction. The provisions of this code are not intended to prevent the use of a material, alternate design, or method of construction not specifically prescribed by this code, provided any alternate has been approved by the building official.
> >
> > The building official may approve any such alternate, provided the building official finds that the proposed material, design or method is satisfactory and complies with the provisions of this code and that the material and method of work offered are, for the purpose intended, at least equivalent of that prescribed in this code in suitability, effectiveness, fire resistance, durability and safety.
> >
> > The building official shall require that sufficient written evidence or proof be

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

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

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

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

(c) Section 105 of such code is deleted in its entirety.

(d) Such code is amended by deleting section 106.5 and appendix B, entitled "Recommended Permit Fee Schedule" as fees shall be charged as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.

(e) Section 106.5.3.2 of such code is amended by substituting the figure 75 percent for the words (Specify percentage).

(f) Section 106 of such code is amended by adding a new section 106.5.4, which provides as follows:

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

(g) Section 106 of such code is amended by adding a new section 106.5.6, which provides as follows:

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

(h) Section 108 of such code is deleted in its entirety and the penalty provision of section 1-8 of the Code of Ordinances is substituted in its place.

(i) Section 109 of such code is deleted in its entirety and a new section 109 substituted therefor as follows:

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

(j) Appendix A contained in the International Mechanical Code is hereby adopted.
(Code 2002, § 3.402; Ord. No. 590, 6-19-2001; Ord. No. 737, § 1, 3-24-2009; Ord. No. 766, § 2, 1-25-2011; Ord. No. 790, § 1, 3-27-2012)

Sec. 10-143. Future amendments.

Future amendments, not including clarifications or technical notices of any type, of the International Mechanical Code, 2009 Edition, are not adopted by this article, and must be subsequently approved and adopted by the city council.
(Code 2002, § 3.403; Ord. No. 790, § 1, 3-27-2012)

Sec. 10-144. Effect of code.

The mechanical code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the city council, the city or its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Code 2002, § 3.404)

Secs. 10-145—10-171. Reserved.

ARTICLE VII. ELECTRICAL CODE*

Sec. 10-172. Enforcement generally.

The provisions of this article shall apply to and govern the supply of electricity and all sales, rentals, leases, uses, installations, alterations, repairs, removals, renewals, replacements, distributions, connections, disconnections and maintenance of all electrical equipment. For the purpose of this article, the term "electrical equipment" means all materials, wiring, conductors, fittings, devices, appliances, fixtures, signs and apparatus or parts thereof.

(1) The following activities are exempt from the provisions of this article:

a. The installation, alteration or repair of electrical generation, transmission or distribution equipment, but not utilization equipment, owned and operated by an electrical public utility company or the city.

b. Any work in connection with electrical equipment used for radio and television.

c. Any work associated with:

1. The repair of any plug-connected electrical appliances or devices; or

2. The repair of permanently connected electrical appliances or devices that have been electrically and mechanically disconnected and separated from all sources of electrical supply by a licensed electrician. The opening of switches or blowing or removal of fuses shall not be considered an electrical or mechanical disconnection or separation.

d. The installation or replacement of approved fuses.

e. The installation or replacement of pin-type lamps, screw-base lamps or plug-connected portable appliances.

(2) The National Electrical Code of 2008, as recommended by the National Fire Protection Association, is hereby adopted in full, except for portions that are deleted, modified or amended by subsection (3) of this section. A copy of such code as adopted hereby, is attached hereto and made a part hereof for all purposes and a copy shall be maintained on file in the office of the city secretary.

(3) The following amendments, modifications and deletions to the National Electrical Code, 2008 Edition, are hereby made:

a. All services shall be installed in rigid metal conduit or electrical metallic tubing, except that underground services or feeders may be run in approved duct and, except where overhead services or feeders run between two buildings within six feet of each other, shall be run in rigid metal conduit, electrical metallic tubing or approved busways. Where underground services or feeders are run in approved duct, a continuous grounding wire or cable shall be installed in this duct from metal to metal to make a continuous ground and the minimum size of this wire or cable shall be that required for grounding the alternating current circuits and service equipment or interior raceway and equipment, as the case may be. Where duct is used, it shall in no case be smaller than two inches inside diameter. Where duct is used, it shall be buried at least 18 inches below the ground surface. The portion of the service ahead of the meter cabinet shall not run through attic spaces. Where conduit fittings are used ahead of meter cabinets, the same shall be of sealable type and

*__State law reference—__National Electrical Code as municipal electrical construction code, V.T.C.A., Local Government Code § 214.214.

shall be plainly visible. In no case will the use of electrical metallic tubing or aluminum rigid conduit, be permitted within 12 inches of the ground.

b. Where meters are installed in inaccessible places in houses or buildings and the electric public service company desires to relocate such meter loops for convenience in the rendering of its service, it may upon request to the chief electrical inspector have a licensed master electrician reinstall meter loops to a point where the same would be located if the house or building were having a new system of wiring installed, and all such work so done at the request of the electric public service company shall be performed without cost to the owner; unless such relocation is the result of such wiring having been condemned by the chief electrical inspector for practices in violation of the provisions of this or any other ordinance of the city.

c. The meter cabinets and electrical metering equipment through which service is rendered by the electric public service company to domestic establishments and buildings combining domestic establishments with commercial or industrial usage shall be installed where readily accessible on the exterior of the building. Fireproof meter cabinets or meter sockets shall be supplied by the electric public service company and installed by the electrician performing the work, such meter cabinets to be located so the center of the opening for the meter dial shall be not less than five feet nor more than six feet above mean ground level and to be readily accessible to the electric public service company service. All service outlets shall be located so as to permit placing the electric public service company's wires on the wall of the building next to the supply and in no case should be lower than ten feet from the ground level.

d. The electric public service company shall never require the placing of meters on the front or street side of a building without the written consent of the owner; and where it is not practical, in the opinion of the electrical inspector, to place metering devices on the exterior of the building, such location shall be at a point convenient to the electric public service company's service as determined by the electrical inspector.

e. Swimming pools. Article 680 of the National Electrical Code of 2008 shall apply to swimming pools. All electrical work on swimming pools shall be performed by or under the supervision of a master electrician on a separate permit apart from other electrical work on the same property. It shall be the master electrician's responsibility that all bonding (article 680-22) and all grounding (articles 680-24 and 680-25) is inspected and approved before it is covered.

f. Additions to existing wiring. Any additions to existing wiring shall be performed and inspected the same as new work. Service and panel boards shall be modified, if necessary, to comply with the provisions of the National Electrical Code of 2008.

g. The main grounding electrode at the service must be an approved driven grounding electrode and the main grounding conductor must also be connected to the cold water piping.

h. Only insulated copper conductors may be used as the wiring method.

(Code 2002, § 3.631; Ord. No. 344, art. VI, 5-20-1980; Ord. No. 570, 3-21-2000; Ord. No. 791, § 1, 3-27-2012)

Sec. 10-173. Registration of electricians.

Any person doing electrical work in the city shall register their statewide license with the city

secretary and pay the registration fee as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.

Sec. 10-174—10-194. Reserved.

ARTICLE VIII. OUTDOOR LIGHTING

Sec. 10-195. Restrictions.

(a) It shall be unlawful for any person to cause or permit to be energized on property under his possession or control any outdoor lighting including but not limited to spotlights, floodlights or similar illuminating devices which project a glare or brightness, directly or indirectly, upon any lot, tract or parcel of land, other than that upon which such outdoor lighting is situated which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

(b) All outdoor lighting in the city consisting of spotlights, floodlights or similar illuminating devices shall be installed, hooded, regulated, and maintained by the owner or person in control thereof in such a manner that the direct beam of any such light shall be cast downward so that it will not glare upon any lot, tract or parcel of land other than that upon which it is situated and so that it will not cause or permit any illumination from indirect lighting in excess of 0.5 footcandle in, on, or over the ground at or beyond the boundary of the lot, parcel or tract.
(Code 2002, § 3.1201; Ord. No. 343, §§ 1, 2, 5-20-1980)

Sec. 10-196. Permit and inspection—Required.

Any person desiring to install any outdoor lighting capable of illuminating, either by direct beam or spilled light on any property, shall first obtain any and all construction and installation permits required by other ordinances of the city and in addition shall obtain from the city building official or his designate an outdoor lighting permit to make such installation. The installation shall be made by a qualified electrician. Upon completion of such outdoor lighting installation for which the permit was granted, the electrician shall call for an inspection by the city building official to be made during hours of darkness with an accurate light meter, which shall be furnished by the electrician who made such installation. Both the building official and such electrician shall be present at the time such inspection is made.
(Code 2002, § 3.1202; Ord. No. 343, § 3, 5-20-1980)

Sec. 10-197. Same—Fees.

There shall be fees as set by resolution or ordinance of the city council from time to time and

kept on file in the office of the city secretary for outdoor lighting permits and inspections. Such schedule of fees shall be maintained in the office of the city secretary. It shall be unlawful for the owner or person in control of such outdoor lighting to cause the same to be turned on except for inspection purposes, until and unless the same meets the requirements of this article and has been inspected and finally approved by the building official.
(Code 2002, § 3.1203; Ord. No. 608, 12-17-2002)

Sec. 10-198. Existing lighting.

All existing outdoor lighting within the city shall be brought into compliance with the provisions of this article within 90 days of the passage of the ordinance from which this section is derived; provided, however, permits for existing outdoor lighting shall not be required unless such lighting is altered or moved.
(Code 2002, § 3.1204; Ord. No. 343, § 5, 5-20-1980)

Sec. 10-199. Game court lighting.

(a) Notwithstanding any other provision of this article, it shall be unlawful for any person to construct, install or maintain any outdoor lighting designed or used for the illumination of a tennis court, paddleball court or other type game court unless all of the area occupied by such court is at least 100 feet from all boundary lines of the property upon which such court is situated.

(b) All outdoor lighting designed or used for the purpose of illuminating tennis courts, paddleball courts or other type game courts shall be extinguished not later than 10:00 p.m. and shall not be again turned on until after 8:00 a.m. of the following day.
(Code 2002, § 3.1205; Ord. No. 343, §§ 6, 7, 5-20-1980)

Sec. 10-200. Exception.

The provisions of this article shall not apply to streetlights operated by or under the direction of the city.
(Code 2002, § 3.1206; Ord. No. 343, § 8, 5-20-1980)

Secs. 10-201—10-218. Reserved.

ARTICLE IX. FLOOD PLAIN ADMINISTRATION

Sec. 10-219. Generally.

(a) *Statutory authorization*. The legislature of the state has, in V.T.C.A., Water Code § 16.311 et seq., delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

(b) *Findings of fact.*

(1) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(c) *Statement of purpose.* It is the purpose of this article to promote public health, safety and general welfare and to minimize public and private loss due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area.

(d) *Methods of reducing flood losses*. In order to accomplish its purposes, this article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, are protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging and other development which may increase flood damage; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 2002, § 3.1301; Ord. No. 523, § 1, 10-15-1996)

Sec. 10-220. Definitions.

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

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex and is characterized by high-velocity flow, active processes of erosion, sediment transport and deposition and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Area of shallow flooding means a designated AO, AH or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Areas of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, zone A usually is refined into zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means any area of a building having its floor subgrade (below ground level) on all sides.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in or to improved or unimproved real estate, including but not limited to the construction or alteration of buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

Elevated building means a building which does not contain a basement and which is:

(1) Built, in the case of a building, in zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building in zones V1-30, VE or V, to have the bottom of the lowest

horizontal structure member of the elevated floor, elevated above ground level by means of pilings, columns (posts and piers) or shear walls parallel to the floor of the water; and

(2) Adequately anchored so as not to impair the structural integrity of the building during a base flood. In the case of zones A1-30, AE, A, A99, AO, AH, B, C, X and D, elevated building shall also include a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of zones V1-30, VE or V, the term "elevated building" shall also include a building otherwise meeting the definition of elevated building even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of section 60.3(e)(5) of the National Flood Insurance Program regulations.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. The term "existing construction" may also be referred to as existing structures.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets and either final site grading, or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the city.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which manufactured homes are to be affixed, including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the city.

Flood Insurance Study means the official report, identified as such, provided by FEMA. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

Flood protection system means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the city subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or *floodprone area* means any land area susceptible to being inundated by water from any source. See definition of flooding.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means regulations contained in zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and/or their contents.

Floodway or *regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include longterm storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

(3) Individually listed on the inventory of historic places by a state historic preservation program which has been approved by the Secretary of Interior; or

(4) Individually listed on an inventory of historic places by the county or the city, pursuant to a historic preservation program that has been certified either:

a. By a state program approved by the Secretary of the Interior; or

b. Directly by the Secretary of the Interior.

Levee means a manmade improvement, usually an earthen embankment, designed and constructed in accordance with sound engineering practices, to contain, control or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system that consists of a levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, suitable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's FIRM are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes,

the term "new construction" shall mean structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the city and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the city.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projections;

(3) Assigned to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily for use not as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]) includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The term "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above ground as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before start of construction of the improvement. This includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for the improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or

(2) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief to a person from the requirement of this article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this article. For full requirements, see section 60.65 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD 88), as adjusted by the Tropical Storm Allison Recovery Project (TSARP), or other datum where specified, of floods of various magnitude and frequencies in the floodplains of coastal or riverine areas.
(Code 2002, § 3.1302; Ord. No. 523, § 2, 10-15-1996; Ord. No. 831, § 1, 6-24-2014)

Sec. 10-221. General provisions.

(a) *Land to which this article applies.* This article shall apply to all areas of special flood hazard within the corporate limits of the city.

(b) *Basis for establishing areas of special flood hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "Flood Insurance Study - Harris County and Incorporated Areas," dated June 9, 2014, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and incorporated into this article.

(c) *Development permit.* It shall be unlawful for any person to cause or allow any new construction, substantial improvements or any other development to or on any tract of land owned or occupied by such person, within the corporate limits of the city, without having first received a development permit therefor issued in accordance with this article to ensure conformance with the provisions of this article.

(d) *Compliance.* No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this article and other applicable regulations.

(e) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate or impair any existing easement, covenant or deed restriction. However, where this article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) *Interpretation.* In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the city council; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(g) *Warning and disclaimer of liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.
(Code 2002, § 3.1303; Ord. No. 523, § 3, 10-15-1996; Ord. No. 831, § 2, 6-24-2014)

Sec. 10-222. Administration.

(a) *Designation of city engineer as administrative officer.* The city engineer is hereby appointed the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

(b) *Duties and responsibilities of the administrative officer.* Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.

(2) Review permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by adoption of the ordinance from which this article is derived.

(4) Review permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies (including section 505 or the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the state coordinating agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with section 10-221(b) obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source to administer the provisions of section 10-223.

(9) When a regulatory floodway has not been designated, require that no new construction, substantial improvement or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(c) *Permit procedures.*

(1) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/her and shall include but not be limited to plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information shall be required:

a. Elevation, in relation to mean sea level, of the lowest floor (including basement) of all new and substantially improved structures;

b. Elevation, in relation to mean sea level, to which any nonresidential structure shall be floodproofed;

c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 10-223(b)(2);

d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

e. The floodplain administrator shall maintain a record of all such information in accordance with subsection (b)(1) of this section.

(2) Approval or denial of a development permit by the floodplain administrator shall be based on all of the provisions of this article and the following relevant factors:

a. The danger to life and property due to flooding or erosion;

b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

c. The danger that materials may be swept onto other lands to the injury of others;

d. The compatibility of the proposed use with existing and anticipated development;

e. The safety of access to the property in times of flood for ordinary and emergency vehicles;

f. The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges and public utilities and facilities such as sewer, gas, electrical and water systems;

g. The expected height, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

h. The necessity to the facility of a waterfront location, where applicable;

i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

j. The relationship of the proposed use to the comprehensive plan for that area;

k. The impact to adjacent and neighboring properties, as it relates to drainage, flood levels and flood damage potential, reasonably expected as a result of the proposed development.

(3) The floodplain administrator may issue a development permit without an applicant submitting all or any part of the information required in subsection (c)(1) of this section, if the application is for a development located wholly outside an area of special flood hazard, and such administrator determines that there exists sufficient available data relating to the information being waived.

(d) *Variance procedures.*

(1) The appeal board shall be appointed by city council to hear and render judgment on requests for variances from the requirements of this article.

(2) The appeal board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this article.

(3) Any person aggrieved by the decision of the appeal board may appeal such decision to a court of competent jurisdiction.

(4) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this article.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in subsection (c)(2) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall be increased proportionately.

(7) Upon consideration of the factors noted in this section and the intent of this article, the appeal board may attach such conditions to the granting of variances as it

deems necessary to further the purpose and objectives of this article (see section 10-219(c)).

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

b. Variances shall only be issued upon:

1. Showing a good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that: (i) the criteria outlined in subsection (d)(9) are met; and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Code 2002, § 3.1304; Ord. No. 523, § 4, 10-15-1996)

Sec. 10-223. Provisions for flood hazard reduction.

(a) *General standards*.

(1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(6) All new and replacement sanitary sewage systems shall be designed to eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and

(7) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.

(b) *Specific standards.* In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 10-221(b), section 10-222(b)(8), or subsection (c)(3) of this section, the following provisions shall apply:

(1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection, as proposed in section 10-222(c)(1)a., is satisfied.

(2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the floodplain administrator.

(3) *Enclosures*. New construction and substantial improvements with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings shall not be equipped with screens, louvers, valves or other coverings or devices unless they permit the automatic entry and exit of floodwaters.

(4) *Manufactured homes.*

a. Require that all manufactured homes to be placed within zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

b. Manufactured homes that are placed or substantially improved within zones A1-30, AH and AE on the community's FIRM on sites:

1. Outside of a manufactured home park or subdivision;

2. In a new manufactured home park or subdivision;

3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation, and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

c. Manufactured homes placed or substantially improved on sites within an existing manufactured home park or subdivision within zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of subsection (4) shall be elevated so that either:

1. The lowest floor of the manufactured home is at or above the base flood elevation; or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) *Recreational vehicles.* Recreational vehicles placed on sites within Al-30, AH and AE on the community's FIRM shall either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of section 10-222(c)(1), and the elevation and anchoring requirements for manufactured homes in subsection (b)(4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices, and has no permanently attached additions.

(c) *Standards for subdivision proposals*.

(1) All subdivisions shall be consistent with section 10-219(b), (c) and (d).

(2) All proposals for the development of subdivisions, including manufactured home parks and subdivisions, shall meet development permit requirements of section 10-221(c) and section 10-222(c), and the provisions of this section.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 10-221(b) or section 10-222(b)(8).

(4) All subdivision proposals including manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(d) *Standards for areas of shallow flooding, AO/AH zones.* Located within the areas of special flood hazard established in section 10-221(b) are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity

flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of nonresidential structures shall:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in section 10-222(c)(1)a are satisfied.

(4) Require within zones AH or AO that adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(e) *Floodways*. Located within areas of special flood hazard established in section 10-221(b) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments shall be prohibited, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the city or adjacent areas during the occurrence of the base flood discharge.

(2) If subsection (e)(1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.

(Code 2002, § 3.1305; Ord. No. 523, § 5, 10-15-1996)

Sec. 10-224. Reserved.

ARTICLE X. FUEL GAS CODE

Sec. 10-225. International Fuel Gas Code adopted.

The International Fuel Gas Code, 2009 Edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., as may be amended in section 10-226, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Ord. No. 792, § 1, 3-27-2012)

Sec. 10-226. Amendments (reserved).

Sec. 10-227. Future amendments.

Future amendments (not including clarifications or technical notices of any type) of the International Fuel Gas Code are not adopted by this article, and must be subsequently approved and adopted by the city council.
(Ord. No. 792, § 1, 3-27-2012)

Sec. 10-228. Effect of code.

The code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects nor shall the city council, the city or its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Ord. No. 792, § 1, 3-27-2012)

Secs. 10-229—10-239. Reserved.

ARTICLE XI. EXISTING BUILDING CODE

Sec. 10-240. International Existing Building Code adopted.

The International Existing Building Code, 2009 Edition, hereinafter sometimes referred to as the "code," as published by the International Code Council, Inc., as may be amended in section 10-241, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Ord. No. 793, § 1, 3-27-2012)

Sec. 10-241. Amendments (reserved).

Sec. 10-242. Future amendments.

Future amendments (not including clarifications or technical notices of any type) of the International Existing Building Code are not adopted by this article, and must be subsequently approved and adopted by the city council.
(Ord. No. 793, § 1, 3-27-2012)

Sec. 10-243. Effect of code.

The code adopted in this article shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure for any damages to persons or property caused by defects nor shall the city council, the city or its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by such code or any permits or certificates issued under such code.
(Ord. No. 793, § 1, 3-27-2012)

Secs. 10-244—10-248. Reserved.

Chapter 11

BUSINESSES

Article I. Credit Access Businesses

ARTICLE I. CREDIT ACCESS BUSINESSES

Sec. 11-1. Definitions.

As used in this article:

Certificate of registration means a certificate of registration issued under this article to the owner or operator of a credit access business.

Consumer means an individual who is solicited to purchase or who purchases the services of a credit access business.

Consumer's language of preference is the language the consumer understands best.

Credit access business has the meaning given that term in Section 393.601 of the Texas Finance Code.

Deferred presentment transaction has the meaning given that term in Section 393.601 of the Texas Finance Code.

Extension of consumer credit has the meaning given that term in Section 393.001 of the Texas Finance Code.

Motor vehicle title loan has the meaning given that term in Section 393.601 of the Texas Finance Code.

Registrant means a person issued a certificate of registration for a credit access business under this article and includes all owners and operators of the credit access business identified in the registration application filed under this chapter.

State license means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-2. Violations; penalty.

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, commits an offense. A person commits a separate offense for each and every violation relating to an extension of consumer credit, and for each day during which a violation is committed, permitted, or continued.

(b) An offense under this article is punishable by a fine of not more than $500.

(c) A culpable mental state is not required for the commission of an offense under this article and need not be proved.

(d) The penalties provided for in subsection (b) of this section are in addition to any other remedies that the city may have under city ordinances and state law.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-3. Defense.

It is a defense to prosecution under this article that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G, of the Texas Finance Code.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-4. Registration required.

A person commits an offense if the person acts, operates, or conducts businesses as a credit access business without a valid certificate of registration. A certificate of registration is required for each physically separate credit access business.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-5. Registration application.

(a) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the city administrator. The application must contain the following:

(1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.

(2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business.

(3) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business, and the nature and extent of each person's interest in the credit access business.

(4) A copy of a current, valid state license held by the credit access business pursuant to Chapter 393, Subchapter G of the Texas Finance Code.

(5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Code of Ordinances.

(6) A non-refundable fee of $50.00.

(b) An applicant or registrant shall notify the city administrator within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-6. Issuance and display of certificate of registration; presentment upon request.

(a) The City Administrator shall issue to the applicant a certificate of registration upon receiving a completed application under section 11-5 of this Code.

(b) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the director or any peace officer for examination.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-7. Expiration and renewal of certificate of registration.

(a) A certificate of registration expires on the earliest of:

(1) One year after the date of issuance; or

(2) The date of revocation, suspension, surrender, expiration without renewal, or other termination of the registrant's state license.

(b) A certificate of registration may be renewed by making application and paying the $50.00 fee in accordance with section 11-5 of this Code. A registrant shall apply for renewal at least 30 days before the expiration of the registration.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-8. Nontransferability.

A certificate of registration for a credit access business is not transferable.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-9. Maintenance of records.

(a) A credit access business shall maintain a complete set of records of all extensions of consumer credit arranged or obtained by the credit access business, which must include the following information:

(1) The name and address of the consumer;

(2) The principal amount of cash actually advanced;

(3) The length of the extension of consumer credit, including the number of installments and renewals;

(4) The fees charged by the credit access business to arrange or obtain an extension of consumer credit; and

(5) The documentation used to establish a consumer's income under section 11-10 of this Code.

(b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of a consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code.

(d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made avail-

able for inspection by the city upon request during the usual and customary business hours of the credit access business.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-10. Restriction on extension of consumer credit.

(a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.

(b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:

(1) Three percent of the consumer's gross annual income; or

(2) Seventy percent of the retail value of the motor vehicle.

(c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.

(d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

(e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.

(f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-11. Requirement of consumer understanding of agreement.

(a) Every agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer), must be written in the consumer's language of preference. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English and Spanish languages.

(b) For every consumer who cannot read, every agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer) must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.

(c) For every consumer who cannot read, every disclosure and notice required by law must be read to the consumers in its entirety in the consumer's language of preference, prior to the consumer's signature.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Sec. 11-12. Referral to consumer credit counseling.

A credit access business shall provide a form, to each consumer seeking assistance in obtaining an extension of consumer credit which references non-profit agencies that provide financial education and training programs and agencies with cash assistance programs. The form will also contain information regarding extensions of consumer credit, and must include the information required by section 11-9 of this ordinance specific to the loan agreement with the consumer. The form must be provided in English and Spanish.
(Ord. No. 830, § 2, App. A, 6-3-2014)

Chapter 12

CABLE TELEVISION

Sec. 12-1. Rate regulation.

The city will exercise its authority to regulate cable television operating within its jurisdiction to the full extent allowed under law.
(Code 2002, § 4.700)

Chapter 13

RESERVED

Chapter 14

EMERGENCY MANAGEMENT*

*__State law references—__Emergency management, V.T.C.A., Government Code ch. 418; municipal programs, V.T.C.A., Government Code § 418.103.

Sec. 14-1. Organization.

The mayor shall be the emergency management director of the city in accordance with state law.

(1) An emergency management coordinator may be appointed by and serve at the pleasure of the director.

(2) The director shall be responsible for conducting a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in section 14-2. He may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.

(Code 2002, § 1.701; Ord. No. 620, 2-17-2004)

Sec. 14-2. Director powers, duties and responsibilities.

(a) The powers and duties of the director shall include an ongoing survey of actual or potential major hazards which threaten life and property within the city and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur. As part of his responsibility in hazards mitigation, the director shall supervise the development of an emergency management plan for the city and shall recommend that plan for adoption by the city council along with all mutual aid plans and agreements which are deemed essential for the implementation of such emergency management plan. The powers of the director shall include the authority to declare a state of disaster, but such action may be subject to confirmation by the city council at its next meeting. The duties of the director shall also include the causing of a survey if the availability of exiting personnel, equipment, supplies and services which could be used during a disaster, as provided for herein, as well as, a continuing study of the need for amendments and improvements in the emergency management plan.

(b) The duties and responsibilities of the emergency management director shall include the following:

(1) The direction and control of the actual disaster operations of the city emergency management organization as well as the training of emergency management personnel.

(2) The determination of all questions of authority and responsibilities that may arise within the emergency management organization of the city.

(3) The maintenance of necessary liaison with municipal, county, district, state, regional, federal or other emergency management organizations.

(4) The marshalling, after declaration of a disaster as provided for in this section, of all necessary personnel, equipment or supplies from any department of the city to aid in the carrying out of the provisions of the emergency management plan.

(5) The issuance of all necessary proclamations as to the existence of a disaster and the immediate operational effectiveness of the emergency management plan.

(6) The issuance of reasonable rules, regulations or directives which are necessary for the protection of life and property in the city. Such rules and regulations shall be filed in the office of the city secretary and shall receive widespread publicity, unless publicity would be of aid and comfort to the enemy.

(7) The supervision of the drafting and execution of mutual aid agreements in cooperation with the representatives of the state and of other political subdivisions of the state, and the drafting and execution, if deemed desirable, of an agreement with the county in which such city is located and with other municipalities within the county for the countywide coordination of emergency management efforts.

(8) The supervision of and final authorization for the procurement of all necessary supplies and equipment including acceptance of private contribution which may be offered for the purpose of improving emergency management within the city.

(9) The authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.

(Code 2002, §§ 1.702, 1.704; Ord. No. 620, 2-17-2004)

Sec. 14-3. Interjurisdictional program.

The mayor is hereby authorized to join with the county judge and the mayors of the other cities in such county in the formation of an emergency management council for the county and shall have the authority to cooperate in the preparation of a joint emergency management coordinator, as well as, all powers necessary to participate in a countywide program of emergency management insofar as such program may affect the city.

(Code 2002, § 1.703; Ord. No. 620, 2-17-2004)

Sec. 14-4. Composition, form, functions the of operational organization.

The operational emergency management organization of the city shall consist of the officers and employees of the city so designated by the director in the emergency management plan as well as all organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency plan. Such plan shall set forth the form of the organization, establish and designate divisions and functions, assign tasks, duties and powers, and designate officers and employees to carry out the provision of this article. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management and of the federal government.

(Code 2002, § 1.705; Ord. No. 620, 2-17-2004)

Sec. 14-5. Unauthorized warning signals a violation.

Any unauthorized person who shall operate a siren or other device so as to simulate a warning signal or the termination of a warning shall be deemed guilty of a violation of this article.

(Code 2002, § 1.706; Ord. No. 620, 2-17-2004)

Sec. 14-6. This article superseding existing regulations.

At all times when the orders, rules and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede and override all existing ordinances, orders, rules and regulations insofar as the latter may be inconsistent therewith.

(Code 2002, § 1.707; Ord. No. 620, 2-17-2004)

Sec. 14-7. State or federal statutes.

This article shall not be construed so as to conflict with any state or federal statute or with any military or naval order, rule or regulation.

(Code 2002, § 1.708; Ord. No. 620, 2-17-2004)

Sec. 14-8. Liability.

This article is an exercise by the city of its governmental functions for the protection of the public peace, health and safety and neither the city, the agents and representatives of such city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof in good faith carrying out, complying with or attempting to comply with any order, rule or regulation promulgated pursuant to the provisions of this article shall be liable for any damage sustained to persons as the result of such activity. Any person owning or controlling real estate or other premises who voluntarily, and without compensation, grants to the city a license of privilege, or otherwise permits the city to inspect, designate and use the whole or any parts of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack shall, together with his successors in interest, if any, not be civilly liable for the death of, or injury to any person on or about such real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such persons.

(Code 2002, § 1.709; Ord. No. 620, 2-17-2004)

Sec. 14-9. Commitment to contracts, funds.

No person shall have the right to expand any public funds of the city in carrying out any emergency management activity authorized by this article without prior approval by the city council,

nor shall any person have the right to bind the city contract, agreement or otherwise without prior and specific approval of the city council.
(Code 2002, § 1.710; Ord. No. 620, 2-17-2004)

Sec. 14-10. Violations; penalty.

It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this article, or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this article. It shall likewise be unlawful for any person to wear, carry or display any emblem, insignia or any other means of identification as a member of the emergency management organization of the city unless authority to do so has been granted to such person by the proper officials. Convictions for violations of the provisions of this article shall be punishable by a fine in accordance with the general penalty provision found in section 1-8.
(Code 2002, § 1.711; Ord. No. 620, 2-17-2004)

Sec. 14-11. Oath.

Each employee or any individual that is assigned a function or responsibility shall solemnly swear or affirm to support and defend the Constitution of the United States, laws of the state and the articles of the city.
(Code 2002, § 1.712; Ord. No. 620, 2-17-2004)

Sec. 14-12. National Incident Management System adopted.

The city hereby adopts the National Incident Management System dated March 1, 2005.
(Code 2002, § 1.731; Ord. No. 642, 8-16-2005)

Chapter 15

RESERVED

Chapter 16

EMERGENCY SERVICES

Article I. In General

Secs. 16-1—16-18. Reserved.

Article II. Alarm Systems

Division 1. Generally

Division 2. Permits

ARTICLE I. IN GENERAL

Secs. 16-1—16-18. Reserved.

ARTICLE II. ALARM SYSTEMS*

DIVISION 1. GENERALLY

Sec. 16-19. Definitions.

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

Alarm site means the premises within the city on which a burglar alarm system is, or will be, installed or operated.

Burglar alarm system means a device or system that transmits a signal intended to alert law enforcement officers or others of an unlawful entry or attempted unlawful entry into premises within the city.

Chargeable false alarm means a false alarm to which the city police department has responded within 30 minutes of receiving notification.

Chief of police means the Chief of Police of the Memorial Villages Police Department.

False alarm means the transmitting of a signal by a burglar alarm system indicating an unlawful entry or attempted unlawful entry into an alarm site when no such unlawful entry or attempted unlawful entry has occurred.

Shutoff device means a device or feature of a burglar alarm system that acts automatically to shutoff any audible signal emitted by the burglar alarm system within a predetermined time after the activation of the signal.
(Code 2002, § 8.101; Ord. No. 479, § 1, 5-19-1992)

Sec. 16-20. Shutoff devices.

All burglar alarm systems within the city shall be equipped with shutoff devices designed or adjusted to shut off the burglar alarm system's audible signal within 15 minutes after its activation.
(Code 2002, § 8.106; Ord. No. 479, § 6, 5-19-1992)

Sec. 16-21. Article requirements in addition to building regulations.

The requirements of this article are in addition to any applicable requirements of the city's building regulations.
(Code 2002, § 8.107; Ord. No. 479, § 7, 5-19-1992

Secs. 16-22—16-45. Reserved.

DIVISION 2. PERMITS

Sec. 16-46. Required.

It shall be unlawful to install, activate or operate a burglar alarm system within the city without a valid permit obtained in accordance with the provisions of this article.
(Code 2002, § 8.102(a); Ord. No. 479, § 2, 5-19-1992)

Sec. 16-47. Application.

(a) *Filing.* Applications for permits shall be filed with the city secretary by or on behalf of a person who has control over the alarm site.

(b) *Contents.* Applications shall contain the following information:

(1) The full name, business and residence addresses and business and residence telephone numbers of the applicant;

(2) The street address of the alarm site;

(3) A description of the nature of the ownership or other interest the applicant has in the alarm site;

(4) If the applicant is not the owner of the alarm site, the name, address and telephone number of the owner;

(5) The name and telephone numbers of the current occupants, if any, of the alarm site;

(6) The name and telephone number of a person or business entity that has agreed

*__State law reference—__Municipal regulation of alarm systems, V.T.C.A., Local Government Code § 214.191 et seq.

in the event of an alarm to come to the alarm site within one hour of being notified, for the purpose of granting access to the premises or deactivating the burglar alarm system;

(7) The name and telephone number of a person or business entity that has agreed to make repairs to the burglar alarm system at any time such repairs become necessary;

(8) A certification by the applicant that the system proposed to be installed or operated is equipped with a shutoff device in compliance with section 16-20.

(Code 2002, § 8.102(b), (c); Ord. No. 479, § 2, 5-19-1992)

Sec. 16-48. Fees—Initial, annual.

The fees for issuance, or renewal, of a permit under this article are as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.
(Code 2002, § 8.103; Ord. No. 479, § 3, 5-19-1992; Ord. No. 693, § 1, 7-17-2007)

Sec. 16-49. Same—False alarm.

In addition to the fees for issuance or renewal of a permit, a permit holder shall pay the sum as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary for each chargeable false alarm in excess of five for a 12-month period beginning on January 1 of each year.
(Ord. No. 696, § 1, 8-21-2007)

Sec. 16-50. Terms and conditions.

(a) A permit issued under this article shall expire at 11:59 p.m. on December 31 of the calendar year in which it was issued, or last renewed, unless the permit holder prepays the annual renewal fee.

(b) Permits shall be personal to the applicant and are not transferable.

(c) The issuance of a permit does not create or grant any right or privilege other than the right and privilege to install and operate a burglar alarm system within the city.

(d) Permit holders shall keep their permits at the alarm sites for which they were issued and shall produce the permits for inspection upon the request of any member of the police department.

(e) Permits may be revoked by the city upon failure of the permit holder to comply with the provisions of this article.
(Code 2002, § 8.104; Ord. No. 479, § 4, 5-19-1992; Ord. No. 693, § 2, 7-17-2007)

Sec. 16-51. Revocation—Generally.

(a) A permit may be revoked if:

(1) The permit holder has failed to make payment to the city of any fees assessed under section 16-49 within 60 days of the date the city has mailed a notice to the permit holder that the fees are due and owing; and

(2) Mechanical malfunction or faulty equipment has caused five or more false alarms by the burglar alarm system in the 12-month period immediately preceding the date of notice of hearing.

(b) A permit shall not be revoked under subsection (a)(1) of this section if the permit holder shows that the fees have been paid. A permit shall not be revoked under subsection (a)(2) of this section if the permit holder shows that, since the most recent false alarm from such alarm system, the system has been repaired and that the police department has inspected such alarm system and found it to have been properly repaired.
(Code 2002, § 8.109; Ord. No. 479, § 9, 5-19-1992)

Sec. 16-52. Same—Procedures.

(a) *Notice.* Prior to revocation of a permit, written notice shall be given to the permit holder or his agent by personal delivery or by certified mail addressed to the permit holder at the address set out in the application for the permit. The notice shall state:

(1) The amount of any fees assessed under section 16-49 that are due and owing, and the dates on which those fees were incurred, if the proposed revocation is based in whole or in part upon section 16-51 (a)(1);

(2) The specific dates of any false alarms from the alarm site which were caused by mechanical malfunction or faulty equipment, if the revocation is based in whole or in part upon section 16-51 (a)(2);

(3) A hearing will be held before the chief of police or his designated representative to determine whether the permit should be revoked;

(4) The date, time and place of the hearing; and

(5) The permit holder may appear in person and be represented by counsel, may present testimony, and may cross examine any witnesses.

(b) *Hearing officer.* All hearings shall be held by the chief of police or his designated representative who shall be referred to as the hearing officer. The chief of police shall not designate any person to perform the duties of hearing officer under this section who has prior knowledge of the allegations or circumstances of the proposed revocation.

(c) *Rules for hearing.* The following rules shall apply to the hearings:

(1) All parties shall have the right to representation by a licensed attorney though an attorney is not required;

(2) Each party may present witnesses on his own behalf;

(3) Each party has the right to cross examine any witnesses;

(4) Only evidence presented before the hearing officer at the hearing may be considered in rendering the order.

(d) *Failure to appear.* If the permit holder fails to appear at the hearing at the time, place, and date specified, the city shall be required to present sufficient evidence to establish a prima facie case showing that grounds exist for revocation of the permit.

(e) *Findings.* The hearing officer shall give written notice of his finding to the permit holder, and if the officer finds that grounds exist for revocation of the permit, the officer shall revoke the permit. Upon receipt of notice of revocation, the permit holder shall disconnect the burglar alarm system immediately and surrender the permit to the city secretary or the city secretary's designee.

(Code 2002, § 8.110; Ord. No. 479, § 10, 5-19-1992)

Sec. 16-53. Reinstatement.

(a) For permits revoked on the grounds set forth in section 16-51 (a)(2), the permit holder may request that an inspection is made after the burglar alarm system has been repaired. The inspection shall be made by the police department as soon as possible and not later than ten city working days after receipt of the request. The permit will be reinstated if, upon inspection by the police department, it is found that the system has been properly repaired, all fees assessed under section 16-49 for the alarm have been paid, and the permit holder has made a written request for reinstatement of the permit to the city secretary.

(b) For permits revoked on the grounds set forth in section 16-51 (a)(1), the permit will be reinstated if all fees assessed under section 16-49 have been paid and the person in control of the property has made a written request for reinstatement of the permit to the city secretary.

(Code 2002, § 8.111; Ord. No. 479, § 11, 5-19-1992)

Chapter 17

RESERVED

Chapter 18

ENVIRONMENT*

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Article II. Tree Preservation

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*__State law references—__Sanitation and environmental quality, V.T.C.A., Health and Safety Code ch. 341 et seq.; natural resources, V.T.C.A., Natural Resources Code ch. 1 et seq.; parks and wildlife, V.T.C.A., Parks and Wildlife Code ch. 1 et seq.

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ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. TREE PRESERVATION*

Sec. 18-19. Definitions.

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

Caliper means the diameter of a tree as measured at a point on the tree that is 12 inches above the ambient grade.

Circumference means the circumference of the trunk of a tree measured at a height of 4½ feet above the ground using an ordinary tape measure or diameter tape. If the tree has unusual swells in the trunk at measurement height, measurement shall be taken either below or above the swell at the smallest trunk diameter as close to 4½ feet as possible.

Critical root zone means the area within the drip line of a tree.

Development activity means construction or preparation for construction, and includes grading, clearing and grubbing, and demolition of existing structures.

Drip line means an imaginary circle drawn around a tree extending to the outer tips of the largest branches.

Impervious material means concrete, tar, asphalt, brick pavers or similar paving materials.

Minimum required density means, for a particular lot:

(1) Seven protected or replacement trees, of which at least three must be located in the front yard, plus one additional protected or replacement tree for every 1,000 square feet of area in excess of 22,500 square feet, up to a maximum of seven additional protected or replacement trees per lot, provided, however, that where a lot contains areas that are not suitable for the location of trees because of topology or other natural features, those unsuitable areas shall not be included in calculating the number of additional protected or replacement trees required in addition to the first seven;

(2) For a lot that is less than 20,000 square feet in area: a) the minimum number of protected or replacement trees may be reduced to five where the collective circumference of the protected and replacement trees equals 375 inches or more; and b) the minimum number of protected or replacement trees in the front yard may be reduced to two protected or replacement trees where the collective circumference of the protected and replacement trees in the front yard equals 150 inches or more.

(3) A protected or replacement tree that is located within the public street right-of-way shall not be counted in determining whether a lot has the minimum required density of protected or replacement trees.

Professional means a person with a professional working knowledge of trees, and includes architects, engineers, landscape or tree professionals, arborists, surveyors and any city official approved by the city council.

Property owner means the owner of a lot, tract, parcel or other site, and includes the owner's authorized agents.

Protected tree means any existing tree that has a circumference of 18 inches or more.

Protective fence means a physical barrier that is:

(1) At least four feet in height;

(2) Supported by metal posts spaced no wider than eight feet apart; and

*__Editor's note__—Ord. No. 720, § 1, adopted May 20, 2008, amended Ch. 18, Art. II in its entirety to read as herein set out. Former Art. II, §§ 18-19—18-25, pertained to similar subject matter, and derived from the Code of 2002, §§ 3.1401, 3.1402(a)—(g), 3.1403, 3.1405, and 3.1406, and Ord. No. 562, adopted November 16, 1999.

(3) Constructed of chain link fencing or similar material that is effective in preventing the passage of persons, machinery, trash, material or other items.

Replacement tree means a tree that: a) has a caliper of six inches or more; b) is at least ten feet in height; c) is one of the species listed in section 18-27; and d) is planted under the requirement of this article.

Root pruning means a clean cut between the undisturbed and disturbed root zones within the drip line of a tree, commonly done with a rock saw or similar equipment to minimize root damage.

Serious damage means any damage to a tree that will, in reasonable probability, cause the death of the tree or seriously impair its health. The following actions are actions that will cause serious damage to a tree: severing a main trunk or large branches or large roots, girdling, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, digging or drilling any hole or trench larger than three cubic feet within the critical root zone, covering over a substantial portion of the critical root zone with two inches or more of soil or other nonporous material or compacting a substantial part of the soil in the critical root zone (e.g., driving or parking a vehicle in the critical root zone, or otherwise placing heavy objects within the critical root zone).

Tree disposition and protection plan means a written plan prepared by a professional that shows how the protected trees and critical root zones on the site, and the critical root zones of protected trees that are located off of the site but that have 30 percent or more of their critical root zones within the site, are to be protected, and how replacement trees are to be planted and maintained to encourage survival and sustained growth.

Tree removal permit means a permit issued by the city pursuant to the conditions and requirements of this article, granting permission and authority to remove protected trees from a site.

Tree survey means a survey of the protected trees on a site. A tree survey must be prepared by a professional and must include:

(1) The location, size, and species of all existing protected trees on the site;

(2) A designation, by species, size and location, of all protected trees proposed to be removed or destroyed;

(3) A designation of all proposed new and/or replacement trees by species, size and location;

(4) Outlines of all existing and proposed structures, paved surfaces, swimming pools, fences, sprinkler systems, utilities and other improvements and structural features on the site;

(5) A scale, north arrow, name, address, phone number, and profession or occupation of the person who prepared the tree survey; and

(6) The name of the owner of the site and/or the builder or developer of the site.

Urban forester means the professional so designated by the city council.
(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, § 1, 7-15-2008; Ord. No. 779, § 1, 11-8-2011)

Sec. 18-20. Preservation and protection of trees.

(a) *Intent.* The intent of this section is to encourage site planning which furthers the preservation of trees and natural areas by these methods: to protect trees during construction; to facilitate site design and construction which contribute to the long-term viability of existing trees; to control the unnecessary removal of larger trees; and to require on-site replacement of larger trees that must be removed during development activities. It is the further intent of this article to achieve the following broader objectives:

(1) Protect healthy trees and preserve the natural, ecological, environmental and aesthetic qualities of the city;

(2) Protect and increase the value of properties within the city;

(3) Prohibit the indiscriminate clearing or clear cutting of property;

(4) Maintain and enhance a positive image toward the city;

(5) Prevent the unnecessary removal of protected trees and to provide for remediation where removal is unavoidable.

(b) *Tree removal permit required.* It is unlawful for any person to remove or to intentionally, or with criminal negligence, cause serious damage to any protected tree within the city without having first obtained from the city a tree removal permit.

(1) *Removal in connection with site development or construction.*

a. *Generally.* A property owner who seeks a permit to remove one or more protected trees in order to develop or construct improvements on a site must submit to the building official a current tree survey and tree disposition and protection plan. The city shall grant a tree removal permit if the applicant demonstrates that, for each protected tree that is to be removed, the removal is necessary in order to make a reasonable use of the site, and that all alternatives to removal, including redesign of the proposed improvements, have been considered.

b. *Restrictions on additional removals.*

1. Where a permit is granted to remove protected trees in order to develop or construct a particular improvement on a site, and the subject trees are actually removed, no permit shall be granted for the removal of additional protected trees from the site for the construction of a similar improvement for a period of five years following the date the first permit was issued.

2. For example, if a permit is granted for the removal of trees for the construction of a proposed new residence and the property owner, or his successor in title, elects not to build that proposed residence, any new proposed residence on the site must be designed to fit within the area from which protected trees have been removed and cannot require the removal of additional protected trees.

3. The purpose of this provision is to prevent the unnecessary removal of protected trees based on speculative construction or development plans and to encourage property owners to seek removal of trees only when the proposed improvements will actually be constructed.

4. For the purposes of this article, the filing of an application for removal of protected trees for the construction of a particular improvement is deemed to be an admission, by the applicant, that a reasonable improvement of the type desired can be constructed on the site without removing any additional protected trees.

(2) *Other removal.*

a. A property owner who otherwise seeks a permit to remove a protected tree must file an application with the city describing the location, species, and size of the protected tree that is to be removed and explaining the reason that removal is desired. The city shall grant a removal permit if the applicant demonstrates that:

1. The protected tree in question is severely damaged, diseased or dead;

2. The protected tree constitutes an unreasonable impediment to the use and enjoyment of the site because of its location or size;

3. The tree is of an undesirable species that has characteristics

that interfere with the property owner's use and enjoyment of the site;

4. The removal of the tree is necessary for safety reasons including, but not limited to, a branch overhanging a structure, a severely leaning tree, or a tree with a seriously damaged root system that poses a reasonable threat of falling.

b. Notwithstanding any other provision of this chapter, a property owner is not required to obtain a permit to remove a single protected tree that is severely damaged, diseased or dead or that must be removed for safety reasons, including but not limited to, a branch overhanging a structure, a severely leaning tree, or a tree with a seriously damaged root system that poses a reasonable threat of falling.

(3) *Emergency removal.* Where the dangerous condition of a protected tree requires its immediate removal to protect against a serious and immediate risk to health, safety or property, a property owner may remove a protected tree without first obtaining a permit. However, within seven calendar days after removing the tree, the property owner must file with the building official a written statement describing the protected tree by size, species, and location and explaining the emergency conditions that required its immediate removal.

(c) *Tree survey and tree disposition and protection plan required.* Except as provided in subsection (c)(2) below, for small projects, no permit shall be granted for any site work or construction activity in the city unless and until a current tree survey and tree disposition and protection plan for the subject lot, and any property within ten feet of the subject lot, has been submitted to the city and approved by the urban forester.

(1) *Small projects exception.* Neither a tree survey nor a tree disposition and protection plan is required for projects that meet the following requirements as determined by the building official:

a. The construction work or other activity contemplated by the permit is of a type and scope that presents little risk of serious damage to any protected trees on the site; and

b. The owner, or his authorized agent, has certified to the city in writing that no protected trees will be removed or seriously damaged during the construction work or other activity.

(2) *Single tree exception.* Neither a tree survey nor a tree disposition and protection plan is required where a property owner seeks to remove a protected tree for any of the reasons set out in subsection 18-20(b)(2).

(d) *Utility right-of-way maintenance.*

(1) An employee of a public utility, or an authorized contractor working in a dedicated public right-of-way, drainage or utility easement, may in the course of business, prune that portion of a tree, including a protected tree, that prohibits the safe construction, operation, repair or maintenance of a service line or facility. Trees must be pruned no more than is reasonably necessary for the construction, operation, repair or maintenance of the service line or facility, and any pruning shall be in accordance with the specifications set forth by the National Association of Arborists. No tree permit, tree survey or tree disposition and protection plan is required for work performed under these circumstances.

(2) Trees, including protected trees, that are outside the public right-of-way or utility easement, that are severely damaged, diseased or dead and that present a risk of damaging a public utility service line or facility may be removed by an employee or authorized contractor of the public utility whose service line or facility is at risk of damage, provided that utility has the

consent of the tree owner. Such work will require a permit for removal, but no tree survey or tree disposition and protection plan is required. No permit fee shall be charged for issuance of a permit under this subsection.

(e) *Tree replacement.*

(1) *Generally.* Except as otherwise provided, a property owner must maintain the minimum required density of protected and replacement trees on the owner's lot at all times and, if the lot falls below the minimum required density because of the loss or removal of a tree or trees, regardless of cause, the property owner shall plant and maintain a sufficient number of replacement trees to meet the minimum required density. If a lot fall below the minimum required density because of the loss of one or more protected or replacement trees, the property owner shall, within 30 days after the removal or loss, plant a sufficient number of replacement trees to restore the minimum required density.

(2) *Special rule for removals related to driveway construction.* Where protected trees are removed from a front yard in order to relocate or expand a pre-existing driveway, the property owner must plant one replacement tree in the front yard for every protected tree that is removed from the front yard. Tree replacement is required under this provision regardless of whether replacement would have been required under subsection (e)(1), above.

(3) *Location requirements for new home construction.* Where a new home is to be constructed on a site, the tree disposition and protection plan must include provisions for preserving or planting and maintaining at least three protected or replacement trees in the front yard.

(4) *Timing of planting.* Any replacement tree required under this article shall be planted within 30 days after the loss or removal of the tree it is to replace. Provided however, that the building official may grant a written extension if the property owner:

a. Applies for the extension in writing, and within 30 days after the loss or removal; and

b. Demonstrates that replacement within 30 days is not practical because of ongoing construction or weather conditions.

(5) *Exceptions to replacement requirements.* No replacement tree shall be required if because of the topography or natural conditions of the lot, or the location of permitted structures and other improvements to the lot, it is not reasonably possible to plant and maintain an otherwise required replacement tree. A property owner who is excused from providing a replacement tree shall instead pay to the city the applicable tree replacement fee.

(6) *Replacement of trees that die within five years after construction activity.* A property owner shall plant replacement trees for any protected trees that die within five years after the date of completion of any outside construction activity on the property, regardless of whether the lot would have the minimum required density without the replacement. Provided however, that no replacement shall be required if the property owner can demonstrate that the death of the tree or trees was not related to the construction activity.

(f) *Protection of trees during site preparation or construction activity.* Protected trees, whether located on the subject site or within ten feet of the subject site, must be protected from serious damage during construction activity in accordance with the following requirements, provided, however, that the urban forester may allow modification of the requirements upon a determination that unique circumstances exist and that a strict application of the requirements would result in undue hardship to the owner of the site.

(1) *Prohibited activities.* The following activities are prohibited within the drip line of any protected tree:

a. *Material storage.* No materials intended for use in construction accu-

mulated due to excavation or demolition shall be placed within the limits of the drip line of any protected tree.

b. *Equipment cleaning; liquid disposal.* No equipment shall be cleaned, and no liquids other than clean water shall be deposited, within the limits of the drip line of any protected tree. Prohibited liquids include but are not limited to paint, oil, solvents, asphalt, concrete, mortar or other materials.

c. *Tree attachments.* No signs, wires or other attachments, other than those of a protective nature and that have been approved in the tree disposition and protection plan, shall be attached to any protected tree.

d. *Vehicular traffic.* No vehicle, construction equipment or other parking shall be allowed within the limits of the drip line of any protected tree.

e. *Trespassing; trash.* Trespassing or throwing trash into a protective fence area is prohibited.

(2) *Required procedures.* The following procedures shall be followed prior to and during any development activity on a site until a certificate of occupancy has been issued by the city:

a. *Protective fencing; root protection.* Unless otherwise approved in the tree disposition plan, the critical root zone of each tree or group of trees to be preserved must be enclosed by a protective fence during all development activity and until a certificate of occupancy has been issued by the city. Each protective fence shall be marked with signs stating "OFF LIMITS" and "NO TRASH" (or equivalent) in both English and Spanish.

b. *Mulch.* If development activity is to take place within the critical root zone of any tree, the protective fence shall cover the area on which no development activity is to take place, and the balance of the critical root zone for such tree or group of trees must be covered with at least six inches of organic or wood chip mulch and covered with three-fourths inch plywood or road boards in order to protect the roots from soil compaction.

c. *Fence, mulch removal.* It shall be unlawful for any person to remove any portion of any protective fence or mulch and road boards for any period of time during any development activity, unless otherwise specified in the tree disposition plan.

d. *Tree flagging.* All trees to be removed from the site shall be flagged with orange vinyl tape (flagging) wrapped around the main trunk at a height of four feet or more. After receipt of the tree removal permit, the owner of the site or his agent shall paint with orange paint an "X" on the tree approved for removal at a height of four feet or more so that the paint is visible to workers on foot or operating heavy equipment.

e. *Trunk protection.* In situations where a tree remains in the immediate area of intended development activity, the tree shall be protected by enclosing the entire circumference of the tree's trunk with lumber, at least eight feet high, banded by wire or other means that does not damage the tree.

f. *Construction pruning.* If a tree has a low canopy, or limbs that may be broken during the course of construction, and if specified and approved by the urban forester in the tree disposition plan, the obtrusive limbs may be cut. Pruning should be done according to the National Association of Arborists Standards.

g. *Supplemental feeding, watering.* Protected trees should receive supplemental water during times of drought or low rainfall. Plans for feeding and

watering must be prepared by a professional, who is retained by the owner or his agent and must be included in the tree disposition and protection plan.

(3) *Design constraints.* Design constraints may dictate that in certain circumstances some protected trees will have some encroachment of their critical root zone. The following is the minimum design criteria allowed within the critical root zone of a protected tree:

a. *Change of grade.* In the event that grade changes must be made around a protected tree, the following procedures shall be followed unless otherwise approved in the tree disposition plan:

1. No cut or fill of the ambient grade greater than two inches shall be located close to the trunk of a protected tree if the cut or fill covers more than one-half of the radius of the critical root zone. If these provisions cannot be complied with, the following provisions shall apply:

(i) *Increase in grade.* The owner shall construct tree wells around the drip line of a tree which shall be of a design that provides for proper aeration and drainage of the critical root zone; or

(ii) *Decrease in grade.* The owner shall construct retaining walls around the drip line of a tree to mitigate cuts.

2. If development activity causes standing water or wet soil conditions which are detrimental to a species of tree on a site or adjacent property, adequate drainage shall be provided in the tree disposition and protection plan in order to prevent suffocation and/or root rot of the affected tree.

b. *Underground utilities.* Boring for the installation of underground utilities is permitted under protected trees in certain circumstances. The minimum depth of the bore shall be 30 inches. In special circumstances approved by the urban forester, trenching for underground utilities may be permitted with respect to all such protected trees. If utility trenching is approved, the following procedures must be adhered to:

1. Root pruning shall take place at least two weeks prior to any trenching;

2. Root pruning shall be supervised by a professional;

3. The utility trench must be backfilled less than 24 hours after it is dug; and

4. A root remediation schedule must be addressed in the tree disposition plan.

c. *Irrigation systems.* Irrigation systems shall be designed to avoid trenching across the critical root zone of any protected tree.

d. *Paving and impervious material.* A maximum of 25 percent of the critical root zone of a protected tree may be covered with impenetrable material, such as concrete, tar or asphalt.

e. *Procedures when using impervious materials.* If the design plans for the site call for any impervious material over any part of the critical root zone of a protected tree, the following procedures shall be adhered to:

1. Root pruning shall be done six inches to one foot behind the proposed curb line and shall take place at least two weeks prior to any fill or cut;

2. Root pruning and necessary limb pruning shall be supervised by a professional;
3. A plastic vapor barrier of construction grade shall be installed between the roots of a protected tree and the impervious material so as to inhibit leaching of lime into the soil; and
4. A root remediation schedule must be addressed in the tree disposition plan.

(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, §§ 2, 3, 7-15-2008; Ord. No. 750, § 1—3, 12-8-2009; Ord. No. 779, §§ 2, 3, 5, 11-8-2011)

Sec. 18-21. Tree replacement payments and fund.

The city shall establish and maintain a separate tree replacement fund and shall deposit all tree replacement fees into that fund.

(1) Monies in the tree replacement fund may only be used for the following purposes:
   a. To purchase and plant trees within the city on public property and rights-of-way, or other property under the control of the city;
   b. To water, feed, or otherwise maintain trees planted or maintained by the city; or
   c. To promote the planting and conservation of trees within the city.

(2) A property owner who removes a protected tree pursuant to a valid permit, or in an emergency situation, but who is excused from the obligation to provide a replacement tree under section 18-20(e)(4), shall pay to the city a tree replacement fee in the amount $500.00 which the city has determined to be the average cost of providing, planting, and maintaining a replacement tree.

(3) A property owner who removes a protected tree in violation of this chapter shall provide a replacement tree of the same size and species as the tree that was illegally removed. If it is not feasible to provide a replacement tree, the property owner shall pay a tree replacement fee equal to $500.00 per inch of diameter of the protected tree that was removed. The measurement of diameter shall be made at a point on the trunk of the tree that was six inches above the ambient grade immediately before the protected tree was removed. The city council shall be the final authority to determine whether planting a replacement tree is feasible.

(Ord. No. 720, § 1, 5-20-2008)

Sec. 18-22. Urban forester.

(a) *Appointment.* The city council has the authority to hire a professional as the urban forester for the city. The professional designated as the urban forester must hold at least a bachelor's degree from an accredited college or university in urban forestry or horticulture or must have equivalent arboricultural skills and experience.

(b) *Duties.* The permit secretary or the building official of the city shall deliver to the urban forester all tree disposition and protection plans, tree surveys, applications for tree removal permits and other documents reasonably requested in connection with any or all of the requirements of this article. The urban forester shall work with each owner and/or builder on the site, and appropriate officials of the city in order to administer and enforce the provisions of this article, as the same may be amended from time to time. The urban forester shall establish categories of simple and routine or low-risk development activity, the applications for which may be handled summarily without submission to the urban forester.

(Ord. No. 720, § 1, 5-20-2008)

Sec. 18-23. Appeal of permit denials.

(a) An applicant whose request for a tree removal permit has been denied by the building official may appeal that decision to the board of adjustment by filing a written notice of appeal with the city secretary.

(b) The board of adjustment shall schedule a hearing on the appeal for a date within 45 days after the date the notice of appeal is received in

the office of the city secretary. The hearing may be held at any regular meeting of the board of adjustment.

(c) At the hearing, the board of adjustment shall provide the applicant an opportunity to present evidence and arguments demonstrating that the applicant is entitled to a permit under the terms of this article and that the building official erred in denying the permit.

(d) The board of adjustment may hear and consider any other evidence relevant to the issue of whether the applicant is entitled to a permit.

(e) If, at the conclusion of the hearing, a majority of the board of adjustment determines that the applicant has met the requirements of this article and is entitled to a permit, it shall order the building official to issue a permit. Otherwise, the decision of the building official to deny the permit shall be affirmed.
(Ord. No. 722, § 5, 7-15-2008; Ord. No. 779, § 6, 11-8-2011)

Sec. 18-24. Violations.

(a) It shall be unlawful for any person to fail or refuse to comply with the requirements of this article or any permit issued pursuant hereto.

(b) The city's building official or urban forester may withhold or withdraw (red flag) any permit issued or to be issued pursuant to this article if any condition or requirement of this article or such permit is not fulfilled.
(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, § 4, 7-15-2008)

Sec. 18-25. Penalty.

Any person who violates any provision of this article shall be deemed guilty of a misdemeanor. The owner of a site where any violation of this article shall occur, and any agent, contractor, builder, architect or other person who shall assist in the commission of such offense, shall be guilty of a separate offense.
(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, § 4, 7-15-2008)

Sec. 18-26. Affirmative defenses.

It shall be an affirmative defense to prosecution, under this article, that immediate action to remove, seriously damage or kill the tree in question was necessary to prevent harm to persons or property.
(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, § 4, 7-15-2008)

Sec. 18-27. Species of trees approved for use as replacement trees.

The following species of trees are approved for use as replacement trees. The urban forester may approve the use of species that are not on this list if the urban forester determines that the species is suited to the local climate, likely to grow into a protected tree, and not likely to create nuisance conditions.

Approved Tree List for Hunters Creek Village		
Common Name	*Species*	*Family Name*
Chalk maple	Acer leucoderme	Aceraceae
Drummond red maple	Acer rubrum var.drummondi	Aceraceae
American hornbeam	Carpinus caroliniana	Betulaceae
American beech	Fagus grandifolia	Fagaceae
White oak	Quercus alba	Fagaceae
Swamp white oak	Quercus bicolor	Fagaceae
Southern red oak	Quercus falcate	Fagaceae
Sand live oak	Quercus geminata	Fagaceae
Laurel oak	Quercus hemisphaerica	Fagaceae
Swamp laurel oak	Quercus laurifolia	Fagaceae
Overcup oak	Quercus lyrata	Fagaceae
Bur oak	Quercus macrocarpa	Fagaceae
Sand post oak	Quercus margaretta	Fagaceae
Swamp chestnut oak	Quercus michauxii	Fagaceae
Chinkapin oak	Quercus muchlenbergii	Fagaceae
Water oak	Quercus nigra	Fagaceae
Nutall oak	Quercus nuttallii	Fagaceae
Willow oak	Quercus phellos	Fagaceae
Shumard oak	Quercus shumardii	Fagaceae
Post oak	Quercus stellata	Fagaceae
Black oak	Quercus velutina	Fagaceae
Live oak	Quercus virginiana	Fagaceae
Sweetgum	Liquidambar stryraciflua	Hamamelidaceae
Pecan	Carya illino	Juglandaceae
Black hickory	Carya texana	Juglandaceae
Sassafras	Sassafras albidum	Lauraceae
Southern magnolia	Magnolia grandiflora	Magnoliaceae
Sweet bay magnolia	Magnolia ludiviciana	Magnoliaceae
Black gum	Nyssa sylvatica	Nyssaceae
Shortleaf pine	Pinus echinata	Pinaceae
Longleaf pine	Pinus palustris	Pinaceae
Loblolly pine	Pinus taeda	Pinaceae
Weeping willow	Salix babylonica	Salicaceae
Bald-cypress	Taxodium distichum	Taxodiaceae
Montezuma cypress	Taxodium mucronatum	Taxodiaceae
Winged elm	Ulmus alata	Ulmaceae
Scan elm	Ulmus Americana	Ulmaceae
Cedar elm	Ulmus crassifolia	Ulmaceae

(Ord. No. 720, § 1, 5-20-2008; Ord. No. 722, § 4, 7-15-2008)

Secs. 18-28—18-53. Reserved.

ARTICLE III. SOUTHERN PINE BEETLE INFESTATION

Sec. 18-54. Generally.

(a) *Public nuisance declaration.* Any pine tree within the city limits which is infested with the insect known as the southern pine beetle, as determined by a representative of the city, a representative of the state forest service or an entomologist is declared to be a public nuisance.

(b) *Permitting, maintaining infested pine prohibited.* It shall be unlawful for the owner of any lot or parcel of land within the city to permit or maintain on any such lot or parcel of land, any pine tree infested with southern pine beetles; and it shall be the duty of the owner of any such lot or parcel of land upon which is situated a pine tree infested with southern pine beetles to abate such infestation and public nuisance either by chemical treatment of the bark of such tree or by the felling of such tree and subsequent chemical treatment of its bark, whichever shall be required.

(c) *Authorized entry for inspections.* The city building inspector and such other officers, employees and agents of the city as may be designated by the city council are authorized and empowered to enter upon any lot or parcel of land within the city, at any reasonable time, for the purpose of inspecting any pine tree situated thereon and may remove or cause to be removed a portion of the bark to determine if such tree is infested with southern pine beetles. Before entering upon any lot or parcel of land for such purpose, the city building inspector or other representative of the city shall make a reasonable effort to contact the owner of such lot or parcel of land and advise such owner of the purpose and approximate time of such proposed entry and inspection.

(d) *Denial of entry unlawful.* It shall be unlawful for any person to prevent or attempt to prevent the city building inspector or other persons designated by the city council from entering upon any lot or parcel of land in the city for the purpose of making the inspection described in subsection (c) of this section or from performing any other duties prescribed by this article.

(e) *Determination; notice; compliance.* If, from an examination of a pine tree or a bark sample removed therefrom by the city building inspector or other person with entomological competence designated by the city council, it is determined that the tree is infested with southern pine beetles, the city building inspector shall serve or cause to be served upon the owner of record of the lot or parcel of land upon which such tree is situated, a written notice requiring such owner to comply with the provisions of this article. Such notice may be served in person or by registered or certified mail, return receipt requested. Such owner must comply with the provisions of this article including, but not limited to, subsection (b) of this section, within ten days after receipt of such notice.

(Code 2002, §§ 3.1402(h), 8.900; Ord. No. 298, §§ 1—6, 5-17-1977; Ord. No. 562, 11-16-1999)

Secs. 18-55—18-81. Reserved.

ARTICLE IV. PROPERTY MAINTENANCE*

Sec. 18-82. Reserved.

Editor's note—Ord. No. 783, § 1, adopted Jan. 24, 2012, repealed § 18-82 which pertained to definitions and derived from Ord. No. 739, § 1, adopted March 24, 2009.

Sec. 18-83. Definition of nuisance.

In this article the term "nuisance" shall mean any condition of property that is dangerous to life or health, and shall include, without limitation, the following conditions:

(a) Any accumulation of sewage or stagnant water, or other unwholesome or impure matter;

***Editor's note—**Ord. No. 739, § 1, adopted March 24, 2009, amended ch. 18, art. IV in its entirety to read as set forth herein. Former art. IV, §§ 18-82—18-86, pertained to similar subject matter, and derived unamended from the Code of 2002, §§ 6.302-6.305.

State law reference—Authority of municipality to regulate weeds, grass, etc., V.T.C.A., Health and Safety Code § 342.004.

(b) Swimming pools, whether filled with water or not, that have not been fenced or walled to prevent unsupervised access by minors;

(c) Swimming pools that contain stagnant, untreated, or impure water;

(d) Any accumulation of carrion, or loose garbage, trash, or refuse;

(e) Weeds or grass that exceeds eight inches in height;

(f) Trees that are dead, diseased or damaged and in a location where they present a danger to life, health, or property in their present condition;

(g) Any condition that is likely to produce or transmit disease; and (h) Any condition that harbors, or is likely to harbor, mosquitoes, rats, snakes, or other disease-bearing animals or insects.

(Ord. No. 739, § 1, 3-24-2009; Ord. No. 783, § 1, 1-24-2012)

Sec. 18-84. Abatement.

If any person who owns any lot or building within the city who does not abate a nuisance as described in this article within seven days after notice to such person, as provided in section 18-85 below, the city may do or cause to be done that which will abate the nuisance, and may pay the expense therefore, and charge such expenses incurred in doing such work or having such work done or improvements made to the person who owns such lot or building. If such work is done or improvements made at the expense of the city, such expenses shall be assessed on the real property upon which such expense was incurred as provided in section 18-86 below.

(Ord. No. 739, § 1, 3-24-2009)

Sec. 18-85. Notice.

(a) The notice required in section 18-84 above shall be given:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) If personal service cannot be obtained:

a. By publication at least once;

b. By posting the notice on or near the front door of each building on the property to which the violating relates; or

c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(b) If the city mails a notice to a property owner in accordance with subsection (a)(2) above, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice shall not be affected, and the notice shall be considered as delivered.

(c) In the notice provided under this section, the city may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the owner's expenses and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period and the city has not been informed in writing by the owner of an ownership change then the city, without notice, may take any action permitted, and assess the expenses therefor, as provided by section 18-86 below.

(Ord. No. 739, § 1, 3-24-2009)

Sec. 18-86. Collection of expenses.

The mayor or city secretary shall file a statement of expenses giving the amount of such expense, the date on which such work was done, and a description of the premises upon which such work was done or improvements made with the county clerk. The city shall have a privileged lien on such lot or real estate upon which such work was done, or improvements made, to secure the expenditures so made, in accordance with

V.T.C.A., Health & Safety Code § 342.007, as amended, which lien shall be second only to tax liens or liens for street improvements, and such amount shall bear ten percent interest from the date the statement is filed. For any such expense and interest suit may be instituted, and recovery and foreclosure of such lien may be had in the name of the city. The statement of expenses, so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.
(Ord. No. 739, § 1, 3-24-2009)

Secs. 18-87—18-115. Reserved.

ARTICLE V. VEGETATION OBSTRUCTING STREETS

Sec. 18-116. 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:

Obstructing vegetation means any tree or other vegetative matter, or any part thereof, located nearer than eight feet from the centerline of any private street, or less than 14 feet above the grade of any private street.

Private street means any street, lane or other accessway other than a public street which provides the principal means of access to two or more lots or tracts of land.
(Code 2002, § 8.1201; Ord. No. 490, § 2, 5-18-1993)

Sec. 18-117. Prohibited.

It shall be unlawful for any person owning or occupying property adjacent to a private street to cause or permit any tree or vegetation to become obstructing vegetation, as that term is defined herein, over, across or adjacent to any private street.
(Code 2002, § 8.1202; Ord. No. 490, § 3, 5-18-1993)

Sec. 18-118. Notice to remove.

Should any person owning or occupying property adjacent to a private street fail to remove obstructing vegetation on the lot or tract owned or occupied by such person within ten business days following notice to do so, the city may enter such property and cause the removal thereof. Notice to remove such obstructing vegetation shall be given in a manner authorized pursuant to V.T.C.A., Health and Safety Code § 342.006. All costs incurred in such removal shall be charged to the owner of such property. In the event the owner fails or refuses to pay the city the costs incurred in removing obstructing vegetation, the city may attach a lien therefor in the manner provided in V.T.C.A., Health and Safety Code § 342.007.
(Code 2002, § 8.1203; Ord. No. 490, § 4, 5-18-1993)

Sec. 18-119. Nuisance declared.

The existence of obstructing vegetation is hereby declared to be a public nuisance.
(Code 2002, § 8.1204; Ord. No. 490, § 5, 5-18-1993)

Secs. 18-120—18-136. Reserved.

ARTICLE VI. NOISE*

Sec. 18-137. Generally.

(a) *Prohibited.* In view of the residential character of the city and in recognition that noise is unwanted sound which can annoy or disturb persons, the creation of any unreasonably loud, annoying, disturbing or unnecessary noise of such intensity or duration so as to cause distress or discomfort in persons of ordinary sensibilities, in the area, is prohibited. The creation of such a prohibited noise or any activity which creates a noise above the allowable noise level, as set forth in section 18-138 shall be a violation of this article.

(b) *Measurement.* Noise should be measured at the property line or boundary of any affected property or properties.
(Code 2002, § 8.601)

*__State law references__—Authority of municipality to restrain or prohibit the ringing of bells, blowing of horns, hawking of goods, or any other noise, V.T.C.A., Local Government Code § 217.003; presumption of unlawful noise, V.T.C.A., Penal Code § 42.01(c).

Sec. 18-138. Noise level prohibition.

(a) The allowable noise level within a zoning district, as such districts are defined in chapter 44, shall be as set forth in the following table:

Zoning District	*Allowable Time Interval*	*Noise Level*
District R	10:00 p.m.—7:00 a.m.	50 dB(A)
	7:00 p.m.—10:00 p.m.	55 dB(A)
District B	10:00 p.m.—7:00 a.m.	57 dB(A)
	7:00 p.m.—10:00 p.m.	62 dB(A)

(b) In the event the ambient (background) noise level exceeds the allowable noise level as specified in subsection (a) of this section, the allowable noise level for the property in question shall be adjusted to equal the ambient noise level during measurement.
(Code 2002, § 8.602)

Sec. 18-139. Permitted variations in noise.

Noise within any zoning district may exceed:

(1) The allowable noise level plus up to five dB(A) for a cumulative period of no more than 30 minutes in any hour;

(2) The allowable noise level plus six to ten dB(A) for a cumulative period of 15 minutes in any hour;

(3) The allowable noise level plus 11 to 15 dB(A) for a cumulative period of five minutes in any hour; or

(4) The allowable noise level plus 16 to 24 dB(A) for a cumulative period of one minute in any hour.

(Code 2002, § 8.603)

Sec. 18-140. Prohibited variations in noise.

Noise within any zoning district is prohibited which exceeds the allowable noise level plus 25 dB(A) or more on an intermittent basis.
(Code 2002, § 8.604)

Sec. 18-141. Exceptions.

For the purpose of determining compliance with the noise standards in this article, the following noise sources shall be excepted:

(1) Noises emanating from construction, grading, repair, remodeling or maintenance activities during hours when such activities are permitted in accordance with the city's building code.

(2) Noise of safety signals, warning devices, emergency pressure relief valves, water wells and sewer lift stations.

(3) Occasional private outdoor gatherings and public events.

(4) Standard air conditioning, refrigeration systems, swimming pool equipment or associated equipment in reasonable repair.

(5) Emergency and repair activities of any public entity or a utility.

(6) Electric generators when operated in compliance with the requirements of section 44-166.

(Code 2002, § 8.605; Ord. No. 733, § 2, 1-20-2009)

Secs. 18-142—18-165. Reserved.

ARTICLE VII. STORAGE OF BOATS, RECREATIONAL VEHICLES, TRAILERS AND TRUCKS

Sec. 18-166. Prohibited locations.

No boat, houseboat, sailboat, canoe, catamaran or other watercraft capable of transporting one or more human passengers on or over a body of water, whether propelled by wind, sails, motors, oars, paddles or other means, or any recreational vehicle, horse trailer, or any other type of trailer shall be stored or parked on or in any of the following places within the corporate limits of the city:

(1) Upon a public street, right-of-way or easement;

(2) Upon a vacant lot or tract of land;

(3) In that space between the front building line of the lot or tract of land upon which a residence or business is located, and the street right-of-way line; or

(4) In that space between the side building line and side property line of the lot or tract of land upon which a residence or

business is located. In the case of a corner lot or tract of land (meaning that space between the side building line and the side street right-of-way line which is not fenced and screened) to a height of seven feet or more.

(Code 2002, § 8.801; Ord. No. 277, § 2, 10-15-1975)

Sec. 18-167. Exceptions.

The provisions of this article shall not apply to:

(1) The temporary storage or parking of a boat or other watercraft. As used herein, the term "temporary storage or parking" shall mean a period of time of not more than 48 hours during any seven day period.

(2) The storage or parking of a boat, houseboat, canoe, catamaran or other watercraft upon the premises of a business establishment if such commercial establishment is engaged in the business of selling, repairing, maintaining or storing such watercraft.

(Code 2002, § 8.802; Ord. No. 277, § 3, 10-15-1975)

Sec. 18-168. Storage of trailers.

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

Bus means a vehicle designed to transport more than 12 persons.

Horse trailer means a trailer which is used or designed for the transportation of horses, cows or other livestock.

House trailer, large camper or similar type vehicles means a vehicle which is or which customarily is equipped with living or sleeping facilities, whether self-propelled or designed to be used as a trailer or otherwise in conjunction with a motor-driven vehicle, the body of which exceeds 12 feet in length and six feet in height above the ground.

Truck means a truck in excess of one-ton capacity.

(b) *Storage regulations.* No truck, horse trailer, bus, house trailer, large camper or similar type vehicle shall be stored or parked in the following places within the corporate limits of the city:

(1) Upon a public street, right-of-way or easement;

(2) Upon a vacant lot or tract of land;

(3) In the front yard of a residence or business, meaning that space between the front building line of the lot or tract of land and the street right-of-way line; or

(4) In the side yard of a residence or business in the case of a corner lot or tract of land, meaning that space between the side building line and the side street right-of-way line.

(c) *Exceptions.* The provisions of this article shall not apply to:

(1) The temporary storage or parking of a truck, horse trailer, bus, house trailer, large camper or similar type vehicle. As used herein, the term "temporary storage or parking" shall mean a period of time not more than 36 hours during any seven-day period;

(2) The storage or parking of a truck, horse trailer, bus, house trailer, large camper or similar type vehicle upon the premises of a commercial establishment if such vehicle is used incidentally with operation of the business of the commercial establishment;

(3) The storage or parking of a truck, horse trailer, bus, house trailer, large camper or similar type vehicle is being used incidentally with a construction project; or

(4) The storage or parking of a truck, horse trailer, bus, house trailer, large camper or similar type vehicle upon the premises of a commercial establishment if such commercial establishment is engaged in the business of selling repairing, maintaining or storing such vehicles.

(Code 2002, § 8.804; Ord. No. 275, §§ 2—5, 6-17-1975)

Secs. 18-169—18-189. Reserved.

ARTICLE VIII. JUNKED MOTOR VEHICLES*

Sec. 18-190. Definitions.

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

Antique vehicle means a passenger car or truck that is at least 25 years of age.

Collector means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Demolisher means any person whose business is to convert the motor vehicle into processed scrap or scrap metal or otherwise to wreck or dismantle motor vehicles.

Inoperative means incapable of being moved with the power generated from the engine mounted in the vehicle.

Junked vehicle means a motor vehicle that is self-propelled and does not have lawfully affixed

*__State law reference—__Regulation of abandoned and junked motor vehicles, V.T.C.A., Transportation Code ch. 683.

to it either an unexpired license plate or a valid motor vehicle safety inspection certificate, and is either:

(1) Wrecked, dismantled, or partially dismantled or discarded; or

(2) Inoperable and has remained inoperable for more than 72 consecutive hours, if on public property; or 30 consecutive days, if on private property.

Junkyard means a business that stores, buys or sells materials that have been discarded or sold at a nominal price and keeps all or part of the materials outdoors until disposing of them.

Licensed motor vehicle dealer means a person who is licensed as a motor vehicle dealer under V.T.C.A., Occupations Code ch. 2301.

Motor vehicle means any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act (V.T.C.A., Transportation Code ch. 501).

Special interest vehicle means a motor vehicle of any age that has not been altered or modified from the original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.
(Code 2002, § 8.1001; Ord. No. 633, 11-16-2004)

Sec. 18-191. Penalty for violation.

Any owner or occupant of a premises, including any person having ownership, occupancy or control of any property in the city on which there exists a nuisance as herein set out, who shall fail, refuse or neglect to remove therefrom, after receiving due notice as herein set out, or refuse to abide by any order requiring the removal of such nuisance shall be deemed guilty of a misdemeanor.
(Code 2002, § 8.1002; Ord. No. 633, 11-16-2004)

Sec. 18-192. Purview of article.

It is not intended by this article to make provisions pertaining to abandoned motor vehicles as that term is defined by the Texas Abandoned Motor Vehicle Act, V.T.C.A., Transportation Code ch. 683.
(Code 2002, § 8.1003; Ord. No. 633, 11-16-2004)

Sec. 18-193. Exemptions.

This article shall not apply to:

(1) A vehicle or part thereof that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or

(2) A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or an antique or special interest vehicle stored by a collector on the collector's property if the vehicle or vehicle parts and the outdoor storage area are maintained in an orderly manner so that they do not constitute a health hazard, and are screened from ordinary view by means of a fence, rapidly growing trees, shrubbery, or other means.

(Code 2002, § 8.1004; Ord. No. 633, 11-16-2004)

Sec. 18-194. Administration.

The administration of this article shall be by regularly salaried, fulltime employees of the city, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.
(Code 2002, § 8.1005; Ord. No. 633, 11-16-2004)

Sec. 18-195. Delegation of authority.

Whenever the police chief is charged with the enforcement of this article, he may delegate such authority to any regularly salaried employee of the police department of the city.
(Code 2002, § 8.1006; Ord. No. 633, 11-16-2004)

Sec. 18-196. Declaration of public nuisance.

A junked vehicle (including a part of a junked vehicle) that is visible at any time of the year from a public place or public right-of-way is detrimental to the safety and welfare of the general public, causes a decrease in property values, invites vandalism, creates fire hazards, constitutes an attractive nuisance thereby creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the state, producing

urban blight adverse to the maintenance and continuing development of the city, is therefor declared to be a public nuisance.
(Code 2002, § 8.1007; Ord. No. 633, 11-16-2004)

Sec. 18-197. Nuisance prohibited.

(a) It shall be unlawful for any person to leave or allow to remain upon public property (except as hereinafter provided) within the city limits, any junked vehicle or parts or portion thereof that they own or control for any period of time in excess of ten days.

(b) It shall be unlawful for any person to leave or allow to remain upon private property that they own or occupy (except as hereinafter provided) within the city limits, any junked vehicle or parts or portion thereof that they own or control for any period of time in excess of ten days.
(Code 2002, § 8.1008; Ord. No. 633, 11-16-2004)

Sec. 18-198. Notice to abate nuisance; public hearing.

(a) Whenever it is brought to the attention of the police chief of the city that a public nuisance, as defined herein, exists on private property in the city limits, the police chief shall give or cause to be given, in writing, notice stating the nature of the public nuisance on private property and that it must be removed and abated within ten days of the date the notice was personally delivered or mailed and any request for a hearing must be made before the expiration of such ten-day period. The notice must be personally delivered or mailed by certified mail with a five-day return receipt request to the last known registered owner of the junked motor vehicle, each lienholder of record and the owner or occupant of the property on which the public nuisance is located, or if the nuisance is on a public right-of-way, the property adjacent to the right-of-way. If the notice is returned by the United States post office as undeliverable, official action to abate such nuisance shall be continued to a date not less than 11 days from the date of return of such notice.

(b) If the post office address of the last known registered owner of the junked vehicle is unknown, then the notice provided for in subsection (a) of this section shall be placed upon the junked vehicle and, if the owner is located, such notice shall be personally delivered to the owner.

(c) A public hearing shall be held prior to the removal of the junked vehicle or any part thereof as a public nuisance; the same shall be held before the municipal judge of the city, when such hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which the junked vehicle is located not earlier than the 11th day after the date of service of notice to abate the nuisance. At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. Any resolution or order requiring the removal of the junked vehicle or any part thereof shall include a description, of the vehicle or part and the identification and license number of the vehicle, if available at the site.
(Code 2002, § 8.1009; Ord. No. 633, 11-16-2004)

Sec. 18-199. Order by municipal judge.

(a) After the hearing is held by the judge of the municipal court of the city, as herein provided, if the municipal judge finds that such a nuisance exists, he shall order the owner or occupant of the premises on which the vehicle is located to remove such junked vehicle within ten days after the order is given to such owner or occupant of the premises on which the junked vehicle is located.

(b) It shall be unlawful and a violation of this section for any such person to whom such order is given to fail or refuse to comply therewith and to remove such junked vehicle within the time provided by such order.
(Code 2002, § 8.1010; Ord. No. 633, 11-16-2004)

Sec. 18-200. Duty of premises owner or occupant.

In the event the owner or occupant of the premises does not request a hearing as hereinabove provided, it shall be his duty to comply with the provisions of the notice given him/her and to abate such nuisance within ten days after the date the notice was personally delivered or mailed.
(Code 2002, § 8.1011; Ord. No. 633, 11-16-2004)

Sec. 18-201. Vehicles not to be made operable.

After a vehicle has been removed in accordance with or under the terms and provisions of this article, it shall not be reconstructed or made operable.
(Code 2002, § 8.1012; Ord. No. 633, 11-16-2004)

Sec. 18-202. Notice to state.

Notice shall be given to the state department of transportation, within five days after the date of removal, identifying the vehicle or part thereof.
(Code 2002, § 8.1013; Ord. No. 633, 11-16-2004)

Sec. 18-203. Removal of vehicle.

Not earlier than the 11th day after notice has been delivered to the owner or occupant of the premises on which a junked vehicle is located, if a hearing is not requested, or if a hearing is requested, not earlier than the 11th day after an order requiring the removal of such junked vehicle has been served upon or delivered to the owner or occupant of the premises on which such vehicle is located, the police chief or members of the police department acting under the direction of the police chief (if such nuisance has not been abated) shall remove or cause to be removed the vehicle which was the subject of such notice to a suitable storage area designated by the police chief. Such vehicle shall be stored in such storage area for a period of not less than ten days during which period any party owning or claiming the rights, title, or interest therein shall be entitled to claim possession of same by the payment to the city, the actual cost to the city of abating such nuisance. The police chief may, in such cases if he deems it necessary, require such person to post bond, in the amount as set by resolution or ordinance by the city council from time to time and kept on file in the office of the city secretary, conditioned that such person will not use such vehicle to create another nuisance in the city.
(Code 2002, § 8.1014; Ord. No. 633, 11-16-2004)

Sec. 18-204. Sale or disposal of vehicles.

When any junked vehicle has remained in the storage area, provided for in this article, for not less than ten days, it shall be the duty of the police chief to dispose of same by removal to a scrap yard or by sale to any suitable site operated by the city or county for processing as scrap or salvage.
(Code 2002, § 8.1015; Ord. No. 633, 11-16-2004)

Sec. 18-205. Proceeds of sale; demolition.

(a) Out of the proceeds of the sale of any junked vehicle under this article, the police chief shall pay for the cost of removal and storage, and the balance, if any, shall be paid to the person entitled thereto (either the owner or lienholder).

(b) If there is not a bid or offer for the junked vehicle, the police chief may dispose of same by causing it to be demolished or removed to a place provided by the city council, or by permitting it to be removed by a demolisher who is willing to do so for the benefit of the junk or parts he can salvage.
(Code 2002, § 8.1016; Ord. No. 633, 11-16-2004)

Secs. 18-206—18-223. Reserved.

ARTICLE IX. SUBSTANDARD BUILDINGS AND STRUCTURES

Sec. 18-224. Incorporation of provisions of state law.

This article is adopted under authority of chapter 214, subchapter A of the Texas Local Government Code. Where any provision of this article is inconsistent with any provision of subchapter A, the applicable provision of subchapter A shall control.
(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-225. Definitions.

When used in this article, the following words, terms, and phrases are defined as follows:

Building. Any structure designed or built for the support, enclosure, shelter, or protection of persons, animals, or property of any kind.

Structure. Anything constructed or erected which requires location on the ground or is attached to something having a location on the ground includ-

ing, but not limited to, signs, fences, walls, poles, and buildings, whether of a temporary or permanent nature.
(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-226. Substandard buildings and structures.

Any building or structure which has any of the following defects shall be deemed a substandard building or structure and constitute a hazard to the health, safety, and welfare of the citizens:

(1) Any building or structure that has become deteriorated or damaged through exposure to the elements including, without limitation, flood, wind, hail, or rain, or damage through fire, or damage by any other cause, to the extent that either the roof, windows, or doors, or portions of the house, building, or structure which protect from the weather will no longer reasonably protect from the weather.

(2) Any building or structure which is so structurally deteriorated or damaged that it is in danger of collapse or which cannot be expected to withstand the reasonably anticipated storms.

(3) Any building used for the occupancy of one or more persons which is not connected to an approved public sanitary sewer.

(4) Any building or structure not constructed or maintained in conformity with applicable fire, electrical, plumbing, or building codes of the city, when the nonconformity constitutes a serious hazard to the safety of persons or property.

(5) Any building or structure so constructed or maintained as to constitute a menace to the health or safety, including:

a. All conditions conducive to the harboring of rats, snakes, mice, other disease-carrying animals, or insects reasonably expected to spread disease; or

b. Conditions hazardous to the safety of persons or property, such as the presence of deteriorated materials, or inadequate bracing, structural support, or construction; or

c. Conditions constituting an attractive nuisance creating a hazard to the health or safety of minors.

(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-227. Declaration of nuisance.

Any building or structure within the city that is substandard, as defined in this article, is declared to be a public nuisance.
(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-228. Inspections and reports.

The city building official, or other representative designated by the city council, shall:

(1) Inspect any building or structure that appears to be substandard;

(2) Present a report of the results of the inspection to the city council; and

(3) Where the building appears to be substandard, give appropriate notice to the property owner of any hearings scheduled for the purpose of taking action to remedy the situation.

(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-229. Procedures.

The following procedures shall be applicable when the city is made aware of a substandard building or structure.

(1) *Emergency procedure.* When an emergency exists, as defined below, the following procedures shall apply:

a. When it shall appear that a building or structure in the city is a substandard building or structure under this article and that the building or structure, or the manner of its use, constitutes an immediate and serious danger to life, public safety, or property, the condition shall be deemed a hazard justifying the use of emer-

gency measures, and the city council may order that any of the following emergency measures be taken:

(i) Immediate vacation of the building, structure, or adjoining buildings or structures;

(ii) Vacation of the danger area around the building or structure;

(iii) The temporary emergency shoring and bracing of walls, roofs, and supports as are required to eliminate the immediate and serious threat of damage to life or property;

(iv) The posting of notices on or near the building or structure, notifying the public of the city council's orders and ordering all persons to keep out of the building or structure and the surrounding areas of danger.

b. When any of the above emergency measures are ordered to be taken, notice of the order shall be given by personal service on the owner and/or occupant of the building or structure or the owner's representatives, or if the premises is unoccupied, by attaching a copy of the notice in a place of prominence on the building or structure and causing a copy of the notice to be mailed to the owner or his representative by certified mail, return receipt requested. Upon the adoption of the emergency order the city council shall schedule a hearing and cite the owner or his representative to appear and show cause why the building or structure should not be declared a substandard building or structure and why he should not be ordered to repair, vacate, or demolish the building or structure. The citation shall be served with the notice of emergency order in accordance with the provisions of this paragraph. The hearing shall be conducted in accordance with the provisions of subsection (2) hereof.

(2) *Normal procedure.*

a. When it shall come to the attention of the city that a building or structure in the city is substandard under the provisions of this article, the city council may schedule a hearing and cite the owner of the building or structure or his representative to appear and show cause why the building or structure should not be declared to be a substandard building or structure and why the owner should not be ordered to repair, vacate, or demolish the building or structure. The date of the hearing shall be not less than ten days after the citation shall have been made.

b. The citation may be served by delivery of a copy thereof to the owner and occupant, or if the premises is unoccupied, by attaching a copy of the citation in a place of prominence on the building or structure and causing a copy of the citation to be mailed to the owner or his representative by certified mail, return receipt requested.

c. On the day set in the citation the hearing shall be conducted and on the basis of the hearing the city council shall determine whether or not the building or structure is a substandard building or structure, and shall issue such orders as shall appear reasonably necessary to prevent the building or structure from being a hazard to life or property and to eliminate the substandard qualities.

(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-230. Standards for orders.

The following standards may be followed by the city council in ordering the repair, vacation, or demolition of a substandard building or structure:

(1) If the substandard building or structure can reasonably be repaired so that it will

no longer be in a condition which is in violation of the provisions of this article, it shall be ordered repaired.

(2) If the substandard building or structure is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants, the citizens of the city, or to the public, it shall be ordered to be vacated.

(3) In any case where a substandard building or structure cannot be repaired so that its existence will no longer be in violation of the provision of this article, it shall be ordered demolished.

(Ord. No. 740, § 1, 3-24-2009)

Sec. 18-231. Remedial action.

(a) After the hearing, if the building or structure is found to be substandard, the city council may direct that the building or structure be repaired or removed within a reasonable time. If the repair or removal has not been made at the expiration of the allotted time, the city may demolish and remove the building or structures at the expense of the city and assess the expenses thereof by filing a lien on the land on which the building or structure stood or to which it was attached.

(b) Notice of the assessment of the lien shall be signed in name of the city by the mayor. It shall state that the city council has ordered or directed the removal of a building or structure determined to be substandard, after notice to the owner and public hearing in accordance with this article, and that the failure of the owner to remove the substandard building or structure has resulted in the removal thereof at the expense of the city, which expense has been assessed by the city council on the land on which the building or structure stood or to which it was attached. The notice shall further designate and describe the property against which the lien is assessed and the amount of the assessment.

(c) The notice shall be filed with the clerk of the county in which the property is located with a copy served on the owner of the property or his representative by personal service or certified mail, return receipt requested.

(Ord. No. 740, § 1, 3-24-2009)

Chapter 19

RESERVED

Chapter 20

FIRE PREVENTION AND PROTECTION*

Article I. In General

Article II. Fire Code

Article III. Fire Sprinkler Systems

Article IV. Fireworks

Article V. Fire Hydrants

Article VI. Fire Lanes

Article VII. Arson Reward

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*__State law references—__Public safety, V.T.C.A., Local Government Code ch. 341 et seq.; safety, V.T.C.A., Health and Safety Code ch. 751 et seq.

ARTICLE I. IN GENERAL

Sec. 20-1. Fire service local agreement.

(a) An interlocal cooperation agreement regarding a common fire department was duly entered into on December 20, 1978, by and between the City of Bunker Hill Village, Texas, the City of Hedwig Village, Texas, the City of Hilshire Village, Texas, the City of Hunters Creek Village, Texas, the City of Piney Point Village, Texas, and the City of Spring Valley, Texas.

(b) The aforementioned agreements and all ordinances and resolutions amending same are not herein reproduced, but are hereby specifically saved from repeal and shall be maintained on file in the office of the city secretary.
(Code 2002, §§ 9.301, 9.303)

Secs. 20-2—20-20. Reserved.

ARTICLE II. FIRE CODE

Sec. 20-21. International fire code adopted.

The International Fire Code, 2009 Edition, hereinafter sometimes referred to as the "code," with appendices "A" through "G," as published by the International Code Council, Inc., and as amended herein, is hereby adopted and made applicable within the city. A copy of the code shall be maintained on file in the office of the city secretary.
(Code 2002, § 5.101; Ord. No. 586, 6-19-2001; Ord. No. 630, 10-19-2004; Ord. No. 794, § 1, 3-27-2012)

Sec. 20-22. Amendments.

(a) Section 307.1 of the fire code adopted in this article is hereby amended to provide as follows:

> 307.1. General. Open burning of rubbish, combustible vegetation and other waste is prohibited.

(b) Section 903.2 of the International Fire Code, as adopted and amended by the city, is further amended to read as follows:

> An automatic sprinkler system shall be installed, and maintained in operating condition, in all new and existing buildings and structures containing an enclosed area of 1,000 square feet or more and built for, or to be utilized as, any of the occupancy classifications defined by the International Fire Code, except Miscellaneous Group U.
>
> Provided however, that an automatic sprinkler system shall not be required for an existing building or structure unless and until:
>
> (1) The enclosed floor area of the building or structure, as it existed on the effective date of the ordinance from which this section is derived, is increased by 50 percent or more;
>
> (2) For a non-residential occupancy classification, 50 percent or more of the existing enclosed floor area of the building is renovated, remodeled or restored; or
>
> (3) For a residential occupancy classification, 50 percent or more of the space within the dwelling used for living, sleeping, eating, cooking, bathing, washing, and sanitation purposes is renovated, remodeled, or restored.
>
> And provided further that an automatic sprinkler system shall not be required in spaces or areas in telecommunication buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries, and standby engines, if those spaces or areas are equipped throughout with an automatic fire alarm system and are separated from the remainder of the building by a wall with a fire-resistance rating of not less than one hour and floor/ceiling assembly with a fire-resistance rating of not less than two hours.

(c) Sections 903.2.1 through 903.2.14.2 of such code are hereby deleted.

(d) Section 903.3 of such code is hereby amended to provide as follows:

> 903.3. Installation requirements. Automatic sprinkler systems shall be designed and installed in accordance with sections 903.3.2 through 903.3.7.

(e) Sections 903.3.1 through 903.3.1.3 of such code are hereby deleted.

(f) Section 905.3 of such code is hereby amended to provide as follows:

905.3. Required installations. Class I standpipe systems shall be installed at all Residential Group R occupancies located on flag lots, the location of which shall be approved by the fire chief; otherwise, standpipe systems shall be provided as set forth in sections 905.3.1 through 905.11.

(g) Section 907.3.1.1 of such code is hereby amended to provide as follows:

907.3.1.1. Educational Group E. Educational Group E Occupancies, including day nurseries, day care centers and preschool centers having an occupancy load of six or more persons shall be required to install an automatic fire alarm system to include an approved manual pull-down station. Each system shall incorporate smoke detection devices in each occupiable area, with all detectors interconnected in such a way that activation of any required detector shall automatically activate all detectors.

(h) Section 3301.1.3 of such code is hereby amended by deleting subsections 1 through 4.

(i) Sections 3301.1.4 through 3301.8.1.4 of such code are hereby deleted.

(j) Section 3305.1 of such code is hereby amended to provide as follows:

3305.1. General. The manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks are prohibited.

(k) Sections 3305.2 through 3305.9 of such code are hereby deleted.

(l) Sections 3308.1 through 3308.11 of such code are hereby deleted.

(m) Section 3404.2.9.5.1 of such code is hereby amended to provide as follows:

3404.2.9.5.1. Locations where aboveground tanks are prohibited.

Except as otherwise provided in this section, storage of Class I and Class II liquids in aboveground tanks outside of buildings is prohibited within the city limits of the city. The fire marshal may approve temporary storage of Class I and Class II liquids in portable aboveground tanks at construction sites. Storage by political subdivisions of this state of diesel fuel in aboveground tanks enclosed in concrete is exempt from the provisions of this section.

(Code 2002, § 5.102; Ord. No. 586, 6-19-2001; Ord. No. 619, 12-16-2003; Ord. No. 630, 10-19-2004; Ord. No. 679, § 3, 2-27-2007)

Secs. 20-23—20-47. Reserved.

ARTICLE III. FIRE SPRINKLER SYSTEMS

Sec. 20-48. NFPA 13, NFPA 13D and NFPA 13R 1996 Edition Standards adopted.

The NFPA 13, NFPA 13D, and NFPA 13R, 1996 Edition Standards, hereinafter sometimes referred to as the "standards," as published by the National Fire Protection Association, Inc., and as amended herein, are hereby adopted. A copy of such standards is made a part hereof for all purposes, an authentic copy of which has been filed with the city secretary.

(Code 2002, § 5.201; Ord. No. 587, § 1, 6-19-2001)

Sec. 20-49. Amendments to NFPA 13D.

(a) Section 1-3 of NFPA 13D is hereby amended by deleting the definition of the term "checkvalve" and substituting therefor a new definition to provide as follows:

Dual checkvalve. A valve that allows flow in one direction only, on the system side, as depicted on the diagram of same on Attachment No. 1 to the ordinance from which this section is derived.

(b) Section 3-1.1 of NFPA 13D is hereby amended by deleting all of section 3-1.1 thereof and substituting therefor a new section 3-1.1 to provide as follows:

3-1.1. Each system shall have a single control valve arranged to shut off both the domestic system and the sprinkler system, and there shall be a separate shutoff valve for the domestic system only. However, the sprinkler system

piping shall be permitted to have a separate control valve where supervised by a central station or remote station alarm service.

(c) NFPA 13D is hereby further amended by adding to chapter 3 a new section 3-1.5 to provide as follows:

3-1.5. Dual checkvalve. Each sprinkler system shall be equipped with a dual checkvalve assembly to be located on the sprinkler system side of the water meter, as depicted on Attachment 1 to the ordinance from which this section is derived.

(d) Section 4-3.3.2 of NFPA 13D is hereby amended by deleting all of section 4-3.3.2 thereof and substituting therefor a new section 4-3.3.2 to provide as follows:

4-3.3.2. The use of antifreeze solutions shall be prohibited.

(e) Section 4-6 of NFPA 13D is hereby amended by deleting all of section 4-6 thereof and substituting therefor a new section 4-6 to provide as follows:

4-6. Location of sprinklers. Sprinklers shall be installed in all areas.

Exception No. 1: Sprinklers are not required in bathrooms of 55 ft^2 (5.1 m^2) and less.

Exception No. 2: Sprinklers are not required in clothes closets, linen closets and pantries where the area of the space does not exceed 24 ft^2 (2.2 m^2) and the least dimension does not exceed three feet (0.9 m) and the walls and ceilings are surfaced with noncombustible or limited-combustible materials as defined in NFPA 220, Standard on Types of Building Construction.

Exception No. 3: Sprinklers are not required in detached garages, open attached porches, carports and similar open structures.

Exception No. 4: Sprinklers are not required in attics that are not used for living space except that one sprinkler head shall be placed over each heating device such as hot water heater or home heating device.

Exception No. 5: Sprinklers are not required in entrance foyers that are not the only means of egress.

(Code 2002, § 5.202; Ord. No. 587, § 2, 6-19-2001)

Secs. 20-50—20-71. Reserved.

ARTICLE IV. FIREWORKS*

Sec. 20-72. Definitions.

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

Fireworks means and includes any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation; this however, shall not be construed to include ammunition or weapons.

(Code 2002, § 5.301; Ord. No. 253, 9-19-1973)

Sec. 20-73. Prohibited activities.

(a) The sale, storage, use, explosion, having or manufacturing of fireworks within the city is hereby prohibited.

(b) No relation in the ascending line of a minor, or a guardian of a minor, shall furnish money to a minor for the purchase of fireworks, or encourage, act in conjunction with or in any manner instigate or aid a minor in having, exploding, storing, selling, using or manufacturing fireworks within the corporate limits of the city. This shall be an offense, regardless of whether the minor has been found guilty of the offense. The commission of any of the aforesaid acts by the minor on property under the control or owned by the relation or guardian or on property within their sight or hearing shall be prima facie evidence that the relation or guardian was instigating or aiding the minor.

(Code 2002, § 5.302; Ord. No. 253, 9-19-1973)

*__State law references__—Authority of municipality to regulate the use of fireworks, V.T.C.A., Local Government Code § 342.003; regulation of fireworks and fireworks displays, V.T.C.A., Occupations Code ch. 2154.

Secs. 20-74—20-104. Reserved.

ARTICLE V. FIRE HYDRANTS

Sec. 20-105. Obstruction prohibited.

It shall be unlawful to maintain or permit to be maintained any tree, shrub or any other obstruction whatsoever within ten feet of any fire hydrant within the city.
(Code 2002, § 5.400; Ord. No. 124, 7-11-1960; Ord. No. 151, 12-11-1961)

Sec. 20-106. Turn-on by unauthorized persons unlawful.

It shall be unlawful for any person not a fireman, policeman or employee of the Memorial Villages Water Authority, nor authorized in writing by such corporation to do so, to turn on any fire hydrant within the city.
(Code 2002, § 5.400; Ord. No. 151, 12-11-1961)

Secs. 20-107—20-125. Reserved.

ARTICLE VI. FIRE LANES

Sec. 20-126. When required.

No building or other type of construction for occupancy shall be constructed in such a manner that any part of the structure is more than 150 feet from a public street or highway; provided, however, that such structure may be erected at a greater distance if the owner designates, constructs and maintains a fire lane or access easement having a minimum width of 20 feet and a minimum height clearance of 20 feet running from a public street or highway terminating within 100 feet of the furthest point of such structure; providing further, however, that no fire lane shall be required for any single-family or duplex residential building.
(Code 2002, § 5.501; Ord. No. 486, § 1, 12-15-1992)

Sec. 20-127. Specifications.

Any fire lane more than 100 feet in length shall either connect at each end to a dedicated street or be provided with a turnaround having a minimum radius of 50 feet, excluding cul-de-sac medians when measured from curb to curb. All fire lanes shall be maintained and kept in a state of good repair at all times by the owner, manager or person in charge of the premises and the city shall not be responsible for the maintenance thereof.
(Code 2002, § 5.502; Ord. No. 486, § 2, 12-15-1992)

Sec. 20-128. Designation by fire marshal.

The fire marshal or his authorized representative is hereby authorized and directed to designate adequate fire lanes and/or turnarounds to existing buildings as may be necessary for fire department access in the event of fire in such buildings. Any such fire lane designation for existing buildings shall comply as nearly as is reasonably possible to the requirements herein for new buildings.
(Code 2002, § 5.503; Ord. No. 486, § 3, 12-15-1992)

Sec. 20-129. Signs.

(a) *Posting and maintaining.* The owner, manager or person in charge of any building to which fire lanes have been approved by the fire marshal or his authorized representative shall post and maintain appropriate signs in conspicuous places along such fire lanes stating, "NO PARKING—FIRE LANE." Such signs shall be 12 inches wide and 18 inches high, with a companion sign 12 inches wide and six inches high stating, "TOW-AWAY ZONE."

(b) *Coloring and mounting.* Any "NO PARKING—FIRE LANE" or "TOW-AWAY ZONE" sign shall be painted on a white background with symbols, letters and border in red. Standards for mounting, including but not limited to the height above the grade at which such signs are to be mounted, shall be adopted by the fire marshal of the city.

(c) *Placement.* Where the placement of such signs is not applicable or when in the opinion of the fire marshal or his representative such signs would cause a burden on the management, curb markings may be used.

(d) *Curb markings.* Any "NO PARKING—FIRE LANE" or "TOW-AWAY ZONE" curb markings shall be painted on a red background with

symbols and letters in yellow. Such lettering shall be a minimum of four inches in height. Such lettering shall state: "NO PARKING—FIRE LANE—TOW-AWAY ZONE."
(Code 2002, § 5.504; Ord. No. 486, § 4, 12-15-1992)

Sec. 20-130. Altering, defacing, destroying of fire lane or tow-away sign.

It is hereby unlawful for any person without lawful authority to attempt or in fact alter, destroy, deface, injure, knock down or remove any sign designating a fire lane or tow-away zone erected under the terms of this article.
(Code 2002, § 5.505; Ord. No. 486, § 5, 12-15-1992)

Sec. 20-131. Abandonment or closing.

It shall be unlawful for any owner, manager or person in charge of any premises served by a required fire lane to abandon or close such fire lane without written permission of the fire marshal of the city.
(Code 2002, § 5.506; Ord. No. 486, § 6, 12-15-1992)

Sec. 20-132. Parking in fire lanes prohibited.

(a) It shall be unlawful for any person to park, place, allow, permit or cause to be parked, placed or remain unattended any motor vehicle, trailer, boat or similar obstruction within or upon an area designated as a fire lane and marked by an appropriate marking.

(b) Any motor vehicle, trailer, boat or similar obstruction found parked or unoccupied within an area designated as a fire lane, as required by this section, is hereby declared a nuisance per se; and any such motor vehicle, trailer, boat or similar obstruction parked or unoccupied in such manner as to obstruct in whole or in part any such fire lane shall be prima facie evidence that the registered owner unlawfully parked, placed or permitted to be parked or placed such obstruction within a fire lane.

(c) The records of the state highway department or the county highway license department showing the name of the person to whom the state highway license or boat or trailer license is issued shall constitute prima facie evidence of ownership by the named person.
(Code 2002, § 5.507; Ord. No. 486, § 7, 12-15-1992)

Sec. 20-133. Modifications.

The fire marshal shall have the power to modify any of the provisions of this article, upon application in writing by the owner or lessee or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of this article; provided that the spirit of this article shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire marshal thereon shall be entered upon the records of the city and a signed copy shall be furnished to the applicant.
(Code 2002, § 5.508; Ord. No. 486, § 8, 12-15-1992)

Sec. 20-134. Enforcement; issuance of citations; impoundment of obstructions.

(a) The fire marshal (or any member of the fire marshal's office designated by the fire marshal) or the chief of police (or any member of the police department designated by the chief of police) is hereby authorized to issue parking citations for any motor vehicle, trailer, boat or similar obstruction found parked or unattended in or upon a designated fire lane and may have such obstruction removed by towing it away. Such vehicle or obstruction may be redeemed by payment of the towage and storage charges.

(b) No parking citation shall be voided nor shall the violator be relieved of any penalty assessed by a judge of the municipal court by the redemption of the obstruction from the storage facility.
(Code 2002, § 5.509; Ord. No. 486, § 9, 12-15-1992)

Sec. 20-135. Plats with fire lanes.

(a) *Review process.* Prior to the issuance of a building permit, plats with designated fire lanes shall be submitted to the fire marshal for his review, who then will approve or disapprove the

designated fire lanes and indicate the needed signs and pavement markings. One of these plats shall be retained by the fire marshal of the city.

(b) *Contractor requirement to provide all-weather fire lane.* The contractor or person in charge of any construction site for commercial, industrial, mercantile, educational, institutional, assembly, hotel or multifamily dwelling occupancies shall provide and maintain during construction an approved all-weather fire lane, not less than 20 feet in width, as shown on approved plats. Final paving of such fire lane shall be completed prior to issuance of any certificate of occupancy.
(Code 2002, § 5.510; Ord. No. 486, § 10, 12-15-1992)

Sec. 20-136. Penalties.

Any person who shall violate any provision of this article or who shall fail to comply herewith, or who shall violate or fail to comply with any order made hereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved hereunder or any certificate or permit issued hereunder, shall severally for each and every violation and noncompliance respectively be guilty of a misdemeanor.
(Code 2002, § 5.511; Ord. No. 486, § 11, 12-15-1992)

Secs. 20-137—20-155. Reserved.

ARTICLE VII. ARSON REWARD*

Sec. 20-156. Established.

The mayor of the city is hereby required, authorized and empowered to offer a reward of not less than $250.00 payable to the person who shall be responsible for the arrest and conviction of any person committing in the city the crime of arson as the same is now defined by the state penal code.
(Code 2002, § 5.601)

Sec. 20-157. Determination, form and posting.

Whenever the mayor shall be informed that any fire occurring in such city was of an incendiary origin, he shall call for a report on the same by the city fire marshal. If the fire marshal shall report that such fire was caused by the commission of the crime of arson, it shall become the duty of the mayor to offer the reward prescribed in section 20-156. Such reward shall be in the form of a proclamation duly issued by the mayor under his official signature and attested by the seal of the city, and which shall be posted upon conspicuous places, one of which shall be the city hall in accordance with the regulations of the state insurance department.
(Code 2002, § 5.602)

Sec. 20-158. Payment.

(a) Upon information being given by any person causing the arrest and conviction of any person guilty of the specific crime of arson and upon the final conviction of such person, the person giving such information shall be entitled to receive the reward offered in section 20-156 from the city.

(b) The city council shall be the sole and exclusive judge in determining eligibility for the reward offered hereunder.

(c) Persons providing information hereunder may remain anonymous.
(Code 2002, § 5.603)

*__State law reference—__Provisions regarding arson, V.T.C.A., Penal Code § 28.02.

Chapter 21

RESERVED

Chapter 22

LAW ENFORCEMENT*

(RESERVED)

*__State law references__—Vernon's Ann. C.C.P. ch. 1 et seq.; V.T.C.A., Penal Code ch. 1 et seq.; public safety, V.T.C.A., Local Government Code ch. 341 et seq.

Chapter 23

RESERVED

Chapter 24

MUNICIPAL COURT*

Article I. In General

Article II. Municipal Court Judge

*__State law references—__Judicial branch, V.T.C.A., Government Code ch. 21 et seq.; municipal courts, V.T.C.A., Government Code ch. 29.

ARTICLE I. IN GENERAL

Sec. 24-1. Building security fund.

(a) *Created, established.* There is hereby created and established a municipal court building security fund, the "fund," pursuant to Vernon's Ann. C.C.P. art. 102.017.

(b) *Security fee assessment authorized, required.* The municipal court of the city, the "municipal court," is hereby authorized and required to assess a municipal court building security fee, the "fee," in the amount as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary, against all defendants convicted in a trial of a misdemeanor offense by the municipal court. Each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) *Fee collection.* The municipal court clerk is hereby authorized and required to collect the fee and to pay same to the treasury of the city. All fees so collected and paid over to the treasury of the city shall be segregated in the fund.

(d) *Financing security devices, services.* The fund shall be used only for the purpose of financing the purchase of security devices and/or services for the building housing the municipal court of the city. Security devices and/or services shall include any and all items described in Vernon's Ann. C.C.P. art. 102.017(d).

(e) *Administration.* The fund shall be administered by or under the direction of the city council.

(Code 2002, § 7.200; Ord. No. 526, 11-19-1996)

State law reference—Authority to establish municipal court building security fund, Vernon's Ann. C.C.P. art. 102.017.

Sec. 24-2. Technology fee.

(a) *Created, established.* There is hereby created and established a municipal court technology fund, the "fund," pursuant to Vernon's Ann. C.C.P. art. 102.0172.

(b) *Assessment authorized, required.* The municipal court of the city is hereby authorized and required to assess a municipal court technology fee, the "fee," in the amount set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary against all defendants convicted of a misdemeanor offense in the municipal court. Each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) *Collection.* The municipal court clerk is hereby authorized and required to collect the fee and to pay same to the treasury of the city. All fees so collected and paid over to the treasury of the city shall be segregated in the fund.

(d) *Financing technological enhancements.* The fund shall be used only for the purposes of financing the purchase of items used to provide certain technological enhancements for the municipal court of the city. Technological enhancement items shall include any and all items described in Vernon's Ann. C.C.P. art. 102.0172(d).

(e) *Administration.* The fund shall be administered by or under the direction of the city council.

(Code 2002, § 7.300; Ord. No. 561, 9-21-1999)

State law reference—Authority to establish municipal court technology fund, Vernon's Ann. C.C.P. § 102.0172.

Secs. 24-3—24-22. Reserved.

ARTICLE II. MUNICIPAL COURT JUDGE*

Sec. 24-23. Defined.

The term "municipal court judge" refers to that person so appointed by the city council, in accordance with the provisions of V.T.C.A., Government Code ch. 29, charged with responsibility for the duties imposed herein, as well as ch. 29 of the Government Code.

(Code 2002, § 7.101)

Sec. 24-24. Eligibility for appointment.

To be eligible for appointment to such office, a person must be duly licensed to practice law in the state.

(Code 2002, § 7.103; Ord. No. 357, § 2, 2-17-1981)

*__State law reference—__Municipal court judges, generally, V.T.C.A., Government Code § 29.004.

Sec. 24-25. Term of office.

The term of office of the person appointed judge of the municipal court shall be two years.
(Code 2002, § 7.104; Ord. No. 357, § 3, 2-17-1981)

Sec. 24-26. Alternates.

(a) From time to time and as the occasion may warrant or require, the city council shall appoint two persons as alternate municipal judges of the city. Such persons must possess the qualifications prescribed for the regular municipal judge and shall act or sit for the regular municipal judge only on those occasions when such regular municipal judge is temporarily unable to act in such capacity.

(b) While acting or sitting as an alternate for the regular municipal judge, the alternate municipal judge shall have all of the powers and duties of the office of the regular municipal judge and shall be entitled to such compensation as may be established by the city council.

(c) The persons hereby appointed as alternate municipal judges of the city are not appointed to such position for a specific term or time and shall not have a property right in continued service in or appointment or reappointment to such position; rather, they shall serve in such position at the will and pleasure of the city council and may be removed from or replaced in such position at any time by the city council, with or without cause.

(d) With and by the appointments herein made, any and all appointments heretofore made to the position of alternate municipal judge of the city are vacated and terminated and any person heretofore appointed to such position shall cease to hold the same from and after the date hereof.
(Code 2002, § 7.105; Ord. No. 491, §§ 2, 3, 5, 6, 7-20-1993)

Sec. 24-27. Clerk.

(a) The city secretary shall be ex officio clerk of the municipal court who may be authorized to appoint a deputy with the same power as the secretary and shall hold office during his term as city secretary.

(b) The clerk shall keep minutes of the proceedings of such court, issue all processes and generally perform all of the duties of the clerk of a court as prescribed by law for a county clerk in so far as the same may be applicable.
(Code 2002, § 7.106; Ord. No. 22, 11-7-1955)

State law reference—Municipal court clerk, generally, V.T.C.A., Government Code § 29.010.

Sec. 24-28. Special expense fee.

The presiding judge and any associate or alternate judge of the municipal court of this city may, after conviction, assess upon the defendant a special expense fee as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary, for the issuance and service of a warrant of arrest for an offense committed under V.T.C.A., Penal Code § 38.10, bail jumping and failure to appear, or under V.T.C.A., Transportation Code § 543.009, violation of written promise to appear. The presiding judge and any associate or alternate judge of the municipal court of the city may assess the special expense fees described in Vernon's Ann. C.C.P. art. 17.04, dealing with the requisites of a personal bond and a special expense fee for the issuance and service of a warrant of arrest, after due notice, as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary. The presiding judge and any associate or alternate judge of the municipal court of the city may assess the special expense fee described in Vernon's Ann. C.C.P. art. 45.203, dealing with the collection of expenses for services performed in cases in which the laws of the state require that the case be dismissed by or on behalf of a defendant in compliance with the provisions of Vernon's Ann. C.C.P. art. 45.0511(B), set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.
(Code 2002, § 7.107; Ord. No. 423, § 1, 9-15-1987)

Sec. 24-29. Certified copies of ordinances.

The municipal court of the city is authorized to accept copies of ordinances, certified to be true and correct copies of the originals by the custodian of the ordinances, the city secretary, or a deputy city secretary. Such certified copies shall

constitute prima facie proof of the content of the original ordinance. Such prima facie proof shall not preclude the acceptance of other or different proof concerning content of the original ordinance.
(Code 2002, § 7.108; Ord. No. 273, 4-16-1975)

Chapter 25

RESERVED

Chapter 26

OFFENSES*

*__State law reference—__V.T.C.A., Penal Code ch. 1 et seq.

Sec. 26-1. Firearms.

It shall be unlawful to discharge any gun, pistol or other firearm on or across any public property, or across any thoroughfare or property line within the city, except that such firearms may be discharged by any party upon his own property and upon the property of another only when acting in such other person's presence and with his permission.
(Code 2002, § 8.200; Ord. No. 40, 1-7-1957)

State law reference—Authority of municipality to regulate the discharge of firearms, V.T.C.A., Local Government Code § 217.003.

Sec. 26-2. Pellet and BB guns.

It shall be unlawful to discharge any air rifle, pellet gun, BB gun, carbon dioxide (CO2) gun, bow, crossbow or so-called hunting slingshot so that the projectile therefrom crosses any public property, or crosses any thoroughfare or property line within the city, except that such may be discharged by any party upon his own property and upon the property of another only when acting in such other person's presence and with his permission.
(Code 2002, § 8.300; Ord. No. 56, 6-7-1957)

Sec. 26-3. Compliance to lawful order.

No person shall willfully fail or refuse to comply with any lawful order, direction or signal (visual or audible) of any police officer vested by law with authority to direct, control or regulate traffic.
(Code 2002, § 8.700; Ord. No. 208, 7-6-1967)

Sec. 26-4. Helicopters.

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

Emergency landing site means the landing or takeoff of helicopters in times of natural disaster.

Helicopter means an aircraft whose support in landing and takeoff is derived chiefly from aerodynamic forces acting on one or more rotors turning about substantially vertical axis.

Medical evacuation landing site means any landing or takeoff of a helicopter to administer emergency medical aid or effect a medical evacuation.

(b) *Prohibited.* It shall be unlawful for any person to land or take off in a helicopter, or to permit a helicopter to land or take off within the city except when an emergency landing or medical evacuation landing is necessary, or when necessary or appropriate for law enforcement purposes.
(Code 2002, §§ 8.1101, 8.1102; Ord. No. 370, §§ 1, 2, 5-18-1982)

Sec. 26-5. Reserved.

Editor's note—Ord. No. 711, § 2, adopted January 15, 2008, renumbered the former section 26-5, which pertained to entry by police and construction sites, as section 10-4.

Sec. 26-6. Protection of storm drains and public waterways.

It shall be unlawful for any person to place or cause to be placed into any watercourse, waterway, storm drain, on any public or private street, or ditch any grass, tree or yard clippings, any construction debris, or any other debris or trash.
(Ord. No. 768, § 1, 2-22-2011)

Chapter 27

RESERVED

Chapter 28

SECONDHAND GOODS

Article I. In General

Secs. 28-1—28-18. Reserved.

Article II. Garage Sales

ARTICLE I. IN GENERAL

Secs. 28-1—28-18. Reserved.

ARTICLE II. GARAGE SALES

Sec. 28-19. Definitions.

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

Garage sale means the sale or offering for sale to the public of three or more items of personal property from a building, accessory building, structure or premises designed, used, intended to be used or zoned for residential purposes.
(Code 2002, § 4.601; Ord. No. 346, § 1, 6-17-1980)

Sec. 28-20. Prohibited.

It shall be unlawful for any person to conduct or permit to be conducted, on any premises under his control, a garage sale within the corporate limits of the city.
(Code 2002, § 4.602; Ord. No. 346, § 2, 6-17-1980)

Chapter 29

RESERVED

Chapter 30

SOLICITATION AND PEDDLING*

Article I. In General

Secs. 30-1—30-18. Reserved.

Article II. Solicitors and Peddlers

Secs. 30-33—30-52. Reserved.

Article III. Charitable Solicitations

Division 1. Generally

Secs. 30-59—30-76. Reserved.

Division 2. Certificate of Registration

*__State law reference—__Authority of municipality to license, tax, suppress, prevent, or otherwise regulate peddlers, hawkers and solicitors, V.T.C.A., Local Government Code, § 215.031.

ARTICLE I. IN GENERAL

Secs. 30-1—30-18. Reserved.

ARTICLE II. SOLICITORS AND PEDDLERS

Sec. 30-19. Definitions.

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

Commodities, goods or *merchandise* means personal property of any nature whatsoever.

Itinerant vendors means any person, their representatives, agents and employees, who engages in a business, within the city, of selling or offering for sale any goods or merchandise, or exhibiting the same for sale, or for the purpose of taking orders for the sale thereof; who display, exhibit, sell or offer for sale such goods, merchandise or services upon or from a truck or other vehicle within the city; or who temporarily hire, rent, lease or occupy any room or space in any building, structure, or other enclosure or vacant lot within the city upon which such business is to be operated or conducted. The term "itinerant vendors" shall not include individuals connected with solicitation of funds for a charitable purpose as that phrase is defined in this section.

Peddler means any person, their representatives, agents and employees, who engages in the business within the city of selling, offering for sale or exhibition for sale of any commodity or service, from house to house or from place to place and not from one established spot. Delivery of the commodity or service is made or to be made at the time of sale. Collection of the sales price at time of sale or later is immaterial. The term "peddler" shall not include individuals connected with solicitation of funds for a charitable purpose, as that phrase is defined in this section.

Services means the performance of labor for the benefit of another, or at another's command.

Solicitation of funds for a charitable purpose means any request for the donation of money, property or anything of value, or the pledge of a future donation of money, property or anything of value; or the selling or offering for sale of any property real or personal, tangible or intangible, whether of value or not, including but not limited to goods, books, pamphlets, tickets, publications or subscriptions to publications or brochures upon the representation, express or implied, that the proceeds of such sale will be used for a charitable purpose, as such term is herein defined. The term "charitable purpose" shall mean a philanthropic, religious or other nonprofit objective including benefiting poor, needy, sick, refugee or handicapped persons; to benefit any church or religious society, sect, group or order; to benefit a patriotic or veterans' association or organization; to benefit any fraternal, social or civic organization, or to benefit any educational institution. The term "charitable purpose" shall not be construed to include a direct benefit to the individual making the solicitation or for the benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

Solicitor or *canvasser* means any person, their representatives, agents and employees, who engages in the business within the city of taking orders for future delivery of commodities or services, or solicits subscriptions, orders, contributions or any kind of support for remuneration or gain, from house to house or from place to place. This term "solicitor" or "canvasser" shall not include individuals connected with solicitation of funds for a charitable purpose, as that phrase is defined in this section.

Temporary business means the business use of any real property within the city for which definite written arrangements with the owner have not been made for occupancy of the premises for a term in excess of 90 days. Definite arrangements would include, without being limited to, a lease agreement or other document conveying an enforceable right of occupancy.
(Code 2002, § 4.301; Ord. No. 527, 2-18-1997)

Sec. 30-20. Liability of corporate officers.

If business, fundraising or communication under the provisions of this article shall be con-

ducted by a corporation, it shall be unlawful for any officer, agent or employee of such corporation to cause or permit a violation of this article.
(Code 2002, § 4.302; Ord. No. 527, 2-18-1997)

Sec. 30-21. Exemptions.

(a) A peddler, solicitor, canvasser or itinerant vendor conducting activities on the property of another by express, prior invitation of the owner thereof is exempt from the provisions of this article.

(b) A vendor selling or exhibiting for sale commodities, goods, merchandise or services to persons engaged in the business of buying, selling and dealing in the same within the city is exempt from the provisions of this article.

(c) Persons conducting activities in connection with solicitation of funds for a charitable purpose are exempt from the provisions of this article.
(Code 2002, § 4.303; Ord. No. 527, 2-18-1997)

Sec. 30-22. Unlawful conduct.

It shall be unlawful for any peddler, solicitor, canvasser or itinerant vendor to:

(1) Conduct a business or related activity within the city without a valid registration certificate as hereinafter provided.

(2) Conduct a business or related activity within the city without a valid identification card as hereinafter provided.

(3) Conduct a business or related activity without visibly displaying the identification card issued to that individual.

(4) Alter a registration certificate or identification card issued by the city.

(5) Conduct a business or related activity within the city after the expiration of the registration certificate issued by the city.

(6) Conduct a business or related activity within the city different than described in the registration statement required by this article.

(7) Provide false, inaccurate or misleading information in the registration statement.

(8) Use a vehicle or vehicles in the conduct of a business or related activity not identified in the registration statement.

(9) Conduct a business from a location or locations within the city not listed in the registration statement.

(10) Conduct a business or related activity at a residence or business in defiance of any express notification, including posted notice exhibited at such residence or business, indicating that solicitations are not welcome or not invited.

(11) Conduct a business selling, offering for sale, exhibiting for sale or taking of orders for delivery of any commodities, goods, merchandise or services not listed and described in the registration statement.

(12) Sell, assign or transfer, or attempt to sell, assign or transfer a registration certificate or identification care.

(13) Conduct a business authorized under a registration certificate issued pursuant to this article on any public sidewalk, public street right-of-way or other public property within the city without written authorization from the city.

(14) Conduct a business during hours other than those permitted by this article.
(Code 2002, § 4.304; Ord. No. 527, 2-18-1997)

Sec. 30-23. Authority for admission to inspect.

A representative of the city, designated by the chief of police, shall have the authority to request admission to inspect, at a reasonable time without advance notice, a business operating under a registration certificate issued pursuant to this article to determine whether the permit holder's business and related activities are as represented in the registration statement. If such admission is denied, or if the chief of police deems it advisable, then the chief shall have the authority to obtain a warrant in accordance with applicable law for the purpose of allowing the inspection.
(Code 2002, § 4.305; Ord. No. 527, 2-18-1997)

Sec. 30-24. Hours.

Business conducted in accordance with this article shall be carried out during central standard time from 9:00 a.m. to 7:00 p.m. and during daylight saving time from 9:00 a.m. to 8:00 p.m. (Code 2002, § 4.306; Ord. No. 527, 2-18-1997)

Sec. 30-25. Registration statement.

Prior to commencement of business and related activities by any peddler, solicitor, canvasser or itinerant vendor, a registration statement shall be completed on a form provided by the chief of police for that purpose, stating and/or providing the following:

(1) Name of applicant (person who completes the registration statement);

(2) Height, weight, sex and hair color of applicant;

(3) A color or black and white photograph of the applicant, no larger than two inches by two inches, taken not more than 90 days prior to the registration;

(4) Social security number of applicant;

(5) Permanent home address and local address, if different;

(6) Applicant's driver's license number and state of issuance. The chief of police shall verify this information from the applicant's license. If the applicant has no driver's license, other identification shall be provided;

(7) Name of individual, firm, company or organization represented, if any, and the permanent address and local address of any individual, firm, company or organization represented:

a. The last four communities in which business was conducted by the individual, firm, company or organization represented shall be listed, with the period (beginning and ending month/year) business was conducted in each community listed; and

b. If the applicant or person represented is a corporation incorporated under the laws of the state, the corporation shall provide a certified copy of the charter or article of incorporation; or

c. If the applicant or person represented is a corporation incorporated under the laws of a state other than the state, the corporation shall provide a certified copy of its certificate of authority to do business in the state.

(8) Description, vehicle license number and state of registration of each vehicle, if any, that will be operated under the registration certificate being applied for;

(9) The name, height, weight, sex, hair color, social security number, permanent home address and driver's license number and state of issuance for each individual who will be involved in business under the registration certificate. If an individual has no driver's license, other identification shall be provided;

(10) Prior to issuance of the registration certificate and identification cards provided for in this section, each individual whose name is listed by the applicant shall present his driver's license or other identification in person to the chief of police for verification of the information provided by the applicant;

(11) A color or black and white photograph of each individual who is listed by the applicant, no larger than two inches by two inches, taken not more than 90 days prior to the registration;

(12) A description of the business and related activities to be conducted;

(13) Character and description of commodities, goods, merchandise or services to be offered for sale;

(14) Location or locations from which business and other activities will be conducted;

(15) Prior to issuance of the registration certificate and identification cards provided for in this section, the applicant and each

individual whose name is listed by the applicant, shall answer on the registration statement, or on an attachment thereto, whether he has ever been convicted of any related felony or a misdemeanor, as described in V.T.C.A., Occupations Code § 53.021 et seq.;

(16) Prior to issuance of the registration certificate and identification cards provided for in this section, the applicant and each individual whose name is listed by the applicant, shall on the registration statement or attachment thereto, separately list and explain the nature of each and every such conviction, whether for felony or misdemeanor offenses, other than convictions for misdemeanor traffic law offenses, and give the state where the conviction occurred and the year of such conviction; and

(17) The term or period during which the business activities will be conducted, not to exceed 180 days. Upon expiration of the 180-day period, or shorter period indicated by the applicant on the permit registration statement, the applicant must complete a new registration statement in accordance with the requirements of this section if renewal is desired.

(Code 2002, § 4.307; Ord. No. 527, 2-18-1997)

Sec. 30-26. Registration fee.

Every registration statement shall be accompanied by a registration fee as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary to compensate the city for the cost of administering this article. Such fee will be nonrefundable, irrespective of whether a certificate of registration is issued.

(Code 2002, § 4.308; Ord. No. 527, 2-18-1997)

Sec. 30-27. Registration certificate.

(a) When all the prerequisites of this article have been complied with, the chief of police shall initiate appropriate action to process the application. The chief of police shall make an appropriate investigation of an applicant, any person listed by the applicant and any information provided. The chief of police shall issue a registration certificate to the applicant authorizing the sale, offer for sale, taking of orders for sale and exhibition of commodities, good, merchandise and services within 15 working days after the applicant has fully complied with all applicable provisions of this article, subject to denial of registration certificate or identification card as outlined in section 30-30.

(b) The registration certificate shall state the effective term and the beginning and ending dates not to exceed 180 days. Upon expiration, the registration certificate may be renewed upon full compliance with the requirements of this article.

(c) A registration certificate issued hereunder shall be personal to the applicant and shall not be sold, assigned or transferred to any other persons. Any attempted sale, assignment or transfer of registration certificate shall be grounds for revocation of the registration certificate.

(Code 2002, § 4.309; Ord. No. 527, 2-18-1997)

Sec. 30-28. Identification cards.

(a) In conjunction with the issuance of a registration certificate under this article, the chief of police shall issue identification cards for each individual whose name is listed in the registration statement. The identification card shall be laminated in clear plastic. It shall have a metal clothing clip; it shall contain the photograph of the holder; and it shall state the holder's name, driver's license number and state of issuance, and height, weight, sex and hair color of the cardholder; the term of the permit; and the nature of the business and related activities. The card shall contain the following disclaimer of any endorsement by the city, to be placed in a conspicuous place upon such card:

"THE CITY OF HUNTERS CREEK VILLAGE, TEXAS, DOES NOT ENDORSE THE PRODUCT, SERVICE OR ACTIVITY PROMOTED BY THIS CARDHOLDER."

(b) An identification card issued in accordance with this article shall be personal to the cardholder and shall not be sold, assigned or transferred to any other person. Any attempted sale, assignment or transfer of an identification card shall be

grounds for revocation of the registration certificate and the identification cards issued thereunder.

(c) The chief of police shall issue up to five identification cards with the registration certificate without any additional charge. The applicant may obtain additional or replacement identification cards by paying to the city an amount as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.
(Code 2002, § 4.310; Ord. No. 527, 2-18-1997)

Sec. 30-29. Display of identification card.

While conducting business covered by the registration certificate, each cardholder shall visibly display the identification card for identification by clipping the identification card to the clothing of the holder so that the identification card is in plain view.
(Code 2002, § 4.311; Ord. No. 527, 2-18-1997)

Sec. 30-30. Denial of certificate, card to specified individuals.

(a) The issuance of a registration certificate may be denied if:

(1) Any violation of this article or other city ordinances or laws relating to the business or related activities to be conducted under the registration certificate applied for has been committed by any individual or individuals who would operate under such registration certificate;

(2) False, inaccurate or misleading information is contained in the registration statement;

(3) The applicant is overdue in payment to the city of taxes, fees, fines or penalties assessed or imposed against him/her; or

(4) The applicant fails to fully comply with applicable provisions of this article.

(b) Conviction of a related felony or misdemeanor, as described in V.T.C.A., Occupations Code § 53.021 et seq., shall be grounds for:

(1) Denial of issuance to that individual of an identification card;

(2) Removal from the registration statement on file with the city of any such person so convicted; and/or

(3) Denial of the right to conduct business covered by such certificate by any such person so convicted.

(c) Notice of a denial of a registration certificate, or denial of an identification card to any individual shall be given in writing, specifically setting forth the reasons for such denial and what action will be required before a registration certificate can be issued. Such notice shall be served in person, or by depositing the same in the United States mail, addressed to the applicant's local address if provided, or to the permanent business or home address listed on the registration statement.
(Code 2002, § 4.312; Ord. No. 527, 2-18-1997)

Sec. 30-31. Revocation of certificate.

The city may revoke a registration certificate if:

(1) Any violation of this article, or any violation of other city ordinances or laws relating to the business or related activities covered by the registration certificate is committed by any individual or individuals operating under the registration certificate during the original term or renewal thereof; or

(2) False, inaccurate or misleading information is contained in the registration statement; or

(3) There is conviction of a related felony or misdemeanor, as described in V.T.C.A., Occupations Code § 53.021 et seq.
(Code 2002, § 4.313; Ord. No. 527, 2-18-1997)

Sec. 30-32. Appeal of denial or revocation.

An applicant or other individual who has been denied a registration certificate or identification card or who has had a registration certificate revoked may appeal that action to the city council by submitting a letter to the city secretary's office within ten days of the action complained of. A hearing on the denial will be scheduled for the

next regular city council meeting. The city council will render its decision on the appeal at the meeting during which the appeal is considered.
(Code 2002, § 4.314; Ord. No. 527, 2-18-1997)

Secs. 30-33—30-52. Reserved.

ARTICLE III. CHARITABLE SOLICITATIONS

DIVISION 1. GENERALLY

Sec. 30-53. Definitions.

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

Charitable purpose means a philanthropic, religious or other nonprofit objective including to benefit poor, needy, sick, refugee or handicapped persons; to benefit any church or religious society, sect, group or order; to benefit a patriotic or veterans' association or organization; to benefit any fraternal, social or civic organization; or to benefit any educational institution. The term "charitable purpose" shall not be construed to include a direct benefit to the individual making the solicitation or for the benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

Individual means only a natural person.

Solicit funds or *solicitation of funds* means any request for the donation of money, property, or anything of value, or the pledge of a future donation of money, property or anything of value; or the selling or offering for sale of any property, real or personal, tangible or intangible, whether of value or not, including but not limited to goods, books, pamphlets, tickets, publications or subscriptions to publications, or brochures upon the representation, express or implied, that the proceeds of such sale will be used for a charitable purpose, as such term is herein defined. Expressly excluded from the meaning of the term "solicit funds" or "solicitation of funds" is any offer of membership in any organization and any solicitation of funds for any purpose by either a governmental agency or a political subdivision. The means of solicitation of funds covered by this definition are limited to a solicitation communicated in the physical presence of any individual within the corporate limits of the city. A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this article.
(Code 2002, § 4.901; Ord. No. 528, 2-18-1997)

Sec. 30-54. Unlawful solicitation.

(a) It shall be unlawful for any person, directly or through an agent or employee, to solicit funds for charitable purposes within the corporate limits of the city unless such person shall have first obtained a certificate of registration from the city secretary, as hereinafter provided.

(b) It shall be unlawful for any individual as the agent or employee of another to solicit funds for charitable purposes in the city unless his principal or employer has obtained a certificate of registration as hereinafter provided.

(c) It shall be unlawful for any person to solicit funds for charitable purposes in the city between the hours of 7:00 p.m. and 9:00 a.m. during central standard time and between the hours of 8:00 p.m. and 9:00 a.m. during daylight saving time.

(d) It shall be unlawful for any person to solicit funds for charitable purposes at a residence or business in defiance of any express notification, including posted notice exhibited at such residence or business, indicating that solicitations are not welcome or invited.

(e) It shall be unlawful for any person, directly or through an agent or employee, to solicit funds for charitable purposes within the corporate limits of the city after the expiration of any certificate of registration issued as hereinafter provided.

(f) It shall be unlawful for the person registering or the agents or employees thereof to solicit funds in the city for a charitable purpose other than that purpose identified and set out in the registration statement upon which the certificate of registration was issued.

(g) It shall be unlawful for any person who shall solicit funds for charitable purposes in the city to represent, in connection with such solicitation of funds, that the issuance of a certificate of registration by the city constitutes an endorsement or approval of the purposes of such solicitation of funds by the city or any officer or employee thereof.
(Code 2002, § 4.902; Ord. No. 528, 2-18-1997)

Sec. 30-55. Registration statement.

All persons desiring to solicit funds for charitable purposes in the city shall file with the city secretary a registration statement on forms provided by the city containing the following:

(1) The name of the person registering and desiring to solicit funds for charitable purposes;

(2) Whether the person registering is an individual, partnership, corporation or association;

a. If an individual, his business or residence address and telephone number;

b. If a partnership, the names of all partners and the principal business address and telephone number of the partnership and each partner;

c. If a corporation, whether it is organized under the laws of the state or is a foreign corporation, the mailing address, business location, telephone number and name of the individual in charge of the local office of the corporation, and if a foreign corporation, the place of incorporation;

d. If an association, the association's principal business address and telephone number, if any, and the names, business or residence addresses and telephone numbers of all principal officers and managers. If the association is part of a multi-state organization or association, the mailing address and business location of its principal headquarters shall be given in addition to the mailing address and business location of its local office;

(3) A brief description of the charitable purpose for which the funds are to be solicited and an explanation of the intended use of the funds toward that purpose;

(4) The names of all individuals authorized to incur expenses related to the solicitation or to disburse any proceeds of the solicitation;

(5) The name, mailing address and telephone number of each individual who will have organization responsibility with respect to the solicitation of funds. If there are more than 20 such individuals, the person registering may alternatively list the 20 individuals with the principal organizational responsibility with respect to the solicitation of funds;

(6) The time period within which the solicitation of funds is to be made, giving the date of the beginning of solicitation and its projected conclusion;

(7) A description of the methods and means by which the solicitation of funds is to be accomplished;

(8) The total amount of funds proposed to be raised;

(9) A projected schedule of salaries, wages, fees, commissions, expenses and costs that the person registering reasonably believes will be expended and paid in connection with the solicitation of funds or in connection with their disbursement, and an estimated percentage of the total projected collections which the costs of solicitation will comprise. These figures shall cover the entire time period during which the solicitation is to be made;

(10) A financial statement for the last preceding fiscal year of any funds collected for charitable purposes by the person filing the registration statement, giving the amount of money so raised, together with the cost of raising it and final distribution thereof;

(11) A statement to the effect that if a certificate of registration is granted, such certificate will not be used as or represented to be an endorsement by the city or any of its officers or employees;

(12) As to each officer, director, trustee, partner or any current agent or employee engaging in the solicitation of funds who within the past seven years has been convicted of (or been incarcerated for any conviction of) a felony or a misdemeanor involving moral turpitude, the name of the individual, the nature of the offense, the name of the state where the conviction occurred and the year of the conviction;

(13) If the person registering is unable to provide any of the foregoing information, an explanation of the reasons why such information is not available;

(14) The registration statement shall be signed by or on behalf of the person registering. If the person registering is an individual, the individual shall sign the statement. If the person registering is a partnership, the partner charged with disbursing the funds solicited shall sign the statement. If the person registering is a corporation or an association, its officer charged with disbursing the funds solicited shall sign the statement. The individual signing the registration statement shall sign the statement and swear before an officer authorized to administer oaths that he has carefully read the registration statement and that all the information contained therein is true and correct.

If while any registration statement is pending, or during the term of any certificate of registration granted thereon, there is any change in fact, policy or method that would alter the information given in the registration statement, the applicant shall notify the city secretary in writing thereof within 24 hours after such change.
(Code 2002, § 4.903; Ord. No. 528, 2-18-1997)

Sec. 30-56. Registration fee.

Every registration statement shall be accompanied by a registration fee as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary to compensate the city for the cost of administering this article. Such fee will be nonrefundable, irrespective of whether a certificate of registration is issued.
(Code 2002, § 4.904; Ord. No. 528, 2-18-1997)

Sec. 30-57. Public disclosure.

All registration statements filed with the city secretary whether or not a certificate of registration has been issued shall be public records and shall be available for inspection by members of the public during the city's regular business hours. Copies may be obtained at the fees prescribed by law for copies of city records.
(Code 2002, § 4.910; Ord. No. 528, 2-18-1997)

Sec. 30-58. Exceptions.

The following are excepted from the provisions of this article:

(1) The solicitation of funds for charitable purposes by any organization or association from its members; and

(2) The solicitation of funds for charitable purposes by a person when such solicitation occurs on premises owned or controlled by the person soliciting funds or with the permission of the person who owns or controls the premises.

(Code 2002, § 4.911; Ord. No. 528, 2-18-1997)

Secs. 30-59—30-76. Reserved.

DIVISION 2. CERTIFICATE OF REGISTRATION

Sec. 30-77. Issuance.

Within ten working days of receipt of the registration statement, the city secretary shall either issue a certificate of registration as provided in section 30-79, or notify the person registering that the registration statement does not comply with the requirements of section 30-55, and shall specifically set out what information or explana-

tion has not been furnished that is required before the certificate of registration can be issued.
(Code 2002, § 4.905)

Sec. 30-78. Not transferable.

Any certificate of registration issued hereunder shall not be assigned or transferred to any other person, firm, corporation or association. Any such attempted assignment or transfer shall render the certificate of registration void.
(Code 2002, § 4.906)

Sec. 30-79. Prescribed form.

The city secretary shall prescribe the form of the certificate of registration. However, each such certificate of registration shall be printed in black, except the following statement which shall be printed prominently thereon in red: "The issuance of this certificate of registration is not an endorsement by the city, or any of its officers or employees." Each certificate of registration shall bear a registration number issued by the city secretary, and the same number shall be assigned to the file containing the registration statement filed by the registrant.
(Code 2002, § 4.907)

Sec. 30-80. Expiration.

Each certificate of registration issued by the city shall expire at the conclusion of the solicitation period specified in the registration statement or 180 days from the date of issuance, whichever is less.
(Code 2002, § 4.908)

Sec. 30-81. Required while engaged in solicitation of funds.

All persons to whom a certificate of registration has been issued under this article shall furnish proper credentials to their agents and solicitors who will engage in the solicitation of funds within the city. It shall be unlawful for any person, or its agents and solicitors to solicit funds for charitable purposes within the city without carrying the certificate of registration required by this article on his person while he is engaged in such soliciting.
(Code 2002, § 4.909)

Chapter 31

RESERVED

Chapter 32

SOLID WASTE*

Article I. In General

Article II. Residential Solid Waste Disposal

Article III. Dumpsters

*__Editor's note—__Ord. No. 727, § 1, adopted October 21, 2008, amended ch. 32 in its entirety. Former ch. 32, §§ 32-1—32-48, pertained to similar subject matter, and derived from §§ 6.101, 6.102, 6.201—6.203, and 6.400(a)—(c) of the Code of 2002, and Ord. No. 498, §§ 1-5, 12-21-1993.

__State law reference—__Solid waste, V.T.C.A., Health and Safety Code ch. 361 et seq.

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

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

Approved site means:

(1) A solid waste disposal site with a current permit issued by the state;

(2) A solid waste disposal site licensed by a county under authority of state law; or

(3) A designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

Class I solid waste means solid waste that is:

(1) Acceptable for disposal at a type I municipal solid waste site under the requirements of state and federal law; and

(2) Not excluded from the list of waste materials that the city's current solid waste disposal service providers have agreed to accept. The term includes yard and garden waste, heavy trash, and recyclable materials.

Dispose or dump means to discharge, deposit, inject, spill, leak or place solid waste onto or into land or water.

Heavy trash means any rubbish or trash generated upon the premises of a single-family residence that is of such size or weight that it cannot be placed in a container, and includes major appliances and tree limbs or trunks with a diameter of three inches or more. The term does not include any rubbish or trash generated from construction or restoration or renovation activity on the premises.

Recyclable material means a material that is suitable for reuse, recycling, or reclamation and that the city has designated as a type of material for which the city will provide separate collection as a part of the solid waste disposal services it provides. The city secretary shall maintain a list of the types of materials that have been designated by the city as recyclable.

Solid waste means:

(1) Organic waste from a public or private establishment, residence or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking or consumption of food, but not including sewage, body wastes or industrial byproducts; or

(2) Nonorganic waste, except ashes, that consists of:

a. Combustible waste material including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves or similar materials;

b. Noncombustible waste material including glass, crockery, tin or aluminum cans, metal furniture and similar materials that do not burn at ordinary incinerator temperatures of 1,800 degrees Fahrenheit or less; and

c. Discarded or worn out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances and scrap metal.

(3) The term includes all forms of class I solid waste.

Yard and garden waste means organic waste products generated in the process of planting or maintaining lawns, gardens, and other natural landscape features on the premises of a single-family residence, including grass and hedge clippings, leaves, tree branches, and similar materials. The term does not include manmade waste products such as the residue of fertilizers, pesticides, or their containers.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-2. Prohibited activities.

It shall be unlawful for any person to dispose or dump any solid waste within the corporate limits of the city other than at an approved site.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-3. Use of unapproved sites prohibited.

(a) It shall be unlawful for any person to dispose or dump solid waste, or allow or permit the disposal or dumping of solid waste at any place that is not an approved site.

(b) It shall be unlawful for any person to receive solid waste for disposal at a place that is not an approved site, regardless of whether the solid waste or the land on which the solid waste is placed is owned or controlled by that person.

(c) It shall be unlawful for any person to transport solid waste to a place that is not an approved site.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-4. Duty of property owners.

All persons owning or occupying property within the city shall provide for the removal and lawful disposal of solid waste generated from the use of that property no less often than once a week and in accordance with the provisions of this chapter.
(Ord. No. 727, § 1, 10-21-2008)

Secs. 32-5—32-20. Reserved.

ARTICLE II. RESIDENTIAL SOLID WASTE DISPOSAL

Sec. 32-21. Residential solid waste disposal services provided by the city.

The city shall provide solid waste disposal services for class I solid waste to all single-family residential properties within the city under the terms of service provided in this article.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-22. Point of collection.

The owner or occupier of each single-family residential property in the city shall establish and maintain on their property a regular point of collection where all yard and garden waste, recyclable materials, and all other class I solid waste, except heavy trash, shall be placed for collection by the city or its contractor.

(1) The point of collection shall be located behind the front building setback line and within 50 feet of a driveway or other surface prepared for motor vehicle traffic, and shall be kept accessible to the city's solid waste disposal services contractor on the scheduled dates of collection. Provided however, that if there is no suitable location for a point of collection that is behind the front building set back line, the point of collection can be established at a location that is in front of, but immediately adjacent to, the front building setback line.

(2) The point of collection may be screened from view but may not be located inside a gated fenced or walled enclosure except as follows. A property owner may construct and maintain a see-through gated structure or enclosure designated for the sole purpose of storing yard and garden waste, recyclable materials, and all class I solid waste, except heavy trash and serving as a regular point of collection. The structure or enclosure must comply with the location requirements for points of collection, must be located entirely behind the front building line, and must provide convenient access for solid waste collection.

(3) Heavy trash shall be placed at the curb in front of the residence not more than 24 hours before the date designated by the city for heavy trash collection.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-23. Required containers.

Except as provided below, all class I solid waste shall be stored and delivered to the point of collection in rigid enclosed containers that are reasonably resistant to being opened or disturbed by dogs or other wild or domesticated animals.

(1) Yard and garden waste may be prepared for collection by tying it into bundles or

placing it in an appropriate disposable or permanent container. Sturdy plastic bags may be used as containers for yard and garden waste.

(2) Recyclable materials shall be placed in designated containers supplied by the city.

(3) Heavy trash is not required to be placed in any form of container.

(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-24. Collection schedule.

The city shall establish a schedule for collection of class I solid waste from single-family residences in the city and may amend that schedule from time to time. The city secretary shall maintain a copy of the current schedule and shall post it on the city's website. The schedule shall provide for collection of class I solid waste from each single-family residence in the city at least twice a week. The city may establish different collection dates and a different frequency of collection for heavy trash and recyclable material. The city also may establish, for particular categories of class I solid waste, limits on the amounts that will be collected on a specific collection date.
(Ord. No. 727, § 1, 10-21-2008)

Secs. 32-25—32-30. Reserved.

ARTICLE III. DUMPSTERS

Sec. 32-31. Placement.

No dumpster shall be placed except:

(1) On property zoned for commercial use; or

(2) On property used for public schools.

(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-32. Screening.

Garbage dumpsters shall be fully screened from public view.
(Ord. No. 727, § 1, 10-21-2008)

Sec. 32-33. Property adjoining public streets.

Any garbage dumpster placed and maintained on property adjoining a public street shall be located behind the building setback line established in the city's zoning ordinance.
(Ord. No. 727, § 1, 10-21-2008)

Chapter 33

RESERVED

Chapter 34

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. Street Reconstruction Projects

Division 1. Procedures For Receiving Citizen Input

Division 2. Minimum Design Standards

Article II. Excavations

Division 1. Generally

Division 2. Permits

Article III. Use of Rights-of-Way

*__State law references__—Public buildings and grounds, V.T.C.A., Local Government Code ch. 281 et seq.; parks and other recreational and cultural resources, V.T.C.A., Local Government Code ch. 306 et seq.

ARTICLE I. STREET RECONSTRUCTION PROJECTS

DIVISION 1. PROCEDURES FOR RECEIVING CITIZEN INPUT

Sec. 34-1. Purpose.

The purpose of this division is to provide a consistent and effective process for receiving citizen input on the design and implementation of street reconstruction and improvement projects.
(Ord. No. 801, § 1, 7-24-2012)

Sec. 34-2. Statement of policy.

The city council's responsibilities, as the governing body of the city, include making legislative decisions concerning the construction and maintenance of the city's public infrastructure including its streets, sidewalks, and drainage improvements. The city council believes that it is important in making those decisions to consider not only information concerning engineering and public safety issues but also information concerning the expectations and desires of the citizens who are served by those facilities. With that end in mind, it is the city council's policy to actively encourage citizen input into decisions regarding the reconstruction and improvement of existing city streets.
(Ord. No. 801, § 1, 7-24-2012)

Sec. 34-3. Definitions.

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

Public facilities means paved or improved traffic lanes, shoulders, sidewalks, drainage facilities or other public improvements located within a public street right-of-way.

Street project or *project* means a project calling for the substantial reconstruction or improvement of the public facilities in an existing street right-of-way that is located within the city and over which the city has jurisdiction. The terms "street project" or "project" shall not include minor projects involving the repair or maintenance of existing streets or public facilities.
(Ord. No. 801, § 1, 7-24-2012)

Sec. 34-4. Public hearing process guidelines.

(a) The following process shall be followed by the city in considering the design of a proposed street project, unless the city council takes affirmative action by motion, resolution, or ordinance to exempt a specific street project from the process.

(b) Prior to authorizing the final engineering design of a street project the city council shall schedule a public hearing on the project and shall direct the city secretary to prepare a notice to the public containing the following information:

(1) The name and location of the streets or portions of a street that are to be reconstructed or improved;

(2) A general description of the scope and nature of the reconstruction or improvement that is contemplated including, at a minimum the proposed width of the pavement sections, the type of pavement, and the type of drainage;

(3) An estimated schedule for beginning and completing the street project;

(4) An invitation from the city council for comments and input from citizens stating that comments will be accepted in writing or in person at the hearing; and

(5) The date, time, and place for which the public hearing is scheduled.

(c) At least 14 calendar days before the scheduled hearing, the city secretary shall:

(1) Post a copy of the notice on the city's website;

(2) Mail a copy of the notice, by regular mail, to all property owners who own property that abuts the street project, as shown in the records of the Harris County Appraisal District; and

(3) Post at least one sign, containing a brief notice of the public hearing, on the public right of way in the immediate vicinity of the proposed project location.

(d) At the public hearing before the city council, a description of the proposed street project shall be provided and members of the public attending the meeting shall be given an opportunity to express their opinions on any matter related to the proposed project either verbally or in written form to the city secretary. The city council shall also receive into the record of the public hearing any written communications received from citizens on or prior to the date of the hearing. Such input may be in the form of letters, petitions, emails, surveys or any other form of written communication.

(e) At the conclusion of the public hearing, the city council may:

(1) Vote to authorize the final engineering design of the project with such changes, if any, as may be desired; or

(2) Take any other action it deems appropriate.

(f) Where no action is taken on a proposed street project within 24 months after the hearing, the hearing process shall be repeated again prior to any action being taken.
(Ord. No. 801, § 1, 7-24-2012)

Sec. 34-5. City council retains its discretion.

Decisions concerning the city's expenditure of public funds, construction of public works projects, and similar issues are left to the sole discretion of the city council. Nothing in this division or article is intended to limit the authority of the city council to take whatever action it deems to be necessary to promote public health, safety, and welfare. The provisions of this division governing public input are for the benefit of the city council and the public in general and are not intended to create any private right or property interest. Any failure by the city to comply with any of the requirements of this division shall not affect the validity of any action the city council or the city takes with regard to a street project or the improvement of public facilities.
(Ord. No. 801, § 1, 7-24-2012)

Secs. 34-6—34-9. Reserved.

DIVISION 2. MINIMUM DESIGN STANDARDS

Sec. 34-10. Purpose.

The purpose of this division is to provide minimum design standards for the replacement or reconstruction of existing public streets.
(Ord. No. 802, § 1, 7-24-2012)

Sec. 34-11. Minimum design standards for replacement or reconstruction of existing streets.

The following minimum design standards shall apply to the reconstruction or replacement of existing streets except where city council concludes that good reasons exist for deviating from these standards.

(a) The minimum pavement width shall be 24 feet or the width of the preexisting street, whichever is greater, provided that the existing public street right-of-way is sufficient to accommodate the pavement and associated drainage facilities. The width of the pavement shall be measured from the inside edge of the curbs.

(b) The street surface must be constructed of concrete or asphalt.

(c) Concrete streets may include curbs, depending on the existing drainage.

(Ord. No. 802, § 1, 7-24-2012)

Secs. 34-12—34-18 Reserved.

ARTICLE II. EXCAVATIONS*

DIVISION 1. GENERALLY

Sec. 34-19. Application.

Applications shall be written and shall state the purpose of the application and describe accu-

*__State law reference—__Trench safety standards, V.T.C.A., Health and Safety Code § 756.021 et seq.

rately by description, plat, or both the exact location or locations for which permission is requested. It shall guarantee that the surface of the area so disturbed shall be restored to a condition at least as good as before such disturbance and it shall guarantee maintenance thereof for one year following the final replacement of the surface or area.
(Code 2002, § 3.800(b); Ord. No. 110, 12-14-1959)

Sec. 34-20. Nonconformance to application specifications unlawful.

It shall be unlawful for any person to make or cause or permit to be made any cut or excavation or to install or maintain, or cause or permit to be installed or maintained any pipe, conduit, duct, tunnel or other structure under the surface of any public street, alley, sidewalk or other public place at any other location than that described in the application and shown on the plat or described therein.
(Code 2002, § 3.800(a); Ord. No. 110, 12-14-1959)

Sec. 34-21. Safety and accident prevention.

It shall be the duty of every person making any excavation in any public street, alley or other public place to place and maintain suitable barriers at each end of such excavation and at such places as may be necessary along the excavation to prevent accidents; and also to place and maintain red lights at each end of such excavation and at a distance of not more than 50 feet apart along the line thereof from sunset each day to sunrise of the next day, until such excavation is entirely refilled. It shall be unlawful for any person to fail, refuse or neglect to comply with any requirement contained in this article.
(Code 2002, § 3.800(e); Ord. No. 110, 12-14-1959)

Sec. 34-22. Refill and replacement.

All cuts or excavations in public streets, alleys or other public places in the city shall be refilled and replaced with materials to a condition at least as good as before making of the cut or excavation. The person obtaining the permit shall be responsible for maintaining the same for a period of one year after completion of the last repair or refilling.
(Code 2002, § 3.800(f); Ord. No. 110, 12-14-1959)

Sec. 34-23. Emergency events for public utilities franchisees.

In the event of an emergency, public utilities operating under a franchise from the city may make a cut or excavation and not be deemed in violation of this article; provided that within three days of making such emergency cut or excavation, such public utility shall apply for and obtain a permit therefor, shall replace the surface in due course and guarantee maintenance as provided in this article.
(Code 2002, § 3.800(h); Ord. No. 110, 12-14-1959)

Secs. 34-24—34-46. Reserved.

DIVISION 2. PERMITS

Sec. 34-47. When required.

It shall be unlawful for any person to make or cause or permit to be made any cut or excavation in or under the surface of any public street, alley, sidewalk or other public place for the installation, repair or removal of any pipe, conduit, duct, tunnel or other structure, or for any purpose whatsoever, without first obtaining from the city engineer or his assistant a written permit to make such cut or excavation.
(Code 2002, § 3.800(d); Ord. No. 110, 12-14-1959)

Sec. 34-48. Bond.

(a) *Required.* Before the issuance of any permit under this division, the applicant for a permit shall make or cause to be made with the city secretary a cash bond as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary to guarantee compliance with this article. If, in the opinion of the city engineer or his assistant, the cutting, excavating, replacement or repair of the same is not proceeding with reasonable diligence, the city engineer shall notify the applicant in writing of such default or defaults. If the default or defaults are not corrected within seven days

after posting of such notice in the regular mail to the applicant's address as shown on his application, the city engineer or his assistant is authorized to have the default corrected, paying therefor out of the $500.00 cash bond deposited with the city secretary.

(b) *Exception.* Notwithstanding the foregoing provisions, any public utility operating under a franchise from the city shall be exempt for the requirement of posting the $500.00 cash bond referred to in subsection (a) of this section; and further, such enfranchised public utility shall be exempt from the requirement of written application and permit provided in sections 34-19 and 34-20, and may apply orally and obtain an oral permit from the city engineer or his assistant.
(Code 2002, § 3.800(g),(i); Ord. No. 110, 12-14-1959)

Sec. 34-49. Nontransferable and voidable.

No such permit shall be transferable and every such permit shall become void unless the cut or excavation is commenced within 60 days of the date of its issuance, and the work of making such excavation prosecuted diligently to its completion. A failure to so commence and diligently prosecute such work, in the opinion of the city engineer or his assistant, shall of itself cancel such permit and it shall be the duty of the city engineer or his assistant in such event to cancel the same upon the records of his office.
(Code 2002, § 3.800(c); Ord. No. 110, 12-14-1959)

Secs. 34-50—34-73. Reserved.

ARTICLE III. USE OF RIGHTS-OF-WAY

Sec. 34-74. 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:

Director of public works means the person designated as such from time to time by the city council.

Emergency means a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety and/or welfare.

Facilities or *facility* means and includes, but shall not be limited to, pipes, conduits, wires, cables, towers, switches, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, fixtures, appurtenances and such other objects, devices or other items of tangible personal property which are designed, constructed, installed, placed, used or operated in, upon, over, across, above or below public rights-of-way. Notwithstanding the foregoing, structures designed and constructed for the support and passage of vehicular and pedestrian traffic such as streets, alleys, highways, driveways and sidewalks, whether at, below or above grade, shall not be deemed to be facilities. Provided further, a private individually owned connection and/or attendant downstream service line or device through which a utility service is received by the end user owning the same, for which required permits have been issued under applicable building, plumbing, electrical or other codes of the city, shall not be deemed as facilities hereunder.

Public rights-of-way or *public right-of-way* means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property within the corporate limits of the city, and in which the city holds a property interest (fee title, easement or otherwise), or over which the city holds and exercises a right of management or

control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of facilities.

User means a person having facilities within a public right-of-way.
(Code 2002, § 4.1201; Ord. No. 591, 6-19-2001)

Sec. 34-75. Unauthorized use of public rights-of-way prohibited.

Except as otherwise specifically provided by law, this article or any other ordinance of the city applicable thereto, it shall be unlawful for any person to cause or permit the placement, construction, operation or maintenance of any facility within public rights-of-way, unless authorization has been granted by the city in accordance herewith or in accordance with such other ordinance of the city applicable thereto. Provided further, nothing herein shall be construed as superseding or preempting any provision of the city's zoning regulations applicable to wireless telecommunications facilities.
(Code 2002, § 4.1202; Ord. No. 591, 6-19-2001)

Sec. 34-76. Registration required.

It shall be unlawful for any person to place facilities within public rights-of-way without having first filed with the city an application for registration therefor. Applications for registration shall be filed with the city secretary. The city secretary shall issue a registration certificate to each person successfully completing and filing such application. Each registration certificate shall be issued in the name of the user. Registration certificates shall be renewed every 60 months. When information provided in an application for a registration certificate is no longer correct, the user shall inform the city in writing within 30 days following the date of such change. Each application for registration shall include:

(1) The name and legal status of the user;

(2) The name, address, telephone number, e-mail address and fax number of the individuals) who will be the contact for the user;

(3) The name, address, telephone number, e-mail address and fax number of the individual who will be the contact for the field location of the facilities;

(4) The name, address, telephone number, email address and fax number of an emergency contact who shall be available 24 hours a day; and

(5) Proof of insurance and bonding, as otherwise required herein.

(Code 2002, § 4.1203; Ord. No. 591, 6-19-2001)

Sec. 34-77. Construction—Within public rights-of-way.

It shall be unlawful for any person to cause or permit the construction or installation of facilities within public rights-of-way within the city, except as provided by this article and any other ordinance of the city applicable thereto.
(Code 2002, § 4.1204; Ord. No. 591, 6-19-2001)

Sec. 34-78. Same—Regulations.

(a) *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal and city regulations.

(b) *Interference with use of property.* All construction within public rights-of-ways shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.

(c) *Construction permits.* It shall be unlawful for any person to cause or permit any work that involves the construction, installation, expansion, repair, removal or maintenance of facilities within public rights-of-way without having first applied for and obtained from the city a construction permit therefor; provided, however, acquisition of construction permits shall not be required for any such work that does not involve the alteration or disturbance of the surface of the right-of-way. Each construction permit application shall include a written work description, including construction drawings, showing the facilities' location, or proposed location, and the estimated

depth of the facilities, existing and proposed, in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city and if disapproved, returned with comments setting forth the reasons for such disapproval. Approvals shall not be unreasonably withheld or delayed. Except as otherwise specifically provided herein, work shall not commence until applicable construction permits have been approved therefor. Review and approval by the city of construction permits as provided herein shall not constitute any representation or warranty regarding the sufficiency of design or construction of such facilities. All such work shall be in conformance with the approved construction permit.

(1) Work for which a permit is required may be performed at any time; provided, however, any such permitted work performed within 500 feet of any residential structure may only be performed between the hours of 7:00 a.m. and 8:00 p.m. Any permitted work performed outside of the working hours specified in this subsection (c)(1) must be approved in advance by the director of public works or his designee.

(2) All such construction and/or installation work shall be completed in the time specified in the construction permit. If the work cannot be completed within the specified time period, the user may request an extension from the director of public works or his designee, which extension shall not be unreasonably withheld.

(d) *Emergency repairs; restoration of service.* Notwithstanding subsection (c) of this section, during an emergency where in the good faith judgment of the user, failure to act immediately could jeopardize public health, safety or general welfare, or in situations where a repair is necessary to restore service to a customer, such user may perform repairs to facilities within public rights-of-way, which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to, or acquisition of, a construction permit from the city. In such cases, the user shall notify the director of public works of the city as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs, and if not completed the length of time estimated to complete the same. The user shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with the then-applicable city standards shall be corrected upon notice thereof from the city.

(e) *Restoration of surface.* Users may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal or maintenance of its facilities. Upon completion of work, the user shall promptly restore the surface of the affected public right-of-way to a condition that equals or exceeds its condition prior to such construction. To such end, the restoration shall comply with the following requirements:

(1) Replacing all ground cover equal to or better than the type of ground cover damaged during work, either by sodding or seeding or natural growth;

(2) Installation of all manholes and handholes as required;

(3) All bore pits, potholes, trenches or any other holes shall be filled in or covered daily, unless other safety requirements are approved by the director of public works;

(4) Leveling of all trenches and backhoe lines;

(5) Restoration of excavation site to city specifications; and

(6) Restoration of all landscaping and other affected structures such as sprinkler systems and mailboxes.

(f) *Maintenance period; delay in construction*. All restoration work shall be maintained by the user to the satisfaction of city for a period of one year from the date of completion of such restoration work. No public right-of-way shall be encumbered by construction, maintenance, removal, restoration or repair work for a longer period than shall be necessary to execute such work. If there is an unreasonable delay by the user in restoring and maintaining the public right-of-way or restoring such public right-of-way after such excavations, construction, installation or repairs have

been made, the city shall notify the user in writing that if such restoration or maintenance is not performed within five days of receipt of such notice, the city shall have the right to restore or repair the same and to require the user to pay the reasonable cost of such restoration or repair, including any and all required indirect administrative expenses incurred by the city, including salary, benefits and proportionate office expense. Furthermore, if restoration is not satisfactory and performed in a timely manner, all work in progress except that related to the problem, including all work previously permitted but not complete, may be halted and a hold may be placed on any permits not approved until all restoration is complete.

(g) *Routine maintenance.* Routine maintenance on facilities located within public rights-of-way shall be conducted in a manner that is consistent with applicable city regulations governing such work, if any.

(h) *Obstructions to traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities to facilities other than for emergency repairs, shall require prior notification to the director of public works of the city. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a user performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the user shall provide construction and maintenance signs and sufficient barricades and flagmen at such sites as are reasonably necessary to protect the public and the user's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest edition of the state manual on uniform traffic control devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

(i) *Closing of streets.* If a user's work requires the obstruction of any street for a period longer than 30 minutes, such obstruction shall be approved by director of public works, which approval may be conditioned on adequate traffic control measures. The user shall not close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided, however, in cases of an emergency the director of public works or his designee may authorize the temporary closing of a public street or sidewalk to allow the user to complete such emergency repairs if in the opinion of the director of public works or his designee, such closing is necessary to protect the safety of the general public.

(j) *Construction drawings.* Within 120 days following completion of construction, or within 120 days following any material alteration or modification thereto, the user shall supply the city with a complete set of construction drawings for the work, or for the material alteration or modification thereof, unless the user certifies to the city in writing that such construction was completed in accordance with the construction plans filed pursuant to subsection (c) of this section, in which case such construction plans shall be marked accordingly by the city and filed as the "permanent construction drawings." For the purposes of this subsection, a material alteration or modification of a facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the facilities with reasonable accuracy. In lieu of print documents, a user may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provided that the city has the capability to access such information. (Code 2002, § 4.1205; Ord. No. 591, 6-19-2001)

Sec. 34-79. Conservation of public rights-of-way.

(a) To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a user to attach portions of its facilities to other facilities within the public rights-of-way owned and maintained by other

persons. A user shall not be required to attach its facilities to the facilities of such other persons if it is shown that such user would be subjected thereby to increased risks of interruption to its service, to increased liability for accidents, or to unreasonable delays in construction or availability of service or if the facilities of such other person are not of the character, design or construction required by, or are not being maintained in accordance with current practice or are not available to the user on reasonable terms, including without limitation reasonable fees.

(b) Insofar as is practical to do so, users shall use existing facilities in the provision of their services; provided, however, nothing contained herein shall be construed as limiting a user from expanding its facilities to accommodate future growth and development. Users shall provide information to the city relating to the location and/or operation of their facilities or services as may be reasonably necessary for municipal planning purposes.
(Code 2002, § 4.1206; Ord. No. 591, 6-19-2001)

Sec. 34-80. Relocation or removal of facilities.

(a) To the extent the city may be authorized by law to do so, a user may be required to lower, place underground, relocate or remove any facility within any public right-of-way without cost to the city if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal or installation of any publicly funded city project within the city in, upon or under public rights-of-way, including without limitation street construction and widening, water, sanitary sewer, storm drains, street lights and traffic signal conduits, or any other public facilities in, upon or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a user may be allowed to pay the additional costs incurred for the design and/or construction of any such publicly funded city project in a manner that would avoid the necessity of relocation or removal of the facilities. A user shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work and accommodate suitable refinements and/or joint work with others.

(b) In the event of any such requirement for lowering, placing underground, relocating or removing facilities as herein provided, the user shall complete the same as soon as is reasonably practicable following written notice thereof by the city.
(Code 2002, § 4.1207; Ord. No. 591, 6-19-2001)

Sec. 34-81. Obsolete facilities.

Users shall remove facilities from the public rights-of-way when such facilities are obsolete, are no longer in service and create either visual blight or a nuisance to the public; provided, however, a user shall not be required to remove any facility for which renovation or restoration is planned by the user, and which renovation or restoration is completed within a reasonable period of time. When permanent structures in public rights-of-way are removed, the city shall be notified in writing of such removal.
(Code 2002, § 4.1208; Ord. No. 591, 6-19-2001)

Sec. 34-82. Bonding.

All users other than governmental units shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.
(Code 2002, § 4.1209; Ord. No. 591, 6-19-2001)

Sec. 34-83. Temporary rearrangement of aerial wires and cables.

Upon request, a user shall remove or raise or lower its aerial facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting same, excluding requests by the city. The user may require payment in advance. The user shall be given a reasonable amount of advance notice to provide for such rearrangement.
(Code 2002, § 4.1210; Ord. No. 591, 6-19-2001)

Sec. 34-84. Tree trimming.

Users shall comply with chapter 18, article II, and all other applicable rules and regulations of the city governing the trimming, grooming, or removal of trees or other similar vegetative matter.
(Code 2002, § 4.1211; Ord. No. 591, 6-19-2001)

Sec. 34-85. Erosion and stormwater measures.

Erosion control measures shall be implemented prior to commencement of any work. The user shall comply with stormwater management erosion control that complies with the city, state and federal laws, regulations and guidelines. Requirements may include but shall not be limited to silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established and barricade fencing around open holes. High erosion areas shall require wirebacked silt fencing.
(Code 2002, § 4.1212; Ord. No. 591, 6-19-2001)

Sec. 34-86. Placement of facilities.

All facilities constructed or installed on or after the effective date of the ordinance from which this section is derived shall be buried underground where possible. Except as otherwise provided hereinafter, all facilities constructed or installed above ground shall be approved by the city. Pedestals, junction boxes, metering facilities and similar appurtenances may be placed above ground. Users shall not place facilities within public rights-of-way in such a manner as to unreasonably interfere with existing electrical, cable or telecommunications fixtures, water hydrants or mains, or drainage or sanitary sewer facilities and all such facilities shall be placed in such manner as not to interfere with usual travel or public and/or municipal use of the public rights-of-way. The city shall have the right to direct the location of facilities in the public rights-of-way. The installation, repair, construction, maintenance and replacement of facilities in the rights-of-way shall be subject to inspection and approval by the city. Users shall cooperate fully with the city in conducting inspections. Users shall promptly perform remedial action required by the city pursuant to such inspection.
(Code 2002, § 4.1213; Ord. No. 591, 6-19-2001)

Sec. 34-87. Line location and identification.

Users shall be responsible for obtaining line locations from the state one-call system, the city and all affected utilities and others with facilities in public right-of-way, prior to any excavation. Use of the geographic information system or plans of record shall not satisfy this requirement. The user shall be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the director of public works or his designee, a user shall verify locations of potential conflicts with existing facilities by pot holing, hand digging or other similar method prior to any excavation or boring. Placement of all manholes and/or hand holes must be approved in advance by the director of public works. Handholes or manholes shall not be located in sidewalks unless approved by the director of public works or his designee. Location flags shall not be removed while facilities are being constructed. All location flags shall be removed during the cleanup process by the user at completion of the work. The user or his agent, contractor or subcontractor shall notify the director of public works or his designee immediately of any damage to other utilities.
(Code 2002, § 4.1214; Ord. No. 591, 6-19-2001)

Sec. 34-88. Planning for capital improvement projects.

Users shall apprise the city of existing and planned construction, maintenance and other activities of the user within public rights-of-way. Except for emergencies, users shall coordinate all installations and construction within the public rights-of-way with the city's capital improvement programs. The city shall notify the user within 60 days of the date city will demand relocation or removal of users' facilities to facilitate the city's capital program. Within 60 days following receipt of the city's notice thereof, each user shall provide a written report to the city identifying and describing generally the existing facilities that are within or cross through the boundaries of each project identified by the city. The city and the user

shall provide to each other the names of their respective designated officials who will serve as representatives for coordination of the exchange of information and planning on any such project. Users shall field locate their facilities and identify the same with surface markings within 15 working days following the city's request therefor.
(Code 2002, § 4.1215; Ord. No. 591, 6-19-2001)

Sec. 34-89. Guarantee of performance.

Except as provided in this section, each user, at the time of submission of its initial and each renewal registration application, shall file with the city a guarantee of performance of the user's obligations hereunder, whether to be performed by the user or any contractor or subcontractor on behalf of the user, to complete the installation of its facilities within the public rights-of-way in accordance with the permits and approved plans and specifications therefor. Such guarantee shall be payable to the city in the amount as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary. In the event a user, or a contractor or subcontractor performing work on behalf of a user applies for a permit for work in which the estimated cost of restoration will exceed such amount, such user shall file a supplemental guarantee for such additional reconstruction costs. Such guarantee may take the form of a bond, an irrevocable letter of credit or a statement of fiscal responsibility as set forth below:

(1) *Bonds.* A corporate surety bond issued by a corporate surety authorized to do business in the state. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety, nor may any intention not to renew be exercised by the surety until 60 days after receipt by the city, by registered or certified mail or written notice of such intent to cancel or to not renew." The rights reserved to the city with respect to the bond are in addition to all other rights of the city and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights of the city; or

(2) *Letters of credit.* An irrevocable letter of credit in a form satisfactory to the mayor and the city attorney shall be issued by a federally insured commercial lending institution with a credit rating of BAA or BBB+ or higher. The federally insured commercial institution on which the irrevocable letter of credit is to be drawn shall be acceptable to the city. The irrevocable letter of credit shall contain the following endorsement: "At least 60 days prior written notice shall be given to the mayor by the financial institution of any intention to cancel, replace, fail to renew or materially alter this irrevocable letter of credit. Such notice shall be given by certified mail to the mayor and city attorney. The city may draw upon this irrevocable letter of credit by presentation of a draft at sight, accompanied by a written certificate signed by the city administrator, certifying that (user) has failed to comply with provisions of ordinances applicable to (user's) use of public rights-of-way within the city."

a. After providing a user with 30 days advance written notice of any amount due and owing, and the user's failure to pay such amounts, the city may draw upon the irrevocable letter of credit by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the mayor certifying that the user has failed to comply with the provisions of this article.

b. The user shall structure the irrevocable letter of credit in such a manner that if the city draws upon the irrevocable letter of credit and reduces the amount of available credit to an amount below that required, the user shall replenish the irrevocable letter of credit to the minimum within five calendar days after the available credit is reduced to an amount below that required. The intent of this section is to ensure that the credit available to the city shall at no time fall below the amount required.

(3) *Statement of fiscal responsibility.* Written evidence in the form of its most recent audited financial statement, showing assets or reserves sufficient to cover the amount of the guarantee required by this section. If the user's assets or reserves are no longer adequate to comply with the amounts required by this section, the user shall immediately notify the city and shall obtain a bond or letter of credit as set forth in this section.

The rights reserved to the city with respect to the financial guarantees provided for in this section are in addition to all other rights of the city, whether reserved by this article or otherwise authorized by law and no action, proceeding or right with respect to the guarantee shall affect any other right the city has or may have.
(Code 2002, § 4.1216; Ord. No. 591, 6-19-2001)

Sec. 34-90. Insurance and indemnity.

(a) *Generally.* A user shall procure and maintain insurance in full force and effect at all times while its facilities are located in the public rights-of-way. The insurance shall cover all risks associated with the use and occupancy of such rights-of-way. Coverage shall be on an "occurrence basis." The insurance requirements applicable to a user under this section shall be applicable to all persons performing work within public rights-of-way on behalf of such user unless such person is covered, or named as an additional insured, under the policies of insurance supplied by the user pursuant hereto. If any person other than a user is required to provide such insurance, the provisions referring to a user hereinbelow shall be construed to mean such person.

(1) *Risks and limits of liability.* The insurance, at a minimum, must include the following coverages and limits of liability.

	Coverage	*Limit of Liability*
a.	Workers' compensation and employer's liability	Statutory
b.	Employer's liability	Bodily injury $1,000,000.00 (each occurrence)
c.	Commercial general liability 1. All premises/operations 2. Independent contractors 3. Personal and advertising injury 4. Contractual liability 5. Explosion, collapse and underground hazards	Combined single limit for bodily injury and property damage of $1,000,000.00 per occurrence and $1,000,000.00 aggregate
d.	Comprehensive automobile liability, including coverage for loading and unloading hazards for: 1. Owned/leased vehicles 2. Non-owned vehicles 3. Hired automobiles	Combined single limit for bodily injury and property damage of $1,000,000.00 per occurrence.
e.	Excess coverage	$5,000,000.00 per occurrence/combined aggregate in excess of limits specified for employer's liability, commercial general liability, and automobile liability.

Note—Aggregate limits are for a 12-month policy period, unless otherwise indicated.

(2) *Form of policies.* The insurance may be in one or more policies of insurance, the form of which must be approved by the state insurance commission.

(3) *Issuers of policies.* The issuer of any policy shall be authorized to transact insurance business in the state.

(4) *Insured parties.* Each policy shall name the user and the city (and the officers, agents and employees of the city) as insured parties.

(5) *Deductibles.* The user shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claims it may ever have for the deductible amounts against the city, its officers, agents or employees.

(6) *Cancellation.* Each policy shall expressly state that it may not be canceled or nonrenewed unless 30 days advance notice of cancellation or nonrenewal is given in writing to the city.

(7) *Subrogation.* Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the city, its officers, agents or employees.

(8) *Liability for premium.* If any of the policies referred to in this section do not have a flat premium rate, and such premium has not been paid in full, such policy shall have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the user for any further premium payment and has no right to recover any premiums from the city.

(9) "*Other insurance*" *clause.* The insurance policy shall provide that the "other insurance" clause does not apply to the city where the city is shown on the policy as an additional insured.

(10) *Delivery of policies.* The originals of all policies referred to in this section, or copies thereof, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by the user with the city secretary prior to commencement of any work. Failure on the part of the user to furnish a new policy or certified copy thereof before the expiration date of any such policy, or failure to obtain a new policy before the date fixed for the cancellation of an existing policy so that the insurance referred to shall be continuously in effect, shall constitute a violation hereunder.

(11) *Liability of user.* The city's approval, disapproval or failure to act regarding any insurance supplied by a user shall not relieve such person from full responsibility or liability for damages and accidents arising out of use or occupancy of public rights-of-way. Neither bankruptcy, insolvency nor denial of liability by the insurance company shall exonerate the user from liability.

(12) *Self-insurance.* A user may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection, provided the user submits to the city copies of its certificates of self-insurance from the state department of insurance and its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A user shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a user's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If a user's self-insurance program ceases, or a user's assets or reserves are no longer sufficient to comply with the above coverage requirements, the user shall immediately notify the city of such lapse of coverage and the user shall obtain commercial insurance, in accordance with the requirements of this section, within 30 days following such notice.

(b) *Indemnity.* To the extent permitted by law, each user and each person performing work within a public right-of-way as a contractor on behalf of a user shall indemnify and hold the city harmless as set forth below. If any person other than a user is required to provide such indemnity, the provisions referring to a user hereinbelow shall be construed to mean such person.

(1) The user shall promptly defend, indemnify and hold the city harmless:

a. From and against all damages, costs, losses or expenses for the repair, replacement or restoration of city's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective solely as a result of the user's acts or omissions; and

b. From and against any and all claims, demands, suits, causes of action and judgments for:

1. Damage to or loss of the property of any person (including but not limited to the user, its agents, officers, employees and subcontractors, and the city, its agents, officers, and employees and third parties); and/or

2. Death, bodily injury, illness, disease, loss of services or loss of income or wages to any person (including but not limited to the officers, agents, and employees of the user, the user's contractors and the city's officers, agents, and employees and third parties);

arising out of, incident to, concerning, or resulting from the negligent or willful acts or omissions of the user, its officers, agents, employees, and/or subcontractors in the performance of activities pursuant to this article.

(2) This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in authorizing the user to use or occupy the public rights-of-way, in regulating the conduct of the user, or in failing to prevent the user from acting in a negligent or wrongful manner.

(c) *Acts and omissions of officers, agents, etc., of the user.* For purposes of this indemnification provision, acts or omissions of officers, agents, employees and contractors of the user shall be considered the acts and omissions of the user.

(d) *Benefit of the city.* The indemnity provision set forth in this section is solely for the benefit of the city and the user and is not intended to create or grant any rights, contractual or otherwise, to any other person.

(Code 2002, § 4.1217; Ord. No. 591, 6-19-2001)

Sec. 34-91. Revocation or denial of construction permits.

If any provision of this article is not followed, a permit for the construction of facilities may be revoked. If a person has not followed the terms and conditions of this article with respect to work done pursuant to a prior permit, new permits may be denied or additional terms may be required.

(Code 2002, § 4.1218; Ord. No. 591, 6-19-2001)

Sec. 34-92. Appeal from denial or revocation of permit.

Appeals from denials or revocations of permits shall be to the city council. Appeals shall be filed with the city secretary within 15 days from the date of the denial or revocation. A hearing shall be held within 30 days of the date the appeal is filed with the city secretary.

(Code 2002, § 4.1219; Ord. No. 591, 6-19-2001)

Sec. 34-93. Conflicts with existing or future franchises.

In the event of conflict between the provisions of this article and any franchise or other written authorization heretofore or hereafter approved by city, the provisions of this article shall control.

Any condition imposed pursuant to a zoning specific use permit shall be in addition to the requirements of this article.
(Code 2002, § 4.1220; Ord. No. 591, 6-19-2001)

Sec. 34-94. Notice.

Any notice required to be given to the city hereunder shall be given in writing, and may be effected by:

(1) Personal delivery if delivered to the director of public works or his designee;

(2) By facsimile or electronic mail, if delivered to the director of public works or his designee and to the city secretary; or

(3) By United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the director of public works or his designee and the city secretary.

No notice shall be deemed given until actual receipt by the city as set forth in this section.
(Code 2002, § 4.1221; Ord. No. 591, 6-19-2001)

Sec. 34-95. Penalties; remedies.

(a) *Criminal penalty.* Any person who shall violate any provision of this article shall be deemed guilty of a misdemeanor. Prosecution for and imposition of criminal penalties under this subsection shall not bar the city from seeking other additional remedies as may be provided in this article by law or in equity.

(b) *Civil penalties.* Civil penalties may be imposed for violation of any provision of this article, as follows:

(1) Up to $1,000.00 for each violation and each day of a continuing violation may be considered a new violation; and/or

(2) Revocation of any or all permits granted to allow work in public rights-of-way, subject to procedural guidelines provided in this article, any agreement which applies to the person subject to the complaint and subject to any limitation imposed by federal or state law.

(Code 2002, § 4.1222; Ord. No. 591, 6-19-2001)

Secs. 34-96—34-118. Reserved.

ARTICLE IV. USE OF RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS*

Sec. 34-119. Purpose.

(a) *Protection of rights-of-way; neutrality*. The purpose of this article is to establish a competitively neutral policy for the use by telecommunications providers of the city's public rights-of-way and to enable the city to:

(1) Minimize congestion, inconvenience, visual impact, costs and other adverse effects which would likely result from the unregulated placement of telecommunications facilities within public rights-of-way;

(2) Require, to the extent permitted by law, that telecommunications providers pay fair and reasonable compensation for the use of public rights-of-way;

(3) Promote competition among telecommunications providers and encourage the universal availability of telecommunications services to all residents and businesses of the city;

(4) Conserve the limited physical capacity of such public rights-of-way held in public trust by the city;

(5) Ensure that telecommunications providers having facilities within the city comply with applicable ordinances, rules and regulations of the city; and

(6) Ensure that the city fairly and responsibly preserves and protects the public health, safety and general welfare.

(b) *Services not regulated.* It is not the policy or intention of this article to prohibit, regulate, license or franchise the provision of any service within the city, and no provision of this article shall be so construed; any term or condition contained herein, or in any license ordinance

*__State law reference—__Management of public right-of-way used by telecommunication provider in municipality, V.T.C.A., Local Government Code ch. 283.

adopted pursuant hereto, shall relate to the rights of a person to make use of the public rights-of-way, not in limitation of any right granted by the state public utility commission, the Federal Communications Commission (FCC) or their successors.

(c) *Existing franchise rights preserved.* This article shall not apply to a telecommunications provider operating within the city on the effective date of the ordinance from which this article is derived pursuant to a valid existing franchise ordinance; provided, however, upon the termination of any such franchise, the telecommunications provider to which it applies shall be subject to the provisions hereof in the same manner as any other telecommunications provider. Notwithstanding the foregoing, any telecommunications provider operating within the city on the effective date of the ordinance from which this article is derived pursuant to a valid franchise ordinance may, at such provider's option, apply for the issuance of a license hereunder and the early termination of such franchise. Such franchise shall be deemed terminated upon the effective date of such license. Nothing in this article shall be construed to diminish the right or ability of the city to require any other user of public rights-of-way to secure appropriate city authorization, including without limitation cable service providers.
(Code 2002, § 4.1101; Ord. No. 558, 9-24-1999)

Sec. 34-120. Definitions.

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

Access line means a unit of measurement representing:

(1) Each switched transmission path of the transmission media that is physically within the public right-of-way extended to the end-user customer's premises within the city that allows delivery of local exchange telephone services within the city that is provided by means of owned facilities, unbundled network elements or leased facilities or resale;

(2) Each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within the public right-of-way connecting specific locations identified by and provided to the end-user for delivery of nonswitched telecommunications services within the city; or

(3) Each switched transmission path within the public right-of-way used to provide central office based PBS-type services for systems of any number of stations within the city, and in such instance, one such path shall be counted for every ten stations served.

The term "access line" shall not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises, or to permit duplicate or multiple assessment of access line rates upon the provision of a single service.

Applicant means a person who files an application with the city, pursuant to section 34-123 hereof, to obtain a license to use or place network facilities within the city's public rights-of-way, whether by means of the person's own facilities or by purchase or lease of one or more network facilities from another provider of telecommunications services.

Cable Act means the Cable Communications Policy Act of 1984, 47 USC 532 et seq., as amended.

Cable operator means a person providing or offering to provide cable service within the city as that term is defined in the Cable Act.

Cable service shall have the same meaning provided by the Cable Act.

City property means all real property owned by the city other than public rights-of-way, as that term is defined herein, and all other properties held in a proprietary capacity by the city which are not subject to right-of-way licensing as provided in this article.

Federal Communication Commission or *FCC* means the federal agency or its successor agency that is the regulatory authority over telecommunications providers.

License fee means the compensation payable to the city by a licensee for the use and occupancy of public rights-of-way.

License ordinance means an ordinance adopted pursuant to this article which grants to a telecommunications provider the authority and license to place, operate and utilize its network facilities within the public rights-of-way of the city for the purpose of providing telecommunications services.

Licensee means a telecommunications provider that has been issued a license pursuant to a license ordinance.

Network facilities means conduits, ducts, manholes, vaults, tanks, towers, wave guides, optic fiber, microwave dishes, transmitters, antennas and antenna structures, radio equipment and any associated converters, electrical lines, communications lines, transmission lines, cables, wires, amplifiers, switches, utility equipment or other such object, device, facility or appurtenance, including attachments and encasements therefor, whether underground or overhead, which are designed, installed and constructed within the public rights-of-way for the purpose of producing, receiving, amplifying, switching, transmitting or distributing communication signals, whether analog or digital, whether for voice, data or other purposes, and whether by or through wired or wireless systems, to or from customers, subscribers or locations within the corporate limits of the city. Network facilities shall not include airwaves above a right-of-way. Network facilities shall not include such facilities to the extent that they are solely used to provide cable services.

Public rights-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term "public rights-of-way does not include the airwaves above a right-of-way with regard to wireless telecommunications.

Public Utility Commission of Texas or *PUC* means the state agency having jurisdiction over telecommunications providers.

Telecommunications means the transmission between or among points specified by the user of information of the user's choosing, without change in the content of the information as sent and received.

Telecommunications provider or *provider* means a person who offers telecommunications services to customers through network facilities located in the public rights-of-way.

Telecommunications services mean the provision of telecommunications provided through network facilities, excluding cable services, but which include without limitation:

(1) Access lines provided to end users or to other telecommunications companies for the purpose of voice, data or noncable video transmission;

(2) Nonswitched telephone circuits consisting of transmission media connecting specific locations identified by and provided to the end-user for delivery of nonswitched services within the city;

(3) Switched access lines for the distribution of voice, data, and noncable video transmission; and

(4) Any other telecommunication services authorized by state or federal law.

Wired telecommunications service means telecommunications services provided through network facilities which transmit and receive sounds, pictures or signals of any kind by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, and includes both one-way and two-way services.

Wireless telecommunications service means telecommunications services provided through network facilities which transmit and receive sounds, pictures or signals of any kind by radio or microwave signals between the points of origin and reception of such transmission, and includes both one-way and two-way services.
(Code 2002, § 4.1102; Ord. No. 558, 9-24-1999)

Sec. 34-121. Unauthorized use.

(a) *Authorization required.* It shall be unlawful for any person to lay, construct, operate, offer for lease or make available for any use whatsoever any network facility across, along, over,

above or under any public right-of-way within the limits of the city for any private or commercial purpose unless the right to do so has been granted to such person pursuant to a license ordinance adopted by the city council in accordance herewith.

(b) *Liability for fees.* Without limitation of other remedies available to the city, persons making use of the public rights-of-way of the city in violation of this article, or otherwise without valid consent of the city, shall be liable for all fees authorized by this article effective as of the date of inception of such use.
(Code 2002, § 4.1103; Ord. No. 558, 9-24-1999)

Sec. 34-122. Public use license.

(a) *Application required, contents.* Any person proposing to place network facilities within public rights-of-way shall submit an application to the city. Applications may be filed in the office of the city secretary. An application shall describe, in general terms, all services the applicant will offer or provide, and shall outline the applicant's proposed network facilities, including a description of the physical characteristics of the network facilities proposed to be installed in the public rights-of-way. The city council may require the following information:

(1) The identity of the applicant and all affiliates of the applicant which may use in any manner the network facilities to provide telecommunications services within the city;

(2) A general description of the principal transmission medium that will be used by the applicant to offer or provide such telecommunications services;

(3) Preliminary engineering plans, specifications and a network map of planned or projected new network facilities to be located within the city, all in sufficient detail to identify:

a. The location and route requested for the applicant's proposed network facilities;

b. The location of all known overhead and underground public utility, telecommunications, cable, water, sewer, drainage and other facilities in the public rights-of-way along the proposed route; and

c. The specific trees, structures, improvements, facilities or obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;

(4) If the applicant is proposing to install overhead facilities, evidence that surplus space is available, and if existing utility poles are to be utilized, evidence that their use is authorized;

(5) If the applicant is proposing to install underground network facilities, evidence of whether surplus duct or conduit space is available, and if existing ducts or conduits are to be utilized, evidence that their use is authorized;

(6) A preliminary construction schedule and completion dates;

(7) A preliminary traffic control plan;

(8) Information to establish that the applicant will obtain all other governmental approvals and permits prior to construction and operation of the network facilities and prior to offering or providing the telecommunications services;

(9) Whether the applicant intends to provide cable service or other video programming service, such as an open video system, as defined in the Cable Act, together with sufficient information to determine whether such service is subject to cable franchising under the Cable Act;

(10) A narrative description of applicant's existing network facilities in the city that the applicant intends to use or lease;

(11) The area of the city the applicant desires to serve and a schedule for build-out to the entire city, if any; and

(12) Such other and further information relating to the use of the public rights-of-way that may be reasonably requested by the city council.

(b) *Standards for approval.* In making its determinations regarding adoption of license ordinances, the city council shall consider the legal authority of the subject applicant to provide telecommunications services within the city, with due regard for applicable federal and state telecommunications laws, regulations and policies.

(c) *License ordinance.* The license ordinances adopted by the city council shall be deemed to incorporate all provisions of this article. A license ordinance shall be deemed as authorization for the applicable licensee to use the public rights-of-way for the provision of telecommunications services. No network facility shall be located, or made use of, in any public right-of-way in a manner inconsistent with the provisions of this article and/or the license ordinance. No license ordinance shall be construed to grant access to city property, as defined herein, unless specifically included therein. No licensee shall use a public right-of-way or allow any other person to use licensee's network facilities in a public right-of-way, except as provided in the applicable license ordinance. Notwithstanding the foregoing, a license ordinance shall not be required for a person engaging solely in the resale of a licensee's services or the provision of services by unbundled network elements obtained from a licensee; provided that the applicable license ordinance authorizes the network facilities involved and the person does not own or operate any network facilities in the public rights-of-way.

(d) *Conditions of license.* The issuance of any license pursuant to this section shall be subject to the following additional standards:

(1) *Interference with public use prohibited.* All licensees shall lay, construct, erect, operate, lease, maintain, repair and replace their network facilities in such a manner as to not unreasonably interfere with the use of public rights-of-way, public streets and sidewalks or other public or private ways.

(2) *Compliance with law.* Licensees are explicitly subject to the police powers of the city and the city's rights as a property owner under state and federal laws. All work done by licensees in connection with the construction, expansion, reconstruction, maintenance or repair of its network facilities in public rights-of-way shall be subject to and governed by all applicable federal, state and city rules, regulations, laws and ordinances. The provisions of this subsection shall apply to all licensees and to any other person owning, operating or in control of network facilities located within public rights-of-way.

(3) *Construction regulations.*

a. *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal and city regulations.

b. *Interference with use of property.* All construction within public rights-of-ways shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers.

c. *Construction permits*. Before commencing any work which involves the construction, installation, expansion, repair, removal or maintenance of network facilities within a public right-of-way, a licensee shall apply for and obtain a construction permit therefor; provided, however, acquisition of construction permits shall not be required for any such work which does not involve the alteration or disturbance of the surface of the right-of-way. Each permit application shall include a written work description, including construction drawings, showing the network facilities' location (or proposed location) and the estimated depth of the network facilities (existing and proposed) in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city engineer and if disapproved, returned with comments setting forth the reasons for such disapproval. Ap-

provals shall not be unreasonably withheld or delayed. Except as otherwise specifically provided herein, licensees shall not commence any such work until applicable construction permits have been approved therefor. Upon completion of any such work, the licensee shall promptly restore the surface of the affected public right-of-way to a condition which equals or exceeds its condition prior to such construction. To such end, the licensee shall replace excavated areas with the same type of materials as those removed, unless alternate equivalent materials are approved by the city. Any excavated areas showing depressions within one year following such work shall be restored by the licensee. Licensees may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its network facilities. Review and approval by the city of construction permits as provided herein shall not constitute any representation or warranty regarding the sufficiency of design or construction of the network facilities.

d. *Emergency repairs; restoration of service.* Notwithstanding the foregoing subsection (d)3c., during emergency situations where in the good faith judgment of a licensee failure to act immediately could jeopardize public health, safety or general welfare, or in situations where a repair is necessary to restore service to a customer, licensees may perform repairs to facilities within public rights-of-way which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to the city. In such cases, the licensee shall notify the director of public works for the city by the close of business on the next business day, stating the nature of such repairs and if not completed, the length of time estimated to complete the same. The licensee shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with the then-applicable city standards shall be corrected upon notice thereof from the city.

e. *Routine maintenance.* Routine maintenance on network facilities located within public rights-of-way shall be conducted in a manner that is consistent with the then-applicable city regulations governing such work, if any.

f. *Obstructions of traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities of a licensee other than for emergency repairs shall require prior notification to the director of public works of the city. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a licensee performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the licensee shall provide construction and maintenance signs and sufficient barricades and flag men at such sites as are reasonably necessary to protect the public and the licensee's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest addition of the state manual on uniform traffic control devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

g. *Closing of streets.* If a licensee's work requires the obstruction of any street for a period longer than 30 minutes, the closure shall be performed in a manner approved by the director of public works. The licensee shall not wholly close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided that in cases of an emergency, the director of public works may authorize the temporary closing of a public street or sidewalk to allow the licensee to complete such emergency repairs if, in the opinion of the director of public works, such closing is necessary to protect the safety of the general public.

h. *Construction drawings.* Within 120 days following completion of each segment of its network facilities, or within 120 days following any material alteration or modification thereto, each licensee shall supply the city with a complete set of construction drawings for that segment, or for the material alteration or modification thereof, unless the licensee certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to subsection (d)(3)c of this section, in which case such construction plans shall be marked accordingly by the city and filed as the "permanent construction drawings." For the purposes hereof, a material alteration or modification of a network facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the licensee's network facilities with reasonable accuracy. In lieu of print documents, a licensee may upon advance reasonable request provide such drawings and maps by other mediums, including electronic mediums, provided the city has the capability to access such information.

(4) *Conservation of public rights-of-way.*

a. To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a licensee to attach portions of their facilities to other facilities within the public rights-of-way owned and maintained by other persons. A licensee shall not be required to attach its facilities to the facilities of such other persons if it is shown that such licensee would be subjected thereby to increased risks of interruption to its service, to increased liability for accidents or to unreasonable delays in construction or availability of service, or if the facilities of such other person are not of the character, design or construction required by, or are not being maintained in accordance with, current practice or are not available to the licensee on reasonable terms, including, without limitation, reasonable fees.

b. Insofar as is practical to do so, licensees shall use existing network facilities in the provision of their services; provided, however, nothing contained herein shall be construed as limiting a telecommunications provider from expanding its facilities to accommodate future growth and development. Licensees shall provide information to the city relating to the location and/or operation of their network facilities or services as may be reasonably necessary for municipal planning purposes.

(5) *Relocation or removal of facilities.*

a. A licensee may be required to lower, place underground, relocate or re-

move any network facility within any public right-of-way without cost to the city if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal or installation of any city or other governmental entity's publicly funded project within the city in, upon or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, streetlights and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a licensee may be allowed to pay the additional costs incurred for the design and/or construction of any such public works project in a manner that would avoid the necessity of relocation or removal of the network facilities. A licensee shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work and accommodate suitable refinements and/or joint work with others.

b. In the event of any such requirement for lowering, placing underground, relocating or removing network facilities as herein provided, the licensee shall complete the same as soon as is reasonably practicable following written notice thereof by the city.

(6) *Timely completion*. If a licensee fails to either (i) commence or thereafter diligently prosecute any repair, refilling, lowering, relocation, removal, or other work required by the city, or (ii) diligently complete any work that disturbs a public right-of-way, the city may cause the work to be done or completed at the expense of the licensee and may recover all such expense from the licensee, together with all costs and reasonable attorneys fees. Notwithstanding the foregoing, a licensee shall be entitled to notice and opportunity to cure during the cure period described and set forth in section 34-125, and shall not be liable for any costs under this section unless such licensee fails to timely complete during such cure period.

(7) *Abandonment of obsolete network facilities.* Licensees shall remove network facilities when such network facilities are obsolete, are no longer in service and either create visual blight or create a nuisance to the public; provided, however, a licensee shall not be required to remove any network facility for which renovation or restoration is planned by a licensee and which renovation or restoration is completed within a reasonable period of time following abandonment. Provided further, no network facility or any material portion thereof, which is being utilized for telecommunications services shall be deemed to be abandoned. When permanent structures in public rights-of-way are removed or abandoned, the city shall be notified in writing of such removal or abandonment. The director of public works may direct such remedial measures as the director may determine are necessary for public safety and the integrity of public rights-of-way.

(8) *Bonding*. A licensee shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.

(9) *Temporary rearrangement of aerial wires and cables*. Upon request, a licensee shall remove or raise or lower its aerial network facilities temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting the same, excluding requests by the city. The licensee may require payment in advance. The licensee

shall be given a reasonable amount of advance notice to provide for such rearrangement, but in no event shall such notice be required to exceed 30 days.

(10) *Tree trimming.* A licensee is authorized to trim trees upon and overhanging public rights-of-way to the extent reasonably necessary to prevent the branches thereof from coming in contact with the licensee's network facilities. At the option of the city, a licensee may be required to conduct tree trimming under the supervision and direction of the city through the city official to whom such duty has been or may be delegated.

(11) *Term.* The term of each license granted pursuant to this article shall be as set forth in the license ordinance, but shall not exceed ten years.

(Code 2002, § 4.1104; Ord. No. 558, 9-24-1999)

Sec. 34-123. Compensation; books and records.

(a) *Licensee fees for providers of wired telecommunications services.* Licensees using public rights-of-way for the provision of wired telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge for each access line owned, placed, operated, controlled or maintained by the licensee during the month to which the licensee fee applies, for use by an end-user or for another provider that uses the licensee's services or network facilities for the provision of telecommunications services within the city. With regard to persons leasing, reselling or otherwise using the licensee's access lines, if the licensee does not have sufficient information to determine the appropriate access line type, and thus the appropriate fee rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the licensee sufficient written information to determine the correct line fee. Notwithstanding the foregoing, a licensee shall not be liable for underpayment of license fees resulting from the licensee's reliance upon the written information provided by any such person using licensee's service or facilities for the provision of telecommunications services to end-user customers. The license fee payable to the city shall be the sum total of the monthly charges to be applied to access lines, on a calendar month basis, as follows: Monthly charge (per access line) as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.

(1) *Payment due dates; calculation report; access lines.* License fees shall be paid quarterly, with such payments due and payable on or before the 45th day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number and type of access lines owned or placed and maintained by the licensee within the city that are activated for end-user customers and other telecommunications providers at month's end, for each of the three calendar months to which such remittance applies. Such report shall specifically identify access lines owned, placed, operated, controlled or maintained by the licensee that are leased and/or used by persons who are not end-user customers. Such report shall show the number of access lines by category, to the extent known. The report shall be used solely for the purpose of verifying the number of the licensee's access lines serving premises within the city.

(2) *Exclusions for certain economically disadvantaged customers*. Lines terminating at customers' premises that are billed as "Lifeline," "Tel-Assistance," or other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged shall not be included in the count of access lines for which the license fee is calculated.

(3) *Leased network facilities.* Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of, and shall not be required to remit a license fee to the city based on access lines that are resold, leased or otherwise provided to another person if the other person has furnished the licensee with ade-

quate proof that the person will remit directly to the city a license fee based on those leased access lines.

(b) *License fees for providers of wireless telecommunications services.*

(1) Licensees using public rights-of-way for the provision of wireless telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge calculated in accordance with one of the following methods described in this subsection (b):

a. *Per subscriber/customer method.* Licensees may elect to pay a license fee that is calculated by applying a monthly charge for each subscriber/customer within the city that uses the licensee's services or network facilities for the provision of telecommunications services. A monthly charge shall be applied for each end-user subscriber/customer having a billing address within the city. The license fee payable to the city shall be the sum total of the monthly charges to be applied to each subscriber/customer, on a calendar month basis, as follows: Monthly fee (per subscriber/customer) as set as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.

b. *Gross revenue method.* If the license fee provided for in subsection (a) of this section would result in a fee which exceeds four percent of the applicable licensee's gross revenues from subscribers/customers within the city, such licensee may pay a license fee which equals four percent of the gross revenues received by such licensee from subscribers/customers within the city. For the purposes hereof, the term "gross revenues" shall mean the gross dollar amounts received by the licensee for wireless telecommunications services provided to subscribers/customers with billing addresses in the city, but excluding:

1. The monthly charges collected pursuant to this section;

2. Local, state or federal taxes collected by the licensee that have been billed to subscribers/customers and separately stated on bills therefor; and

3. Uncollectible revenues.

c. *Facilities charge method.* A licensee providing wireless telecommunications services within the city which does not occupy more than 500 linear feet, 200 square feet or 100 cubic feet of the public rights-of-way for the location of its network facilities may pay an annual license fee based on the actual network facilities located within such public rights-of-way. Such license fees shall be calculated in accordance with public right-of-way use fee schedules as may be adopted by the city council from time to time and in effect at the time the applicable license ordinance is adopted.

(2) *Payment due dates; calculation report.* License fees shall be paid quarterly, with such payments due and payable on or before the 45th day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number of subscribers within the city that are served by the licensee, the gross revenues received by the licensee or an inventory of network facilities in the city's public right-of-way, as applicable, for each of the three calendar months to which such remittance applies. Such report shall specifically identify any network facilities owned, operated or maintained by the licensee that are leased and/or used by persons who are not end-users. Such report shall show the number of subscribers of such persons

leasing or using such facilities, if any, to the extent known. The report shall be used solely for the purpose of verifying the license fee payable to the city as herein provided.

(3) *Exclusions for certain economically disadvantaged customers.* Subscribers that are billed as "Lifeline," "Tel-Assistance" or for other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged shall not be included in the count of subscribers for which the license fee is calculated.

(4) *Leased network facilities.* Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of subscribers, and shall not be required to remit a license fee to the city based on subscribers that are served by network facilities resold, leased or otherwise provided to another person for consideration if: (i) the other person is operating pursuant to a valid license under this article; and (ii) the other person has furnished the licensee with adequate proof that the person intends to include its subscribers in its monthly count to the city, the person intends to remit to the city a license fee based on those subscribers and the city has approved the arrangement.

(c) *License fees for providers not serving customers within the city.* Providers using network facilities within public rights-of-way but which serve no customers within the city other than itself shall pay an annual license fee based on the facilities located within such public rights-of-way, which fees shall be commensurate with the fees paid by providers serving customers within the city. Such license fees shall be calculated in accordance with public right-of-way use fee schedules as may be adopted by the city council from time to time and in effect at the time the applicable license ordinance is adopted. This fee shall be due on or before July 15 of every year during the term of the license, prorated as applicable. A report shall be submitted with each annual payment showing the calculation of the payment, including necessary descriptions of the network facilities, as applicable.

(d) *Reporting requirements.* The forms required to be filed pursuant to subsections (a) (b) and (c) of this section shall be accompanied by a written statement, executed by a duly authorized officer or representative of the licensee, certifying that the information contained in such report is true and correct to the best of the officer or representative's knowledge and belief, after due inquiry. A copy of the completed forms and the accompanying certified statements shall be filed with the city secretary. Such forms shall be deemed confidential to the extent permitted by law. Upon written request, licensees shall verify the information contained in such forms and upon reasonable advance notice all non-customer-specific records and other documents required for verification shall be subject to inspection by the city, expressly excluding any records, documents or other writings the disclosure of which is prohibited by state or federal law.

(e) *Late payments; default*. Payments received after their due date shall incur interest at the rate of ten percent per annum, compounded daily. Notwithstanding the foregoing, failure of a licensee to make a full payment within 30 days following the due date shall constitute an event of default.

(f) *Circumvention of license fees prohibited*. Licensees shall not circumvent payment of license fees by bartering, by transferring rights or by other means that result in undercounting the number of access lines or subscribers, as applicable, as required herein. Capacity or services may be bartered if the imputed access lines, or subscribers are reported in accordance with this article.

(g) *Uncollectibles*. A licensee shall not be obligated to pay the city for any access lines or subscribers for which revenues remain uncollectible.

(h) *No release.* No acceptance by the city of any payment by a licensee shall be construed as a release of, or an accord or satisfaction of any claim that the city might have for further or additional

sums payable under the terms of this article or a license ordinance, or for any other performance or obligation of the licensee.

(i) *No other fees.* License fees paid hereunder shall be in lieu of any permit, license, approval, inspection or other similar fee or charge, including but not limited to all general business license fees customarily assessed by the city for the use of the public rights-of-way against persons operating businesses similar to that of licensees. Further, such license fees shall constitute full compensation to the city for all of a licensee's network facilities located within the public rights-of-way, including interoffice transport and other transmission media that do not terminate at an end-user customer's network interface device, even though those types of network facilities are not used in the calculation of a license fee.

(j) *Records.* Licensees shall retain and maintain all records, accounts and financial and operating reports necessary to establish compliance with the terms of this article, for a period of not less than five years.
(Code 2002, § 4.1105; Ord. No. 558, 9-24-1999)

Sec. 34-124. Indemnification and insurance.

(a) *Indemnity*. To the extent permitted by law, each licensee shall indemnify and hold the city harmless as follows:

(1) The licensee shall promptly defend, indemnify and hold the city harmless:

a. From and against all damages, costs, losses or expenses for the repair, replacement or restoration of city's property, equipment, materials, structures and facilities which are damaged, destroyed, or found to be defective solely as a result of the licensee's acts or omissions; and

b. From and against any and all claims, demands, suits, causes of action, and judgments for:

1. Damage to or loss of the property of any person (including but not limited to the licensee, its agents, officers, employees, and subcontractors, city, its agents, officers and employees and third parties); and/or

2. Death, bodily injury, illness, disease, loss of services or loss of income or wages to any person (including but not limited to the agents, officers and employees of the licensee, licensee's subcontractors, city's officers, agents and employees and third parties);

arising out of, incident to, concerning or resulting from the negligent or willful acts or omissions of the licensee, its agents, employees and/or subcontractors, in the performance of activities pursuant to this article.

(2) This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in granting this license, in regulating the conduct of the licensee under this license, or in failing to prevent the licensee from acting in a negligent or wrongful manner.

(3) The indemnity provision set forth above is:

a. Solely for the benefit of the city and the licensee and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity;

b. To the extent permitted by law, any payments made to or on behalf of the city under the provisions of this section are subject to the rights granted to licensees under sections 54.204—54.206 of the state utilities code; and

c. Subject to the continued applicability of the provisions of sections 54.204—54.206 of the state utilities code, as set forth in subsection (a)(2) of this section, the provisions of the indemnity shall survive the expiration of this article.

If the authority granted by this article is terminated or is not renewed, and the licensee does not remove its network facilities from the public rights-of-way, the licensee shall continue to indemnify and hold harmless the city pursuant to this section as long as its facilities are located in the public rights-of-way, and for such purpose, this section shall survive the license ordinance.

(b) *Insurance*. Licensees shall procure and maintain during the term of their licenses, the following insurance coverage, and the respective policies thereof shall cover all risks related to the licensee's use and occupancy of the public rights-of-way and all other risks associated with their license.

Coverage	*Limits of Liability*
Workers' compensation	Minimum statutory limits
Employer's liability	Bodily injury by accident $1,000,000.00 (each accident) Bodily injury by disease $1,000,000.00 (policy limit) Bodily injury by disease $1,000,000.00 (each employee)
Commercial general liability: including broad form coverage, contractual liability, bodily and personal injury, and completed operations	Combined single limits of $1,000,000.00 per occurrence and $1,000,000.00 aggregate
Products and completed operations	$1,000,000.00 aggregate
Automobile liability insurance for automobiles used by the licensee in the course of its performance under the license ordinance, including employer's non-ownership and hired auto coverage	$1,000,000.00 combined single limit per occurrence
Excess coverage	$1,000,000.00 per occurrence/combined aggregate in excess-of limits specified for employer's liability, commercial general liability, and automobile liability

Note—Aggregate limits are for a 12-month policy period, unless otherwise indicated.

(1) The city shall be named as an additional insured, by endorsement, on all applicable insurance policies;

(2) Applicable insurance policies shall each be endorsed with a waiver of subrogation in favor of the city;

(3) Insurers shall have a rating of B+ or better and a financial size of class VI or better, according to the current year's best rating. Each insurer shall be responsible and reputable, must have financial capability consistent with the risks covered and shall be subject to approval by the city council with regard to conformance with these requirements, which approval shall not be unreasonably withheld;

(4) Deductible limits on insurance policies and/or self-insured retention exceeding $50,000.00 shall require approval by the city council;

(5) Certificates of insurance shall state that the city shall be notified a minimum of 30 days prior to the insurers' action, in the event of cancellation, nonrenewal or reduction in policy limits, regarding any policy required hereby;

(6) Full limits of insurance required in this section shall be available for claims arising out of a licensee's applicable license ordinance;

(7) Certificates of insurance shall be provided by a licensee to the city prior to the installation, construction or operation of any network facilities within public rights-of-way; provided, however, any licensee lawfully operating network facilities within public rights-of-way at the time of adoption of such licensee's applicable license ordinance shall provide such certificates of insurance within 30 days following the effective date of such license ordinance. Any failure of the city to request such documentation shall not be construed as a waiver of the insurance requirements specified herein;

(8) The city shall be entitled, upon request and without incurring expense, to review the insurance policies or certified copies thereof, including endorsements thereto, which relate to the insurance requirements specified herein, and at its discretion to require proof of payment for policy premiums;

(9) The city shall not be responsible for paying the cost of insurance coverage required herein;

(10) Notice of any actual or potential claim and/or litigation that would affect insurance coverage required herein shall be provided to the city in a timely manner. In the alternative, a policy may, by endorsement, establish a policy aggregate to establish compliance with the requirements set forth herein;

(11) Each insurance policy required herein shall be primary insurance to any other insurance available to the city with respect to any claims arising hereunder;

(12) A licensee shall either require its contractors to maintain the same insurance coverage and limits thereof as specified herein, or such coverage on the licensee's contractors shall be provided by the licensee; and

(13) A licensee may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection (b); provided that the licensee submits to the city copies of its certificates of self-insurance from the state department of insurance, and of its most recent audited financial statements, showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth in this section. A licensee shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a licensee's self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If during the term of a license granted hereunder, a licensee's self-insurance program ceases or a licensee's assets or reserves are no longer sufficient to comply with the above coverage requirements, the licensee shall immediately notify the city of such lapse of coverage, and the licensee shall obtain commercial insurance in accordance with the above requirements within 30 days following such notice.

(c) *No right of recovery*. Insurers shall have no right of recovery against the city, it being the intention hereby that the insurance policies required herein shall protect licensees and the city, and shall be primary coverage for all losses covered by such policies. Such policies shall provide that the issuing company waives all right of recovery by way of subrogation or assignment against the city in connection with any damage

covered thereby. Companies issuing such policies shall have no recourse against the city for payment of any premiums or assessments, same being at the sole risk of the licensees.

(d) *Lapse of coverage an event of default.* A licensee shall continuously and without interruption maintain in full force and affect the required insurance coverage and limits set forth in this section. Failure to maintain such insurance shall constitute an event of default and the city, at its option, may terminate any license granted pursuant hereto, in accordance with the provisions of section 34-125.
(Code 2002, § 4.1106; Ord. No. 558, 9-24-1999)

Sec. 34-125. Default and termination.

(a) *Events of default.* The occurrence of any of the following shall constitute an event of default by a licensee:

(1) Failure of a licensee to comply with any material term, condition or provision of this article or the license ordinance applicable to such licensee;

(2) Any intentional false statement or misrepresentation as to a material fact by an applicant;

(3) A licensee's loss of or failure to obtain licenses, permits and certifications lawfully required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the licensee's operations and to pay all fees associated therewith;

(4) An act or omission of a licensee constituting a knowing or intentional evasion of payment of any fee payable hereunder.

(b) *Cure period.* If a licensee continues to violate or fail to comply with a material term or provision of this article for a period of 30 days following notification in writing by the city to cure such specific alleged violation or failure to comply, then the city may follow the procedures set forth herein to declare that the licensee has terminated all rights and privileges consented to pursuant to this article and the licensee's license ordinance; provided, however, if a licensee is alleged to be in violation of any material provision of this article other than the payment of a fee due hereunder, and if the licensee commences efforts to cure such alleged violation within 30 days following receipt of written notice thereof and shall thereafter prosecute such curative efforts with reasonable diligence until such curative efforts are completed, then such alleged violation shall cease to exist and no further action shall be taken at that time.
(Code 2002, § 4.1107; Ord. No. 558, 9-24-1999)

Sec. 34-126. Transfer of authority.

(a) *Prohibition.* Any right, privilege and license granted pursuant hereto may not be assigned in whole or in part without the prior consent of the city expressed by resolution or ordinance, and then only under such conditions as may therein be prescribed, except as otherwise provided in subsection (d) of this section. No such consent by the city shall be unreasonably withheld, conditioned or delayed. No assignment in law or otherwise shall be effective until the assignee has filed with the city an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof and of the license ordinance, and agreeing to comply with all the provisions thereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of a license for the purposes of this article.

(b) *Process.* Upon receipt of a request for consent to an assignment, the city shall diligently investigate the request in a timely manner and place the request on the city council agenda at the earliest practicable time. The city council shall proceed to act on the request within a reasonable period of time.

(c) *Scope of review.* In reviewing a request for assignment, the city may to the extent permitted by law, inquire into the legal, technical and financial qualifications of the prospective assignee, and the licensee shall assist the city in so inquiring. The city may condition such assignment upon such terms and conditions as it deems reasonably necessary, provided its approval and any such terms and conditions so attached shall be related

to the legal, technical and financial qualifications of the prospective assignee, as well as the licensee's compliance with the terms hereof.

(d) *Assignments not requiring approval.* Notwithstanding any other provision contained in this article to the contrary, the prior approval of the city shall not be required for any transfer of ownership or control of a provider's business, except that the provider shall maintain with the city a current point of contact information; provided, however, no such assignment shall be effective until the licensee shall have given written notice thereof to the city.

(e) *Release*. Upon receiving the city's consent to an assignment or, in the event of an assignment qualifying under subsection (d) of this section, upon giving notice under subsection (d) of this section, a licensee shall be relieved of all conditions, obligations and liabilities arising or which might arise hereunder that are assumed by the assignee.
(Code 2002, § 4.1108; Ord. No. 558, 9-24-1999)

Sec. 34-127. Miscellaneous provisions.

(a) *Work by others, construction by abutting owners and alterations to conform with public improvements*.

(1) The city reserves the right to lay and permit to be laid sewer, gas, water and other pipe lines or cables and conduits, and to do and permit to be done any underground and overhead work, and any attachment, restructuring or changes in aerial facilities that may be deemed necessary or proper by the city in, across, along, over or under any public right-of-way occupied by providers, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the city shall not be liable to providers for any damages not directly caused by the misconduct or gross negligence of the city; provided, however, nothing contained herein shall relieve any other person or entity, including any contractor, subcontractor or agent from liability for damage to a licensee's facilities.

(2) If, during a license term, the city authorizes abutting landowners to occupy space over, under or across the surface of any public right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to a licensee. In the event that the city shall close or abandon any public right-of-way which contains any portion of a licensee's network facilities, any conveyance of land contained in such closed or abandoned public right-of-way shall be subject to the rights of a licensee hereunder and under the licensee's license ordinance.

(3) Providers shall be liable for the acts or omissions of any person used by such providers when such person is involved directly or indirectly in the construction and installation of such providers' network facilities to the same extent as if the acts or omissions of such person were the acts or omissions of the provider.

(b) *Annexation and disannexation.* Within 30 days following the date of passage of any action effecting the annexation of any property to, or the disannexation of any property from the city's corporate boundaries, the city shall furnish licensees written notice of the action and an accurate map of the city's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the city under this article, a licensee shall start including or excluding access lines or subscribers as applicable, within the affected area in the licensee's count of access lines or subscribers as applicable, on the effective date designated by the comptroller of public accounts of the state for the imposition of state local sales and use taxes, but in no case less than 30 days following the date the licensee is notified by the city of the annexation or disannexation.

(c) *Confidential records.* Upon the notification by a licensee to the city of the confidential nature of any information, report, document or writing, the city shall maintain the confidentiality of such information, report, document or writing to the extent permitted by law. Upon receipt by the city of requests for the licensee's confidential information, report, document or writing, the city shall notify the licensee of the request in writing.

Unless otherwise approved in writing by the applicable licensee, the city shall request an attorney general's opinion before disclosing any confidential information, report, document or writing, and will furnish the licensee with copies of such requests.

(d) *Abandonment of public rights-of-way.* If the city conveys, closes, abandons or releases its interest in or authority over any public right-of-way containing network facilities installed or operated pursuant to a license ordinance, any such conveyance, closure, abandonment or release shall be subject to the rights of the licensee under the license ordinance.

(e) *Right to audit.* The city reserves the right to inspect a provider's business records to the extent necessary to ensure compliance with the access line and/or subscriber reporting requirements of this article. Any such review shall be commenced within 90 days following the filing of a certified report of access lines and/or subscribers. If any such inspection discovers an underpayment due to the city that exceeds five percent of the total amount paid for any quarterly reporting period, then the licensee shall promptly reimburse the city for the actual and reasonable cost of such audit. The provider shall also pay the city all actual amounts of the underpayments as determined by the audit, plus interest as hereinabove provided.

(f) *Force majeure*. Other than for the failure to pay amounts due and payable under this article, a licensee shall not be in default or be subject to sanction under any provision of this article when its performance is prevented by force majeure. Force majeure shall mean an event caused by strike or other labor problem, embargo, epidemic, act of God, fire, flood, adverse weather conditions or other major environmental disturbance, act of military authority, or war or civil disorder; provided that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the licensee. Performance is not excused under this article following the end of the applicable event of force majeure.

(g) *Controlling law.* This article and any license issued hereunder shall be governed by the laws of the state and the United States, and venue for any action hereunder shall be in the county.

(h) *Effective date of license.* Any license granted hereunder shall be effective upon the adoption of the applicable license ordinance and the filing of necessary certificates of insurance as otherwise required herein.

(Code 2002, § 4.1109; Ord. No. 558, 9-24-1999)

Secs. 34-128—34-152. Reserved.

ARTICLE V. DRAINAGE CULVERTS

Sec. 34-153. Drainage channel dimensions.

(a) Required flow cross section area will be set by the city engineer in no case to be less than 1.75 square feet cross sectional area.

(b) Required flow area may be obtained:

(1) By the use of one or more parallel round culvert pipes meeting the area requirement set forth in subsection (a) of this section, but no pipe will be acceptable which has an inside diameter of less than 12 inches;

(2) By the use of a bridge with span and footing approved by the city engineer, but in no case may the lowest point of the bridge structure be less than eight inches above the invert of the ditch;

(3) By a dip in the driveway, but only if the invert is less than nine inches below the street edge; or

(4) By any other method which receives the approval of the city engineer.

(c) For approval any such construction must be set based on the invert established by the city engineer.

(d) Culvert size, inverts and installations made on Voss Road and Memorial Drive when performed by the county maintenance department will be approved by the city engineer.

(Code 2002, § 3.901; Ord. No. 34, § 1, 3-5-1956)

Sec. 34-154. Application.

(a) Application for the establishment of the ditch invert and required flow area must be made with application for a building permit.

(b) The fee for establishing the invert and final inspection of the work is on file in the office of the city secretary.
(Code 2002, § 3.902; Ord. No. 34, § II, 3-5-1956; Ord. No. 608, 12-17-2002)

Sec. 34-155. Approval.

(a) The installation will be inspected and acted upon within ten days after notice of completion of the work is given to the city engineer and if not rejected within that time will be automatically approved.

(b) The city building inspector is hereby directed to refuse a certificate of occupancy for any building if the provisions of this article have not been complied with and received the approval of the city engineer.
(Code 2002, § 3.903; Ord. No. 34, § III, 3-5-1956)

Secs. 34-156—34-178. Reserved.

ARTICLE VI. NEWSPAPER VENDING MACHINES

Sec. 34-179. 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.

Newspaper vending machine means a rack, holder or mechanical device used for the exhibition, display and sale of newspapers without a vendor being present at the time of sale.
(Code 2002, § 4.801; Ord. No. 449, § 3, 9-13-1989)

Sec. 34-180. Prohibited locations.

It shall be unlawful for any person to install, construct, locate or place a newspaper vending machine in any of the following locations:

(1) Upon or within eight feet of the paved portion of any public street used or intended for use by vehicular traffic.

(2) Upon or within two feet of the paved or padded portion of any public sidewalk or public hike-and-bike path.

(3) Upon any public street right-of-way within which the paved portion of the public street used or intended for use by vehicular traffic is 36 feet or less in width (excluding curbs) unless:

a. Designated parking places are located along the curbline of such street adjacent to the location of the newspaper vending machine; or

b. Where parking available for use by the general public is located adjacent to or within 50 feet of the newspaper vending machine on the same side of the public street as the newspaper vending machine.

(Code 2002, § 4.802; Ord. No. 449, § 4, 9-13-1989)

Sec. 34-181. Prohibited attachments.

It shall be unlawful for any person to attach by chain, bracket or other means, a newspaper vending machine to any public utility pole or standard or to any pole or standard supporting or being a part of any traffic control sign or device.
(Code 2002, § 4.803; Ord. No. 449, § 5, 9-13-1989)

Sec. 34-182. Identification.

Each newspaper vending machine installed, constructed, located or placed within the city shall have the name, address and telephone number of the owner thereof displayed on the rear of such machine with the lettering not less than one-fourth inch in height. In lieu of display of the name, address and phone number on the rear of such machine, the owner thereof may file such information with the city secretary along with a description of the location of the machine.
(Code 2002, § 4.804; Ord. No. 449, § 6, 9-13-1989)

Sec. 34-183. Penalty for violations.

In addition to any penalty, any newspaper vending machine installed, constructed, located or placed in a location prohibited by this article shall be removed by the city's director of public works if it is determined by such director that such newspaper vending machine interferes with vehicular traffic, causes congestion upon a sidewalk or otherwise constitutes a hazard to vehicular or pedestrian traffic upon a public street or

public sidewalk. Upon such removal, the director of public works shall cause notice thereof to be given to the owner of such newspaper vending machine as soon thereafter as is practical.
(Code 2002, § 4.805; Ord. No. 449, § 8, 9-13-1989)

Secs. 34-184—34-189. Reserved.

ARTICLE VII. INTERSECTION VISIBILITY

Sec. 34-190. Purpose.

The purpose of this article is to promote traffic safety by providing for clear sight lines for vehicle operators approaching street intersection within the city.
(Ord. No. 767, § 1, 1-25-2011)

Sec. 34-191. Visibility triangle defined.

As used in this article, the term "visibility triangle" means, for each corner of an intersection, a triangular horizontal area determined as follows. The two sides of the triangle shall be formed by extending straight lines from the nearest point at which the paved area of the two streets intersect to a point on the edge of each of the intersecting streets that is 25 feet from the point of beginning, if the street is a local street, and 45 feet from the point of beginning, if the street is a major thoroughfare. The base of the triangle shall be formed by extending a straight line to connect the two points forming the open end of the triangle.
(Ord. No. 767, § 1, 1-25-2011)

Sec. 34-192. Visibility window defined.

As used in this article, the term "visibility window" means the vertical space, within a visibility triangle, that is between 30 inches and 84 inches from the surface.
(Ord. No. 767, § 1, 1-25-2011)

Sec. 34-193. Obstruction of visibility prohibited.

It shall be unlawful for any person to place, construct, or maintain any structure, vegetation, or other item within a visibility window.
(Ord. No. 767, § 1, 1-25-2011)

Secs. 34-194—34-199. Reserved.

ARTICLE VIII. PRIVATE SECURITY CAMERAS

Sec. 34-200. Definitions.

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

Building official means the person designated as such from time to time by the city council.

Emergency means a situation where a significant risk of harm to persons or property will occur unless immediate remedial action is taken.

Private security camera means a recording device for capturing images or video that is owned or operated by a private citizen or entity and installed at a specific location, but does not include a handheld or other portable camera.
(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-201. Unauthorized use of public rights-of-way prohibited.

Except as otherwise specifically provided by this article, it shall be unlawful for any person to cause or permit the placement, operation or maintenance of a private security camera within a public right of way, unless authorization has been granted by the city in accordance with this article.
(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-202. Permit and fees required.

A person or entity that desires to place a private security camera within the public right of way of a street within the city must obtain a permit from the building official and pay the applicable fees.
(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-203. Requirements for permit.

In order to obtain a permit to place a private security camera within the public right of way of

a street within the city, the applicant must file a written application with the building official and demonstrate the following:

(a) The applicant either owns the fee in the property underlying the public right of way, or has the written permission of the owner of the underlying fee to place and maintain a private security camera at the desired location;

(b) The placement and maintenance of the private security camera will not create a hazard to vehicular or pedestrian traffic;

(c) The placement and maintenance of the private security camera will not interfere with the use of the public right of way by any public utility or other user authorized by state law;

(d) The applicant has, or will acquire prior to the installation of the private security camera, liability insurance that will cover any claims arising out of the placement or maintenance of the private security camera, with per claim limits of at least $1,000,000.00.

(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-204. Application for permit.

Each application for a permit shall include the following information:

(a) The name and legal status of the applicant;

(b) Proof of ownership of the underlying fee where the private security camera will be located, or; if the applicant does not own the underlying fee, a signed and notarized document from the owner of the underlying fee giving permission for such placement;

(c) The address, telephone number, and e-mail address of the applicant;

(d) If the applicant is a legal entity, the name, address, telephone number, and e-mail address of the person who is authorized to act for the entity with regard to the private security camera;

(e) The name, address, telephone number, and e-mail address of at least one emergency contact; and

(f) A certificate of insurance or other satisfactory proof that the applicant has acquired, or will acquire prior to installation of the private security camera, the required amount of liability insurance coverage.

The applicant shall also pay an application fee in the amount established by separate action of the city council;

(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-205. Conditions of permit.

(a) A permit is valid for a period of five years and must be renewed at least 30 days prior to the date of expiration.

(b) A permit may be revoked at any time if the building official determines that the private security camera no longer meets the requirements for a permit.

(c) As a condition for receiving a permit, the applicant must acknowledge that the rights granted by the permit are subordinate to the rights of public utilities and other users authorized by state law and that the city may require the removal or relocation of a permitted private security camera because of a potential conflict with a public utility or other lawful user of the right of way or as necessary for the safety of vehicles or pedestrians.

(d) The city shall have the right to remove a private security camera, without notice to the permit holder, in the event of an emergency and the city will not be liable for damages or the cost of replacement.

(Ord. No. 832, § 1, 6-24-2014)

Sec. 34-206. Obsolete private security cameras.

A permit holder shall promptly remove a private security camera that is no longer operable or that is no longer being used.

(Ord. No. 832, § 1, 6-24-2014)

Chapter 35

RESERVED

Chapter 36

SUBDIVISIONS AND DIVISIONS OF LAND*

Article I. In General

Article II. Subdivision Regulations

Article III. Minor Boundary Line Adjustments

*__State law reference—__Regulation of subdivision and property development, V.T.C.A., Local Government Code ch. 212.

ARTICLE I. IN GENERAL

Sec. 36-1. Streets and roads, generally.

(a) Every tract or lot created by a division of land must abut a public or private road or street that provides adequate access to the tract or lot for emergency vehicles.

(b) Except for private streets and roads approved as provided below, no street or road shall be permitted or authorized which has an easement or right-of-way of less than 40 feet in width, or which has a hard roadway surface of less than 28 feet, including curbs and gutters, or which does not have curbs, or which does not have gutters or which does not have storm sewers, except when in the opinion of the city engineer storm sewers are unnecessary for adequate drainage; and provided further that no street or road shall be permitted or authorized when the roadway is not centered in the right-of-way or easement.

(c) Before any division of land shall be approved by the planning and zoning commission, it shall first ascertain that the roads or streets provided for thereon allow adequate access to sewers, water lines, public utilities and fire equipment.

(d) No separate lot or tract created by a division of land under this article shall be sold or transferred until all of the roads or streets included on the approved subdivision plat are completed and approved by the city engineer.

(e) No division of land shall be approved by the planning and zoning commission until it is determined by the city engineer that drainage for such proposed division of land is adequate.

(f) The term "division" is here used in its broadest sense, encompassing every instance in which a tract is reduced in size in any way, and includes but is not limited to subdivisions.
(Code 2002, § 10.100; Ord. No. 102, 9-14-1959; Ord. No. 145, 7-10-1961; Ord. No. 765, § 1, 1-25-2011)

Sec. 36-2. Private streets.

(a) A subdivision plat may include private streets if the applicant demonstrates to the approving authority that:

(1) The proposed private streets, and any associated facilities, will provide adequate access for emergency vehicles;

(2) Adequate provisions will be made to assure that the streets and any associated facilities necessary for emergency vehicle access will be maintained in good working order; and

(3) The proposed private streets will not be detrimental to public health and welfare.

(b) The area of a lot that is burdened by a private street access easement shall not be included in calculating whether the lot meets the minimum lot size requirement and, all measurements for applying any minimum yard or setback requirements shall be made from the closest edge of the private street access easement.

(c) A subdivision plat that includes private streets must include a regulatory access easement granting to the federal, state, and local government the right to use the private streets for any lawful governmental regulatory function, including without limitation, the provision of fire and police protection, building regulation and inspection, and enforcement of laws and regulations.

(d) A subdivision plat that includes private streets must be approved by both the planning and zoning commission and the city council.
(Ord. No. 765, § 1, 1-25-2011)

Secs. 36-3—36-20. Reserved.

ARTICLE II. SUBDIVISION REGULATIONS

Sec. 36-21. Purpose.

The purpose of this article is to provide for the orderly, safe, and healthful development within the city and to promote the health, safety, morals and general welfare of the community.
(Code 2002, § 10.200(1); Ord. No. 349, § 1, 8-19-1980)

Sec. 36-22. 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:

Final plat means the map, drawing or chart on which a subdivider's plan of subdivision is presented in final recordable form as approved by the planning and zoning commission.

Flag or key shaped lot means a lot having gross disparities in width between size lot lines, sometimes resembling a flag on a flag pole, a key or some other lot shape of comparable irregularity.

Natural channel means a discernible natural water drainage channel of discrete width as opposed to general puddling over a substantially uniform surface.

Preliminary plat means the map, drawing or chart on which a subdivider's plan of subdivision is initially presented to the planning and zoning commission.

Subdivider or developer means a person or corporation who proposes to subdivide a tract of land within the corporate limits of the city.

Subdivision means a division of any tract of land situated within the corporate limits of the city, 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, and which may or may not include streets, alleys or other portions intended for public use or the use by purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" includes resubdivision.

Definitions not expressly prescribed herein are to be construed in accordance with customary usage in municipal planning and engineering practices or as set out in the zoning chapter of the city.
(Code 2002, § 10.200(2); Ord. No. 349, § 2, 8-19-1980; Ord. No. 448, § 2, 9-13-1989)

Sec. 36-23. Special provisions.

(a) No building, repair, plumbing or electrical permit shall be issued by the city for any structure on a lot after the effective date of the ordinance from which this article is derived, unless a final plat has been approved pursuant to the provisions hereof and filed for record, and the provisions of section 36-29 have been complied with in full.

(b) It is specifically provided, however, the provisions of this chapter shall not be construed to prohibit the issuance of permits for any lot upon which a residence building exists and was in existence prior to passage of the ordinance from which this chapter is derived, the last recorded conveyance of which prior to passage of the ordinance from which this chapter is derived was by metes and bounds or for any lot in a subdivision, validly recorded in accordance with applicable law prior to the passage of the ordinance from which this chapter is derived or for any lot in an unrecorded subdivision which was owned as a separate parcel prior to March 25, 1955, the date of adoption of the city's first zoning ordinance.

(c) *Exception—Joinder by amending plat.* An application for an amending plat may be filed where a single owner owns two or more adjoining lots or tracts of land, or portions thereof, within the city, and intends to treat them as one lot or tract. All conditions below must be satisfied in order to be eligible:

1. The lots, or portions thereof, must be under common ownership, and must be described on the application for amending the plat;
2. The amendment does not attempt to remove recorded covenants or restrictions;
3. The amendment does not increase the number of lots; and
4. The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

Application for an amending plat shall be submitted on a form provided by the city, and all documents must be prepared in accordance with this chapter for final plats. The amending plat shall show, on its face, the original name of the subdivision, and the original lots and blocks affected by the amendment, and be titled "Amend-

ing Plat." Signature approval blocks shall be provided for the building official and the city secretary/administrator.

Administrative approval authorized. Upon submittal of all required forms and fees, the amending plat will be reviewed by city staff. The city building official and city secretary/ administrator are authorized to administratively approve an amending plat as described in this section, provided all requirements of this section and all applicable regulations of the city are met. Such approval shall be noted on the face of the amending plat by signature and date in the approval blocks provided. Review and recording of amending plats shall be in accordance with the procedures set forth for final plats in this chapter.

In the event of any discrepancy with the term of any city regulation, or issue regarding the proposed amending plat on the part of the building official or city secretary/administrator, the amending plat will be forwarded for review and approval as a final plat by the commission and council.
(Code 2002, § 10.200(3); Ord. No. 349, § 3 8-19-1980; Ord. No. 818, § 1, 12-10-2013)

Sec. 36-24. Preliminary plat and accompanying data.

(a) *Preliminary conference.* Prior to the official filing of a preliminary plat, the subdivider, his planner; or other appropriate representative should consult with city staff for comments and advice on the procedures, specifications, and standards required by the city as conditions for subdivision plat approval.

(b) *Applications.* There shall be filed with the city secretary at least 30 days prior to the next regular meeting of the commission, not less than ten legible prints of the preliminary plat, together with the following:

(1) A written application for preliminary approval of such plat signed by the subdivider (accompanied by a letter signed by the owner or owners of the lands affected by the preliminary plat, if other than the subdivider) stating that such owner or owners request approval of such plat; and

(2) A statement from either an attorney or from a title company stating that upon the basis of a certificate of title issued by a title company or a land abstract company doing business in the county, with respect to those instruments of record relating to the lands affected by the preliminary plat, the application referred to in subsection (b)(1) of this section has been executed or joined in, as the case may be, by the one or more persons, firms or corporations which appear to be the apparent current owner or owners of record of the lands affected by the preliminary plat. Such statement shall be based upon a certificate dated as of a date not earlier than 30 days preceding the date of filing of the preliminary plat.

(c) *Presentment of application.* The application for preliminary plat approval filed with the city secretary pursuant to subsection (b) of this section shall be submitted by the subdivider at an official meeting of the commission.

(d) *Form and content.* The plat shall show the following:

(1) Name and address of the subdivider and record owner of the parcel to be subdivided.

(2) Proposed name of the subdivision, which shall not have the same spelling as or be pronounced similar to the name of any other subdivision located within the county.

(3) Description by metes and bounds of the subdivision.

(4) Subdivision boundary lines indicated by heavy lines, lot lines and the computed acreage of the subdivision and each lot in such subdivision.

(5) Date of preparation, scale of plat and north arrow.

(6) A number or letter to identify each lot or site.

(7) Front building setback lines on all lots and sites; side yard building setback lines on corner lots, if applicable.

(8) Proposed easements for drainage, public utility easements and streets, both public and private.

(e) *Processing of preliminary plat*.

(1) The commission shall check the preliminary plat as to its conformity with the master plan, major street plan, land use plan, zoning districts, zoning chapter and this chapter.

(2) Within 30 days after the preliminary plat is formally filed, the commission shall approve or disapprove such plat or conditionally approve it with modifications. Upon request of an owner of an affected tract, the commission shall certify the reasons for the action taken on an application.

(3) Conditional approval of a preliminary plat by the commission shall be deemed an expression of approval of the layout submitted on the preliminary plat as a guide to the approval of the layout of streets, water, sewer and other required improvements and utilities and to the preparation of the final or record plat.

(4) Conditional approval of preliminary plat shall be effective for six months unless reviewed by the commission in the light of new or significant information which would necessitate a revision of the preliminary plat. If, prior to approval of the final plat, the commission determines that changes are necessary in such preliminary plat, it shall inform the subdivider in writing of the necessary changes in such preliminary plat to bring it into conformity with this article.

(5) Conditional approval of a preliminary plat shall not constitute automatic approval of the final plat.

(Code 2002, § 10.200(4); Ord. No. 349, § 4, 8-19-1980; Ord. No. 447, § 1, 9-13-1989; Ord. No. 663, §§ 1—3, 3-21-2006; Ord. No. 818, § 2, 12-10-2013)

Sec. 36-25. Final plat.

(a) *Form and content*.

(1) The final plat and accompanying data shall conform to the preliminary plat and other required data as conditionally approved by the commission, incorporating any and all changes, modifications, alterations, corrections and conditions as set out in the letter of preliminary approval from the commission and must show easements for all utilities and drainage.

(2) The plat shall be drawn at a scale as approved by the planning commission.

(3) Final plat applications shall be filed with the city secretary at least 30 days prior to the next regular meeting of the commission along with not less than ten legible prints of the final plat. The final plat shall contain all of the features required for preliminary plats.

(4) In addition to the above-stated requirements for the preliminary plat, the final plat together with a full set of engineering drawings and specifications shall provide the following information:

a. The exact location, dimensions, name and description of all streets, alleys, reservations, easements or other rights-of-way within the subdivision, intersecting or contiguous with its boundary or forming such boundary with accurate dimensions, bearing or deflecting angles and radii, area and central angle, degree of curvature, tangent distance and length of all curves where appropriate.

b. The exact location, dimension, name and description of all proposed public and private streets, alleys, drainage structures, parks, other public areas, reservations, easements or other rights-of-way, blocks, lots and other sites within the subdivision with accurate dimensions, bearing or deflecting angles with radii, area and central angles, degree of curvature, tangent distance and length of all curves where appropriate.

c. The designated street address for each lot.

d. Names of contiguous subdivisions and indicate unsubdivided land and an indication of whether or not contiguous properties are platted.

e. Primary control points or descriptions, and ties to such control points to which all dimensions, angles, bearings and block numbers and similar data shall be referred.

f. The location, dimensions, description and flow line of existing watercourses and drainage structures within the subdivision or on contiguous tracts.

g. Topographic information which shall include contours at such intervals as are satisfactory to the city engineer.

h. A key map showing the location of the tract in the city.

(5) When filed with the planning and zoning commission, the final plat shall be accompanied by drawings showing the following site improvement data:

a. Streets, alleys, sidewalks, hike and bike paths, cross walkways and monuments together with two copies of plans and profiles of all streets, alleys, sidewalks, hike and bike paths, cross walkways and monuments.

b. Sanitary sewers. Two copies of the proposed plat, showing the proposed locations and dimensions of sanitary sewer lines shall be provided together with two copies of plans and profiles of proposed sanitary sewer lines, indicating depths and grades of lines.

c. Water lines. Two copies of the proposed plat showing contours and the location and the size of water lines and fire hydrants shall be provided, together with two copies of plans and profiles of all proposed water lines and fire hydrants, showing size, depths and grades of the lines.

d. Storm drainage. Two copies of the proposed plat, indicating one foot contours shall be furnished. All street widths and grades and all drainage easements shall be indicated on the plat, runoff figures (based on a precipitation rate of one inch per hour) shall be indicated on the outlet and inlet side of all drainage ditches and storm sewers, and all points in the streets at changes of grade or where the water enters another street or storm sewer or drainage ditch together with calculations showing the anticipated stormwater flow from such subdivision.

(6) All plans and engineering calculations shall bear the seal and signature of a registered professional engineer.

(7) The final plat shall also include the following:

a. A dedication, unless an exception to this requirement is granted by resolution of the city council, to the city, for the use of the persons living in its boundaries forever of all streets, alleys, easements, culverts and bridges and other public ways delineated on such plat, which shall be the same as those shown on the preliminary plat, signed and acknowledged before a notary public by the owner and lienholder, if any, of the land and a complete and accurate description of the land subdivided. (Dedication and acknowledgment to be in current form as required by the county clerk for recording in the map records of the county.) Private streets, as approved by city council, shall be indicated on the recorded plat giving the resolution number so allowing or approving.

b. A statement prepared for the signature of the chairman and the secretary of the planning and zoning commission stating that the final plat has been approved by such commission.

c. The certification of the surveyor responsible for surveying the subdivision area, attesting to its accuracy.

d. A certification by the engineer responsible for the preparation of the final plat and supporting data, attesting to its accuracy.

(8) The developer shall obtain a letter from each public and private utility stating that utility easements are adequate to accommodate all public and private utilities, which shall accompany the proposed final plat.

(b) *Processing of final plat*.

(1) As soon as practical after the subdivider is notified of the approval of the preliminary plat, he or his engineer shall submit to the commission the final plat of the subdivision or portion thereof to be considered at an official meeting of such commission.

(2) No final plat will be considered unless a preliminary plat has been submitted and conditionally approved.

(3) A final plat of an approved preliminary plat or a portion thereof shall be submitted to the commission within six months of the date of approval of the preliminary plat, otherwise the preliminary plat approval of the commission shall become null and void unless an extension of time is applied for and granted by the commission.

(4) Within 30 days after the final plat is formally filed, the commission shall approve or disapprove such plat or conditionally approve it with modifications. Upon request of an owner of an affected tract, the commission shall certify the reasons for the action taken on an application.

(c) *Title report*. A current title report, statement or opinion, title policy or certificate or letter from a title company authorized to do business in the state or an attorney licensed as such in the state must be provided, certifying that within 30 days prior to the time the final plat is furnished to the commission for recording, a search of the appropriate records was performed covering the land proposed to be platted and providing the following information concerning the title to such land:

(1) The date of the examination of the records;

(2) A legal description of the property lying within the proposed subdivision including a metes and bounds description of the boundaries of such land;

(3) The name of the record owner of fee simple title as of the date of the examination of the records, together with the recording information of the instruments whereby such owner acquired fee simple title;

(4) The names of all lienholders together with the recording information and date of the instruments by which such lienholders acquired their interests;

(5) A description of the type and boundaries of all easements and fee strips not owned by the subdivider of the property in question together with the recording information and date of the instruments whereby the owner of such easements or fee strips acquired their title; and

(6) Certification stating that all current city, county, school, special district or other governmental entity taxes due and payable have been paid or a tax certificate from the city, county, schools, special district or other governmental entity in which the land being platted is located showing no delinquent taxes are due on the property being platted.

(Code 2002, § 10.200(5); Ord. No. 349, § 5, 8-19-1980; Ord. No. 447, § 2, 9-13-1989; Ord. No. 663, §§ 4, 5, 3-21-2006)

Sec. 36-26. Additional notice and hearing requirements for certain replats.

If a public hearing is required to be held by V.T.C.A., Local Government Code ch. 212 on a replat, unless otherwise required by V.T.C.A., Local Government Code ch. 212, only one public hearing shall be held and it shall be held at the

time the preliminary plat of the replat is submitted to the commission for approval. Notice of such public hearing shall be given in the manner required by such V.T.C.A., Local Government Code ch. 212.
(Code 2002, § 5.1; Ord. No. 663, § 6, 3-21-2006)

Sec. 36-27. Fees.

An application for preliminary or final plat approval shall be accompanied by a nonrefundable application fee in the amount as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary.
(Code 2002, § 10.200(6); Ord. No. 649, § 1, 9-20-2005)

Sec. 36-28. Standards and specifications.

(a) *Streets*.

(1) *Layout.* In any subdivision, the subdivider shall provide streets in conformity with the requirements of this chapter and any other ordinance of the city. Adequate streets shall be provided by the subdivider and the arrangement, character, extent, width, grade and location of each shall conform to the comprehensive plan of the city and shall be considered in relation to existing and planned streets, topographical conditions, public safety and convenience, and in its appropriate relationship to the proposed uses of land to be served by such streets. A street layout shall be devised for the most advantageous development of the entire neighborhood.

(2) *Relation to adjoining street system.* Where necessary, as may be determined by the commission, existing or proposed streets in areas adjoining the proposed subdivision shall be continued.

(3) *Lots situated along Memorial Drive, Voss Road or Bingle Road.* The commission shall permit a subdivision containing lots with a rear lot line along Memorial Drive, Voss Road or Bingle Road; provided that the back yards of such lots shall be at least 25 feet deep and a wall seven feet high shall be required along the rear or side lot line where the rear or side lot line is contiguous to Voss Road, Memorial Drive or Bingle Road, such wall to be completed prior to construction of any residence on such lot. The wall shall be constructed of brick or stone as specified by such developer with common construction material for all lots, and such requirement shall become a condition precedent to other construction on such lot or lots.

(4) *Minimum street frontage.* Each lot in a new subdivision shall have direct frontage of at least 70 feet on a new or existing dedicated street or private street if approved by the city council, meeting the requirements of this chapter; provided, however, that any lot of which all or a part of the frontage is on the arc of a turn circle which is part of a street, shall be deemed to meet the requirements of this subsection, if such frontage is 37 feet or more.

(5) *Additional requirements for turn circles*. Each lot fronting on a turn circle shall be platted to have straight lines as that portion of the side lot line located between the front building line and the street right-of-way line unless an exception to this requirement is approved by the commission.

(6) *Rights-of-way and pavement widths.* The following requirements shall be met.

(i) Street rights-of-way shall be a minimum of 40 feet in width.

(ii) Turn circles shall have a minimum radius measured from the center to the lot lines of not less than 35 feet.

(iii) Pavement widths for public streets shall be a minimum of 28 feet on straight streets and for private streets shall be a minimum of 24 feet on straight streets.

(iv) Pavement for public and private streets must comply with standards approved by the city council.

(7) *Signs.* Street signs shall be installed by the subdivider at all intersections within

or abutting the subdivision. Such signs shall be of a type approved by the city and shall be installed in accordance with standards of the Manual for Uniform Traffic Control Devices, adopted and approved by the state department of public safety.

(8) *Flag or key-shaped lots.* Flag or key shaped lots are prohibited.

(b) *Water supply and distribution.* All subdivisions shall be provided with approved water supply, water distribution systems and fire hydrants meeting the requirements of the water authority serving the subdivision.

(c) *Sewers*. All subdivisions shall be provided with an approved sewage system meeting the requirements of the water authority serving the subdivision.

(d) *Monuments.* Concrete, or approved equal monuments, six inches in diameter and 24 inches long, shall be placed at all major corners of boundary lines, curve points, angle points and block corners unless otherwise approved in writing by the city engineer. A copper pin, or approved equal one-fourth inch in diameter embedded at least three inches in the monument shall be put in the monument at the exact intersection point. Any such monument shall be set at such an elevation that it will not be disturbed during construction and the top of the monument shall be approximately flush with the natural ground after contemplated improvements are completed.

(e) *Drainage*.

(1) *Easement.* Where a subdivision is traversed by a watercourse, drainageway, natural channel or stream, there shall be provided an easement or right-of-way conforming substantially to the limit of such watercourse, plus additional width to accommodate projected future runoff as determined by the commission.

(2) *Drainage facilities.* Drainage facilities shall be installed sufficient to drain all lots in the subdivision and the sufficiency of such facilities shall be approved by the commission.

(f) *Hike and bike trails.* Easements for hike and bike trails and construction thereof will be provided as required by the commission in accordance with the hike and bike master plan as approved by the city council.
(Code 2002, § 10.200(7); Ord. No. 349, § 7, 8-19-1980; Ord. No. 448, § 3, 9-13-1989; Ord. No. 765, § 2, 1-25-2011; Ord. No 808, § 1, 1-22-2013)

Sec. 36-29. Responsibilities of the subdivider.

The subdivider, at his expense, shall construct all streets, alleys, culverts and bridges, drainage facilities, water lines, sewer lines and hike and bike paths within the subdivided property all in accordance with the specifications as approved by the city, and upon the acceptance by the city, the same shall become the property of the city or other governmental body having control thereof unless otherwise provided herein. Before starting clearing or any construction within a proposed subdivision or a platted subdivision, the developer must obtain a subdivision construction permit from the city building official. The city building official shall not issue a subdivision construction permit until a final plat is approved by the commission and recorded in the map records of the county.
(Code 2002, § 10.200(8); Ord. No. 349, § 8, 8-19-1980)

Sec. 36-30. Requirements for permit issuance.

When the subdivision is completed and a satisfactory report has been received by the city engineer from the developer's engineer stating that all work has been completed in accordance with the approved plat, plans and specifications, and the water and sewer facilities have been approved by the water authority and the city engineer has made a satisfactory final inspection ascertaining that all work, cleanup and requirements of the commission has been completed, the city engineer will, by letter, authorize the city building inspector to issue permits for buildings in such subdivision. However, after filing the plat and before any building permit may be issued, the developer must deliver to the city engineer three

full size prints of the plat, one 105mm Micromaster and a black line print at a scale of 200 feet per inch.
(Code 2002, § 10.200(9); Ord. No. 349, § 9, 8-19-1980)

Sec. 36-31. Liability of city to furnish improvements.

The acceptance of a final plat by the city does not in any manner obligate the city to finance or furnish any storm sewers, drainage structures, street, water, sewer improvements or any other items or improvements whatsoever.
(Code 2002, § 10.200(10); Ord. No. 349, § 10, 8-19-1980)

Sec. 36-32. Recording of approved plat required.

The approval of a final plat of a subdivision by the commission shall be invalid unless the approved plat of such subdivision is recorded in the office of the county clerk within 30 days after the date of its final approval by the city.
(Code 2002, § 10.200(11); Ord. No. 349, § 11, 8-19-1980)

Secs. 36-33—36-50. Reserved.

ARTICLE III. MINOR BOUNDARY LINE ADJUSTMENTS

Sec. 36-51. Generally.

The commission may approve a plat providing for an adjustment of the boundaries between two existing lots located in the district R single-family district as provided in this article.
(Ord. No. 773, § 1, 5-24-2011)

Sec. 36-52. Conditions required for approval.

The commission shall approve a plat providing for an adjustment of the boundaries between two existing lots if the applicants for approval of the plat demonstrate the following:

(a) The proposed boundary line adjustment will not amend or remove any existing covenants or restrictions that apply to either of the lots;

(b) The proposed boundary line adjustment will not have the effect of amending, removing, or violating any existing public utility easements without the consent of the affected utility companies;

(c) The proposed boundary line adjustment will not cause either of the lots, or any existing structures on the lots, to violate the city's zoning regulations or other ordinances; and

(d) If one or more of the lots, or the structures on those lots, are not in conformance with the requirements of the city's zoning regulations prior to the adjustment, the applicants must demonstrate that, considering the purpose and intent of the relevant zoning regulations or other ordinances, the overall effect of the boundary line adjustment is to reduce the collective nonconformity of the two lots and further the goals of the zoning regulations or other regulations.

(Ord. No. 773, § 1, 5-24-2011)

Sec. 36-53. Application.

The owners of the lots for which a boundary line adjustment is proposed must file a written application with the commission for approval of the proposed adjustment. The application must be signed by, or on behalf of, the owners of both lots and must include the following information and attachments:

(a) Current title reports or other satisfactory proof that the applicants are the owners of the lots, or are authorized to act on the owners' behalf;

(b) A plat or map showing the existing boundaries of the two lots and the locations of any structures on the lots:

(c) A plat or map showing the proposed new boundaries of the two lots and the locations of any structures on the lots;

(d) A written explanation of the reason for the proposed boundary line adjustment;

(e) A signed and sworn statement by the applicants that:

(1) they have reviewed any applicable covenants or restrictions and that the proposed boundary line adjustment will not amend or remove any existing covenants or restrictions that apply to either of the lots; and

(2) they have reviewed the existing utility easements effecting the lots and have determined that the proposed boundary line adjustment will not have the effect of amending, removing, or violating any existing public utility easements, or that they have obtained the written consent of the affected utility companies;

(f) If applicable, a copy of any written consents from utility company; and

(g) Payment of the applicable fee.

(Ord. No. 773, § 1, 5-24-2011)

Section 36-54. Notice and hearing.

(a) The commission shall consider an application for approval of a boundary line adjustment after conducting a public hearing for the purpose of receiving information from the applicants, the city staff, and interested members of the public.

(b) Notice of the subject, time and date, and place of the hearing shall be given in accordance with the requirements of Section 212.015 of the Texas Local Government Code.

(Ord. No. 773, § 1, 5-24-2011)

Chapter 37

RESERVED

Chapter 38

TAXATION*

*__State law references—__V.T.C.A., Tax Code ch. 1 et seq.; finances, V.T.C.A., Local Government Code ch. 101 et seq.

Sec. 38-1. Elderly homestead exemption.

From and after January 1, 1978, $10,000.00 of the assessed taxable value of all residence homesteads of persons 65 years of age or older shall be exempt from all ad valorem taxes levied by the city.

(Code 2002, § 11.100; Ord. No. 304, §§ 1—2, 8-16-1977)

State law reference—Residence homestead tax exemptions, V.T.C.A., Tax Code § 11.13.

Sec. 38-2. Freeport goods.

Personal property temporarily located within the state that would otherwise be exempt from ad valorem taxation under the provisions of Tex. Const. art. VIII, §§ l-j, shall be taxable by the city and shall be subject to an annual ad valorem tax levy by the city.

(Code 2002, § 11.200; Ord. No. 453, § 2, 12-19-1989)

Sec. 38-3. Gas and electricity for residential use.

The city, by majority vote of its city council, hereby votes to retain the taxes authorized by the Local Sales and Use Tax Act (Vernon's Ann. Civ. St. art. 1066c) on the receipts from the sale, production, distribution, lease or rental of, and the use, storage or other consumption of gas and electricity for residential use, as authorized by V.T.C.A., Tax Code § 321.101.

(Code 2002, § 11.300; Ord. No. 329, § 1, 4-17-1979)

State law reference—Authority of municipality to impose tax on sales of gas and electricity, V.T.C.A., Tax Code § 321.103.

Sec. 38-4. Telecommunications services.

(a) A tax is hereby authorized on all telecommunications services sold within the city. For purposes of this article, the sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other communication originates. If the point of origin cannot be determined, the sale is consummated at the address to which the call or other communication is billed.

(b) The application of the exemption provided for in V.T.C.A., Tax Code § 321.210 is hereby repealed by the city, as authorized by section 4B(b) thereof.

(c) The rate of tax imposed by this article shall be the same as the rate imposed by the city, for all other local sales and use taxes as authorized by the legislature of the state.

(Code 2002, § 11.400; Ord. No. 421, § 1, 5-19-1987)

State law reference—Authority of municipality to impose tax on the sale of telecommunications services, V.T.C.A., Tax Code § 321.210.

Chapter 39

RESERVED

Chapter 40

TRAFFIC AND VEHICLES*

Article I. In General

Article II. Truck Traffic

Article III. Stopping, Standing and Parking

Article IV. Use of Golf Carts on Public Streets and Roads

*__State law reference—__V.T.C.A., Transportation Code ch. 1 et seq.

ARTICLE I. IN GENERAL

Sec. 40-1. Traffic administration.

(a) *Responsibility and authority of city council*. The city council or its duly designated representative shall have the general responsibility and authority to determine the installation and proper timing and maintenance of traffic control devices, to conduct engineering analyses of traffic accidents and to devise remedial measures, to conduct engineering investigations of traffic conditions, to plan the operation of traffic on the streets and highways of the city and to cooperate with other governmental officials in the development of ways and means to improve traffic conditions.

(b) *Emergency and experimental regulations.* The city council or its duly designated representative is hereby empowered to make regulations necessary to make effective the provisions of the traffic ordinances of this city and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. No such temporary or emergency regulation shall remain in effect for more than 60 days. The city council or its duly designated representative may test traffic control devices under actual conditions of traffic.

(c) *Presumptions*. It shall be initially presumed that each and every traffic control device, signal, sign, marker or marking heretofore or hereafter erected by the city council or its duly authorized representative has been installed pursuant to its or his observations and studies, based on generally used and accepted traffic control principles and techniques.
(Code 2002, § 12.101; Ord. No. 328, art. I, 2-20-1979)

Sec. 40-2. Enforcement and obedience to traffic regulations.

(a) *Authority of police and fire department personnel.* It shall be the duty of the officers of the police department (Memorial Villages Police Department) or such officers as are assigned by the chief of police to enforce all traffic laws of this city and of the state.

(1) Officers of such police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws; provided however, in the event of fire or other emergency or to expedite the flow of traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(2) Officers of the fire department (Memorial Villages Fire Department), when at the scene of a fire, may direct or assist the police in directing traffic at such scene or in the immediate vicinity thereof.

(b) *Required obedience to traffic chapter*. It shall be unlawful and a misdemeanor for any person to do any act forbidden by or fail to perform any act required by this article or to fail to comply with the command, direction or limit of any traffic control device, signal, sign, marker or marking erected or maintained by the city pursuant to the provisions of this article.

(c) *Obedience to police and fire department personnel.* It shall be unlawful for any person to willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department official given pursuant to authority granted by ordinance of this city or the laws of this state.

(d) *Arrest without warrant.* Any officer of the police department shall have the power and is hereby authorized to arrest, without warrant of arrest being first issued, any person who violates any provision of the traffic ordinances of this city or of the state motor vehicle laws applicable within the city limits, provided such violation occurs within the presence or view of such arresting officer, and further provided that state law does not require the officer to issue written notice to appear in lieu of arrest.
(Code 2002, § 12.102; Ord. No. 328, art. II, 2-20-1979)

Sec. 40-3. Traffic control devices.

(a) *Specifications for traffic control devices.* As far as practicable, all traffic control devices shall be uniform as to type and location throughout the city. All traffic control devices erected and not

inconsistent with the provisions of this article and the laws of this state shall be official traffic control devices.

(b) *Official traffic control devices, presumption of legality.* Whenever official traffic control devices are placed in position pursuant to the provisions of or in the manner authorized by this article, such devices shall be presumed to have been placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence. Any official traffic control device thus placed in position and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this article, unless the contrary shall be established by competent evidence.

(c) *Existing traffic control devices ratified and codified.* Any and all traffic control devices, signs, signals, marks and marking heretofore placed or erected by the city council or other officer, employee, agent or contractor of the city and now in use for the purpose of regulating, warning, directing or guiding traffic or pedestrians are hereby approved, affirmed, ratified and confirmed as official traffic control devices of the city; provided that such traffic control devices are not inconsistent with the provisions of this article or the laws of this state.
(Code 2002, § 12.103; Ord. No. 328, art. III, 2-20-1979)

Sec. 40-4. Speed regulations.

(a) *State speed laws applicable*. No person shall drive a vehicle on a public street or highway at a speed greater than is reasonable and prudent under the circumstances then existing. Except as altered by subsection (b) of this section, the maximum prima facie speed limits on public streets and highways within the city shall be those established by the laws of the state. Any speed in excess of the limits specified in this section shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(b) *Altered speed limits.* Based upon an engineering and traffic investigation, the city council hereby determines that the maximum prima facie speed limits established by the laws of the state should be, and they are hereby, altered as follows:

(1) Memorial Drive: 35 miles per hour.

(2) Voss Road; 35 miles per hour.

(3) School zones:

a. Along Beinhorn Road from a point 200 feet west of its intersection with Wade Hampton Drive to a point 150 feet east of its intersection with Flint River Drive, 20 miles per hour when school zone flashing beacons are in place and flashing warning lights.

b. Along Wade Hampton Drive from its intersection with Beinhorn Road to its intersection with the north right-of-way of 12 Oaks Drive, 20 miles per hour between the hours of 7:00 a.m. and 9:00 a.m. and 2:00 p.m. and 4:00 p.m., Monday through Friday, except on school holidays, when signs are in place giving notice of such speed limit.

c. Along Flint River Drive from its intersection with Beinhorn Road to the north right-of-way of 12 Oaks Drive, 20 miles per hour between the hours of 7:00 a.m. and 9:00 a.m. and 2:00 p.m. and 4:00 p.m., Monday through Friday, except on school holidays, when signs are in place giving notice of such speed limit.

(4) Those portions of the service roads of Interstate 10 that are located within the city's boundaries: 45 miles per hour.

(c) *Speeds unlawful when signs in place.* When signs are in place giving notice thereof, any speed in excess of the limits specified in this section shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(d) *Twenty-five miles per hour speed limits on certain streets.*

(1) A prima facie maximum speed limit of 25 miles per hour is established for the following streets within the City of Hunters Creek Village:

a. Saddlewood Lane;

b. Thamer Lane;

c. Thamer Court;

d. Hunterwood Drive:

e. Hunters Trail Street.

(2) No person shall drive a vehicle on any of the streets designated above at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, and any speed in excess of 25 miles per hour on those streets shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(3) City staff shall cause speed limit signs to be erected along the designated streets specifying a speed limit of 25 miles per hour.

(Code 2002, § 12.104; Ord. No. 398, §§ 1—3, 5-22-1985; Ord. No. 408, art. IV, 4-15-1986; Ord. No. 612, 4-15-2003; Ord. No. 736, § 3, 3-24-2009; Ord. No. 797, § 3, 5-22-2012)

Sec. 40-5. General authority.

(a) *Turns, crosswalks, yield, parking and weight limits.* The city council or its duly designated representative shall have authority to designate and maintain by appropriate devices, marks or lines upon the surface of the streets, crosswalks for pedestrians and traffic lanes for vehicles and to place and maintain traffic control devices or signs altering the normal course for turns, restricting or prohibiting turns, making streets and alleys one-way, restricting or prohibiting the direction of movement on streets during certain periods of time, providing for vehicular traffic to stop or yield, to regulate, restrict or prohibit parking, to designate and regulate loading zones and to establish gross weight limits.

(b) *Traffic control devices, signals, etc.* The traffic control devices, signals, signs or markings used to effect such traffic controls shall indicate the activity, speed or travel restricted, regulated, permitted or prohibited and, where applicable, the hours of the day during which the same are in effect.

(Code 2002, § 12.105; Ord. No. 328, art. V, 2-20-1979)

Sec. 40-6. Dig out or tire squeal prohibited.

The driver of a motor vehicle shall not dig out or cause tire squeal. For the purpose of this section, the term "dig out" shall mean "tire squeal." The term "tire squeal" means the sound produced by the friction of a motor vehicle tire turning against dry pavement under sudden acceleration of the vehicle to which such tire or tires are mounted, such tire or tires then turning at a rate of revolution disproportionately greater than the length of distance then traveled on such pavement by such vehicle. Skid marks or tire marks left by such tire or tires upon the pavement, or smoke produced by such revolution, shall constitute prima facie evidence of such disproportionate revolution.

(Code 2002, § 12.106)

Sec. 40-7. Obstructions of view of traffic by trees or shrubs.

Trees, shrubs, bushes, plants, grass or weeds growing on or over the right-of-way of streets at or near intersections in such a manner as to obstruct the view of approaching traffic from the right or left are hereby declared to be an immediate and substantial hazard to public safety and a public nuisance. Any duly designated officer, employee or contractor of the city is authorized to remove the same or as much thereof as is reasonably necessary, as the case may be, without notice in order to restore unobstructed approaches to such intersection.

(Code 2002, § 12.107)

Sec. 40-8. Authorized emergency vehicles.

The provision of this article regulating the movement, parking and standing of vehicles shall not apply to fire department or police department vehicles or to ambulances, while the driver of such vehicle is operating the same in an emergency in the necessary performance of public duties. However, this exemption shall not protect the driver of any such vehicle from the consequences of a reckless disregard for the safety or property of others.

(Code 2002, § 12.108; Ord. No. 328, art. VI, 2-20-1979)

Sec. 40-9. Bicycle paths.

(a) Wherever a useable path for bicycles has been provided adjacent to a public street, bicycle riders shall use such path and shall not use the public street.

(b) The city engineer is directed to post signs giving notice of the requirements hereof.

(c) No person shall use or operate a motor vehicle or ride a horse or pony, upon the pathway and bikeway system, or any portion thereof, as shown by the map or plat which is attached hereto and incorporated as a part hereof, and as it may be revised from time to time by the city council; provided however, that this prohibition shall not apply to the public and private streets comprising a part of the pathway and bikeway system.
(Code 2002, § 12.400; Ord. No. 236, 8-17-1970; Ord. No. 422, §§ 1, 2, 7-30-1987)

Secs. 40-10—40-36. Reserved.

ARTICLE II. TRUCK TRAFFIC

Sec. 40-37. Prohibited routes.

It shall be unlawful for any person, firm or corporation to drive, operate or cause to be operated a truck having more than two axles upon Voss Road or Memorial Drive within the residential area of the city; provided however, that this regulation shall not apply when such truck is en route to, or en route from a destination within any of the Cities of Hunters Creek Village, Piney Point Village or Bunker Hill Village, making a pickup or delivery or rendering some requested service at premises within any of the such three cities; and this regulation shall not apply to recreational vehicles.
(Code 2002, § 12.201; Ord. No. 319, 6-20-1978)

Sec. 40-38. Definitions.

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

Residential area means the area within single-family dwelling district A, more fully defined and described on the official zoning map of the city.

Truck refers to every vehicle designed, used or maintained primarily for the transportation of property. It includes truck tractors and semitrailers, all axles of which shall be counted for purposes of this article.
(Code 2002, § 12.202; Ord. No. 319, 6-20-1978)

Sec. 40-39. Signs.

The city building official is hereby authorized to place official signs prohibiting the unlawful operation of such heavy trucks as described in section 40-37, upon Voss Road, Memorial and Bingle Road and in residential areas within the corporate limits of the city.
(Code 2002, § 12.204; Ord. No. 319, 6-20-1978)

Secs. 40-40—40-66. Reserved.

ARTICLE III. STOPPING, STANDING AND PARKING*

Sec. 40-67. On rights-of-way.

It shall be unlawful for any person to stop, stand or park a motor vehicle on an esplanade or grassy or landscaped portion of the right-of-way of a public street when signs are duly erected giving notice thereof.
(Code 2002, § 12.501; Ord. No. 407, § 1, 4-15-1986)

Sec. 40-68. On Hickory Hollow.

(a) It shall be unlawful for any person, having registered in his name or owning or operating or having charge of any vehicle, knowingly to allow or suffer or permit the same to be parked or left standing upon Hickory Hollow south of its intersection with the Interstate 10 eastbound access road for a distance of 475 feet on the northbound side and for a distance of 340 feet on the southbound side, and such portion of Hickory Hollow is hereby designated as a "No Parking-Tow Away Zone."

(b) When any person is charged with having parked or left standing a vehicle in the "No Parking-Tow Away Zone" designated in subsection (a) of this section, proof that the vehicle was

*__State law reference—__Authority to regulate parking, V.T.C.A., Transportation Code § 542.202(2).

at the date of the offense alleged owned by the person charged with the offense shall constitute prima facie evidence that the vehicle was parked

or left standing at the place by the owner, but the owner shall have the right to introduce evidence to show that such vehicle was not parked by him as charged in the complaint.

(c) The mayor is hereby authorized and directed to cause the placement of "No Parking-Tow Away Zone" signs along that portion of Hickory Hollow described in subsection (a) of this section.

(d) Any peace officer of the city is authorized to remove, to have removed or to require the driver or other person in charge of a vehicle to remove, a vehicle parked or left standing in violation of this section. A vehicle removed by a peace officer under the provisions of this section may be removed to the nearest garage or storage facility or to a garage or storage facility designated by the city. The owner of a vehicle that is removed under this section is liable for all reasonable towing and storage fees incurred in the removal or storage.
(Code 2002, § 12.502; Ord. No. 505, §§ 1—5, 3-21-1995)

Sec. 40-69. Sufficient passageway required.

It shall be unlawful for any person to stop, stand or park a motor vehicle on any side of any street whether or not otherwise lawful when such act shall cause there to be less than 15 feet of passageway through the middle of the street for the uninterrupted flow of traffic through such street.
(Code 2002, § 12.503)

Sec. 40-70. No parking zones.

(a) It shall be unlawful for any person, having registered in his name or owning or operating or having charge of any vehicle, to allow or suffer or permit the same to be parked or left standing upon the following streets, or portions thereof indicated, between the hours of 7:00 a.m. and 9:00 a.m. and 2:00 p.m. and 4:00 p.m., Monday through Friday, except on school holidays, when signs are in place giving notice of such prohibition ("No Parking Zones"):

(1) Wade Hampton Drive between its intersection with Beinhorn Road and its intersection with 12 Oaks Drive; and

(2) Flint River Drive between its intersection with Beinhorn Road and its intersection with 12 Oaks Drive.

(b) When any person is charged with having parked or left standing a vehicle in a "No Parking Zone" during the hours and days designated in subsection (a) of this section, proof that the vehicle was, at the date and time of the offense alleged, owned by the person charged with the offense shall constitute prima facie evidence that the vehicle was parked or left standing at the place by the owner, but the owner shall have the right to introduce evidence to show that such vehicle was not parked by him as charged in the complaint.
(Code 2002, § 12.504; Ord. No. 598, 1-15-2002)

Sec. 40-71. Stopping, standing or parking of unattended motor vehicle.

There shall be a presumption in all prosecutions for an offense under an ordinance of the city prohibiting the stopping, standing, or parking of an unattended motor vehicle that the registered owner of the vehicle is the person who stopped, stood, or parked the vehicle at the time and place the offense occurred. Proof that the vehicle was, at the date and time of the offense alleged, owned by the person charged with the offense shall constitute prima facie evidence that the vehicle was stopped, stood, or parked by the owner; however, the owner shall have the right to introduce evidence to show that such vehicle was not parked by him as charged in the complaint.
(Code 2002, § 12.505; Ord. No. 602, 5-21-2002)

Secs. 40-72—40-79. Reserved.

ARTICLE IV. USE OF GOLF CARTS ON PUBLIC STREETS AND ROADS

Sec. 40-80. Generally.

The use of golf carts on public streets and roads within the city is permitted subject to the conditions and limitations provided below.
(Ord. No. 762, § 1, 12-7-2010)

Sec. 40-81. Excluded streets and roads.

The use of golf carts is prohibited:

(a) On the eastbound service road of Interstate Highway 10;

(b) On Voss Road, except when crossing at its intersection with Beinhorn; and

(c) On any street or road where the posted speed limit is greater than 35 miles per hour; and

(d) On Memorial Drive except between Voss Road and Saddlewood Lane.

(Ord. No. 762, § 1, 12-7-2010)

Sec. 40-82. Golf carts defined.

For the purpose of this article, the phrase "golf cart" means a motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(Ord. No. 762, § 1, 12-7-2010)

Sec. 40-83. Required safety equipment.

A golf cart shall not be operated on a public street or road in the city unless it has the following equipment in working order:

(a) Headlamps;

(b) Tail lamps;

(c) Reflectors;

(d) Parking brake;

(e) Mirrors; and

(f) A slow-moving vehicle emblem.

(Ord. No. 762, § 1, 12-7-2010)

Sec. 40-84. Operating requirements.

(a) The golf cart operator must have a valid driver's license and be 21 years of age or older.

(b) The golf cart must be operated in compliance with all applicable traffic laws and regulations.

(Ord. No. 762, § 1, 12-7-2010)

Sec. 40-85. Penalty.

Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision of this article, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than $1.00 nor more than $200.00.

(Ord. No. 762, § 2, 12-7-2010)

Chapter 41

RESERVED

Chapter 42

UTILITIES*

Article I. In General

Article II. Water System

Article III. Sewer System

*__State law references—__V.T.C.A., Utilities Code ch. 1 et seq.; water and utilities, V.T.C.A., Local Government Code ch. 401 et seq.

ARTICLE I. IN GENERAL

Secs. 42-1—42-18. Reserved.

ARTICLE II. WATER SYSTEM

Sec. 42-19. Mandatory water connections.

(a) Subject to the provisions of subsection (b) of this section, all persons, firms or corporations using private water systems whose property is located within 200 feet of a water line of the Memorial Villages Water Authority or its successors, shall, on or before July 1, 1961, contract with such corporation to connect with such water line and cause such connection to actually be accomplished on or before October 1, 1961, and whenever by reason of the extension of any water line or lines of such corporation or its successors, property with a water system not connected to such public water system comes within 200 feet of any such usable water line, the owners shall contract with such corporation or its successors, to connect with such water line within 60 days thereafter and shall cause such connection to be actually accomplished not more than 30 days later.

(b) Any owner of any property upon which there is an existing water system not connected to the system of the Memorial Villages Water Authority or its successors, shall not be required to comply with the provisions of subsection (a) of this section; provided that on or before August 1, 1961, and during each July thereafter, such owner files with the city secretary a certificate showing that water from such private water system has been inspected within 30 days prior thereto and has been found uncontaminated. Each such certificate shall be obtained from the state department of health or its laboratory, or from an inspector approved in writing either by the county health department, or by the city council. Any person, firm or corporation dissatisfied with the determination of any such inspector may appeal such determination or finding to the city council by filing written notice of appeal with the city secretary within ten days after receipt of the written notice of the inspector's decision. Receipt, when not delivered in writing in person, shall be the date when such written notice is posted in the United States mail. The hearing of the appeal by the city council shall be de novo and the appellant may present evidence and argument and be represented by counsel, if desired.

(c) All structures which are erected pursuant to building permits issued after enactment of this article, which have a private water system and which are upon property within 400 feet of such public water line or lines, must connect with and use the same.

(d) It shall be unlawful to make or permit any connection whether equipped with a cut-off valve or not, between a private water system and the system of the Memorial Villages Water Authority or any of its successors.
(Code 2002, § 13.100; Ord. No. 140, 4-10-1961)

Secs. 42-20—42-41. Reserved.

ARTICLE III. SEWER SYSTEM*

Sec. 42-42. Mandatory sewer connections.

(a) Every building situated on any street in the city where there is a public sanitary sewer supplied with water shall be connected with such sewer so that all sewage from the premises shall empty into the sewer; provided that such building is used or intended to be used as a dwelling, office building, place of business or building which will be regularly occupied by people. It is hereby made the duty of each owner of any such building to cause the same to be so connected with a public sewer. All owners of real property within the distance of 200 feet of any public sewer main or lateral shall make or cause to be made proper and permanent sewer connections with such sewers; provided that such owner shall not be obligated to pay any part of the cost of bringing sanitary sewer lines to their property lines. All such owners shall remove or cause to be removed all surface privies, septic tanks and cesspools.

*__State law reference—__Provision of sanitary sewer system by municipality, V.T.C.A., Local Government Code, § 214.013.

(b) It shall be unlawful for any person to permit a privy, dry closet, septic tank or cesspool of any kind or description for the reception of human excreta to be maintained or exist upon any property in the city owned or controlled by such person, where such property is within 200 feet of the public sewer lines and connection therewith is physically possible. For purposes of this article, every such sewer connection shall be deemed physically possible unless certified otherwise in writing by the city engineer.

(c) No vault, cesspool or septic tank shall be connected with a sewer. Such vaults, cesspools or septic tanks existing on premises abutting a public sewer and provided with public water, when declared a public nuisance by the public health officer, shall be cleaned within at least four feet from the surface, shall be filled with earth and ashes or lime, and its use shall be discontinued.

(d) The public health officer or any other officer authorized by the city council shall have the authority, at any time, to enter and examine cellars, cesspools, privies and drains, and all buildings, lots and places within the city for the purpose of ascertaining the condition thereof so far as public health may be affected thereby. The public health officer or other representative of the city so authorized shall recommend to the mayor and city council, when necessary, the abatement, removal or destruction of any such cellar, cesspool, privy or drain.
(Code 2002, § 13.200; Ord. No. 223, 4-14-1969)

Sec. 42-43. Septic tanks.

Installation of septic tanks is prohibited.
(Code 2002, § 13.301)

Sec. 42-44. Service lines.

(a) As used in this section, the term "service line" means the sewer transmission line from the foundation of the house or commercial business to the property line.

(b) Only one service line connection to the authority's sanitary sewage collection system is permitted for each residence or commercial building unless written authorization from the authority is obtained.

(c) Only the following types of pipe and fitting materials are approved for constructing service lines. Pipe and fittings in each individual service line shall be of identical material.

(1) Vitrified clay pipe conforming to ASTM Specification C700 with joint coupling conforming to ASTM Specification C425.

(2) Cast iron soil pipe, standard weight, conforming to ASTM Specification A74 with rubber gasket joint coupling conforming to ASTM Specification C564.

(3) Poly-vinyl chloride (PVC) pipe and fittings manufactured from class 12454-B rigid PVC compound conforming to ASTM D1784. Pipe and fittings to be integral bell and spigot type with provision for elastomeric gasket in bell, or all plain end for use with elastomeric gasket sleeve coupler. Four-inch sanitary sewer service lines to be SDR 33.5 and six-inch sanitary sewer service lines to be SDR 35 conforming to ASTM D3033 or ASTM D3034. Elastomeric gaskets and seats to conform to pipe manufacturer's specifications and ASTM F477 or ASTM D1869.

(4) Acrylonitrile-butadiene-styrene (ABS) pipe, (Type I, Grade 1 or Type IV, Grade I, material conforming to ASTM Specification D1788), solvent-weld joints, manufactured in accordance with ASTM Specification D2751 but having minimum wall thickness as follows:

4-inch pipe	0.150 inch+0.010
6-inch pipe	0.210 inch+0.010

(5) Fiberglass reinforced epoxy pipe with a minimum wall thickness of 0.07 inches for four-inch pipe and 0.10 inches for six-inch pipe. Pipe shall have a minimum pressure rating of 300 psi and a temperature rating of 150 degrees Fahrenheit. Material furnished shall conform to CIBA-300 line pipe. Pipe and fittings shall be joined by use of epoxy resin and hardner and solvent having same pressure and temperature rating as pipe.

(d) Size of service lines shall be as follows:

(1) Residential: Four-inches in diameter (minimum).

(2) Commercial: Six-inches in diameter (minimum),

(e) Minimum grades for service lines shall be as follows:

4-inch pipe	1-foot drop per one hundred feet (1%)
6-inch pipe	6-inch drop per one hundred feet (0.5%)
8-inch pipe	4-inch drop per one hundred feet (0.33%)

(f) Maximum grades for service lines shall be as follows:

4-inch pipe	2.5-foot drop per one hundred feet (2.5%)
6-inch pipe	1.5-foot drop per one hundred feet (1.5%)
8-inch pipe	1-foot drop per one hundred feet (1%)

(g) Construct service lines to true alignment and grade. Warped and sagging lines will not be permitted.
(Code 2002, § 13.302; Ord. No. 380, § 3, 6-21-1983)

Sec. 42-45. Connection of building sewer outlet to service line.

(a) Building tie-on connection shall be made directly to the stub-out from the building plumbing at the foundation on all waste outlets. Septic tanks and all grease traps must be bypassed.

(b) Water-tight adapters of a type compatible with the materials being joined shall be used at the point of connection of the service line to the building plumbing. Neither cement grout nor bitumastic joint materials are permitted, except when a rubber gasket adapter is not available, then an oakum joint sealer with cold lead or hot-poured bitumastic joint material will be permitted.

(c) Where existing wye and/or stack connections are provided, but no service lead from the public (main) sewer to the property line is provided, the existing wye and/or stack connection must be utilized for connection of the service line to the public (main) sewer.
(Code 2002, § 13.303; Ord. No. 380, § 4, 6-21-1983)

Sec. 42-46. Fittings and cleanouts.

(a) No bends or turns at any point shall be greater than 45 degrees.

(b) Each horizontal service line shall be provided with a cleanout at its upper terminal; and each such run of piping which is more than 90 feet in length shall be provided with a cleanout for each 90 feet or fraction thereof, in the length of such piping.

(c) Each cleanout shall be installed so that it opens in a direction opposite to the flow of the waste and except in the case of wye branch and end-of-line cleanouts, cleanouts shall be installed vertically above the flow line of the pipe.

(d) Cleanouts shall be plugged with an airtight mechanical plug.
(Code 2002, § 13.304; Ord. No. 380, § 5, 6-21-1983)

Sec. 42-47. Connection permit.

(a) A building permit, accompanied by the appropriate city fees must be obtained from the city's authorized representative at the beginning of construction of the service line. (The permit form to be used by the applicant for sewer service is maintained on file in the office of the city secretary.)

(b) When the service line is complete, but before connecting to the authority's sewer lead, and also prior to backfilling the pipe trench, the applicant for sewer service shall request an inspection of the installation. Request for inspections shall be made to the city's authorized representative. Twenty-four hours' advance notice for the inspection shall be given to the city's authorized representative.

(c) An inspection fee, as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary, payable to the city on or before the time of inspection, will be charged for inspecting each service line.

(d) The applicant for sewer service shall perform an exfiltration test (minimum of five feet hydrostatic head of water) which will be witnessed by the city's authorized representative. All plugs, risers and other required testing equipment shall be furnished by the applicant. Any leakage observed shall be corrected and only after the service line is watertight will the connection be permitted.

(e) No connection shall be made to the authority's sewer lead until a representative of the authority is present to witness the physical connection. Twenty-four hours' advance notice for the authority's connection inspection must be given.

(f) The physical connection to the authority's sewer lead shall be made by use of an adapter of a type compatible with materials being joined. The connection shall be watertight. Neither cement grout nor bitumastic joint materials are permitted except when a rubber gasket adapter is not available, then an oakum joint sealer with cold lead or hot-poured bitumastic joint material will be permitted.

(g) The inspection fee is for one inspection. No additional inspection fee shall be charged if the installation is approved on the first inspection. If the installation is not approved, then an additional fee as set by resolution or ordinance of the city council from time to time and kept on file in the office of the city secretary will be charged for each additional inspection.

(h) Future extension of service lines will require an additional inspection fee.

(i) Backfilling of the service line trench must be accomplished within 24 hours after a satisfactory exfiltration test has been performed and witnessed by the city's authorized representative. No debris will be permitted in the trench or the material used for backfilling.
(Code 2002, § 13.305; Ord. No. 380, § 6, 6-21-1983)

Sec. 42-48. Excluded flow and waste.

(a) No waste material which is not biologically degradable will be permitted to discharge into the authority's sewerage facilities, including mud and debris accumulated during service line installation.

(b) No downspouts, yard or street drains or gutters will be permitted to be connected into the authority's sanitary sewer collection system.

(c) Swimming pool drain connections are prohibited. Only backwash water from the swimming pool filters can be discharged into the authority's sanitary sewer collection system.
(Code 2002, § 13.306; Ord. No. 380, § 7, 6-21-1983)

Chapter 43

COMPREHENSIVE PLAN

Sec. 43-1. 2012 comprehensive plan.

(a) *Purpose of comprehensive plan.* This comprehensive plan is adopted, under authority of V.T.C.A. Local Government Code, ch. 213, as a present statement of policy by the City of Hunters Creek Village (the "city") and as a guide for future land use, capital improvements and other programs within the city including cooperative efforts with other governmental agencies and the private sector.

This plan may be amended or revised as deemed appropriate by the city council. This plan may be reviewed at any time by the city's planning and zoning commission on its own motion or at the direction of the city council. Whenever such review is undertaken, the planning and zoning commission shall submit a written report to the city council which shall include any recommended changes to the plan.

(b) *Comprehensive plan.*

(1) *General.* The City of Hunters Creek Village is a fully developed residential community with a "complementing" business community. One of its most important attributes is its ability to protect the integrity of its residential neighborhoods through its zoning ordinance and other land use regulations. The city is located, along with the other memorial villages, in an area that is surrounded on all sides by the City of Houston and is almost exclusively residential in character. The only commercial activity in the city is located along the Interstate 10 corridor which forms the northern boundary of the city. The city and its residential community are served by commercial and industrial uses that are located in the City of Houston and other neighboring cities and there is no need to expand the city's current business district. The most important goal of this comprehensive plan is the preservation of the city's high quality residential neighborhoods and the protection of those neighborhoods from the negative effects of urban development.

Residential zoning will be employed generally to maintain and improve the health, safety, morals and general welfare of the residents, citizens and inhabitants of the City of Hunters Creek Village by limiting population density, land use, lot size, height and setbacks of buildings and other improvements and by regulating swimming pools, parking, fences and the use of signs, and by enacting such other regulations as may be permitted by law.

Zoning in the business districts will be employed generally to promote business activity while minimizing any adverse effects of commercial development on the residents, citizens and inhabitants of the City of Hunters Creek Village, and providing a buffer zone between the business district and the residential district.

Zoning in the City of Hunters Creek Village is also appropriate for limiting visual pollution, land use, lot size, height and setbacks of buildings and other improvements, including but not limited to regulating swimming pools, parking, site drainage, fences, the use of signs, and the accumulation of refuse in the business district. In addition such other regulations as may be permitted by law should be enacted to protect the residential district and to provide a pleasant and healthful environment in the business district.

(2) *Residential district R.* The city will continue to protect existing single-family residential neighborhoods and existing residences through appropriate land use controls including zoning and other ordinances regulating lot size, use of land and improvements, height and setbacks, swimming pools, parking, fences and the use of signs. These neighborhoods will also be protected and improved by appropriate and timely investments in maintenance and replacement of public infrastructure.

Any new development or redevelopment in the business districts along Interstate 10 should be designed and located so as to minimize any adverse effect on existing residential uses and to ensure that new development constitutes a benefit to the city's residential neighborhoods.

Ingress and egress to all development in the business district should be designed so that traffic to and from the development which originates in or is destined to points outside of the City of Hunters Creek Village will not utilize local residential streets.

(3) *Business district B.* The area along Interstate 10 is subject to substantial noise, visual pollution, air pollution and the heavy traffic associated with a major highway and transportation corridor. The city will continue to exercise its regulatory authority to mitigate the negative effects of these factors on nearby residential areas. Any new development or redevelopment in the existing business district should be designed to be complimentary to the adjoining residential areas of the city and to mitigate any traffic, water, sewer, flood, or other conditions adverse to the community.

Regulations should be tailored to encourage property owners to utilize their property to the maximum extent possible in order to produce adequate revenue to fund the cost to the city of providing necessary services.

(4) *Public services.* Existing public services in the city are adequate to preserve the high quality of the city's residential neighborhoods and its small business district. It is not anticipated that significant expansion and/or upgrading of existing public facilities will be necessary in the future. However, the city will need to continue its program of periodic replacement of public facilities as those facilities reach their useful life. Present facilities in the business district are appropriate for maintenance or adequate service levels to business and commercial interests presently existing in the business districts. Any new development, renovation or replacement of present businesses should be accomplished only if there is appropriate and adequate assurance that the proposed new development will provide sufficient upgrading, renovation or addition of appropriate facilities necessary to serve such new development and otherwise not adversely impact present residential development or existing business development.

The city's forest canopy and existing green space contributes to the health, safety and well-being of the residents of the city and to the overall quality of life within the city and efforts should be made to preserve existing trees and green space through appropriate land use regulations and maintenance of public areas. Efforts should be made to educate and inform the city's residents on the benefits of maintaining the city's forest canopy and green space.

The city should encourage the development and maintenance of privately owned landscaped green areas in its residential neighborhoods. Additional hike and bike trails should be built and existing trails maintained. To these ends citizen participation should be sought.

(5) *Traffic.* Existing traffic circulation systems in the city should be maintained and be upgraded as needed with adequate repairs provided in order to insure good and serviceable streets. Every effort should be made to preserve the integrity of the residential neighborhoods within the city. No zoning ordinance should be adopted which encourages arterial street circulation within the residential neighborhoods of the city.

(6) *Implementation.* The city's land use regulations should provide for protection of the rights and interests of neighboring landowners and the general public. These rights and interests should be protected by controlling development which could create or significantly increase glare, light, shade, traffic, noise, noxious fumes, trash accumulation, or rainwater runoff to other landowners.

Every effort should be made by the city to encourage active participation by all citizens, citizen groups, business owners and

business organizations in the planning and development of the City of Hunters Creek Village.

(Ord. No. 796, § 2(Exh. A), 5-22-2012)

Chapter 44

ZONING*

Article I. In General

Article II. Administration and Enforcement

Division 1. Generally

Division 2. Certificates of Occupancy

Division 3. Board of Adjustment

Article III. District Regulations

Division 1. Generally

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*__State law references—__Regulation of land use, structures, businesses and related activities, V.T.C.A., Local Government Code ch. 211 et seq.; planning and development, V.T.C.A., Local Government Code ch. 371 et seq.

ARTICLE I. IN GENERAL

Sec. 44-1. Short title.

This chapter shall be known and may be cited as "The City of Hunters Creek Village zoning chapter."
(Ord. No. 340, § 1, 5-20-1980)

Sec. 44-2. Definitions.

(a) *Construction.* For the purpose of this chapter, certain words and terms are hereby defined. Words used in the present tense shall include the future tense; the singular number shall include the plural number and the plural number shall include the singular number. The word "building" shall include the meaning of the word "structure"; the word "lot" shall include the meaning of the word "plot", and the term "used for" shall include the meaning of the terms "designed for" or "intended for." The word "shall" is mandatory, not directive.

(b) *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 structure means a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

Automobile shelter means a garage or carport so situated on a lot that unobstructed access for a standard size automobile is afforded by a driveway connecting such garage or carport to the street on which such lot abuts.

Building means any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building area means the area covered by all building and the surface of any tennis court, paddle court or other type of game court, but excluding driveways, walkways and uncovered patios.

Building, height, of means the vertical distance as measured from the top of slab to the highest point of the roof of a building, excluding chimneys.

Building line means a line parallel or approximately parallel to the street line or lot line beyond which buildings may not be erected.

Carport means a sheltered space with three sides screening its contents from view and suitable for parking one or more motor vehicles.

Dwelling means the same as single-family dwelling.

Dwelling, single-family, means a detached residential dwelling, other than a mobile home or trailer or any structure converted from a mobile home or trailer, designed and used exclusively for residential occupancy and having accommodations for and occupied by only one family and no portion of which may be used for the conduct of a business, trade or profession.

Family means one or more persons related by blood, adoption or marriage, living together as a single housekeeping unit. A number of persons not exceeding two living together as a single housekeeping unit though not related by blood, adoption or marriage shall be deemed to constitute a family.

Garage means a sheltered space with an operable door or doors plus three sides screening its contents from view and suitable for parking one or more motor vehicles.

Lot means a parcel of land of at least sufficient size to meet minimum applicable requirements for use, coverage, area and parking, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on a public street or on an existing approved private street.

Lot, depth of, refers to the mean horizontal distance between the front and rear lot lines.

Lot, width of, means the distance between side lot lines as measured at the front building line.

Nonconforming use, building, structure or yard means a use, building, structure or yard existing legally at the time of the passage of the ordinance

from which this chapter is derived or of any amendment thereto, which by reason of design or use does not conform with the regulations of the district in which it is situated.

Private recreation club means an entity which provides indoor and outdoor facilities and equipment for sports and recreation, including but not limited to, tennis courts, pools, saunas, and other facilities and equipment associated with fitness and training, including accessory buildings and structures, restricted to private membership, and situated on a site consisting of a minimum of 25 contiguous acres.

Servants' quarters means an accessory building or portion of a main building located on the same lot as the main building and used as living quarters for servants employed on the premises and not rented or otherwise used as a separate domicile.

Service area means a loading area or trash pick-up area.

Sexually oriented business shall have the same meaning as "sexually oriented business" as that term is defined in V.T.C.A., Local Government Code ch. 243, and shall include but not be limited to an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, escort agency, nude modeling studio, sexual encounter center or any other commercial enterprise, the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. Such uses shall be allowed only as specifically authorized under the terms of this chapter. The determination of what constitutes a sexually oriented business shall be made by the police chief or his designee, and such determination shall be appealable to the zoning board of adjustment.

Sign, on-site, refers to a sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services or activities on the premises.

Special exception means a use that would not be appropriate generally or without restriction throughout the zoning district but would, if controlled as to number, area, location or relation to the neighborhood, promote the property held, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in a zoning district as special exceptions, only if specific provision for such special exception is made in this chapter.

Street means a public or private thoroughfare which affords a principal means of access to abutting property.

Street line means the right-of-way line of a street.

Structure means anything constructed or erected which requires permanent location on the ground or is attached to something having a permanent location on the ground, including but not limited to signs, billboards, poster panels, swimming pools, tennis courts, paddle courts or game-type courts. Yard lights, bird baths, flagpoles, fountains and similar items are not considered as structures herein.

Variance means a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, because of conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the chapter would result in unnecessary and undue hardship.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise permitted herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the edge of the structure or main building shall be used. For the purpose of such measurement, the eave line of a roof may project a maximum of 30 inches into the required yards.

Yard, front, means a yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street right-of-way line and the main building.

Yard, rear, means a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of uncovered steps, uncovered patios and decks that do not exceed one foot in height above finished grade, or unenclosed and uncovered balconies not more than four feet in depth, supported only by the main building with no additional independent supports. On all lots, the rear yard shall be to the rear of the front yard.

Yard, side, means a yard between the main building and the adjacent side line of the lot and extending from the required front yard to the required rear yard, and being the minimum horizontal distance between an adjacent side lot line and any edge or face of the main building.
(Ord. No. 340, § 19, 5-20-1980; Ord. No. 446, § 1, 9-13-1989; Ord. No. 553, 3-16-1999; Ord. No. 583, 3-20-2001; Ord. No. 637, § 1, 12-21-2004; Ord. No. 657, § 1, 2-21-2006; Ord. No. 665, § 1, 4-18-2006)

Sec. 44-3. Validity.

If any section, paragraph, subdivision, clause, phrase or provision of this chapter shall be adjudged invalid or held unconstitutional the same shall not affect the validity of this chapter as a whole or any part or provisions hereof, other than the part so decided to be invalid or unconstitutional.
(Ord. No. 340, § 20, 5-20-1980)

Sec. 44-4. Interpretation, purpose and conflict.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity or general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes greater restrictions including but not limited to those upon the use of buildings or premises or upon height of buildings than are imposed by other ordinances, rules, regulations or by easements, covenants or agreements, the provision of this chapter shall govern.
(Ord. No. 340, § 21, 5-20-1980)

Secs. 44-5—44-26. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 44-27. Administrative official.

(a) The provisions of this chapter shall be administered and enforced by the building official of the city. The building official or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this chapter.

(b) Whenever any construction work is being done contrary to the provisions of this chapter, the building official may order the work stopped by notice in writing served on the owner, resident or contractor doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the building official to proceed with the work.
(Ord. No. 340, § 10-1, 5-20-1980)

Sec. 44-28. Requirements for building permit.

(a) No person shall erect, construct, remodel, enlarge, improve, alter or convert any building, structure or fence or cause the same to be done without first obtaining a building permit therefor. All applications for building permits shall be accompanied by accurate plot plans, submitted in duplicate, drawn to scale, showing:

(1) The actual shape and dimensions of the lot to be built upon.

(2) The exact sizes and locations on the lot of the buildings and accessory buildings then existing.

(3) The lines within which the proposed building or structure shall be erected or altered.

(4) The existing and intended use of each building or part of building.

(5) The land upon which the proposed building or work is to be done shall be described, either by lot, block or tract, or similar general description that will readily identify and definitely locate the proposed building or work. The building or structure to be constructed or the enlargement, moving, improving, alteration, conversion or reroofing operation to be undertaken shall be described in sufficient detail so that the work to be done will be readily apparent.

(6) Such other information with regard to the lot and neighboring lots as may be reasonably requested by the building inspector to determine the applicability of, and provide for the enforcement of, this chapter.

(b) One copy of such plot plans will be returned to the owner when such plans have been approved. An inspection period of as much as two weeks shall be allowed for inspection of plans before a permit shall be issued. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on an actual survey by a qualified registered surveyor and the lot shall be staked out on the ground before construction is started.
(Ord. No. 340, § 10-2, 5-20-1980)

Sec. 44-29. Existing permits and private agreements.

This chapter is not intended to abrogate or annul:

(1) Any permits issued before the effective date of this chapter.

(2) Any easement, covenant or deed restriction, except that in the event of a conflict between this chapter and any easement, covenant or deed restriction, the terms of this chapter shall be controlling.
(Ord. No. 340, § 10-3, 5-20-1980)

Sec. 44-30. Preserving rights in pending litigation; violations.

By the passage of this chapter, no presently illegal use shall be deemed to have been legalized unless specifically such use falls within a use district where the actual use is a conforming use. Otherwise, such uses shall remain nonconforming uses where recognized, or an illegal use, as the case may be. It is further the intent and declared purpose of this chapter that no offense committed and no liability, penalty or forfeiture, either civil or criminal, shall be discharged or affected by the adoption of this chapter; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending be proceeded with in all respects as if such prior chapter had not been repealed.
(Ord. No. 340, § 10-4, 5-20-1980)

Sec. 44-31. Procedure for specific use permits.

A specific use permit is considered an amendment to the zoning chapter of the city, and all procedures outlined in this section, article V pertaining to amendments and V.T.C.A., Local Government Code ch. 211, shall be followed in processing a request for a specific use permit.

(1) *Posted notice.* In addition to the notice required for changes to district boundaries, district regulations, or district classifications, an applicant for a specific use permit shall post on each side of the property that abuts a public or private street, a sign containing the following information:

a. The name of the property owner and the applicant, if different;

b. The use for which a specific use permit is sought; and

c. The dates, times and places of the public hearings to be held before the planning and zoning commission and the city council.

The sign shall be erected a minimum of ten days prior to the date of the first public hearing before the planning and zoning commission, and shall remain on

the property for ten days following the public hearing and action by city council.

The sign shall be placed on the property in a location that is clearly visible from the abutting street and shall be of a size sufficient to include all of the above information. The sign shall be constructed of sturdy materials that are resistant to water. The text of the sign shall be in letters that are a minimum of four inches in height.

(2) *Standards for development.* The city council, on own initiative, or upon recommendation from the planning and zoning commission, may impose such standards for development and use of the site as will, in its opinion, ensure that the proposed development and use will be compatible with adjacent land uses. Such standards may include, without limitation, fencing, screening, lighting, ingress and egress, and hours of operation.

(Ord. No. 340, § 15, 5-20-1980; Ord. No. 552, 3-16-1999; Ord. No. 705, § 2, 11-6-2007)

Sec. 44-32. Schedule of fees, charges and expenses.

(a) The city council shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, certificates of zoning compliance, special exceptions, changes in district classification, appeals and other matters pertaining to this chapter. The schedule of fees shall be maintained in the office of the city secretary and in the office of the administrative official and may be altered or amended only by the city council.

(b) Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

(Ord. No. 340, § 16, 5-20-1980)

Sec. 44-33. Violation and penalties.

Any person who shall violate any of the provisions of this chapter or who shall fail to comply therewith or with any of the requirements thereof, or who shall erect or alter any building or who shall commence to erect or alter any building in violation of any detailed statement of plan submitted or approved thereunder, shall for each and every violation or noncompliance be deemed guilty of a misdemeanor and upon conviction shall be fined not more than $200.00, and each day such violation shall be permitted to exist shall constitute a separate offense. The owner of that building or premises or part thereof where anything in violation of this chapter shall be placed or shall exist, and any architect or builder who may have assisted in the commission of any such violation shall each be guilty of a separate offense and upon conviction shall be subject to the penalties herein provided.

(Ord. No. 340, § 18, 5-20-1980)

Secs. 44-34—44-54. Reserved.

DIVISION 2. CERTIFICATES OF OCCUPANCY

Sec. 44-55. Requirements.

Certificates of occupancy shall be required for any of the following:

(1) Occupancy and use of a building hereafter erected or structurally altered.

(2) Change in use of an existing building to a use of a different classification.

(3) Occupancy and use of vacant land.

(4) Change in the use of land to a use of a different classification.

(5) Any change in the use of a conforming use.

No such occupancy, use or change of use shall take place until a certificate of occupancy therefor shall have been issued by the building inspector.

(Ord. No. 340, § 11-1, 5-20-1980)

Sec. 44-56. Procedure for new or altered buildings.

Written application for a certificate of occupancy for a new building or for an existing building which is to be altered shall be made at the same time as the application for the building permit for such building. Such certificate shall be issued within ten days after a written request for

the same has been made to such building inspector or his agent after the erection or alteration of such building or part thereof has been completed and building inspector finds that such building is in conformity with the provisions of this chapter.
(Ord. No. 340, § 11-2, 5-20-1980)

Sec. 44-57. Procedure for vacant land or a change in use.

Written application for a certificate of occupancy for the use of vacant land, or for a change in the use of land or a building or for a change in a nonconforming use, as herein provided, shall be made to such building inspector. If the proposed use is in apparent conformity with the provisions of this chapter, the certificate of occupancy therefor shall be issued within five days after the application for same has been made.
(Ord. No. 340, § 11-3, 5-20-1980)

Sec. 44-58. Contents.

Every certificate of occupancy shall state that the building or the proposed use of a building or land complies with all provisions of law. A record of all certificates of occupancy shall be kept on file in the office of the building inspector or his agent and copies shall be furnished on request to any person having proprietary or tenancy interests in the building or land affected.
(Ord. No. 340, § 11-4, 5-20-1980)

Secs. 44-59—44-89. Reserved.

DIVISION 3. BOARD OF ADJUSTMENT

Sec. 44-90. Establishment and procedure.

(a) A board of adjustment is established and shall consist of five regular members and four alternate members to be appointed by the city council to numbered positions. The terms of office for each position shall be two years and shall be staggered as follows.

(1) The terms of office for regular positions 1, 2, and 3 and alternate positions 6 and 7 shall expire on July 1, 2008 and on July 1 of each second successive year thereafter;

(2) The terms of office for regular positions 4 and 5 and alternate positions 8 and 9 shall expire on July 1, 2009 and on July 1 of each second successive year thereafter;

(3) Any regular or alternate member serving in a position for which the term has expired shall continue to serve until that member's successor in that position is appointed and confirmed.

(4) Vacancies in a position on the board shall be filled by the city council for the unexpired portion of the term for that position.

(b) The city council may remove a regular or alternate member of the board for cause upon presentment of written charges and after a public hearing.

(c) Regular and alternate members are expected to attend meetings regularly. Any regular or alternate member who misses two consecutive meetings, or 25 percent of the called meetings in a single calendar year, will be subject to removal for cause unless the member's absence is excused by the mayor upon proof of substantial extenuating circumstances.

(d) Alternate members shall serve in the absence of one or more regular members when requested by the mayor.
(Ord. No. 340, § 12, 5-20-1980; Ord. No. 689, § 1, 6-26-2007)

Sec. 44-91. Proceedings.

(a) The board of adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this chapter. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(b) The board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records

of its examinations and all of which shall be immediately filed in the office of the board and shall be a public record.
(Ord. No. 340, § 12-1, 5-20-1980)

Sec. 44-92. Hearings, appeals and notice.

(a) Appeals to the board of adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by the decision of the administrative official. Such appeals shall be taken within a reasonable time, not to exceed 30 days, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(b) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney.
(Ord. No. 340, § 12-2, 5-20-1980)

Sec. 44-93. Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the office from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
(Ord. No. 340, § 12-3, 5-20-1980)

Sec. 44-94. Powers and duties.

The board of adjustment shall have the following powers and duties:

(1) *Administrative review*. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.

(2) *Special exceptions; conditions governing applications; procedures.* To hear and decide only such special exceptions as the board of adjustment is specifically authorized to pass on by the terms of this chapter; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this chapter, or to deny special exceptions when not in harmony with the purpose and intent of this chapter. A special exception shall not be granted by the board of adjustment unless and until:

a. A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested.

b. Notice shall be given at least 15 days in advance of public hearing. The owner of the property for which special exception is sought or for his agent shall be notified by mail. Notice of such hearing shall be published in a newspaper of general circulation in the city and posted in a public place in the city at least 15 days prior to the public hearing.

c. A public hearing shall be held. Any party may appear in person or by agent or attorney.

d. The board of adjustment shall make a finding that it is empowered by specific language in the section of this chapter described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.

e. Before any special exception shall issue, the board shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following, where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

2. Off-street parking and loading areas where required, with particular attention to the subsection (2)e(1) of this section and the economic, noise, glare or odor effects of the special exception on adjoining properties and properties generally in the district;

3. Refuse and service areas, with particular reference to the items in subsections (2)e(1) and (2)e(2) of this section;

4. Utilities, with reference to locations, availability and compatibility;
5. Screening and buffering with reference to type, dimensions and character;
6. Proposed exterior lighting with reference to glare, safety, economic effect and compatibility and harmony with properties in the district;
7. Required yards and other open space;
8. General compatibility with adjacent and other property in the district.

(Ord. No. 340, §§ 13-1, 13-2, 5-20-1980)

Sec. 44-95. Variances; conditions governing applications; authority and limitations.

(a) The board of adjustments shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship, and so that the spirit of the chapter shall be observed and substantial justice done. In exercising such powers of variance, the board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end the board shall have all the powers of the officer or agency from whom the appeal is taken.

(b) In granting any variance or special exception, the board of adjustment may describe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards, when made a part of the terms under which the variance or special exception is granted, shall be deemed a violation of this chapter.

(c) Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or impliedly prohibited by the terms of this chapter in such district.

(d) A variance is authorized only for height, area and size of structure or size of yards and open spaces unless otherwise provided herein. Establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.
(Ord. No. 340, § 13-3, 5-20-1980)

Sec. 44-96. Voting requirements.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in the application of this chapter.
(Ord. No. 340, § 13-4, 5-20-1980)

Sec. 44-97. Appeal.

Any person, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the city may seek review by a court of record of such decision in the manner provided by the laws of the state, particularly V.T.C.A., Local Government Code § 211.011.
(Ord. No. 340, § 14, 5-20-1980)

Sec. 44-98. Duties of administrative official, city council and courts on appeal matters.

(a) It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such questions shall be presented to the board of adjustment only on appeal from the decision of the administrative official, and that recourse from decisions of the board of adjust-

ment shall be to the courts in the manner provided by law, particularly V.T.C.A., Local Government Code § 211.011.

(b) It is further the intent of this chapter that the duties of the city council in connection with this chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this chapter. Under this chapter the city council shall have only the duties of considering and adopting or rejecting proposed amendments or the repeal of this chapter, as provided by law, and of establishing a schedule of fees and charges as stated in section 44-32.
(Ord. No. 340, § 15, 5-20-1980)

Secs. 44-99—44-124. Reserved.

ARTICLE III. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 44-125. Establishment of districts.

The city is hereby divided into two districts:

(1) District R single-family residential district.

(2) District B business district.
(Ord. No. 340, § 2, 5-20-1980)

Sec. 44-126. Official zoning map.

(a) The boundaries of the two districts of the city are defined and established as depicted on the map entitled, "Official Zoning Map of the City of Hunters Creek Village, Texas" which is an integral part of this chapter. The official zoning map shall be identified by the signature of the mayor, attested by the city secretary, and bear the following: "This is to certify that this is the official zoning map of the City of Hunters Creek Village, Texas adopted on the 20th day of May, 1980." If in accordance with the provisions of this chapter, changes are made in district boundaries or other matters portrayed on the official zoning map, such changes shall be made to the official zoning map after amendment has been approved by the city council, together with an entry on the official zoning map as follows: "On _____ day of _____, ____, by official action of the city council of the City of Hunters Creek Village, the following change(s) were made: (brief description with reference number for amending ordinance)."

(b) The official zoning map shall be maintained and kept up-to-date in the office of the city secretary, shall be accessible to the public, and shall be the final authority as to the current zoning status of properties in the city, except to the extent it fails to record a change implemented by a validly enacted ordinance. If the official zoning map becomes damaged, destroyed, lost, obsolete or difficult to interpret because of the nature of number of changes made thereto, the city council may, by ordinance, adopt a new official zoning map which shall supersede the prior official zoning map. The revised zoning 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 map referred to in the ordinance of the City of Hunters Creek Village, adopted on _____ day of _____, ____, which replaces and supersedes the official zoning map which was adopted on May 20, 1980."

Sec. 44-127. Rules for the interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

(1) Where the district boundaries are indicated as approximately following the centerlines of streets or street right-of-way lines, such centerlines or street right-of-way lines shall be construed to be such boundaries.

(2) Where the district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.

(3) Where district boundaries are indicated as approximately parallel to street centerlines or street right-of-way lines,

such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale on such zoning map.

(4) In unsubdivided property, the district boundary lines on the zoning map shall be determined by use of the scale appearing on such map.

(5) Whenever any street is vacated by official action of the city council, the zoning district adjoining each side of such street shall be automatically extended to the centerline of the property thus vacated and all area included in the vacation shall then and henceforth be subject to all regulations of the extended districts.

(6) Where streets or other landmarks on the ground differ from the streets or landmarks as shown on the zoning map, the streets or landmarks on the ground shall control.

(Ord. No. 340, § 4, 5-20-1980)

Sec. 44-128. Compliance with the regulations.

Compliance to the following regulations are required, except as hereinafter specifically provided:

(1) No land shall be used except for a purpose permitted in the district in which it is located.

(2) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building be used, except for a use permitted in the district in which such building is located.

(3) No building shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit herein established for the district in which such building is located.

(4) No building shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which such building is located.

(5) No building shall be erected or structurally altered to the extent specifically provided for herein except in conformity with the off-street parking and loading provisions for the district in which such building is located.

(6) The minimum yards, parking spaces and open spaces, including lot area per family, required by this chapter for each and every building existing at the time of passage of this chapter or for any building hereafter erected shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this chapter for the district in which such lot is located.

(7) Every building hereafter erected or structurally altered shall be located on a lot as herein defined and, except as hereinafter provided, there shall not be more than one main building on one lot.

Sec. 44-129. Drainage.

The entire area of any improved lot or tract within the city shall be drained in such a manner as to carry off all stormwater to a public right-of-way, drainage ditch or storm sewer.

(Ord. No. 340, § 8, 5-20-1980)

Secs. 44-130—44-156. Reserved.

DIVISION 2. DISTRICT R SINGLE-FAMILY RESIDENTIAL DISTRICT

Sec. 44-157. Use regulations.

Buildings and premises in district R shall be used for the following purposes:

(1) Single-family dwellings.

(2) Temporary buildings for uses incidental to construction work on the premises,

which buildings shall be removed upon the completion or abandonment of construction work.

(3) Accessory buildings and other structures customarily incident to the above uses, located on the same lot or tract, and, except as provided below, not involving the conduct of a business, trade or profession. No billboard, signboard, advertising sign or any other form of posted notice shall be permitted as an accessory use, except as provided below.

a. No billboard, signboard, advertising sign, or other form of posted notice shall be located upon a city street or right-of-way.

b. No billboard, signboard, advertising sign, or other form of posted notice shall be illuminated or contain any moving parts, except as specifically provided below.

c. A billboard, signboard, advertising sign or any other form of posted notice that is permitted as provided below may be single or double-faced.

d. The following signs shall be permitted.

1. *Real estate signs.* A single "For Sale" or "For Lease" sign may be displayed on the lot or tract to which the sign refers. No sign face shall exceed six square feet in area, and the sign, including any part of its structure, shall not exceed five feet in height.

2. *Contractor signs.* A single sign containing information on a contractor that is currently performing work on a lot or tract may be displayed on the lot or tract where the work is being performed. No sign face shall exceed six square feet in area, and the sign shall be removed immediately upon completion of the work.

3. *Institutional signs.* Churches and other institutions may display one or more signs containing information on the church or institution's name, and the activities and services provided on the premises where the signs are displayed. No sign face shall exceed eight square feet in area. The signs may be illuminated, provided that the intensity and direction of the illumination is reasonably controlled to avoid undue interference with the use of neighboring residential properties. Larger signs may be allowed only by specific use permit.

4. *Private security signs.* A single sign announcing that a residence is protected by a private security company may be displayed. No sign face shall exceed two square feet in area.

5. *Alarm or security system signs.* A single sign announcing that a residence has a burglar alarm or other security system installed may be displayed. No sign face shall exceed two square feet in area.

6. *Political signs.* One or more temporary signs used in connection with political campaigns may be displayed, provided such signs are removed within five days following the conclusion of such campaign. No sign face shall exceed 36 square feet in area and no sign shall exceed eight feet in height.

7. *Required signs.* Any sign required by the city or any other governmental authority with jurisdiction over the property.

(4) To be permitted as accessory structures or uses, an unlighted outdoor tennis court or game court must be set back at least 25 feet from the nearest lot line; lighted

outdoor tennis courts and game courts must be set back at least 100 feet from the nearest lot line. No more than one tennis court or game court shall be permitted on a lot. Any tennis court or game court shall be buffered by shrubbery or otherwise so as to minimize noise from activities on such court.

(5) Swimming pools.

a. *Generally.* An outdoor swimming pool shall be permitted as an accessory use or structure provided that it meets the following requirements:

1. It must be located in the back or side yard;

2. It must be set back a minimum of ten feet from the rear lot line, unless the rear lot line of the subject lot abuts the side lot line of another lot, in which case the pool must be set back a minimum of 15 feet from the rear lot line;

3. It must be set back a minimum 15 feet from any side lot line.

b. *Special exceptions.* The board of adjustment may grant a special exception reducing the minimum setback distance to no less than five feet for nonconforming lots as defined in section 44-218(b)(1)b. of this chapter.

1. In order to grant a special exception the board must find that because the subject lot is of such unusual size or shape, or because it has valuable trees located in the rear or side yards, it would be impractical to locate a reasonably sized pool on the lot without either reducing the minimum setbacks or removing valuable trees.

2. The board must also find that the granting of a special exception permitting a reduced set back would not be unduly harmful to the owners of the lot or lots abutting the side of the subject lot for which a reduced setback is required. In making such determination the board may consider the location and orientation of any existing improvements on the subject lot and any abutting lots.

3. The board may condition the granting of a special exception as necessary to protect the interests of abutting property owners and to further the intent of the set back requirements. Conditions may include: a) requiring the applicant to design the pool or related improvements to minimize the impact of its location or use on neighboring property owners; b) requiring the applicant to take necessary measures to protect and maintain any valuable trees that served as a basis for granting the special exception; and c) such other conditions as the board deems necessary.

(6) Parks, playgrounds, recreational facilities, public services and fire and police services owned by the city or by a public entity acting at the request of the city.

(7) Uses permitted by specific use permit:

a. Personal wireless service facilities.

1. Facilities for the provision of personal wireless service, including structures commonly known as cellular towers, and ancillary buildings, equipment and related structures may be allowed in this district following approval of a specific use permit by city council. Provided, however, that no specific use permit for a personal wireless services facility shall be approved if:

i. The proposed facility would adversely affect the resi-

dential integrity or safety of adjacent or area neighborhoods; or

ii. The proposed facility would create visual blight; or

iii. The proposed facility would create noise or light pollution; or

iv. The proposed facility would create a nuisance to adjacent or area properties.

2. Further, in order to obtain a specific use permit for a personal wireless service facility, the applicant must establish that:

i. The applicant cannot provide service to the city from other available locations or existing facilities; and

ii. The proposed facility would utilize state of the art technology to achieve its objectives; and

iii. The proposed facility would comply with all safety standards promulgated by the Federal Communications Commission or other agency having jurisdiction thereover.

b. Private recreation club.

(Ord. No. 340, § 6-1, 5-20-1980; Ord. No. 431, § 1, 1-26-1988; Ord. No. 573, 5-16-2000; Ord. No. 717, § 1, 3-25-2008; Ord. No. 729, § 1, 11-18-2008)

Sec. 44-158. Special exceptions to use regulations.

After a public notice and hearing and appropriate safeguards and conditions, the board of adjustment may permit, as special exceptions, uses in district R which do not comply with subsection 44-157, by the following:

(1) Public schools.

(2) Utility substations and pump stations designed to serve some portion of the city.

(3) Churches; provided, however, a church shall only be permitted on a tract of land of five acres or more and shall have adequate parking to provide one parking space on church property for each two members or for each two additional members or guests.

(Ord. No. 340, § 6-2, 5-20-1980)

Sec. 44-159. Height regulations.

District R requirements for the maximum height of a building located on a lot less than 40,000 square feet in size shall not exceed 35 feet. The maximum height of a building located on a lot 40,000 square feet or greater in size shall not exceed 38 feet, provided that the required side yards and required rear yard are each increased by an additional five feet. The top of slab may be up to 24 inches higher than required by all other applicable codes and may be added without affecting the maximum allowed height. For any elevation amount exceeding the 24 inches allowance above, the allowed height of the building shall be diminished by an equal amount. The building height limitation provided in this section shall not apply to church steeples. Aerial antennas shall not exceed a height of 45 feet as measured from the top of slab.

(Ord. No. 340, § 6-3, 5-20-1980; Ord. No. 657, § 2, 2-21-2006)

Sec. 44-160. Area regulations.

The following area regulations shall apply in district R:

(1) *Size of lot.*

a. *Lot area.* No building shall be constructed on any lot having less than 22,500 square feet.

b. *Lot width*. The width of the lot shall be not less than 75 feet at the front building line, nor shall its average width be less than 75 feet.

c. *Lot depth.* The average depth of the lot shall not be less than 120 feet.

d. *Exceptions*. Where a lot having less area, width or depth than herein required existed in separate owner-

ship of record on March 25, 1955, the regulations relating to the size of the lot in this section shall not prohibit the erection of a single-family dwelling thereon.

(2) *Size of yards.*

a. *Front yard.* There shall be a front yard having a depth of not less than 50 feet.

Where lots have double frontage running through from one street to another, the required front yard shall be provided on both streets. For computation of front yard depth, the building shall not be less than 70 feet minimum from the building to the center of the street, whether public or private, and not less than 50 feet from the edge of the street easement or right-of-way; provided, however, that a front yard on a turn circle shall have a front yard depth not less than 35 feet from the street right-of-way line and not less than 70 feet from the center of a turn circle. Where lots are located at the corner of two streets the required front yard shall be provided on one of the two streets. Once a front yard has been established for a particular lot, it may not be changed unless the Planning & Zoning Commission approves a replat of the lot that establishes a front building line reflecting the desired change. For purpose of this section a front yard is established if:

i) a front building line is designated on a subdivision plat; or

ii) a residence has been constructed on the lot.

b. *Side yard.* There shall be two side yards on each lot, having a combined width of not less than 35 feet; neither of such side yards shall be less than 15 feet in width. A side yard adjacent to a side street shall not be less than 20 feet in width.

c. *Rear yard.* There shall be a rear yard having a depth of not less than 25 feet.

(3) *Size of building.*

a. *Building area.* The building area, exclusive of outdoor swimming pools, shall not exceed 25 percent of the lot area. Tennis courts, paddle ball and game courts are included in the computation of building area.

b. *Dwelling area.* Each single-family dwelling must be so designed and constructed that it shall have a minimum space of enclosed living area of 2,000 square feet, exclusive of porches and automobile shelters. At least 1,500 square feet of such enclosed living area shall be contained on the ground floor. Living area shall be computed from the exterior wall surface.

(Ord. No. 340, § 6-4, 5-20-1980; Ord. No. 666, § 1, 4-18-2006; Ord. No. 824, § 1, 4-22-2014)

Sec. 44-161. Automobile shelters.

The following shall apply to automobile shelters in district R:

(1) *Minimum size.* Every single-family dwelling must have at least a 200 square foot garage; or a 200 square foot carport and a 100 square foot completely enclosed storage room with an outside door. Subject to the following exceptions, all automobile shelters must meet the setback requirements of the dwelling; and the opening of the automobile shelter shall face the rear of the lot, provided, however,

a. An automobile shelter, if not attached to the dwelling, may be located not closer than five feet from the rear lot line and not closer than five feet distance from the side lot line unless such line abuts a street, in which event the automobile shelter shall be located at least 20 feet from such side street line.

b. An automobile shelter opening may face toward the front street provided such opening is at least 50 feet to the rear of the front line of the dwelling.

c. An automobile shelter opening may face toward the side line of the lot, provided that:

1. Such opening will not face a street;

2. The front edge of such opening will not be forward of the front line of the residence;

3. Such opening will be at least 28 feet from the side lot line.

d. An automobile shelter may face toward a side street if it is set back from the side lot line that abuts the side street, by at least the same minimum distance that would have been required for an automobile shelter on the same lot that faced the front street. For example, if the front line of a dwelling is set back thirty feet from the front lot line, the minimum setback for a garage opening that faces the front street or a side street would be 80 feet from the applicable lot line (30 + 50). Similarly, if the front line of a dwelling is set back fifty feet from the front lot line, the minimum setback for a garage opening that faces the front street or a side street would be 100 feet from the applicable lot line (50 + 50).

(2) *Driveways.* No driveway shall have entry onto Memorial Drive or Voss Road if the lot or tract upon which the driveway is located has access or is contiguous to another street within the city.

(Ord. No. 340, § 6-5, 5-20-1980; Ord. No. 659, § 1, 12-20-2005; Ord. No. 764, § 1, 1-25-2011; Ord. No. 828, § 1, 5-27-2014)

Sec. 44-162. Accessory structures.

The following shall apply to accessory structures, except as specifically permitted by this chapter:

(1) No accessory structure shall be erected in front of the front line of the residence.

(2) No separate accessory structure or automobile shelter shall be erected within five feet of any property line or other building.

(3) Any servants' quarters or structure containing living space must comply with building line setbacks of the main structure.

(4) No accessory structure may exceed one story in height, except as provided below. A detached garage may include habitable space, not including kitchen facilities, above the first floor, if the detached garage complies with the same yard, setback, and other location requirements as the main residence.

(Ord. No. 340, § 6-6, 5-20-1980; Ord. No. 768, § 1, 5-22-2012)

Sec. 44-163. Fences and walls.

The following fence and wall requirements apply to district R:

(1) *Perimeter fences generally.* Fences shall be generally permitted on the perimeter of the property involved subject to the limitations in subsections (2) through (13) of this section.

(2) *Fences in front of front building line.* No fences shall be permitted in front of the front building line of the property involved unless the front yard is contiguous to Voss Road or Memorial Drive.

(3) *Height limitations generally.* No fence shall exceed seven feet from the top of the natural grade of the property except along Voss Road or Memorial Drive or as specifically provided below.

a. *Columns and finials.* Except as otherwise provided, columns, finials, and other similar decorative elements shall not be included in the measurement of the height of a fence or wall for purpose of applying the limitation on maximum height, provided that:

1. The total height of each individual column, finial or other dec-

orative element does not exceed four feet above the top of the fence or wall; and

2. No portion of any individual column, finial or decorative element exceeds 24 inches in width, and the columns, finials, or other decorative elements are either spaced at least four feet apart or separated by the width of a gate opening.

b. *Wing walls.* A wall that extends out from, and parallel to the front wall of the main residential structure may exceed seven feet in height provided that:

1. The wall is constructed of the same materials as, and is identical in appearance to, the front wall of the main structure;

2. The wall, exclusive of finials and other decorative elements, does not exceed one-third of the height of the main residence; and

3. Any portions of the wall that exceed seven feet in height do not extend into any required side yards.

(4) *Special rules for fences and walls on rear or side property lines facing Voss or Memorial.* A fence or wall of a minimum of seven feet in height shall be required along the rear or side property line where the rear or side line of the property involved is adjacent to Voss Road or Memorial Drive. Such fence or wall along Voss Road or Memorial Drive shall be not less than seven feet nor more than nine feet from the top of the natural grade of the property. Piers, pillars or columns used for such fence or wall supports or architectural enhancement shall be allowed to exceed the nine feet allowable height, but shall not be used to violate the nine-foot maximum allowable height specified in this chapter. Where a curb-and-guttered street is adjacent to the fence or wall or property line, the height restriction shall, however, be measured for the purposes of this chapter from the top of natural grade or the top of the abutting curb, whichever is higher. Any rear or side property line fence or wall along Voss Road or Memorial Drive shall be of brick or masonry construction.

(5) *Special rules for fences and walls on or behind front property lines facing Voss or Memorial.* A fence or wall shall be permitted, subject to the following limitations, along or behind the front property line of any property fronting on Voss Road or Memorial Drive. Such fence or wall may be of wrought iron, brick or masonry construction. There shall be applicable the height limitations and the same requirements outlined above for side and rear fences or walls, with the exception that no minimum requirements for fence or wall height shall be applicable.

(6) *Special setback requirements for gates along Voss and Memorial.* Each gate of any entrance drive or driveway off Voss Road or Memorial Drive shall set back a minimum of 20 feet from the back of curb or pavement edge to the gate location in order to afford a vehicle standing area within such drive or driveway off the main travel lanes on Voss Road or Memorial Drive, as the case may be.

(7) *Setback at street intersections.* Any fence or wall located at any street intersection shall be set back or stepped down to afford full sight distance at the intersection involved.

(8) *General intent of the regulations.* The overall intent of this section is to allow property owners to fence or wall their properties from and including the front building line to and around the back yard, with the exception in the case of any property fronting on Voss Road or Memorial Drive hereinabove specified. The intent of the provisions relating to any property along Voss Road or Memorial Drive is to promote safety of the residents and the trav-

eling public, property protection and to reduce noise along Voss Road or Memorial Drive.

(9) *Front facing fences.* No fence or wall shall be permitted in front of a residence except as provided above for properties fronting on Voss or Memorial, or as provided below for other properties.

a. *Exception for driveway enclosures.* A fence or wall shall be permitted along or behind the front building line, regardless of where the residence is located on the lot if:

1. The fence or wall is used for the purpose of enclosing a driveway;
2. The portion of the fence that faces the front building line is 30 feet or less in length; and
3. The fence or wall is constructed of wrought iron or its equivalent or wood or masonry.

b. *Exception for courtyard walls.* A fence or wall shall be permitted along or behind the front building line, and in front of the residence, if:

1. The fence or wall is used for the purpose of enclosing a courtyard, patio or similar area in front of the residence;
2. The fence or wall is no wider than the front of the residence and is connected to the residence at both ends; and
3. The fence or wall is constructed of:
   (i) Materials that are either identical to the materials of which the front of the residence is constructed or substantially similar in appearance to those materials; or
   (ii) Masonry or wrought iron or its equivalent.
4. A fence or wall that meets the requirements of this subsection (9)b. may exceed seven feet in height but may not exceed the maximum height limitations for buildings in District R.
5. The area enclosed by the fence or wall shall be included as building area for the purpose of calculating the maximum building area under section 44-160(3)a.

(10) *Special rules for fences or walls crossing gullies.* Any fence or wall crossing a bayou, ravine, gully or naturally hilly area shall have the height interpreted by the city engineer to meet the intent of this chapter. Material selection for the fence or wall crossing a bayou, ravine, or gully may be wood, masonry, brick or wrought iron as approved by the city engineer, as long as the natural flow of the drainage area is not impeded. If the interpretation by the city engineer under this subsection (10) is not acceptable to the owner, such owner may appeal such decision to the board of adjustment for a final determination.

(11) *Engineering requirements for certain fences or walls.* Any masonry fence or wall more than seven feet in height shall require a geotechnical report and the foundation designed by a state-registered professional engineer. In lieu of the above requirements a standard minimum design will be available at the offices of the city.

(12) *Special rules for preserving trees.* Controlling over any provisions of this chapter to the contrary, wrought iron and wood sections of any fence or wall shall be permitted to the extent necessary to avoid removing trees.

(13) *Construction and maintenance standards.* Any fence or wall required or permitted under this chapter shall be constructed, repaired, maintained and replaced in order to be in a good, safe, and nonhazardous condition at the risk, cost, and expense of the owner of the property involved.

(Ord. No. 482, § 1, 10-20-1992; Ord. No. 660, § 1, 1-17-2006; Ord. No. 667, § 1, 4-18-2006; Ord. No. 728, §§ 1—4, 11-18-2008)

Sec. 44-164. Dish antennas.

Dish antennas, in district R, greater than three feet in diameter are permitted as accessory structures subject to the following provisions. Dish antennas three feet or less in diameter are not subject to the provisions of this section.

(1) Except as otherwise provided in this section, a dish antenna shall not be located in a front yard, in an easement or within 25 feet of a property line.

(2) Except as otherwise provided in this section, a dish antenna shall not exceed ten feet in height.

(3) A dish antenna or its support structure shall be installed on a concrete foundation. A dish antenna may not be located on the roof of a structure.

(4) A dish antenna constructed of mesh material, so that no more than 40 percent of its total area, excluding support structures, is solid, may be located in a rear or side yard, not within an easement, no closer than five feet to a property line and may not exceed 15 feet in height.

(Ord. No. 404, 2-18-1986)

Sec. 44-165. Home occupations.

(a) *Authorization.* Home occupations shall be permitted in district R, single-family residential, provided such home occupation is incidental and subordinate to the use of the premises for single-family residential purposes and in compliance with the provisions of this section.

(b) *Purpose.* To ensure the protection and preservation of the residential character of district R. and to ensure that home occupations do not interfere with the peace and enjoyment of surrounding homes as places of residence, the following regulations are applicable to the conduct of home occupations:

(1) No home occupation shall result in an increase in the number of motor vehicles parking or traveling to and from the applicable dwelling over that which is customary in a single-family residential neighborhood.

(2) No stock in trade shall be stored, displayed or sold on the premises.

(3) Only members of the family residing on the premises shall be employed in the home occupation.

(4) No mechanical, explosive, electrical or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare or other nuisance outside the dwelling or any accessory structure shall be used.

(5) Outdoor storage of equipment or material shall be prohibited.

(6) The home occupation shall be conducted entirely within the main dwelling unit and the conduct of the home occupation shall not be visible from any street or adjacent property, public or private.

(7) No internal or external alterations, special construction, or other similar feature shall be added to the main dwelling unit.

(8) No sign or advertising of any type shall be permitted on the premises or by published or printed matter, except as follows:

a. Word of mouth by telephone or face-to-face;

b. Listing in telephone directories and business journals and directories; and

c. Business cards, stationery, and websites.

(c) *Home occupations permitted.* Subject to the foregoing limitations, examples of permitted home occupations include:

(1) Artist, writer or craftsman's studio;

(2) Dressmaking;

(3) Professional practices (such as computer programming, engineering, legal counseling, accounting and court reporting);

(4) Music teaching and tutoring of no more than two pupils at one time;

(5) Babysitting or limited child care for not more than three children unrelated to the person providing the child care.

(Ord. No. 677, § 1, 1-16-2007)

Sec. 44-166. Emergency electric generators.

(a) *Generally.* Electric generators may be installed and maintained in District R for the purpose of providing electric power during time periods when normal electric service is unavailable.

(b) *Location.*

(1) Generators are not required to meet the building setback requirements applicable to accessory structures except as provided below.

(2) No generator shall be located in a front yard or in front of the front line of any residence.

(c) *Operation.* No generator shall be operated except:

(1) When necessary to provide electric power during time periods when normal electric service is unavailable; or

(2) When necessary for maintenance or repair.

(d) *Manufacturer's recommendations.* All generators must be installed and operated in compliance with the applicable manufacturer's recommendations.

(e) *Enclosures.* Any structure intended to enclose or screen a generator, other than a structure designed solely for sound attenuation, shall be considered an accessory structure and must comply with all requirements of this division applicable to accessory structures.

(f) *Sound attenuation.* All generators shall be installed, maintained, and operated in such manner as to reduce, to the greatest extent reasonably possible, the volume of sound produced by their operation.

(Ord. No. 733, § 1, 1-20-2009)

Secs. 44-167—44-181. Reserved.

DIVISION 3. DISTRICT B BUSINESS DISTRICT

Sec. 44-182. Use regulations.

The following use regulations shall apply in district B:

(1) *Permitted principal uses and structure.*

a. All uses, structures and special exceptions permitted in district R; provided, however, tennis courts and swimming pools are not permitted in district B.

b. Bakeries, retail only.

c. Banks.

d. Florist shops.

e. Offices and office buildings.

f. Barbershops, beauty shops, shoe repair shops and indoor restaurants.

g. Retail stores, provided that no on-site consumption of foods or beverages sold therein shall be permitted.

h. Any similar uses as determined by the board of adjustment which are not likely to create any more noise, vibration, dust, heat, smoke, odor, excessive light, glare or objectionable influences than the minimum amount normally resulting from other uses permitted.

(2) *Uses permitted by specific use permit.*

a. Sexually oriented business, provided that no sexually oriented business shall be allowed to locate within 1,000 feet of another sexually oriented business, a public park, a place of worship, a public or private school or a day-care facility, and provided further that no on-site consumption of foods or beverages sold therein shall be permitted. For purposes of this section, such distance shall be measured between the closest property lines of each property.

b. Personal wireless service facilities.

1. Facilities for the provision of personal wireless service, including structures commonly known as cellular towers, and ancillary buildings, equipment and related structures, may be allowed in this district following approval of a specific use permit by city council. Provided, however, that no specific use permit for a personal wireless services facility shall be approved if:

i. The proposed facility would adversely affect the residential integrity or safety of adjacent or area neighborhoods; or

ii. The proposed facility would create visual blight; or

iii. The proposed facility would create noise or light pollution; or

iv. The proposed facility would create a nuisance to adjacent or area properties.

2. Further, in order to obtain a specific use permit for a personal wireless service facility, the applicant must establish that:

i. The applicant cannot provide service to the city from other available locations or existing facilities; and

ii. The proposed facility would utilize state of the art technology to achieve its objectives; and

iii. The proposed facility would comply with all safety standards promulgated by the Federal Communications Commission, or other agency having jurisdiction thereover.

(3) *Permitted accessory uses and structures.* Those uses and structures customarily incident to the foregoing uses when located upon the same lot. A sign shall not be allowed as an accessory use or structure, except as hereafter specifically permitted.

(4) *Prohibited uses and structures.* Any use not permitted under subsection (1) of this section and any use or structure otherwise permitted under subsection (1) of this section that is objectionable because of odor, excessive light, glare, smoke, dust, noise, vibration, litter or similar or other nuisance shall be prohibited in district B.

(Ord. No. 340, § 7-1, 5-20-1980; Ord. No. 553, 3-16-1999)

Sec. 44-183. Maximum height of structures.

The maximum height of structures in district B shall not exceed 35 feet. The height of a structure shall be the vertical distance as measured from the finished floor elevation to the highest point of the roof of the main building located on the lot. The top of slab may be up to 24 inches higher than required by all other applicable codes and may be added without affecting the maximum allowed height. For any elevation amount exceeding the 24 inches allowance above, the allowed height of the building shall be diminished by an equal amount. Aerial antennas shall not exceed a height of 45 feet as measured from the top of slab.

(Ord. No. 340, § 7-2, 5-20-1980; Ord. No. 657, § 3, 2-21-2006)

Sec. 44-184. Area regulations.

The following area regulations shall apply in district B:

(1) *Minimum lot requirements-area, width and depth.*

a. Residential use: Same as district R.

b. Other use:

1. Lot area: 7,500 square feet.

2. Lot width: 75 feet.

3. Lot depth: 100 feet.

(2) *Minimum building line requirements.*

a. Residential use: Same as in district R as set forth in section 44-160(2).

b. Other use: Buildings shall be a minimum of 35 feet from any street line. A minimum of 15 feet shall be maintained between any building and the business district boundary line; provided, however, a building of less than 15 feet in height with no windows facing a residential area may be located within two feet of a business-residential boundary line.

(3) *Maximum lot coverage by all buildings and structures.*

a. Residential use: Same as in district R.

b. Other use: The building area, including off-street parking spaces and service areas, shall not exceed 90 percent of the lot area.

(4) *Minimum size of principal building.*

a. Residential use: Same as in district R.

b. Other use: 2,000 square feet of permanently enclosed floor space.

(Ord. No. 340, § 7-3, 5-20-1980)

Sec. 44-185. Off-street parking requirements.

(a) There must be sufficient off-street parking spaces provided on the premises of any business use to accommodate the anticipated parking needs of the persons using the premises. The minimum number of off-street parking spaces required for specific uses is as follows:

(1) For general office use, including any use in which the principal occupants of the improved building space are employees rather than visitors or customers, two spaces for each 1,000 square feet of gross floor area; and

(2) For any other use, four spaces for each 1,000 square feet of gross floor area.

(b) All parking spaces must be at least nine feet wide and 18 feet long in order to be counted towards the minimum required number. The width of parking spaces shall be measured perpendicular to the parking angle. The length of parking spaces shall be measured at right angles to the parking line.

(Ord. No. 340, § 7-4, 5-20-1980; Ord. No. 698, § 2, 9-20-2007)

Sec. 44-186. Service area requirements.

Service areas shall be required in district B. All loading areas, trash pick-up areas and all other service areas located outdoors shall be enclosed by a solid fence, wall or hedge at least seven feet in height, except for an opening for vehicular passage which shall have a solid gate.

(Ord. No. 340, § 7-5, 5-20-1980)

Sec. 44-187. Outdoor storage prohibited.

(a) Outdoor storage shall not be permitted in district B, except during periods of construction or in a service area enclosed in the manner required for areas as set out in section 44-186.

(b) No storage or similar use shall be allowed forward of the front building line in district B.

(Ord. No. 340, § 7-6, 5-20-1980)

Sec. 44-188. Limitation on signs.

(a) Only on-site signs shall be permitted in district B.

(b) One wall sign and one freestanding sign shall be permitted on any premises and shall be "sign, on-site" as defined in this chapter. The freestanding sign may contain an electronic message center. "Electronic message center" shall mean a computer-controlled display panel with automatically changing or moving messages displayed by moving or intermittent lights and containing alphanumeric figures only, with no animation. A changing or moving message displayed on an electronic message center must remain constant for no less than five minutes and may be used only to display the name of the business located on the site.

(c) Signs which are equipped with glaring or rotating strobe or spotlights are prohibited.

(d) No sign shall be erected so as to extend into or over the public right-of-way of any street, nor shall any sign be placed so as to interfere with or obstruct vision at any intersection or along any public street.

(e) Notwithstanding the foregoing, an electronic message center on a freestanding sign may not exceed the height of the building on the lot on which the sign is located.

(f) Sign area; location.

(1) No sign shall have more than two sides. The sign area includes the surface of a signboard and any portion of the supporting structure or trim upon which a message is displayed; provided, however, in the case of double-sided signs, only one side shall be computed to determine the sign area.

(2) On a lot containing less than one acre, the sign area of a single sign or the sign area on each side of a double-sided sign shall not exceed 64 square feet.

(3) For signs located on a lot containing one-half acre or more that abuts IH-10 and upon which one business establishment is located, the sign area of a single free standing sign or the sign area on each side of a double-sided, freestanding sign shall not exceed 80 square feet. The width-to-height ratio of such detached sign shall not exceed one to five or five to one.

(4) For signs located on a lot containing one-half acre or more that abuts IH-10 and upon which more than one business establishment is located, each of which share common driveways and on-site parking facilities, the sign area of a single free-standing sign or the sign area on each side of a double-sided, freestanding sign shall not exceed 90 square feet. The width-to-height ratio of such detached sign shall not exceed one to five or five to one.

(5) No sign allowed by this subsection (f) shall be placed in a yard which abuts district R (residential district).

(g) No portable signs are permitted.

(h) Lighted signs which are above the height of the building to which they pertain will be extinguished at or before 12:00 midnight.

(i) All signs shall be kept in a good state of repair.
(Ord. No. 431, § 2, 1-26-1988; Ord. No. 664, §§ 1—4, 4-18-2006; Ord. No. 676, § 1, 1-16-2007)

Sec. 44-189. District separation requirements.

(a) Improved business property in district B shall be separated from contiguous property in residential district R by any one of the following:

(1) A screening fence seven feet high, built of brick or stone.

(2) A strip of dense natural foliage at least 35 feet in width and at least seven feet in height measured from the boundary line of district B extending into district B.

(b) No building shall have windows with a view into any property within district R of the city, provided that the board of adjustment may grant an exception to such requirement if it determines that any such window, while it would literally have a view into property within district R of the city, would be unlikely to result in individuals having an actual view through such window into property within district R.
(Ord. No. 340, § 7-8, 5-20-1980)

Secs. 44-190—44-216. Reserved.

ARTICLE IV. NONCONFORMING LOTS, USES AND STRUCTURES

Sec. 44-217. Intent.

Within the districts established by this chapter or amendments that may later be adopted, there may exist lots, structures, uses of land and structures and characteristics of use which were lawful before this chapter was passed or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments. It is the intent of this chapter to permit those nonconformities to continue until they are removed, but not to encourage their survival. It is

further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district, except as more specifically set forth in this chapter. Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of the ordinance from which this chapter is derived and upon which actual building construction had been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastening in a permanent manner.
(Ord. No. 340, § 9-1, 5-20-1980)

Sec. 44-218. Nonconforming lots of record.

(a) *Generally.* In district R, a single-family dwelling and customary accessory buildings may be erected on any single lot lawfully created and of record on March 25, 1955, notwithstanding limitations imposed by other provisions of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area, width and depth that are generally applicable in such district. If two or more lots or combination of lots and portions of lots with continuous frontage in single ownership were of record on the effective date of the adoption of the ordinance from which this chapter is derived and if all or part of the lots do not meet the requirements established for lot area and width, the land involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of such parcel shall be used or sold in a manner which diminishes compliance with lot area and width requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with area or width below the requirements established herein.

(b) *Building regulations for nonconforming lots.*

(1) *Definitions.*

a. *Lot.* As used herein, the term "lot" shall mean a lot, tract, or parcel of land designated on a subdivision plat duly filed in the map or plat records of the county, or any lot, tract, or parcel of land held in separate ownership and described by metes and bounds upon a deed duly recorded and registered in the deed records of the county, that existed prior to the date of adoption of applicable subdivision regulations of the city.

b. *Nonconforming lot.* As used herein, "nonconforming lot" is a lot that, because of its area, width or depth, does not comply with the regulations established under the terms of this chapter.

(2) *Minimum required yards.* The minimum yard requirements/building lines for all nonconforming lots lawfully created on or after March 25, 1955, or, in the case that neither deed restrictions recorded prior to March 25, 1955, nor a plat recorded prior to March 25, 1955, establish building lines/a front yard, a side yard, or a rear yard, shall be as follows:

a. For lots created on or before March 25, 1955, with applicable deed restrictions of platted building lines. The required front yard, side yard and rear yard for nonconforming lots legally created and lying within a subdivision which were in existence on March 25, 1955, and in separate ownership, shall be the yard requirements/building lines established in the recorded deed restrictions applicable to such lots as such deed restrictions existed on March 25, 1955, or the building lines established on a plat recorded prior to March 25, 1955. If the original deed restrictions conflict with the building lines established in a recorded plat, the greater distance or depth shall apply. If neither recorded deed restrictions nor a recorded plat establish building

lines/a front yard, a side yard, or a rear yard, the required yard shall be as set forth in subsection (a)(1)b.1—3 of this section.

b. For all other nonconforming lots shall be as follows:

1. *Minimum required front yard.*

Lots less than 10,000 sq. ft.	18 ft.
Lots 10,000 sq. ft.—14,999 sq. ft.	25 ft.
Lots 15,000 sq. ft.—17,999 sq. ft.	30 ft.
Lots 18,000 sq. ft.—19,999 sq. ft.	40 ft.
Lots 20,000 sq. ft.—22,499 sq. ft.	50 ft.

The required front yard on a turn circle shall be as follows:

Lots less than 10,000 sq. ft.	18 ft.
Lots 10,000 sq. ft.—14,999 sq. ft.	20 ft.
Lots 15,000 sq. ft.—17,999 sq. ft.	25 ft.
Lots 18,000 sq. ft.—19,999 sq. ft.	30 ft.
Lots 20,000 sq. ft.—22,499 sq. ft.	35 ft.

2. *Minimum required side yards.*

i. Lots 20,000 sq. ft.—22,499 sq. ft.: There shall be two side yards on each lot, having a combined width of not less than 35 feet; neither of such side yards shall be less than 15 feet in width. A side yard adjacent to a side street shall not be less than 20 feet in width.

ii. All other nonconforming lots: There shall be two side yards on each lot, each side yard having a width of ten feet. A side yard adjacent to a side street shall be not less than 15 feet.

3. *Minimum required rear yards.* There shall be a rear yard having a depth of not less than 25 feet.

(3) *Maximum lot coverage for nonconforming lots.* The building area, exclusive of outdoor swimming pools, shall not exceed one-third of the lot area or 5,625 square feet, whichever is less.

(4) *Maximum building height for nonconforming lots.* The same as specified in section 44-159.

(5) *Alteration or repair of nonconforming building and structures.* Existing single-family dwellings and customary accessory buildings located on nonconforming lots or tracts legally created and lying within a subdivision which was in existence on March 25, 1955, may be altered, repaired or enlarged; provided however, any enlargement or alteration shall meet all setback, yard and height requirements established herein for such subdivision.

(Ord. No. 340, § 9-2, 5-20-1980; Ord. No. 658, §§ 1—3, 2-21-2006)

Sec. 44-219. Nonconforming uses of land or land with minor structures only.

Where, at the time of adoption of the ordinance from which this chapter is derived, lawful use of land exists which would not be permitted by the regulations imposed by this chapter, and where such use involves no individual structure with a replacement cost exceeding $1,000.00, the use may be continued as long as it remains otherwise lawful, provided:

(1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of the ordinance from which this chapter is derived;

(2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of adoption or amendment of the ordinance from which this chapter is derived;

(3) If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such

land shall conform to the regulations specified by this chapter for the district in which the land is located;

(4) No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

(Ord. No. 340, § 9-3, 5-20-1980)

Sec. 44-220. Nonconforming structures.

Where a lawful structure exists at the effective date of adoption or amendment of the ordinance from which this chapter is derived that could not be built under the terms hereof by reason of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming structure may be enlarged or altered in a manner which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

(2) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of such destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

(3) Should any such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(Ord. No. 340, § 9-4, 5-20-1980)

Sec. 44-221. Nonconforming uses of structures or of structures and premises in combination.

If lawful uses involving individual structures with a replacement cost of $1,000.00 or more, or of structure and premises in combination, which exist at the effective date of adoption or amendment of the ordinance from which this chapter is derived, would not be allowed in the district under the terms of this chapter, the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of the ordinance from which this chapter is derived, but no such use shall be extended to occupy any land outside such building.

(3) Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a permitted use shall thereafter conform to the regulations of the district, and the nonconforming use may not thereafter be resumed.

(4) When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for six consecutive months or for 12 months during any three-year period, the structure, or the structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.

(5) Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purposes of this subsection is defined as damage to the extent of more than 50 percent of the replacement cost at the time of destruction.

(6) All nonconforming uses shall be separated from contiguous residential property by any one of the following:

a. A brick or stone screening fence seven feet high.

b. A strip of dense natural foliage 35 feet in width and at least seven feet in height.

c. A formal hedge four feet thick and at least seven feet high.

(Ord. No. 340, § 9-5, 5-20-1980)

Sec. 44-222. Repairs and maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing after obtaining a building permit as herein set out, provided that the cubic content existing when it became nonconforming shall not be increased.

(Ord. No. 340, § 9-6, 5-20-1980)

Sec. 44-223. Uses under special exceptions provisions not nonconforming uses.

Any use which is permitted as a special exception in a district under the terms of this chapter shall not be deemed a nonconforming use in the district, but shall without further action be considered a conforming use.

(Ord. No. 340, § 9-7, 5-20-1980)

Secs. 44-224—44-254. Reserved.

ARTICLE V. AMENDMENTS

Sec. 44-255. Authority.

The city council may from time to time amend, supplement or change by ordinance the boundaries of the districts or the regulations herein established.

(Ord. No. 340, § 17(1), 5-20-1980)

Sec. 44-256. Submission to planning and zoning commission.

Before taking action on any proposed amendment, supplement, or change to a zoning district classification or boundary or a zoning district regulation, the city council shall submit the proposed revision to the planning and zoning commission for its recommendation and report.

(Ord. No. 340, § 17(2), 5-20-1980; Ord. No. 703, § 1, 10-16-2007)

Sec. 44-257. Public hearing—Planning and zoning commission.

The planning and zoning commission shall make a preliminary report and hold public hearings thereon before submitting its final report. Written notice of all public hearings before the planning and zoning commission on proposed changes to a zoning district classification or boundary shall be sent to owners of real property lying within 200 feet of the property on which the change in classification or boundary is proposed, such notice to be given not less than ten days before the date set for hearing to all such owners who have rendered their property for city taxes as the ownership appears on the last approved city tax rolls. Such notice may be served by depositing it, properly addressed and postage paid, in the city post office.

(Ord. No. 340, § 17(3), 5-20-1980; Ord. No. 703, § 2, 10-16-2007)

Sec. 44-258. Same—City council.

After receipt of the final report and recommendation of the planning and zoning commission, a public hearing shall be held by city council before adopting any amendment, supplement or change to a zoning district classification or boundary or district regulation. Notice of the hearing shall be published one time in a newspaper of general circulation in the city, giving the time, date and place of such hearing and describing in reasonable detail the proposed amendment, supplement or change. Such notice shall be published at least 15 calendar days prior to the date of such hearing. In addition, at least seven calendar days before the date of the hearing, a written notice containing the same information shall be mailed, by regular U.S. mail, to each residence in the city, according to the address shown in the tax records maintained by the county appraisal district, or its

successor. All costs of such publication shall be paid by the person requesting such amendment, supplement or change, if any.
(Ord. No. 340, § 17(4), 5-20-1980; Ord. No. 703, § 3, 10-16-2007)

Sec. 44-259. Vote required in the event of nonapproval or protest.

Unless such proposed amendment, supplement or change has been approved by the planning and zoning commission or in case of a protest signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent to the rear thereof extending 200 feet therefrom, all of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council.
(Ord. No. 340, § 17(5), 5-20-1980)

CODE COMPARATIVE TABLE

2002 CODE

This table gives the location within this Code of those sections of the 2002 Code, as supplemented, which are included herein. Sections of the 2002 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances, see the table immediately following this table.

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ORDINANCES

This table gives the location within this Code of those ordinances which are included herein. Ordinances not listed herein have been omitted as repealed, superseded or not a general and permanent nature.

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This table shows the location within this Code, either in the text or notes following the text, of references to state law.

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*__Note—__The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.