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State Law reference— Regulation of land use, structures, businesses and related activities, V.T.C.A., Local Government Code ch. 211 et seq.; planning and development, V.T.C.A., Local Government Code ch. 371 et seq. [\(Back\)](#)

ARTICLE I. IN GENERAL

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Sec. 50-1. Title and purpose.

- (a) This chapter shall be known and may be cited as the city's "comprehensive zoning ordinance" or the "zoning ordinance."
- (b) As authorized by V.T.C.A., Local Government Code ch. 211, the zoning regulations and districts as established in this chapter have been made in accordance with an adopted comprehensive plan for the purpose of promoting the public health, safety, morals and general welfare of the city. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic and other dangers; to ensure adequate light and air; to prevent the overcrowding of land and thus avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, wastewater treatment, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, for the character of each zoning district and its peculiar suitability for the particular uses specified; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

(Ord. No. 2008-01, § 2, 2-4-2008)

Sec. 50-2. Definitions.

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

Abut means to physically touch or border upon; to share a common property line but not overlap. See *adjoining lot or land*.

Accessory building/structure (business or industry) means in the nonresidential districts, a subordinate building to the main building that does not exceed the height of the main building and does not exceed 50 percent of the floor area of the main building, and that is used for purposes accessory and incidental to the main use (see *Accessory use*).

Accessory building/structure (residential) means in a residential district, a subordinate building that is detached from the primary on-site structure and is used for a purpose that is customarily incidental to the main structure, but not involving the conduct of a business, unless permitted as a home occupation (i.e., the building area must be less than that of the main structure). Examples may include, but are not limited to, the following: a private garage for automobile storage, tool shed, greenhouse as a hobby, home workshop, children's playhouse, storage building, garden shelter, etc.

Accessory dwelling means a subordinate building that is detached from the primary on-site structure, is used as a residence, is incidental to the main structure (i.e., the building area must be significantly less than that of the main structure), and is not involved in the conduct of a business.

Accessory use means a use that is customarily incidental, appropriate and subordinate to the principal use of land or buildings and that is located upon the same lot therewith (i.e., the land/building area that is used for the accessory use) must be less than that used for the primary use.

Adjoining lot or land means a lot or parcel of land that shares all or part of a common lot line with another lot or parcel of land.

Airport or landing field means a place where aircraft can land and take off that is usually equipped with hangars, facilities for aircraft refueling and repair, and various accommodations for passengers.

Alley means a minor right-of-way that is dedicated to public use and which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

All-weather surface means a created surface, such as brick, stone, concrete, or asphalt, placed on the land to facilitate pedestrian or vehicular passage, as may be required. The term "all-weather surface" also may be referred to as paving or pavement.

Ambulance service means provision of private (not operated by the city) emergency transportation, which may include mobile medical care, and which may include storage and maintenance of vehicles.

Amusement devices/arcade means any building, room, place or establishment of any nature or kind, and by whatever name called, where more than ten percent of the public floor area is devoted to four or more amusement devices that are operated for a profit, whether the same is operated in conjunction with any other business or not, including, but not limited to, such amusement devices as coin-operated pinball machines, video games, electronic games, shuffle boards, pool tables or other similar amusement devices. However, the term "amusement device/arcade," shall not include musical devices, billiard tables which are not coin-operated, machines that are designed exclusively for small children, and devices designed to train persons in athletic skills or golf, tennis, baseball, archery or other similar sports.

Amusement, commercial (indoor), means an amusement enterprise that is wholly enclosed within a building which is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line, and that provides activities, services and/or instruction for the entertainment of customers or members, but not including amusement arcades. Uses may include, but are not limited to, the following: bowling alley, ice skating rink, martial arts club, racquetball/handball club, indoor tennis courts/club, indoor swimming pool or scuba diving facility, and other similar types of uses.

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Amusement, commercial (outdoor), means an amusement enterprise offering entertainment and/or games of skill to the general public for a fee wherein any portion of the activity takes place outdoors and including, but not limited to, a golf driving range, archery range, miniature golf course, batting cages, go-cart tracks, amusement parks, and other similar types of uses.

Amusement, commercial (temporary), means outdoor or indoor commercial amusement provided on a temporary basis, examples of which include a carnival or haunted house.

Animal kennel means a commercial establishment in which dogs or other domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

Antique shop (no outside sales or storage) means a retail establishment engaged in the selling of works of art, furniture and/or other artifacts of an earlier period, with all sales and storage occurring inside a building.

Apartment. See *Dwelling-multiple-family*.

Appliance service and repair means the maintenance and rehabilitation of appliances that are customarily used in the home, including, but not limited to, washing and drying machines, refrigerators, dishwashers, trash compactors, ovens and ranges, countertop kitchen appliances, vacuum cleaners, etc., but not including appliances/equipment which have internal combustion engines.

Approved plan means a plan that has been granted final approval by the appropriate approving authority.

Art gallery/museum/dealer means an institution for the collection, display and/or distribution of objects of art or science, and which is typically sponsored by a public or quasi-public agency and generally open to the public.

Assisted living facility (continuing care retirement community) means a congregate residence facility for ten or more elderly (over 55 years of age) persons, regardless of legal relationship, who need limited assistance with daily living activities. A limited number of support services such as meals, laundry, housekeeping, transportation, social/recreational activities, hairdressing, etc. may be provided or associated with the assisted living facility. Units may be attached or detached, single- or double-occupancy, and may include limited or full kitchen facilities. Full-time medical or nursing care is not typically provided by the facility, but may be privately arranged by individual residents on a part-time or temporary basis (e.g., visiting nurses, etc.).

Auto accessories (retail sales only) means the use of any building or other premises for the primary inside display and sale of new or used parts for automobiles, panel trucks or vans, trailers, or recreation vehicles.

Auto dealer (new auto servicing and used auto sales as accessory uses) means retail sales of new automobiles or light load vehicles, including, as an accessory use, the sales of used automobiles or light load vehicles and the service of new or used vehicles.

Auto dealer (primarily used auto sales) means retail sales, or offering for sale, primarily used automobiles or light load vehicles.

Auto rental means storage or renting of automobiles and light trucks.

Auto repair (major) means general repair or reconditioning of engines, air conditioning systems and transmissions for motor vehicles; wrecker service; collision repair services including body, frame or fender straightening or repair; customizing; painting; vehicle steam cleaning; undercoating and rustproofing; those uses listed under "auto repair, minor"; and other similar uses.

Auto repair (minor) means minor repair or replacement of parts, tires, tubes and batteries; diagnostic services; minor maintenance services such as grease, oil, spark plug and filter changing; tune-ups; emergency road service; replacement of starters, alternators, hoses and brake parts; automobile washing and polishing; performing state inspections and making minor repairs necessary to pass said inspection; normal servicing of air conditioning systems; and other similar minor services for motor vehicles except heavy load vehicles, but not including any operation named under "auto repair, major" or any other similar use.

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Auto storage or auto auction means the storage or impoundment, on a lot or tract which is paved in accordance with parking lot paving requirements set forth in this chapter, of operable automobiles for the purpose of holding such vehicles for sale, distribution and/or storage. The term "auto storage" or "auto auction" shall not include the storage of wrecked or inoperable vehicles (see *wrecking yard*).

Automobile means a self-propelled mechanical vehicle designed for use on streets and highways for the conveyance of goods and people, including, but not limited to, the following: passenger cars, light duty trucks and sport utility vehicles, vans and minivans, motor scooters and motorcycles.

Automobile accessory installation (minor) means minor installation of minor automobile accessories such as car alarms, radio and stereo equipment, window tinting, pinstriping, cellular telephones and similar accessories.

Automobile repair garage means an establishment providing major or minor automobile repair services to all motor vehicles except heavy load vehicles.

Automobile wash (full-service/detail shop) means washing, waxing or cleaning of automobiles or light-duty trucks where the owner of the vehicle does not actually wash the vehicle. The owner either leaves the vehicle and comes back to retrieve it later, or the owner waits in a designated area while employees of the car wash facility vacuum, wash, dry, wax and/or detail the vehicle for a fee.

Automobile wash (self-service) means washing, waxing or cleaning of automobiles or light duty trucks where the owner of the vehicle causes the vehicle to become washed. One type of unattended car wash facility utilizes automated self-service (drive-through/rollover) wash bays and apparatus in which the vehicle owner inserts money or tokens into a machine, drives the vehicle into the wash bay, and waits in the vehicle while it is being washed. The other type of unattended facility is comprised of wand-type self-service (open) wash bays in which the vehicle owner drives the vehicle into the wash bay, gets out of the vehicle, and hand washes the vehicle with a wand-type apparatus by depositing coins or tokens into a machine.

Automotive gasoline or motor fuel service station means any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of automotive fuels, lubricants and automobile accessories, including those operations listed under "auto repair, minor." Vehicles which are inoperative or are being repaired may not remain parked outside these facilities for a period greater than 48 hours.

Bakery, retail means a facility less than 3,000 square feet for the production and/or sale of baked goods.

Bakery, (wholesale) means a manufacturing facility over 3,000 square feet for the production and distribution of baked goods and confectioneries to retail outlets.

Barn means a structure intended for the purpose of storing farming and ranching related equipment and/or housing livestock.

Basement (or cellar) means a portion of a building that is partly or wholly underground. For the purposes of height measurement, a basement shall be counted as a story when more than one-half of its height is above the average level of the adjoining ground or when subdivided and used for commercial or dwelling purposes by other than a janitor employed on the premises.

Bed and breakfast inn means a dwelling occupied as a permanent residence by an owner or renter which serves breakfast and provides or offers sleeping accommodations in not more than five rooms for transient guests for compensation, generally for a period not to exceed seven days.

Block means an area within the city enclosed by streets and occupied by or intended for buildings; or, if said word is used as a term of measurement, it shall mean the distance along a side of a street between the nearest two streets which intersect said street on said side. In cases where the platting is incomplete or disconnected, the city manager or his designee shall determine the outline of the block.

Board of adjustments (BOA) means a board which is appointed by the city council, and which is authorized to approve variances and special exceptions to this chapter (i.e., variances), and to hear and decide any appeals that allege error in an order, requirement, decision or determination made by an

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administrative official in the enforcement of the zoning ordinance. The term "board of adjustments" is also referred to as the zoning board of adjustments.

Buffer means a specified land area, together with the planting and landscaping required on any building site, which may also contain a barrier, such as a berm or a fence, where such additional screening is necessary to achieve the desired level of buffering between various activities, and shall meet the minimum requirements to provide a year-round visual obstruction.

Building means any structure intended for shelter, occupancy, housing or enclosure for persons, animals or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.

Building height means the vertical distance from finished grade to the top of the highest roof beams on a flat or shed roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs (see Illustration 50-2-1). In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, flagpoles, and parapet wall not exceeding four feet in height.

Illustration 50-2-1a: Measuring building height

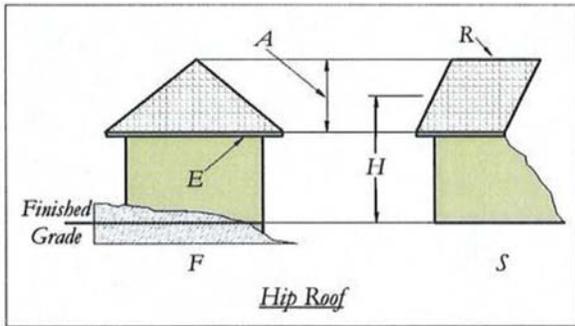
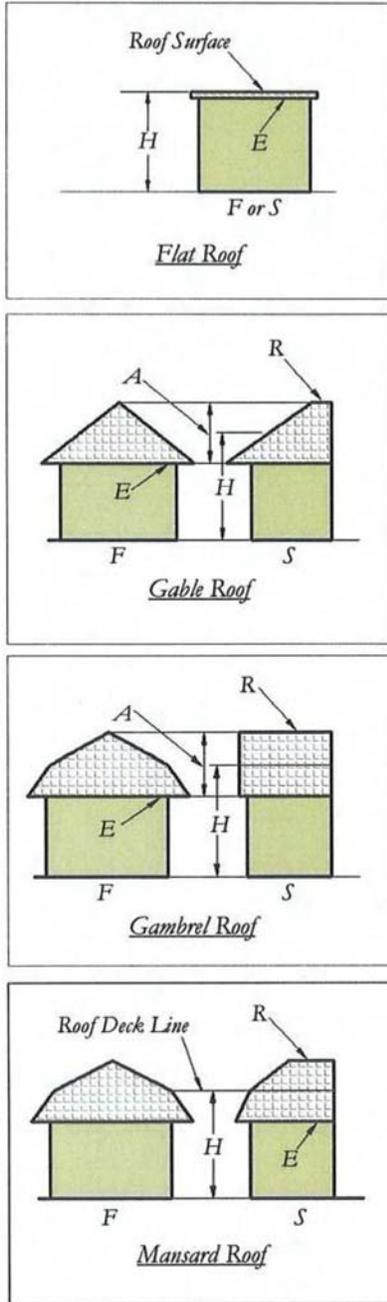


Illustration 50-2-1b: Measuring building height

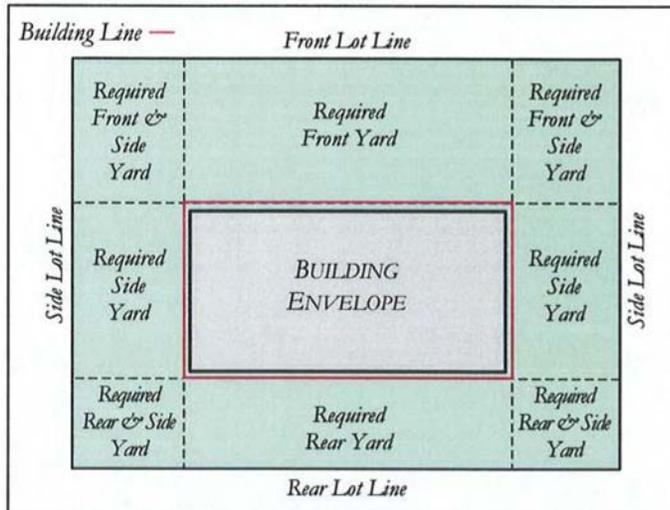
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Building line means a line parallel, or approximately parallel, to any lot line at a specific distance therefrom, marking the minimum distance from the lot line that a building may be erected, and marking the building envelope, which is the area in which a building may be erected (see Illustration 50-2-2).

Illustration 50-2-2: Building line and envelope

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Building materials sales (indoor or outdoor) means materials, tools, and/or hardware customarily used in the construction of buildings and other structures, including facilities for storage of materials for retail sales and is sometimes referenced as a home improvement center. The term "outdoor" means the storage of materials and products outside of the main building.

Building official means the inspector or administrative official charged with responsibility for issuing permits and enforcing this chapter and the building code of the city.

Building site. See *Lot*.

Building, main/primary/principal means a building in which the principal use of the lot on which it is situated is conducted.

Caretaker's or guard's residence means a residence located on a premises with a main residential or nonresidential use and occupied only by a caretaker or guard employed on the premises (e.g., residence for guard in a private street development, residence for a guard/manager/caretaker for a self-storage facility or a restricted access business park, etc.).

Carport means a structure that is open on a minimum of two sides and designed or used to shelter vehicles. The term "carport" is also called a covered parking area.

Cemetery and/or mausoleum means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Cemetery, animal, means same as cemetery except only for the burial of dead animals.

Certificate of occupancy means an official certificate issued by the city through the building official which indicates conformance with the zoning regulations and building codes and which authorizes legal use of the premises for which it is issued.

Child day care center (business) means a commercial institution or place designed for the care or training of six or more unrelated children under 14 years of age for less than 24 hours a day. The term "child day care center" is also referred to as a day care.

Child day nursery is also referred to as a day nursery. See *family home (child care in place of residence)*.

Church/temple/place of worship means a building for regular assembly for religious worship which is used primarily and designed for such purpose and those accessory activities which are customarily associated therewith, and the place of residence for ministers, priests, nuns or rabbis on the premises

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(tax exempt as defined by state law). For the purposes of this chapter, Bible study and other similar activities which occur in a person's primary residence shall not apply to this definition.

Civic center (municipal) means a building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, food service, convention and/or entertainment facilities owned and/or operated by a municipality.

Cleaning plant (commercial laundry) means an industrial facility where fabrics are cleaned with substantially nonaqueous organic solvents on a commercial or wholesale basis.

College or university means an academic institution of higher learning accredited or recognized by the state and covering a program or series of programs of academic study.

Community center (public) means a building or complex of buildings that house cultural, recreational, athletic, food service and/or entertainment facilities owned and/or operated by a governmental agency or private nonprofit agency.

Community home means a place where not more than six physically or mentally impaired or handicapped persons are provided room and board, as well as supervised care and rehabilitation by not more than two persons as licensed by the state department of mental health and mental retardation (see V.T.C.A., Human Resources Code ch. 123).

Community or social building means a building used for recreational, social, educational, and cultural activities generally owned, maintained and operated by a homeowners' association for the enjoyment of its resident members.

Comprehensive plan means a document adopted by the city that consists of graphic and textual policies which govern the future development of the city and which consists of various components governing specific geographic areas and functions and services of the city.

Concrete or asphalt batching plant (permanent) means a permanent manufacturing facility for the production of concrete or asphalt.

Concrete or asphalt batching plant (temporary) means a temporary manufacturing facility for the production of concrete or asphalt during construction of a project and to be removed when the project is completed.

Convenience store (with or without gasoline sales) means a retail establishment selling food for off-premises consumption and a limited selection of groceries and sundries (and possibly gasoline, if pumps are provided). The term "convenience store (with or without gasoline sales)" does not include or offer any automobile repair services.

Copy shop means an establishment which reproduces, in printed form, individual orders from a business, profession, service, industry or government organization and occupies less than 4,000 square feet.

Contractor's shop with outside storage yard means a building, part of a building, or land area for the construction or storage of materials, equipment, tools, products, and vehicles.

Country club (private) means a land area and buildings which may include a golf course, clubhouse, dining room, swimming pool, tennis courts and similar recreational or service uses available only to members and their guests.

Court means an open, unobstructed space, bounded on more than two sides by the walls of a building. An inner court is entirely surrounded by the exterior walls of a building. An outer court has one side open to a street, alley, yard, or other permanent open space.

Coverage means the lot area covered by some type of impervious surface, which includes buildings located thereon, overhanging roofs, and parking areas. Also see *impervious surface*.

Dance hall/dancing facility means an establishment open to the general public for dancing (any sales of alcoholic beverages for on-premises consumption shall be subject to requirements and use restrictions for private clubs). See *private club*.

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Density means the total number of residential dwelling units allowed upon a given tract of land, usually expressed in total number of units per gross acres or net acre.

Detached means having no physical connection above the top of the floor line of the first floor with any other building or structure.

Distribution center means building or facility used for the storage and distribution of wholesale items or products.

District means a section of the city for which regulations, including height, area and use, governing the section have been established and are uniform.

Drapery or furniture upholstering shop means an establishment for the production, display and sale of draperies and soft coverings for furniture.

Drinking establishment means any building or premises primarily engaged in the retail sale of alcoholic beverages such as beer, ale, wine, and liquor, for consumption on the premises. Typical establishments include bars, night clubs, lounges, and dance halls.

Duplex (two-family). See *dwelling, two-family*.

Dwelling means any building, or portion thereof, which is designed or used as living quarters for one or more families.

Dwelling, duplex townhome, means two single-family dwellings attached along a single common property line, each unit designed to be occupied by one family. While the structures may appear to be a duplex, there is a significant difference. Each unit is located on its own platted lot with separate utilities. The buildings, while attached, are separately owned with a common wall meeting the fire and separation requirements of the adopted fire and building codes.

Dwelling, HUD-code manufactured home. See *Manufactured housing*.

Dwelling, industrialized home. See *Manufactured housing*.

Dwelling, manufactured home. See *Manufactured housing*.

Dwelling, multiple-family, means three or more dwelling units on a single lot designed to be occupied by three or more families living independently of one another, exclusive of hotels or motels. The term "dwelling, multiple-family," includes three-family units (triplex) and four-family units (quadraplex), as well as traditional apartments.

Dwelling, single-family attached or townhome means a dwelling which is joined to another dwelling at one or more sides by a party (i.e., shared) wall, which is designed for occupancy by one family, and which is located on a separate lot delineated by front, side and rear lot lines.

Dwelling, single-family detached, means a dwelling designed and constructed as a free-standing structure for occupancy by one family and located on a lot or separate building tract having no physical connection to a building located on any other lot or tract. The term single-family dwelling occupied by one family, has a common entrance, one common kitchen facility and is utilized as one living quarters.

Dwelling, two-family or duplex means two attached dwellings in one structure under one common ownership, each side designed to be occupied by one family.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as living quarters for one family, and includes facilities for food preparation and sleeping. One dwelling unit occupied by one family has a common entrance, utilities, kitchen and food preparation facilities and sleeping and restroom facilities accessible by all. (See *Family*.)

Dwelling, zero-lot-line or patio home means a single-family dwelling on a separately platted lot which is designed such that one side yard is reduced to zero feet in order to maximize the width and usability of the other side yard, and which permits the construction of a detached single-family dwelling with one side (i.e., wall) of such dwelling placed on the side property line.

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Easement means a grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

Eating establishment means any building or premises primarily engaged in the retail sale of prepared food and drink for on-site or off-site immediate consumption.

Eating establishment (with drive-in service) means an eating establishment where food and/or drinks are primarily served to customers in motor vehicles, or where facilities are provided on the premises which encourage the serving and consumption of food in automobiles on or near the restaurant premises.

Eating establishment (with drive-through service) means an eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which may include a drive-through windows.

Eating establishment (with no drive-through service) means an eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which do not have a drive-through window.

Educational facilities means public and private primary, secondary and post-secondary educational facilities offering instruction in the branches of learning and study required to be taught by the state education agency, and such federally funded educational programs for preschool children as the head start program.

Electrical substation means a subsidiary station in which electric current is transformed.

Fair ground/rodeo means an area or space either outside or within a building for the display of animals, exhibitions, topic-specific goods, or information.

Family means one or more persons related by blood, marriage, or adoption; or a group not to exceed four persons not all related by blood or marriage, adoption or guardianship, occupying a dwelling unit and living together as a single housekeeping unit.

Family home (child care in place of residence) means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care. However, the number of children, including the caretaker's own, provided care at such facility shall not exceed 12 at any given time. No outside employment is allowed at the facility. This facility shall conform to V.T.C.A., Human Resources Code ch. 42, and in accordance with such standards as may be promulgated by the state department of family and protective services. The term "family home (child care in place of residence)" is also referred to as child day nursery and day nursery.

Farm (ranch, garden, crops or orchard) means an area used for growing usual farm products, vegetables, fruits, trees, and grain and for the raising thereon of the usual farm animals such as horses, cattle, and sheep and including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

Feed and grain store/farm supply store means an establishment for the selling of corn, grain and other food stuffs for animals and livestock, and including implements and goods related to agricultural processes, but not including farm machinery.

Financial institution means an establishment for the custody, loan, exchange and/or issue of money, the extension of credit, and/or facilitating the transmission of funds, examples of which include banks, saving and loans, and credit unions.

Floodplain means an area of land subject to inundation by a 100-year frequency flood as determined using standard engineering practices and generally as shown on the FIRM flood insurance rate map of the city.

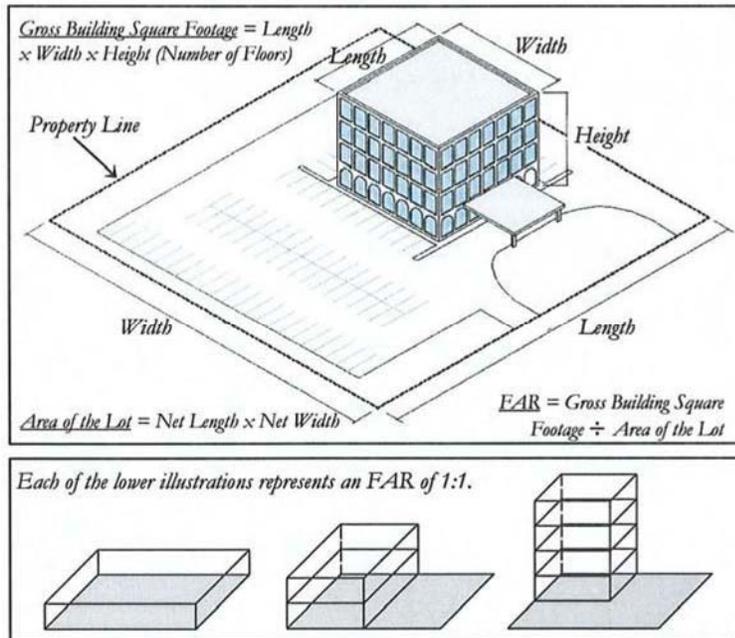
Floor area, gross means the total gross square feet of floor space within the outside dimensions of a building including each floor level, but excluding any space where the floor-to-ceiling height is less than six feet, carports, residential garages, open porches, and breezeways.

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Floor area, minimum. See Minimum floor area per dwelling unit.

Floor area ratio (far) means the floor area of a main building or buildings on a lot, divided by the lot area (see Illustration 50-2-3). The maximum FAR permitted by this chapter shall be calculated by dividing the gross square footage of the buildings to the net (after right-of-way dedication) area of the lot (measured in square feet). Any below grade mechanical rooms, parking garages, or other nonoccupied areas shall not be included in the gross square footage of the buildings for the purposes of this calculation.

Illustration 50-2-3: Floor area ratio (FAR)



Florist shop (retail only) means an establishment for the display and retail sale of flowers, small plants and accessories.

Food or grocery store means a retail business establishment that displays and sells consumable goods that are not to be eaten on the premises. Prepared food may be sold only as a secondary or accessory use.

Food processing means a manufacturing or light industrial use that primarily deals with the processing and packaging of food (such as dairy or grain) products that are intended for human consumption, but which are not typically sold in volume to end users on the premises. Incidental retail sales of food products (e.g., bread and baked goods, dairy products such as cheese, etc.) created and packaged on the premises may be allowed as an accessory use.

Fortunetelling and similar activities mean a use involving the foretelling of the future in exchange for financial or other valuable consideration. Fortunetelling shall be limit to uses where the fortune is told through astrology, tarot card reading, crystal gazing, palmistry or any similar means.

Franchised private utility (not listed) means a utility such as one distributing heat, chilled water, closed circuit television or similar service and requiring a franchise to operate in the city.

Fraternal organization means an organized group having a restricted membership and specific purpose related to the welfare of the members such as Elks, Masons, Knights of Columbus, or a labor union.

Fraternity or sorority house means a building other than a hotel that is occupied only by individuals enrolled in a college or university located within the city and persons to attend the house and supervise activities of the fraternity or sorority. Except for the attendants, each resident must be a member of a

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fraternity or sorority that is recognized by the college or university and chartered by a state or national organization.

Front yard. See *Yard, front.*

Funeral home means a place for the storage of human bodies prior to their burial or cremation, or a building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

Furniture and appliance store means and includes retail stores selling new goods for furnishing the home, including, but not limited to, furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances.

Furniture store (new and used) means the same as a "furniture and appliance store," except sales may include used items.

Garage/accessory dwelling means a residential dwelling unit attached to or over a garage but not attached to the main residential structure.

Garage, private, means an enclosed (on at least three sides) accessory building, or a part of a main building, used for storage of automobiles and used solely by the occupants and their guests. A private garage is also called an enclosed parking space.

Garden shop means a facility which is engaged in the selling of flowers, ornamental plants, shrubs, trees, seeds, garden and lawn supplies, and other materials used in planting and landscaping, but not including cultivation and propagation activities outside a building.

Gasoline service or filling station. See *Automotive gasoline or motor fuel service station.*

General commercial plant means establishments other than personal service shops for the treatment and/or processing of products as a service on a for-profit basis including, but not limited to, newspaper printing, laundry plant, or cleaning and dyeing plants.

General manufacturing. See *industrial, manufacturing.*

General retail stores means and includes retail stores which sell a number of lines of primarily new merchandise including but not limited to dry goods, apparel and accessories, furniture and home furnishings, small wares, small appliances, hardware, and food. The stores included in this group are known as department stores, variety stores, general merchandise stores, general stores, etc. (see *retail shop*).

Golf course means an area of 20 acres or more improved with trees, greens, fairways, hazards, and which may include clubhouses; the golf course may be privately or publicly owned and operated.

Grade means for buildings having walls adjacent to one street only, the elevation of the sidewalk at the center of the wall adjacent to the street. For buildings having walls adjacent to more than one street, the grade is the average of the elevation of the sidewalks at the center of all walls adjacent to the streets. For buildings having no wall adjacent to a street, the grade is the average level of the finished surface of the ground adjacent to the exterior walls of the building. Where no sidewalk has been constructed, the city engineer shall establish such sidewalk level or its equivalent for the purpose of this chapter.

Group day-care home means a facility that provides care for seven to 12 children less than 14 years of age less than 24 hours a day.

Gymnastic or dance studio means a building or portion of a building used as a place of work for a gymnast or dancer or for instructional classes in gymnastics or dance.

Hauling or storage company. See *Motor freight company.*

Health club (indoor) includes, but is not limited to, an establishment which provides facilities and equipment (e.g., gymnasiums, weight rooms, swimming pools/spas, exercise apparatus, instruction/classes, etc.) which are intended to promote health, fitness, weight reduction and/or similar health-related activities. Such facilities may include such accessory uses as food service, sales of

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sundries and apparel, and child care services, provided that such accessory uses are clearly incidental to the primary use and are for the use of studio patrons only (i.e., not the general public).

Heavy load vehicle means a self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) of greater than 16,000 pounds (including trailers), such as large recreational vehicles (originally manufactured as RVs, not converted), tractor-trailers, buses, vans, and other similar vehicles. The term "truck" shall be construed to mean "heavy load vehicle" unless specifically stated otherwise.

Heavy machinery sales and storage means a building or open area used for the display, sale, rental or storage of heavy machinery, tractors or similar machines, or a group of machines which function together as a unit.

Heliport means an area of land or water or a structural surface which is used, or intended for use, for the landing and taking off of helicopters, and any appurtenant areas which are used, or intended for use for heliport buildings and other heliport facilities.

Helistop means the same as a heliport, except that no refueling, maintenance, repairs or storage of helicopters is permitted.

Home for aged, residence, means a home where elderly people are provided with lodging and meals without nursing care being a primary function. A residence home for aged is also referred to as an assisted living facility.

Home occupation means an occupation carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises only, which is clearly incidental and secondary to the use of the premises for residential purposes (see section 50-117), and which can be conducted without any significantly adverse impact on the surrounding neighborhood.

Hospital means an institution that is licensed by the state and that falls within one of the following definitions:

Acute care. The term "acute care" means an institution where sick or injured patients are given medical and/or surgical treatment intended to restore them to health and an active life.

Chronic care. The term "chronic care" means an institution where those persons suffering from illness, injury, deformity and/or deficiencies pertaining to age are given medical care and treatment on a prolonged or permanent basis.

Hotel/motel means a facility offering temporary lodging accommodations or guest rooms on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, housekeeping service and recreational facilities. The term "guest room" shall be defined as a room designed for the overnight lodging of hotel guests for an established rate or fee. The term "hotel/motel" also includes an extended stay lodging facility that may be used for weekly or monthly occupancy periods.

Household care facility means a dwelling unit which provides residence and care to not more than nine persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; or rendered temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two supervisory personnel as a single housekeeping unit. This definition is subject to the Assisted Living Facility Licensing Act (V.T.C.A., Health and Safety Code ch. 247) and Community Homes for Disabled Persons Location Act, V.T.C.A., Human Resources Code ch. 123. A household care facility is also referred to as a hospice.

Household care institution means a facility which provides residence and care to ten or more persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; convalescing from illness; or temporarily homeless due to fire, natural disaster, or financial setback together with supervisory personnel.

HUD regulations means The Mobile Home Construction and Safety Standard Act, 42 USC, section 5401 et seq., as the same now exists or as is amended.

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Impervious surface means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

Incidental or accessory retail and service uses means any use different from the primary use but which complements and/or supplements the primary use (e.g., a sundries shop that serves tenants of an office building or hospital). The term "incidental" shall mean an area which constitutes not more than 15 percent of the main use.

Industrial manufacturing means establishments engaged in the manufacturing or transformation of materials into new products. These establishments are usually described as plants and factories, and characteristically use power-driven machines and materials handling equipment. Manufacturing production is usually carried on for the wholesale market, rather than for direct sale to the domestic consumer.

Institution for alcoholic, narcotic or psychiatric patients means an institution offering out-patient treatment to alcoholic, narcotic or psychiatric patients.

Institutional use means a nonprofit, religious, or public use, such as a church, library, public or private school, hospital, or government-owned or operated building, structure or land used for public purposes.

Japanning and shellacking works means an establishment engaged in applying finish coats to wood and like materials, specifically including the application of enamels, lacquers, sealants, and/or varnishes.

Junk means any manufactured good, appliance, fixture, furniture, machinery, vehicle, personal property or other thing or part thereof, whether of value or valueless, that is demolished, discarded, dismantled, dilapidated, or so worn, deteriorated, or in such condition as to be generally unusable and/or inoperable. Without limiting the generality of the aforementioned, anything that is water soluble, primarily organic, or not typically associated with junkyard activities may not be considered junk.

Junkyard means the outdoor use of any lot for the sale, storage, display, dismantling, demolition, abandonment or discarding of junk.

Kennels (indoor pens) means an establishment with indoor pens in which more than four dogs or domesticated animals more than one year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kennels (outdoor pens) means an establishment with outdoor pens in which more than four dogs or domesticated animals more than one year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kiosk means a small, freestanding, one-story accessory structure having a maximum floor area of 100 square feet and used for retail purposes, such as automatic teller machines, or the posting of temporary information and/or posters, notices and announcements. If a kiosk is to be occupied, it shall have a minimum floor area of 50 square feet.

Kitchen, residential, means, generally, that portion of a residential dwelling that is devoted to the preparation and/or cooking of food for the purpose of consumption by residents of the dwelling. The term "kitchen" generally indicates the presence of complete cooking facilities (i.e., stove, oven, microwave oven and/or refrigerator) as differentiated from a kitchenette which provides very limited cooking facilities (i.e., single-burner hot plate, under-counter refrigerator, microwave oven only, etc.).

Laboratory equipment manufacturing means a facility that makes or produces equipment or products used for research or testing.

Laboratory, scientific or research means an establishment that engages in research, testing or evaluation of materials or products, but not medical-related (see subsection (5) of *medical facilities*).

Landscaping means material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees or palms, and nonliving durable materials that are commonly used in landscaping such as, but not limited to, rocks, pebbles, sand, walls or fences, but excluding paving. The following words, terms, or phrases, when used in the landscaping section (section 50-113) of this chapter shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

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Building site means the tract, parcel or lot of land area which is being developed and which is designated on the building permit application, together with all contiguous tracts or parcels of land held under common ownership and any existing buildings and appurtenant parking.

Diameter means the measurement of a tree at the specified distance above ground level.

Dripline means the periphery of an area underneath a tree, which would be encompassed by the perpendicular line dropped from the outermost edges of the crown of the tree.

Ground cover means grasses and other plants grown to keep soil from being blown or washed away and planted so as to develop full coverage within eighteen months. Bank, mulches, gravel, and other pervious material are included in this definition for use as ground cover under trees and shrubs.

Landscape development includes trees, shrubs, ground cover, vines, or grass installed in planting areas having a minimum of ten square feet of actual planting area and a minimum inside dimension on any side of 18 inches.

Shrub means any self-supporting woody, deciduous or evergreen species, which is generally multi-stemmed and sold by height or spread and measured in inches or feet, as normally will grow in the county.

Tree means any self-supporting wood plant, evergreen or deciduous, which at the time of planting has a caliper equal to or greater than specified, which is not less than six feet in height as measured from the root collar, and shall be of a species that normally grows to an overall height of a minimum of 15 feet in the county.

Laundromat washateria/self-service means a facility where patrons wash, dry and/or dry clean clothing and other fabrics in machines on the premises that are operated by the patron/general public.

Laundry/dry cleaning (retail only, drop off/pick up) means a facility where clothing and other fabrics are washed, dried, and/or dry cleaned in machines on the premises that are operated by an employees of the facility.

Light load vehicle means a self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) not greater than 16,000 pounds and having no more than two axles, such as pickup trucks, sport utility vehicles, vans and minivans, recreational vehicles (less than 32 feet in length), campers and other similar vehicles, but not including automobiles and motorcycles.

Light manufacturing or industrial use means manufacturing of finished products or parts, predominantly from previously prepared materials, including fabrication, assembly, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Loading space means an off-street space or berth used for delivery and loading/unloading of vehicles.

Local utility line means the facilities provided by a municipality or a franchised utility company for distribution or collection of gas, water, surface drainage water, sewage, electric power or telephone service, including pad- and pole-mounted transformers.

Lot means a designated parcel, tract, or areas of land established by plat, subdivision, or otherwise permitted by law (as specified in V.T.C.A., Local Government Code ch. 212), to be separately owned, used, developed, or built upon.

Lot area means the total net area within lot lines and not including portions of streets and alleys.

Lot, corner, means a lot which has at least two adjacent sides abutting for their full lengths upon a street. See Illustration 50-2-4.

Illustration 50-2-4: Descriptions of various lot types

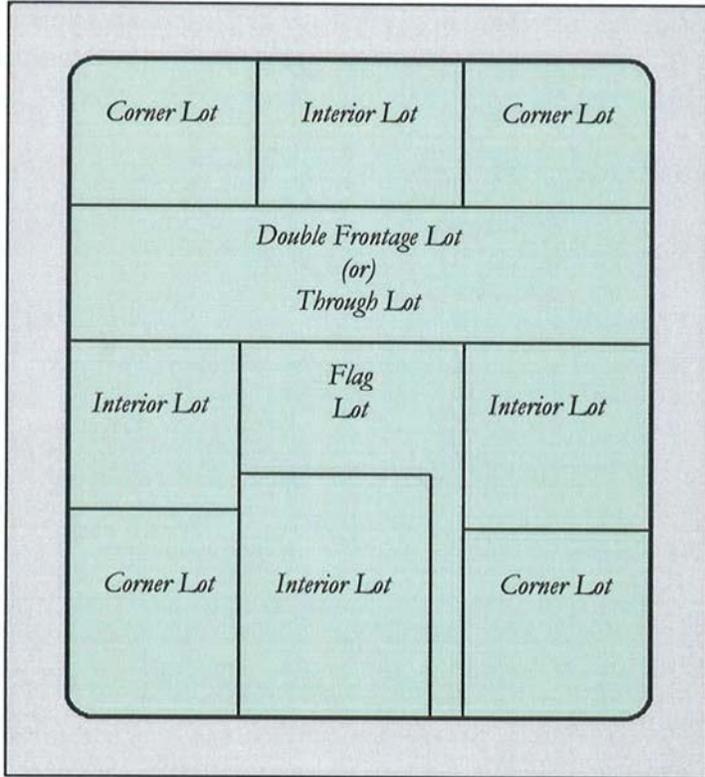
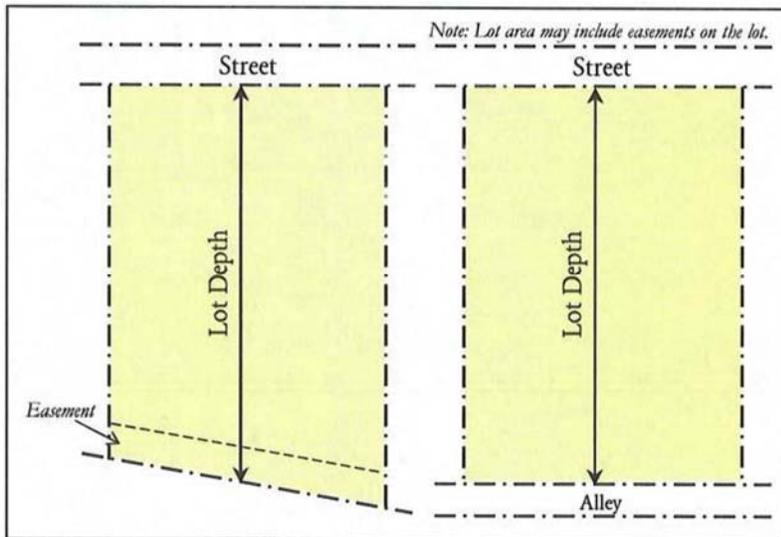


Illustration 50-2-5: Lot depth



Lot depth means the mean horizontal distance between the front and rear lot lines. See Illustration 50-2-5.

Lot, double frontage, means a lot having frontage upon two nonintersecting streets, as distinguished from a corner lot. See Illustration 50-2-4.

Lot, flag, means a lot having access to a street by means of a stem or a narrow strip of land connecting the lot to the street; the stem or narrow strip generally has a depth greater than its street frontage. See Illustration 50-2-4.

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Lot frontage means that dimension of a lot or portion of a lot abutting onto a street.

Lot, interior, means a lot other than a corner lot. See Illustration 50-2-4.

Lot, key, means a corner lot whose exterior side is adjacent to the front yard of another lot.

Lot line means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

Lot of record means a lot which is part of a subdivision, the plat of which has been recorded in the office of the county clerk of either county, as applicable, or a parcel of land, the deed for which was recorded in the office of the county clerk prior to date of adoption of the ordinance from which this chapter is derived.

Lot width means the horizontal distance between the side lines of a lot measured parallel to the front lot line at the minimum required building setback line. See Illustrations 50-2-6 and 50-2-7.

Illustration 50-2-6: Lot width

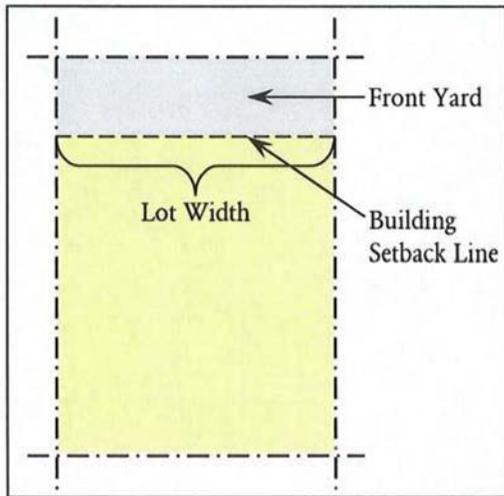
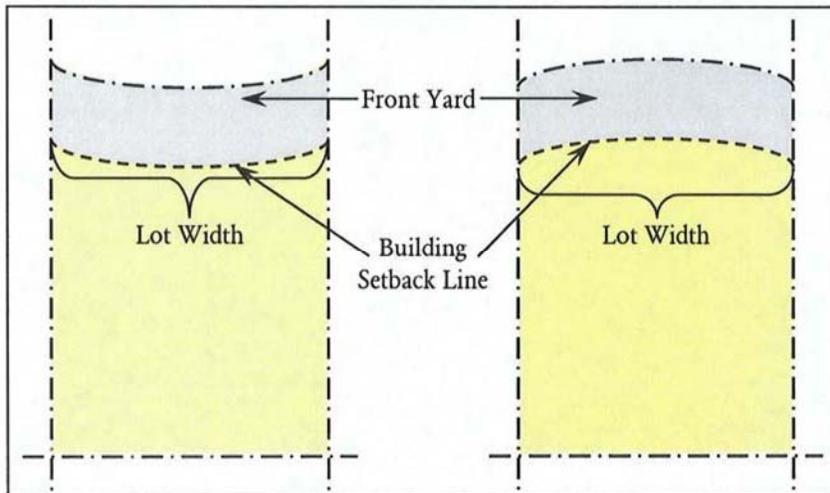


Illustration 50-2-7: How to calculate lot width on curved lots



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Main building means the building on a lot which is occupied by the primary use.

Manufactured home display or sales (new or used) means the offering for sale, storage, or display of new or previously owned (i.e., used) manufactured housing units (e.g., mobile homes/trailers, HUD-code homes, industrialized homes) on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.

Manufactured housing means any one of three types of prefabricated housing products which are typically manufactured/assembled at a location other than the end user's permanent site, and which are regulated by the Texas Manufactured Housing Standards Act (Vernon's Ann. Civ. St. arts. 5221f and 5221f-1). For the purpose of this chapter, there are three types of manufactured homes:

HUD-Code manufactured home or manufactured home means a movable dwelling designed to be transported on the highway (either intact or in major sections) by a prime mover, which can be used as a residential dwelling either with or without a permanent foundation. The term "HUD-Code manufactured home" is also defined as a movable manufactured home that was constructed after June 15, 1976.

Industrialized home (also called modular prefabricated structure or modular home) means a structure or building module as defined under the jurisdiction and control of the state department of labor and standards, that is transportable in one or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a fixed residence on a permanent foundation system. The term "industrialized home" includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term "industrialized home" does not include mobile homes or HUD-Code manufactured homes as defined in V.T.C.A., Occupations Code § 1201.003.

Mobile home means a movable dwelling designed to be transported on its own chassis on the highway (either intact or in major sections) by a prime mover, which is constructed with a base section so as to be independently self-supporting, and which does not require a permanent foundation for year-round living. The term "mobile home" is also defined as any manufactured home that was constructed prior to June 15, 1976.

Mausoleum means property used for the interring of the dead and where bodies are interred above ground in staked vaults.

Medical facilities includes any of the following:

Dental office or doctor's office means same as medical clinic.

Hospital means an institution providing health services primarily for human inpatient medical or surgical care for the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices which are an integral part of the facilities.

Massage establishment means any place of business in which massage therapy is practiced by a massage therapist, as defined and licensed by state law. The term "massage therapy," as a health care service, means the manipulation of soft tissue for therapeutic purposes. The term "massage establishment" includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics, either by hand or with mechanical or electrical apparatus for the purpose of body message. The term "massage therapy" may include the use of oil, salt glows, heat lamps, hot and cold packs, tub, shower or cabinet baths. Equivalent terms for "massage therapy" are massage and therapeutic massage. The terms "massage" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Medical clinic or office means a facility or group of offices for one or more physicians for the examination and treatment of ill and afflicted human outpatients provided that patients are not kept overnight except under emergency conditions.

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Medical laboratory means an indoor establishment that includes laboratories and/or experimental equipment for medical testing, prototype design and development, and product testing.

Public health center means a facility primarily utilized by a health unit for providing public health services including related facilities such as laboratories, clinics and administrative offices operated in connection therewith.

Sanitarium means an institution providing health facilities for inpatient medical treatment or treatment and recuperation making use of natural therapeutic agents.

Surgical out-patient facility means an establishment offering any type of surgical procedures and related care which, in the opinion of the attending physician, can be performed safely without requiring inpatient overnight hospital care and exclusive of such surgical and related care as licensed physicians ordinarily may elect to perform in their private offices.

Manufactured/mobile home park means a parcel of land not less than three acres nor greater than 35 acres which is designed, improved, or intended to be used for short- or long-term occupancy by manufactured or mobile homes in designated spaces. The facility may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Manufactured/mobile home space means a plot of ground within a manufactured/mobile home park, or manufactured/mobile home subdivision which is designed for the accommodation of one manufactured/mobile home, trailer or RV unit.

Manufactured/mobile home subdivision means a parcel of land which is designed, platted, improved and intended for the long-term placement of individually owned manufactured/mobile home units or HUD-code manufactured homes on platted lots which can be purchased outright by the owners of the manufactured/mobile home units. The facility may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Mini-warehouse/self-storage means small, individual, storage units for rent or lease, restricted solely to the storage of items. The conduct of sales, business or any other activity within the individual storage units, other than storage, shall be prohibited.

Minimum floor area per dwelling unit means the minimum floor area per dwelling unit, as specified in each residential zoning district category, defined as the total square feet of floor space within a residential structure's exterior walls that is heated and/or air conditioned including the livable area, closets and storage but excluding breezeways, garages, open porches, carports and accessory buildings.

Model home means a dwelling in a developing subdivision, located on a legal lot of record that is limited to temporary use as a sales office for the subdivision and to provide an example of the dwellings which have been built or which are proposed to be built within the same subdivision.

Motor freight company means a company using trucks or other heavy load vehicles to transport goods, equipment and similar products. The term "motor freight company" includes companies that move residential or commercial belongings.

Motor vehicle means any vehicle designed to carry one or more persons which is propelled or drawn by mechanical power, such as automobiles, vans, trucks, motorcycles and buses.

Motorcycle means a usually two-wheeled, self-propelled vehicle having one or two saddles or seats, and which may have a sidecar attached. Motorbikes, all-terrain vehicles (ATVs), motor scooters, mopeds and similar vehicles are classified as motorcycles.

Motorcycle sales/dealer means the display, sale and/or servicing, including repair work, of motorcycles.

Municipal facility or use means any area, land, building, structure and/or facility which is owned, used, leased or operated by the city, including police and fire department facilities.

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Nonconforming use means a building, structure, or use of land lawfully occupied as of the effective date of this chapter or amendments thereto, but which does not conform to the use regulations of the district in which it is situated.

Nursery means an establishment, including a building, part of a building or open space, for the growth, display and/or sale of plants, shrubs, trees and other materials used in indoor or outdoor planting.

Occupancy means the use or intended use of the land or buildings by proprietors or tenants.

Office showroom/warehouse means an establishment with no more than 25 percent of its total floor area devoted to storage and warehousing, but not accessible to the general public. The remaining area may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

Offices, professional and general business, means a room or group of rooms used for the provision of executive, management and/or administrative services. Typical uses include administrative offices and services including real estate, insurance, property management, investment, legal, personnel, travel, secretarial services, medical, dental, telephone answering, and business offices of public utilities, organizations and associations, but excluding medical offices.

Officially approved place of access means access to a property, other than from a dedicated street, which is approved by the city.

Outdoor sales means any primary use of a premises whereon goods, materials, or merchandise is displayed for the purpose of sale, and which the display area is greater than 30 percent of the gross floor area of the principal building.

Outside storage means the permanent and/or continuous keeping, displaying or storing, outside a building, of any goods, materials, merchandise or equipment on a lot or tract for more than 24 hours. Outside storage is also referred to as open storage.

Paint shop means a commercial establishment where painting services are performed but not automotive-related painting services, which would be included under auto repair (major).

Parcel means any unplatted tract of land or any portion of an unplatted tract of land (see *Tract*).

Park or playground (private) means a recreation facility, park or playground which is not owned by a public agency such as the city or school district, and which is operated for the exclusive use of private residents or neighborhood groups and their guests and not for use by the general public.

Park or playground (public, municipal) means publicly owned and operated parks, recreation areas, playgrounds, swimming pools and open spaces that are available for use by the general public without membership or affiliation. This land use shall include special event type uses such as rodeos, concerts, festivals and other special events requiring special event permits, as set forth in this Code.

Parking lot means an off-street (i.e., not on a public street or alley), ground level area, paved in accordance with city parking lot standards, for the short- or long-term storage of motor vehicles.

Parking lot or garage for passenger cars and trucks of less than one-ton capacity means an area or structure devoted to the parking or storage of cars and trucks of less than one-ton capacity for a fee which may include, in the case of a parking structure only, a facility for servicing automobiles provided that such facility is an internal function for use only by automobiles occupying the structure.

Parking space means an area meeting the dimensional requirements prescribed by this chapter, paved with a concrete or asphalt surface together with a concrete or asphalt surfaced driveway connecting the parking space with a street or alley permitting free ingress and egress. The space shall not be located within a public street or alley, nor shall head-in parking adjacent to a public street or alley, wherein the maneuvering is done on a public street or alley, be classified as off-street parking in computing the parking requirements for any use.

Pawn shop means an establishment where money is loaned on the security of personal property pledged in the keeping of the owners (pawnbroker). Retail sales of primarily used (i.e., pre-owned) items is also allowed, provided that the sale of such items complies with local, state and federal regulations.

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Pet and animal grooming shop means a retail establishment offering small animals, fish and/or birds for sale as pets, where such creatures are housed within the building, and which may include the grooming of dogs, cats and similar animals.

Petroleum distribution/storage means a facility for the long-term storage and distribution of petroleum that may also involve wholesale sales, but not retail sales, of petroleum and petroleum-based products. No manufacturing or refining of petroleum or petroleum-based products occurs on the premises, only storage and/or distribution functions.

Planned development district means planned associations of uses developed as integral land use units, such as industrial parks or industrial districts, offices, commercial or service centers, shopping centers, residential developments of multiple or mixed housing, including attached single-family dwellings or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or by a combination of owners.

Planning director means the person designated by the city manager to administer this chapter.

Planning and zoning commission means a board which is appointed by the city council as an advisory body, and which is authorized to recommend changes in the zoning of property and other planning functions as delegated by the city council. Planning and zoning commission is also referred to as the commission.

Plat means a plan showing the subdivision of land, creating building lots or tracts, showing all essential dimensions and other information in compliance with the subdivision standards of the city, and which is approved by the city and recorded in the plat records of either county.

Platted lot. See *Lot* and *Lot of record*.

Playfield or stadium (private) means an athletic field or stadium owned and operated by an agency other than the city or the school district.

Premises means land together with any buildings or structures situated thereon.

Primary use means the principal or predominant use of any lot or building.

Principal building. See *Main building*.

Private club means an establishment providing social and/or dining facilities which may provide alcoholic beverage service, to an association of persons, and otherwise falling within the definition of, and permitted under the provisions of, V.T.C.A., Alcoholic Beverage Code title 3, ch. 32, as the same may be hereafter amended, and as it pertains to the operation of private clubs.

Professional service means work performed which is commonly identified as a profession, and which may be licensed by the state.

Propane sales means retail sales of gaseous substances commonly used for household purposes such as propane and/or butane; the term "propane sales" does not include the storage, sale or distribution of other types of combustible substances or alternative fuels such as containerized natural gas, liquid propane, etc.

Public agency building, shop, yard or facility means any building, land, area and/or facility (including maintenance/storage yards and shops) which is owned, leased, primarily used and/or occupied by any subdivision or agency of the following: the state, the United States, or other public utility or agency. Any facility which is owned, leased, used and/or occupied by the city, either county, the federal government, or other recognized political subdivision or public agency.

Public view means areas that can be seen from any public street.

Rear yard. See *Yard, rear*.

Recreation center means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities.

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Recreational vehicle (RV) means a self-propelled (i.e., motorized), mobile living unit which is typically used for temporary human occupancy away from the users' permanent place of residence.

Recreational vehicle/camper sales and leasing means an establishment that sells, leases and/or rents new and/or used recreational vehicles, travel trailers, campers, boats/watercraft, and similar types of vehicles.

Recreational vehicle (RV) park/campground means an area or commercial campground for users of recreational vehicles, travel trailers, and similar vehicles to reside, park, rent or lease. A parcel of land not less than three acres nor greater than 35 acres which is designed, improved, or intended to be used for short- or long-term occupancy by recreational vehicles (including travel trailers) in designated spaces. The facility must be developed in accordance with definition as adopted and may include a residence for the owner/manager of the premises, utility hookups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Rehabilitation care facility (halfway house) means a dwelling unit which provides residence and care to not more than nine persons regardless of legal relationship who have demonstrated a tendency towards alcoholism, drug abuse, mental illness, or antisocial or criminal conduct living together with not more than two supervisory personnel as a single housekeeping unit.

Rehabilitation care institution (business) means a facility which provides residence and care to ten or more persons, regardless of legal relationship, who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct together with supervisory personnel.

Residence means the same as a dwelling; also, when used with district, the term "residence" means an area of residential regulations.

Residential district means a district where the primary purpose is residential use.

Residential use means a dwelling unit or group of dwelling units; the term "residential use" includes dwelling units within the second story of a building wherein other parts of the building are used for a nonresidential purpose, such as a retail establishment or office.

Retail or service, incidental, means the rendering of incidental retailing or services incidental to the primary use. In the O Office District, for example, such uses may include a barbershop, beauty shop, smoke shop, news stand, candy counter, restaurant, pharmacy or other incidental activity secondary to the primary office occupancy. The term "incidental uses" shall mean uses which occupy less than 15 percent of the main use.

Retirement housing for the elderly, (also independent living center or congregate housing,) means a development providing self-contained dwelling units specifically designed for the needs of the elderly. Units may be rented or owner-occupied. To qualify as retirement housing, a minimum of 80 percent of the total units shall have a household head 55 years of age or greater. No long-term or permanent skilled nursing care or related services are provided.

Room means a building or portion of a building which is arranged, occupied or intended to be occupied as living or sleeping quarters, but not including toilet or cooking facilities.

Salvage storage yard (see wrecking yard) means the reclamation and storage of used products or materials.

Sand, gravel or stone storage (including sales) means the process of storing and/or selling sand, gravel, stone, topsoil, compost or other products from the earth.

Sexually oriented business means as provided in chapter 6, article II.

School—Business means a for-profit business that offers instruction and training in a profession, service or art such as a secretarial or court reporting school, barber/beauty college or commercial art school, but not including commercial trade schools.

School—Commercial trade (vocational) means a for-profit business that offers vocational instruction and training in trades such as welding, brick laying, machinery operation/repair, and similar trades.

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School—Other than public or denominational means a school under the sponsorship of a private agency or corporation, other than a public or religious agency, which offers a curriculum that is generally equivalent to public elementary and/or secondary schools.

School—Public or denominational means a school under the sponsorship of a public or religious agency which provides elementary and/or secondary curricula, but not including private business or commercial trade schools.

Scientific and industrial research laboratories means facilities for research, including laboratories, experimental equipment, and operations involving compounding or testing of materials (hazardous or nonhazardous) or equipment.

Screened means shielded, concealed, and effectively hidden from the view of a person standing at ground level on an abutting site, or outside the area or feature so screened, by a fence, wall, hedge, berm or similar architectural or landscape feature.

Screening means any method of visually shielding or obscuring one land use from another by the planting of evergreen trees or shrubs, or both, or the erection of a screening fence designed to minimize the transmission or propagation of noise, light, vibration, or dust from traffic or other activity on one property to adjoining public or private properties. The term "screening" shall meet minimum requirements to provide a year-round visual obstruction.

Seasonal uses includes the sales of items such as Christmas trees, pumpkins, snow cones, fresh produce, and other items which are typically only available at certain times of the year.

Servant's quarters or guest house means an accessory dwelling in a residential district for the sole use and occupancy of a member of the immediate family or of a person or persons employed on the premises by the occupant on a full-time basis as domestic help such as a maid, nanny/governess, groundskeeper, chauffeur, cook or gardener, but not involving the rental of such facilities or the use of separate utility connections for such facilities.

Sheltered care facility means a nonprofit or for-profit boardinghome for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation.

Shopping center means a group of primarily retail and service commercial establishments that is planned, constructed and managed as a total entity, and which provides customer and employee parking on site, unloading/delivery areas which are separated from customer access, and aesthetically appropriate design and protection from the elements.

Side yard. See *Yard, side.*

Skilled nursing facility means a facility providing primarily inpatient health care, personal care, or rehabilitative services over a long period of time to persons who are chronically ill, aged or disabled and who need ongoing health supervision but not hospitalization. A skilled nursing facility is also referred to as a nursing home, convalescent home, or a long-term care facility.

Small engine repair shop means a shop for the repair of lawn mowers, chainsaws, lawn equipment, and other machines with one-cylinder engines.

Stable, commercial, means a stable used for the rental of stall space or for the sale or rental of horses or mules.

Stables (private, principal or accessory use) means an area used solely for the owner's private purposes for the keeping of horses, mules or ponies which are not kept for remuneration, hire or sale.

Storage or wholesale warehouse means a building used primarily for the storage of goods and materials.

Story means that portion of a building (above grade), other than a basement, that is included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between the floor and the ceiling above it. The height for the first story shall be considered to be 15 feet in height, and the height of the second story and other subsequent stories shall be

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considered to be 12 feet in height. The term "story" does not include parapets, gables and other normal roof structures. In cases where the site has a significant slope, the height of a building shall be measured from a point representing the average slope from opposite sides of the building.

Story, half means a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level, and in which space not more than two-thirds of the floor area is finished off for use. A half-story containing an independent apartment or self-contained living quarters shall be counted as a full story.

Street means any dedicated public or private thoroughfare (right-of-way), which affords the principal means of access to abutting property. A public street is termed a major thoroughfare or arterial when the right-of-way is greater than 60 feet.

Street intersection means any street which joins another street at an angle, whether or not it crosses the other.

Structural alterations means any change in the supporting members of a building, such as load-bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Structure means anything constructed or erected, the use of which requires location on the ground or which is attached to something having a location on the ground (see *Building*).

Studio for radio and/or television means a building or portion of a building used as a place for radio or television broadcasting.

Swimming pool, commercial, means a swimming pool with accessory facilities which is not part of the municipal or public recreational system and which is not a private swim club, but where the facilities are available for use by the general public for a fee.

Swimming pool, private (use by membership) means a swimming pool constructed for the exclusive use of the residents of a one-family, two-family or multiple-family dwelling and located, fenced and built in accordance with this Code. A private swimming pool shall not be operated as a business nor maintained in a manner to be hazardous or obnoxious to adjacent property owners.

Tattoo or body piercing studio means a building or portion of a building used for selling and/or applying tattoos (by injecting dyes/inks into the skin), and/or for piercing the skin with needles, jewelry or other paraphernalia, primarily for the purpose of ornamentation of the human body.

Telemarketing center means an establishment which solicits business or the purchase of goods and/or services by telephone only. No sale of goods or services to the public occurs at or on the premises. No products are stored at or on the premises.

Telephone and exchange/switching station means a line for the transmission of telephone signals and a central office in which telephone lines are connected to permit communication but not including a business office, storage (inside or outside) or repair yards.

Temporary means used or lasting for only a limited period of time; not permanent.

Temporary building means any nonresidential prefabricated structure which is not originally manufactured or constructed at its use site, required on-site installation of utilities and/or foundation.

Temporary field office or construction yard or office means a structure or shelter used in connection with a development or building project for housing on the site of temporary administrative and supervisory functions and for sheltering employees and equipment. Temporary permits for one year for a specific time and location as determined may be issued by the building official and shall be subject to review and renewal for reasonable cause.

Temporary real estate field office means a building, structure, or portable trailer used temporarily for sales of residential units in a recorded subdivision or development with a residential use component and in which sales and construction of residential units is planned and underway.

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Tennis court (private/not lighted) means a surface designed and constructed for playing the game of tennis along with all fencing, nets and related appurtenances but excluding lighting for nighttime play in residential areas except as may be otherwise provided or restricted by the conditional use permit.

Theater, drive-in (outdoor) means an open lot with its appurtenant facilities devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in automobiles.

Theater or playhouse (indoor) means a building or part of a building devoted to the showing of motion pictures, or for dramatic, musical or live performances.

Tire sales (indoors, no outside storage) means a retail establishment engaged in the sale and/or installation of tires for vehicles, but without outside storage.

Tire sales (outdoors, with outside storage) means a retail establishment engaged in the sale and/or installation of tires for vehicles, with outside storage.

Tool and machinery rental means a building or a portion of a building used for the display and rental of tools, machinery and instruments and that may have outdoor storage.

Tract means a single individual parcel or lot.

Tractor sales. See *Heavy machinery sales and storage.*

Trade and commercial schools. See *School commercial trade.*

Trailer, hauling means a vehicle or device which is pulled behind an automobile or truck and which is designed for hauling animals, produce, goods or commodities, including boats.

Trailer home. See *Recreational vehicle.*

Trailer park or court. See *Recreational vehicle park.*

Trailer space. See *Recreational vehicle park.*

Trailer, travel or camping, means a portable or mobile living unit which is used for temporary human occupancy away from the users' permanent place of residence, which does not constitute the users' principal place of residence, and which is designed to be towed behind another vehicle.

Transit terminal means any premises for the transient housing and/or parking of motor-driven buses and the loading and unloading of passengers.

Transportation and utility structures/facilities means permanent facilities and structures operated by companies engaged in providing transportation and utility services, including, but not limited to, railroad track rights-of-way, sewage pumping stations, telephone exchanges, transit station turnarounds, water reservoirs and water pumping stations.

Truck means a light or heavy load vehicle (see *light load vehicle* and *heavy load vehicle*).

Truck and bus repair means an establishment providing major and minor automotive repair services to heavy load vehicles.

Truck and bus leasing means the rental of new or used panel trucks, vans, trailers, recreational vehicles or motor-driven buses in operable condition and where no repair work or intensive cleaning operations are performed.

Truck stop means a facility for the parking, refueling and/or minor repair of heavy load tractor-trailer trucks. These facilities may also include retail sales of food and/or other items, restaurants, restroom/showers facilities, and/or temporary sleeping quarters.

Truck terminal means an area and building where cargo is stored and where trucks, including tractor and trailer units, load and unload cargo on a regular basis. The term "truck terminal" may include facilities for the temporary storage of loads prior to shipment.

Truck sales and services (heavy trucks) means the display, sale or rental of new or used heavy load vehicles in operable condition.

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Use means the purpose for which land or buildings are or may be occupied in a zoning district.

Utility distribution/transmission lines means facilities which serve to distribute and transmit electrical power, gas and water, including, but not limited to, electrical transmission lines, gas transmission lines, telephone lines and metering stations, whether operated by the city or private utility company.

Variance means an adjustment in the application of the specific regulations of this chapter to a particular parcel of property which, because of special conditions or circumstances of hardship peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district. Only the board of adjustments can grant a variance.

Veterinarian clinic means an establishment where animals and pets are admitted for examination and medical treatment and that may have indoor and/or outdoor kennels or pens (see *kennels*).

Wrecking materials yard (junkyard or auto salvage) means any lot upon which two or more motor vehicles of any kind, which are incapable of being operated due to condition or lack of license, have been placed for the purpose of obtaining parts for recycling or resale.

Yard means an open space at grade between the principal buildings and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except where otherwise specifically provided in this chapter. See Illustration 50-2-2.

Yard, front, means the open (unoccupied, unobstructed) space located in front of the front elevation of the principal buildings, calculated as the minimum horizontal distance between the front property line and the front elevation of the principal buildings. See Illustration 50-2-2.

Yard, rear, means the open (unoccupied, unobstructed) space located behind the rear elevation of the principal buildings, calculated as the minimum horizontal distance between the rear property line and the rear elevation of the principal buildings. See Illustration 50-2-2.

Yard, side, means the open (unoccupied, unobstructed) space located on either side of the principal buildings, calculated as the minimum horizontal distance between the side property line and the side elevation of the principal buildings. See Illustration 50-2-2.

Zoning district means a classification applied to any certain land area within the city stipulating the limitations and requirements of land usage and development.

Zoning district map means the official map upon which the boundaries of the various zoning districts are drawn and which is an integral part of this zoning chapter. (See sections 50-63 and 50-64.)

(Ord. No. 2008-01, § 45, 2-4-2008; Ord. No. 2010-09, § 4, 5-3-2010; Ord. No. 2012-01, § 2, 2-20-2012; Ord. No. 2013-19, § 3, 11-4-2013)

Sec. 50-3. Effect of interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to 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 a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by agreements, the provisions of this chapter shall govern. This chapter is also not intended to abrogate or annul any lawfully obtained permit issued prior to the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2008-01, § 46, 2-4-2008)

Sec. 50-4. Preserving rights in pending litigation and violations under existing ordinances.

By the passage of the ordinance from which this chapter is derived, no presently illegal use shall be deemed to have been legalized unless such use specifically 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 the ordinance from which this chapter is derived that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time this chapter was adopted, shall be discharged or affected by adoption of the ordinance from which this chapter is derived; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending proceeded with in all respects.

(Ord. No. 2008-01, § 47, 2-4-2008)

Sec. 50-5. Penalty for violations.

- (a) Any person or corporation who shall intentionally, knowingly, recklessly, or with criminal negligence violate any of the provisions of this chapter shall, upon conviction, be fined any sum not exceeding \$2,000.00 and each and every day that the provisions of this chapter are violated shall constitute a separate and distinct offense. In addition to the said penalty provided for, the right is hereby conferred and extended upon any property owner owning property in any district, where such property owner may be affected or invaded, by a violation of the terms of the chapter, to bring suit in such court having jurisdiction thereof and obtain such remedies as may be available at law and equity in the protection of the rights of such property owners.
- (b) Nothing contained in this chapter shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2008-01, § 49, 2-4-2008)

Sec. 50-6. 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 provision thereof other than the part so decided to be invalid or unconstitutional.

(Ord. No. 2008-01, § 50, 2-4-2008)

Secs. 50-7—50-30. Reserved.

ARTICLE II. ADMINISTRATION

[Sec. 50-31. Nonconforming uses and structures.](#)

[Sec. 50-32. Planning and zoning commission.](#)

[Sec. 50-33. Board of adjustments \(BOA\).](#)

[Sec. 50-34. Amendments to zoning chapter and districts, administrative procedures, and enforcement.](#)

[Sec. 50-35. Building permits; certificates of occupancy and compliance.](#)

[Sec. 50-36. Submission and review of concept plans, building permit plans and site plans.](#)

[Sec. 50-37. Vested rights and review procedure.](#)

[Secs. 50-38—50-62. Reserved.](#)

Sec. 50-31. Nonconforming uses and structures.

(a) *Nonconforming uses.*

- (1) Any lawful use of property existing at the time of passage of the ordinance from which this chapter is derived that does not conform to the regulations prescribed in article III of this chapter shall be deemed a legal nonconforming use.
- (2) If no structural alterations (except those required by law or ordinance) are made, a nonconforming use may be extended throughout a building. A nonconforming use of a building may be changed to another nonconforming use of the same or more restrictive zoning classification, provided no structural alterations are made. In the event that a nonconforming use of a building is changed to a nonconforming use of a higher or more restrictive zoning classification, it shall not later be reverted to a use in the former lower or less restrictive zoning classification.
- (3) The right of a nonconforming use to continue shall be subject to such regulations as to the maintenance of the premises and conditions of operation as may, in the judgment of the board of adjustments, be reasonably required for the protection of adjacent property.

(b) *Nonconforming structures.*

- (1) A nonconforming structure may continue to be occupied and may be enlarged, repaired, or altered, provided such does not create an additional nonconformity or increase the degree of existing nonconformity with respect to maximum building height or minimum yard requirements. No alteration or enlargement shall extend further into the required yard than the existing nonconforming portion of the building. This provision shall apply separately to each yard requirement with which the existing structure does not comply.
- (2) If 50 percent or more of the improvement's appraised value, as determined by the county appraisal district, of a nonconforming structure is destroyed by fire, the elements, or some other cause, then the structure may be rebuilt only in conformity with the provisions of this chapter.
- (3) If less than 50 percent of the improvement's appraised value, as determined by the county appraisal district, of a nonconforming structure is destroyed by fire, the elements, or some other cause, then the structure may be reconstructed as it was before the partial destruction but only to its original dimensions and floor area, and provided that such reconstruction is completed within one year (i.e., 365 calendar days) following the event that caused the partial destruction. If reconstruction is delayed by contested insurance claims, litigation, or some other similar cause, then the one-year reconstruction period may be extended by the board of adjustments.
- (4) If a nonconforming structure that is totally or partially destroyed was occupied by a nonconforming use at the time of such destruction, then the nonconforming use may not be re-established without specific authorization by the board of adjustments. (See section 50-33).
- (5) Any conforming structure that is totally or partially destroyed shall be reconstructed only in conformity with the provisions of this chapter.
- (6) Nothing in this chapter shall be construed to prohibit the upgrading, strengthening, repair or maintenance of any part of any structure, conforming or nonconforming, that is declared unsafe or uninhabitable by the proper authority, unless such repairs or maintenance exceeds 50 percent of the structure's appraised value, as determined by the county appraisal district.

(c) *Abandonment of nonconforming uses and structures, and cessation of use of structure or land.*

- (1) If a nonconforming use or structure is abandoned, any future use of the premises shall be in conformity with the provisions of this chapter, as amended, and with any other applicable city

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codes or ordinances that are in effect at the time the use is resumed or the structure is re-occupied.

- (2) A nonconforming use or structure shall be deemed abandoned in the following circumstances:
 - a. The use ceases to operate for a continuous period of 180 calendar days;
 - b. The structure remains vacant for a continuous period of 180 calendar days with all or some of the utilities disconnected, or if utility payments are delinquent;
 - c. In the case of a temporary use, the use is moved from the premises for any length of time; or
 - d. A nonconforming use or structure shall not be deemed abandoned for a period of up to one year on properties that are for sale or lease, provided the owner is actively promoting the sale or lease and there is evidence of continual use of signs, advertising or listings.
 - (3) Normal cessation of a use, or temporary discontinuance for purposes of maintenance and rebuilding after damage or destruction, as provided in this section, shall not be included in calculating the period of discontinuance.
 - (4) If the use of any lot, tract or property that does not have a building on it and that is used for open/outside storage as of the effective date of the ordinance from which this chapter is derived (or amendment thereto) is made nonconforming by this chapter (or amendment thereto), then such storage use shall cease within 180 calendar days following the effective date of the ordinance from which this chapter is derived (or amendment thereto). The lot, tract or property shall be cleaned and all trash, debris, stored items and vehicles, and other materials shall be removed from the premises such that the property is not a physical or visual nuisance to the public or to surrounding property owners.
- (d) *Moving of nonconforming structure.* No nonconforming structure or building shall be moved in whole or in part to any other location on the lot, or to any other location or lot, unless every portion of such structure is in compliance with all the regulations of the zoning district wherein the structure is to be relocated. Such building relocation shall also require a structure relocation permit from the city, and may also require platting of the intended building site pursuant to chapter 40, pertaining to subdivisions, as well as any approval processes required by this chapter.
- (e) *Right to proceed preserved.* Nothing contained in this section is intended to alter any rights that may have accrued to proceed under prior regulations, pursuant to V.T.C.A., Local Government Code § 43.002 or 245.001 to 245.006.

(Ord. No. 2008-01, § 7, 2-4-2008)

Sec. 50-32. Planning and zoning commission.

- (a) *Generally.* The planning and zoning commission (also referred to as the commission) shall function according to the criteria this section that establish membership and operating procedures.
- (b) *Powers and duties.*
 - (1) The commission shall have all the rights, powers, privileges and authority authorized and granted by the city council and through the state authorizing and granting cities the power of zoning and subdivision regulation as found in V.T.C.A., Local Government Code chs. 211, 212.
 - (2) The commission shall be an advisory body and adjunct to the city council, and shall make recommendations regarding amendments to the comprehensive plan, changes of zoning, zoning ordinance amendments, and zoning to be given to newly annexed areas, and shall consider approval of plats of subdivisions as may be submitted to it for review and other planning-related matters. The commission shall conduct an annual review of the city's comprehensive plan and shall be prepared to make recommendations to the city council as deemed necessary to keep the city's comprehensive plan current with changing conditions and

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trends and with the planning needs of the city. The commission shall also serve in an advisory capacity on any planning related items in the city and perform other duties as provided for by the city Charter.

(c) *Created; membership; officers; rules and bylaws:*

- (1) There is created, in accordance with V.T.C.A., Local Government Code ch. 211, the planning and zoning commission, hereafter sometimes referred to as the commission, which shall consist of five people residing within the city limits.
- (2) Members shall be appointed by the city council.
- (3) All appointments to the commission shall serve as a member of the commission for a term of office of three years. Members may be reappointed with no limitation on the number of terms one member may serve. Upon adoption of the ordinance from which this chapter is derived, the city council appoints the city planning commission members to serve as the planning and zoning commission.
- (4) Any vacancies on the commission shall be filled via appointment by a simple majority vote of the city council.
- (5) Members of the planning and zoning commission may be removed from office at any time by a simple majority vote of the full city council either upon its own motion or upon recommendation of the commission. Failure to attend three consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control, such as sickness of the member or someone within the member's immediate family, or if the commission or the city council approves the absences as excused. A vote to remove a commission member shall be placed on the appropriate agenda as a regular item, and shall be voted upon accordingly.
- (6) The members of the commission shall regularly attend meetings and public hearings of the commission, shall serve without compensation, and shall not hold any other office within, or serve as an employee of, the city while serving on the commission. The commission shall meet a minimum of once per month at a time established by the city council. If there have been no applications filed for review by the commission, the city secretary shall notify the chairperson and no meeting shall be required for that month.
- (7) The commission shall elect a chairperson and a vice-chairperson from among the commission membership, and each officer shall hold office for one year or until replaced by a simple majority vote of the full commission. The city manager's designee shall serve as secretary to the commission, and shall keep minutes of all meetings held by the commission as well as the full record of all recommendations made by the commission to the city council.
- (8) The commission shall have the power to make rules, regulations and bylaws for its own governance, which shall conform with those set forth by the city council, and such rules, regulations and bylaws shall be subject to approval by the city council. Such rules and bylaws shall include, among other items, provisions for the following:
 - a. Regular and special meetings, open to the public;
 - b. A record of its proceedings, to be open for inspection by the public;
 - c. Reporting to the city council and the public, from time to time and annually; and
 - d. Reviewing the comprehensive plan on a regular basis.

(d) *Parliamentary procedure; quorum; voting.* The commission will follow the parliamentary procedure adopted by the city council, and procedures shall not be in conflict with the laws applicable to the commission on the following:

- (1) *Quorum.* A quorum shall consist of a majority of the membership of the commission, and any issue to be voted upon shall be resolved by a majority of those members present.

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- (2) *Voting.* All commission members, including the chairperson, shall be entitled to one vote each upon any question, a quorum being present. Voting procedures shall be in accordance with the parliamentary procedures adopted by the city council.
 - (3) *Conflict of interest.* If any member has a conflict of interest regarding any item on the commission's agenda, that member may remove himself from the room and shall refrain from discussing and/or voting only on the item for which a conflict exists. Refer to V.T.C.A., Local Government Code ch. 171, and any applicable city ethics policies or regulations.
- (e) *Meetings; public record.*
- (1) The planning and zoning commission shall meet in the municipal building or in some other specified location as may be designated by the presiding chairperson and at such intervals as may be necessary to orderly and properly transact the business of the commission but not less than once each month.
 - (2) Meetings shall be conducted in accordance with the Open Meetings Law (refer to V.T.C.A., Government Code ch. 551).
- (f) *Procedure on zoning hearings.* The procedure and process for zoning changes or amendments shall be in accordance with section 50-34
- (g) *Joint meetings with the city council.* Whenever the city council and the commission are required by the laws of the state to conduct public hearings in matters pertaining to planning, zoning or subdividing property, and at other times when it is in the best interest of the city to do so, the city council and the commission are hereby authorized, after published notice as required by law, to hold joint meetings and to conduct joint public hearings.
- (Ord. No. 2008-01, § 8, 2-4-2008)

Sec. 50-33. Board of adjustments (BOA).

- (a) *Creation.* There is hereby created a board of adjustments, hereafter sometimes referred to as the board, for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, of making special exceptions and variances to the terms of this chapter that are consistent with the general purpose and intent of this chapter. The board shall be composed of members who are resident citizens of the city.
- (b) *Members; terms of office.*
- (1) The board of adjustments shall consist of five regular members, who shall be appointed by a simple majority vote of the full city council, and shall operate in accordance with V.T.C.A., Local Government Code §§ 211.008 through 211.011.
 - (2) The city council shall provide for the appointment of up to four alternate members to serve in the absence of one or more of the regular board members on an alternating basis such that all alternate members have equal opportunities to serve on the board. The planning director shall determine which alternate will serve if an alternate is needed.
 - (3) Regular board members and alternate members shall serve for a term of two years, and expiration of terms shall be staggered so that an overlapping of terms occurs (e.g., in any two-year period, the terms of two regular members and at least one alternate member shall expire during one of those years, and the terms of three regular members and at least one alternate member shall expire during the second year).
 - (4) Any vacancies on the board (both regular and alternate members) shall be filled for the unexpired terms via appointment by a simple majority vote of the full city council for the remainder of the terms.
 - (5) Members of the board may be removed from office for cause, and after a public hearing, by a simple majority vote of the full city council. Failure to attend three consecutive scheduled

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meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family. Absences may be excused by the board or by the city council.

- (6) The members of the board (and alternate members, as needed) shall regularly attend meetings and public hearings of the board, shall serve without compensation, and shall not hold any other office or position with the city while serving on the board.
 - (7) The board of adjustments shall elect a chairperson and a vice-chairperson from among its membership, and each officer shall hold office for two years or until replaced by a simple majority vote of the full board. The city manager's designee shall serve as secretary to the board of adjustments, and shall keep minutes of all meetings held by the board. The secretary shall also set up and maintain a separate file for each application for hearing by the board, and shall record therein the names and addresses of all persons/entities to whom notices are mailed, including the date of mailing and the person by whom such notices were delivered to the post office. All records and files provided for in this subsection shall be official records of the city. The secretary shall also immediately notify in writing the city council, planning and zoning commission, and the city building official of each decision rendered by the board in the conduct of its duties.
 - (8) The board of adjustments shall have the power to make the rules, regulations and bylaws for its own government, which shall conform as nearly as possible to those governing the city council and the provisions of this section. The board's rules, regulations and bylaws shall be subject to approval by city council.
- (c) *Meetings.* Meetings of the board of adjustments shall be held at the call of the chairperson or planning director and at such other times as the board may determine. All meetings of the board shall be open to the public, and minutes shall be kept of all proceedings at board meetings. Four members of the board shall constitute a quorum for the conduct of business.
- (d) *Authority.*
- (1) The board of adjustments shall have the authority, subject to the standards established in V.T.C.A., Local Government Code §§ 211.008 through 211.011 and those established in this chapter, to exercise powers and to perform duties including the following:
 - a. Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this chapter;
 - b. Authorize, in specific cases, a variance or special exception (see section 50-33, subsections (f) and (g) of this section) from the terms of this chapter if the variance is not contrary to the public interest and if, due to special conditions, a literal enforcement of the chapter would result in unnecessary hardship, and so that the spirit of this chapter is observed and substantial justice is done; and
 - c. Make interpretations on zoning district boundaries shown on the zoning map where uncertainty exists because physical features on the ground differ from those on the zoning map or where the rules in section 50-64 do not apply or are ambiguous.
 - (2) In exercising its authority under subsection (d)(1)a of this section, the board of adjustments may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the board has the same authority as the city manager or his designee.
 - (3) The concurring vote of at least four members of the board of adjustments is necessary to:
 - a. Reverse an order, requirement, decision or determination of an administrative official;
 - b. Decide in favor of an applicant on a matter on which the board is required to review under this chapter;

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- c. Authorize a variance from a provision of this chapter; or
- d. Hear and decide special exceptions to a provision of this chapter (see section 50-33 subsection (g) of this section).

(e) *Limitations on authority.*

- (1) The board of adjustments may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought, except as specifically provided for in this chapter.
- (2) The board of adjustments shall have no power to grant or modify conditional use provisions authorized under section 50-81
- (3) The board of adjustments shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the planning and zoning commission or the city council, the board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment by the commission and the city council.
- (4) The board of adjustments shall not grant a variance for any parcel of property or portion thereof upon which a required site plan (refer to section 50-36), or any plat is pending on the agenda of the planning and zoning commission and/or the city council. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the board of adjustments.

(f) *Variances.*

- (1) *Defined.* A variance is the authority to depart from the application of areas, side yard, setback, height, and similar regulations to prevent unnecessary hardships.
- (2) *Granting authority.* The board of adjustments may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring compliance. Variances may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and that substantial justice may be done.
 - a. In granting a variance, the board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest.
 - b. In making the findings outlined in subsection (f)(3) of this section, the board shall take into account:
 - 1. The nature of the proposed use of the land involved;
 - 2. Existing uses of land in the vicinity;
 - 3. The number of persons who will reside or work within the proposed use; and
 - 4. The probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.
- (3) *Conditions required.* No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with section 50-33 subsection (c) of this section and unless the board of adjustments finds:
 - a. That there are special circumstances or conditions affecting the land involved such that the application of the provisions of this chapter would deprive the applicant of the reasonable use of his land;
 - b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
 - c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
 - d. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter; and

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- e. The granting of an individual variance will not set a precedent.

Such findings of the board of adjustments, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the board of adjustments meeting at which such variance is granted.

- (4) *Findings of undue hardship.* In order to grant a variance, the board of adjustments must make findings that an undue hardship exists, using the following criteria:
 - a. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;
 - b. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district;
 - c. That the relief sought will not injure the permitted use of adjacent conforming property;
 - d. That the granting of a variance will be in harmony with the spirit and purpose of this chapter; and
 - e. Financial hardship alone is not an undue hardship if the property can be used, meeting the requirements of the zoning district it is located in.
- (5) *Self-inflicted hardship.* A variance shall not:
 - a. Be granted to relieve a self-created or personal hardship;
 - b. Be based solely upon economic gain or loss;
 - c. Permit or allow any person a privilege or advantage in developing a parcel of land not permitted or allowed by this chapter to other parcels of land in the same particular zoning district;
 - d. Result in undue hardship upon another parcel of land.
- (g) *Special exceptions.*
 - (1) *Defined.* A special exception is a type of variance, but is differentiated from a variance by the following:
 - a. A special exception does not require a finding of a hardship.
 - b. Approval of a special exception by the board of adjustments is specifically provided for and defined in this chapter.
 - c. A special exception applies to nonconforming uses and structures, off-street parking requirements and landscaping requirements.
 - (2) *Requests.* The board of adjustments may grant a special exception to the provisions of sections 50-31, 50-112 and/or 50-113 upon written request of the property owner.
 - (3) *Standards.* The board may also grant a special exception in accordance with the following circumstances and/or standards:
 - a. Change from one nonconforming use to another, reconstruction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
 - b. For existing single-family and duplex (two-family) structures that were legally constructed prior to the effective date of the ordinance from which this chapter is derived, the board of adjustments may authorize a special exception for any structure that was constructed over a setback line established by this chapter.
 - (4) *Conditions.* In granting special exceptions under this subsection (g) of this section, the board may impose such conditions as are necessary to protect adjacent property owners and to

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ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this chapter.

(h) *Appeals.*

- (1) *Authority.* In addition to the authorization of variances and special exceptions from the terms of this chapter, the board of adjustments shall have the authority to hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this chapter. The board of adjustments may reverse or affirm, in whole or in part, or may modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose, the board of adjustments has the same authority as the city manager or his designee.
- (2) *Who may appeal.* Any of the following persons may appeal to the board of adjustments a decision made by an administrative official:
 - a. A person directly aggrieved by the decision; or
 - b. Any officer, department, board, or bureau of the city affected by the decision.
- (3) *Procedure for appeal.* The appellant must file with the board of adjustments and the official from whom the appeal is taken a written notice of appeal specifying the grounds for the appeal. The notice of appeal shall be filed within 15 calendar days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board of adjustments all papers constituting the record of action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board of adjustments facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board of adjustments or a court of appropriate jurisdiction on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within 30 calendar days after the written request (i.e., notice of appeal) was received. The board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken, and may make the correct order, requirement, decision or determination.

(i) *Procedures.*

- (1) *Application and fee.* An application for a variance, special exception or appeal to the board of adjustments shall be made in writing using forms prescribed by the city, and shall be accompanied by an application fee in accordance with the city council's adopted fee schedule, a required plan (see section 50-36), and any other additional information as may be requested in order to properly review the application. There is no filing fee for an appeal filed by any officer, department, board, or bureau of the city affected by the decision.
- (2) *Review and report by the city.* The city manager, or his designee, shall visit the site where the proposed variance or special exception will apply and the surrounding area, and shall report his findings to the board of adjustments.
- (3) *Notice and public hearing.* The board of adjustments shall hold a public hearing for consideration of the variance or special exception request no later than 60 calendar days after the date the application for action, or an appeal, is filed. Notice shall be published in the official local newspaper before the 15th calendar day prior to the public hearing. Written notice of the public hearing for a variance or exception shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within 200 feet of any property affected thereby, said written notice to be sent before the tenth calendar day prior to the date such hearing is held. Such notice shall be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, postage paid, in the regular United States mail.

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- (4) *Action by the board of adjustments.* The board of adjustments shall not grant a variance unless it finds, based upon compelling evidence provided by the applicant, that each of the conditions in subsection (f) of this section have been satisfied. The board of adjustments may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance or special exception as are necessary to protect the public health, safety, convenience and welfare. Violation of any such condition, limitation or safeguard shall constitute a violation of this chapter.
- (5) *Burden of proof.* The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his favor by the board.
- (6) *Waiting period.* No appeal to the board for the same or a related variance or special exception on the same piece of property shall be allowed for a waiting period of 180-calendar-days following an unfavorable ruling by the board unless other property in the immediate vicinity has, within the 180 calendar day waiting period, been changed or acted upon by the board or the city council so as to alter the facts and conditions upon which the previous unfavorable board action was based. Such changes of circumstances shall permit the re-hearing of a variance or special exception request by the board, but such circumstances shall in no way have any force in law to compel the board, after a hearing on the matter, to grant a subsequent variance or special exception request. Any subsequent variance or special exception request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.
- (7) *Timeliness of application for building permit or certificate of occupancy.* Upon a favorable board action on a variance or special exception request, the applicant shall apply for a building permit or a certificate of occupancy, as applicable to his particular situation, within 180-calendar-days following the date of board action, unless the board specifies a longer time period in the minutes of its action. If the applicant fails to apply for a building permit or certificate of occupancy, as applicable, within the 180 calendar day timeframe, then the variance or special exception shall be deemed to have expired, and all rights thereunder shall be terminated. Such termination shall be without prejudice to a subsequent appeal, and such subsequent appeal shall be subject to the same regulations and requirements for hearing as specified in this chapter for the original variance or special exception request.
- (j) *Finality of decisions; judicial review; final and binding; petition.* All decisions of the board of adjustments are final and binding and may not be appealed to the city council. However, any person aggrieved by a decision of the board of adjustments may present a verified petition to a court of appropriate jurisdiction that states that the decision of the board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten calendar days after the date the board's decision is filed in the office of the secretary to the board. Subject to the provisions of V.T.C.A., Local Government Code § 211.011, only a court with appropriate jurisdiction may reverse, affirm or modify a decision of the board of adjustments.

(Ord. No. 2008-01, § 9, 2-4-2008)

Sec. 50-34. Amendments to zoning chapter and districts, administrative procedures, and enforcement.

- (a) *Declaration of policy and review criteria.*
 - (1) The city declares the enactment of the ordinance from which this chapter is derived governing the use and development of land, buildings, and structures as a measure necessary to the orderly development of the community. Therefore, no change shall be made in this chapter or in the boundaries of the zoning districts except:
 - a. To correct any error in the regulations or map;
 - b. To recognize changed or changing conditions or circumstances in a particular locality;

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- c. To recognize changes in technology, the style of living, or manner of conducting business;
or
 - d. To change the property to uses in accordance with the city's adopted comprehensive plan.
- (2) In making a determination regarding a requested zoning change, the planning and zoning commission and the city council shall consider the following factors:
- a. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;
 - b. Whether the proposed change is in accordance with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;
 - c. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances which may make a substantial part of such vacant land unavailable for development;
 - d. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change;
 - e. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved;
 - f. Any other factors that will substantially affect the public health, safety, morals, or general welfare; and
 - g. Whether the request is consistent with the comprehensive plan.
- (b) *Application.*
- (1) *Generally.* Consideration for:
- a. A change in any zoning district boundary line;
 - b. Zoning regulation; or
 - c. An amendment to the zoning chapter text;
- May be initiated only by the owner of real property (or his authorized agent), by the planning and zoning commission, or by the city council on its own motion.
- (2) *Fee required.* Each application for zoning, rezoning, conditional use permit (CUP), planned development (PD), or for a text amendment to a provision of this chapter, shall be made in writing on an application form available in the planning director's office, and shall be accompanied by payment of the appropriate fee as established by resolution adopted by the city council.
- (3) *Form developed.* The planning director is hereby authorized to develop application forms requiring pertinent information from the applicant.
- (4) *Date due.* The application shall be delivered to the city at least 40 calendar days prior to the date of the public hearing before the planning and zoning commission.
- (5) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36(3).
- (6) *Official filing date, completeness of application, expiration of application.* The following shall apply to any application (e.g., concept plan, building permit plan, site plan) submitted in accordance with this chapter:
- a. *Official filing date.* The time period established by state law or this chapter for processing or deciding an application shall commence on the official filing date. The official filing date for a required plan application is the date the application is received by the city.

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- b. *Determination of completeness.* Every required plan application shall be subject to a determination of completeness within ten business days by the planning director for processing the application.
 - 1. No required plan application shall be accepted by the planning director for processing unless it is accompanied by all documents required by and prepared in accordance with the requirements of this chapter.
 - 2. The incompleteness of the required plan application shall be grounds for denial of the application.
 - 3. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this chapter.
 - 4. A determination of completeness shall be made by the planning director in writing and delivered to the applicant no later than the tenth business day after the official filing date that the required plan application is submitted to the city.
 - (i) The applicant shall be notified within that ten-business-day period of the determination of completeness.
 - (ii) If the required plan application is determined to be complete, the application shall be acted upon in the proper manner as prescribed by this chapter.
 - (iii) If the required plan application is determined to be incomplete, the notification shall specify the documents or other information needed to complete the application and shall state the date the application will expire (see subsection (b)(6)c of this section) if the documents or other information is not provided.
 - (iv) A required plan application shall be deemed complete on the 11th business day after the application has been received if the applicant has not otherwise been notified that the application is incomplete.
 - c. *Expiration of application.* The required plan application shall expire on the 45th calendar day after the date the application is filed if:
 - 1. The applicant fails to provide documents or other information necessary to comply with the city's requirements relating to the required plan application;
 - 2. The city provides to the applicant, not later than the tenth business day after the date the application is filed, written notice that specifies the necessary documents or other information, and the date the application will expire if the documents or other information is not provided; and
 - 3. The applicant fails to provide the specified documents or other information within the time provided in the notification. If the required plan application is not completed by the 45th calendar day after the application is submitted to the responsible official, the required plan application will be deemed to have expired and it will be returned to the applicant together with any accompanying applications.
 - d. *Resubmittal.* If the required plan application is resubmitted after a notification of incompleteness, the timeframe for a determination of completeness described in subsection (b)(6)3 of this section shall begin on the date of the resubmittal of the required plan application.
- (c) *Notice of public hearing.*
- (1) *Public hearing for zoning changes involving real property.* For zoning and rezoning requests involving real property (including PD and CUP requests), the planning and zoning commission and the city council shall hold at least one public hearing on each zoning application, as per applicable state law (V.T.C.A., Local Government Code ch. 211).

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- a. Notice of the public hearing to occur before the planning and zoning commission shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the eighth calendar day prior to the date of the public hearing.
 - b. Notice of the public hearing to occur before the city council shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing.
 - c. Written notice of the public hearing before the planning and zoning commission shall also be sent to all owners of property, as indicated by the most recently approved city tax roll, that is located within the area of application and within 200 feet of any property affected thereby, said written notice to be sent before the tenth calendar day prior to the date such hearing is held. Such notice shall be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, postage paid, in the regular United States mail. If written notice as required is not sent before the tenth calendar day prior to the date of the hearing, then the hearing must be delayed until this notice requirement is met.
- (2) *Public hearing for zoning changes involving ordinance text.* For requests involving proposed changes to the text of the zoning chapter, notice of the planning and zoning commission hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the eighth calendar day prior to the date of the public hearing. Notice of the city council hearing shall be accomplished by publishing the purpose, time and place of the public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing. Changes in the chapter text which do not change zoning district boundaries (i.e., which do not involve specific real property) do not require written notification to individual property owners.
 - (3) *Dual notification of planning and zoning commission public hearings and city council public hearings.* The city may, at its option, publish the required zoning change notifications in conformance with V.T.C.A., Local Government Code ch. 211 for public hearings for the planning and zoning commission and the city council at the same time; said notifications must be published eight days prior to the planning and zoning commission public hearing and 15 days prior to the city council public hearing.
 - (4) *Joint public hearings.* The city council may hold a joint public hearing on a zoning, rezoning or zoning chapter text amendment request along with the planning and zoning commission, but the city council shall not take action on the request until it has received a final recommendation from the commission. Notification for a joint public hearing shall be accomplished by publishing the purpose, time and place of the joint public hearing in the official newspaper of the city before the 15th calendar day prior to the date of the public hearing. In accordance with V.T.C.A., Local Government Code § 211.007, the city council shall prescribe any other necessary methods of notification for joint public hearings.
 - (5) *Additional rules and procedures established.* The city council may, at its option, establish additional rules and procedures for public notification of proposed zoning changes and development proposals (e.g., required plans, plats, etc.) which may include, but not be limited to, the posting of a signs on any property that is proposed for a zoning change or development by the applicant or its agents. Knowledge of and adherence to such rules and procedures, if so established by the city, shall be the responsibility of the applicant and shall be required as part of a zoning change or development application.
- (d) *Failure to appear.* Failure of the applicant or his authorized representative to appear before the planning and zoning commission or the city council for more than one hearing without an approved delay by the city manager, or his designee, shall constitute sufficient grounds for the planning and zoning commission or the city council to table or deny the application unless the city manager or his designee is notified in writing by the applicant at least 72 hours prior to the hearing. If the agenda item is tabled, the planning and zoning commission shall specify a specific date at which it will be reconsidered.

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- (e) *Planning and zoning commission consideration and recommendation.*
- (1) *Accordance with section 50-32* The planning and zoning commission shall function in accordance with section 50-32 and with applicable provisions in this Code.
 - (2) *Tabling of the decision/recommendation.* The planning and zoning commission may, on its own motion or at the applicant's request, table its decision/recommendation for not more than 90 calendar days from the time the public hearing was first opened. Such tabling shall specifically state the time period of the tabling by citing the meeting date whereon the request will reappear on the commission's agenda, and further notice in the newspaper and to surrounding property owners shall not be required.
 - (3) *Recommending approval.* When the commission is ready to act upon the zoning request, it may recommend approval of the request as it was submitted by the applicant, approval of the request subject to certain conditions, or disapproval of the request. The request will then be forwarded to the city council for public hearing (see subsection (f)(2) of this section). The commission may recommend more restrictive uses, area requirements, restrictions or a zoning district than was requested in the original application and included in the advertised and written notice. In no case, however, may a use, area requirement or restriction that is considered less restrictive or a less restrictive zoning district than was requested in the original application and included in the advertised and written notice be recommended.
 - (4) *Recommending denial.* If the planning and zoning commission recommends denial of the zoning change request, it shall provide reasons to the applicant for the denial, if requested by the applicant. The planning and zoning chairperson shall inform the applicant of the right to receive reasons for the denial. The recommendation of denial will then be forwarded to the city council for public hearing (see subsection (f)(2) of this section).
- (f) *City council authority and consideration.*
- (1) *City council authority.* The city council, after receiving a recommendation by the planning and zoning commission and after public hearings required by law, may amend, supplement, or change the regulations of this chapter or the boundaries of the zoning districts on the zoning map.
 - (2) *Applications forwarded to the city council.* After consideration by the planning and zoning commission, all zoning applications shall be automatically forwarded to the city council for a public hearing following appropriate public hearing notification as prescribed in subsection (f)(1) of this section.
 - (3) *City council action on zoning, rezoning or text amendment requests.* After a public hearing is held before the city council regarding the zoning application, the city council may:
 - a. Approve the request in whole or in part (if the city council approves the request, then subsection (f)(5) of this section will apply);
 - b. Modify and approve the request to any more restrictive uses, area requirements, restrictions or zoning district than was requested in the original application and included in the advertised and written notice. In no case, however, may a use, area requirement or restriction that is considered less restrictive or a less restrictive zoning district than was requested in the original application and included in the advertised and written notice be approved;
 - c. Deny the request in whole or in part;
 - d. Table the application to a future meeting (and specifically citing the city council meeting to which it is tabled); or
 - e. Refer the application back to the planning and zoning commission for further study.
 - (4) *Protests.* For zoning and rezoning requests involving real property (including PD and CUP requests), a favorable vote of three-fourths of all members of the city council shall be required to approve any change in zoning when written objections are received from the owners of 20

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percent or more of the land area covered by the proposed change, or of the land area within 200 feet of the subject property, in accordance with the provisions of V.T.C.A., Local Government Code § 211.006 (commonly referred to as the "20 percent rule"). If a protest against such proposed zoning change has been filed with the city secretary, duly signed and acknowledged by the owners of 20 percent or more, either of the area of the land included in such a proposed change or those owners of property immediately adjacent to the subject property and extending 200 feet therefrom, such zoning change shall not become effective except by a three-fourths vote of the full city council.

- (5) *Final approval and ordinance adoption.* Upon approval of the zoning request by the city council, the applicant shall submit all related material with revisions, if necessary, to the city manager (or his designee) for the preparation of the amending ordinance. The amending ordinance will be prepared for adoption when a correct description and all required exhibits have been submitted to the city manager or his designee. The amending ordinance shall be effective at such time that it is adopted by the city council, signed by the mayor, and attested by the city secretary.
- (g) *Administration and enforcement.*
- (1) *Authority to enforce chapter.* The city manager, or his designee, shall be authorized by the city council to administer and enforce the provisions of this chapter. If the city manager (or his designee) finds, upon his own personal observation, or upon receipt of a complaint, that the provisions of this chapter are being violated, he shall immediately investigate and, when necessary, give written notice to the persons responsible to cease or correct such violations immediately. Notice may be delivered in person or by certified mail to the violators or to any person owning, leasing, or occupying a property where the violation is occurring. The city manager, or his designee, shall have the right to enter upon any business premises during regular business hours for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this chapter. The city manager, or his designee, shall request permission of a residence owner to enter upon residential premises for the purpose of making inspections of buildings or premises that may be necessary to carry out the duties in the enforcement of this chapter. If the owner of a residence refuses permission to make such inspection or if an inspection of a business is needed after hours or while not open to the public, then the city staff may work with the city attorney to obtain a warrant or other legal authorization to make such inspections.
 - (2) *Stop work orders.* Whenever any building or construction work is being done contrary to the provisions of this chapter, the city manager, or his designee, shall have the authority to order the work stopped by notice in writing served on the property owner or the contractor doing the work or causing such work to be done, or by posting on the new construction itself and any such person shall forthwith stop such work until authorized in writing by the city to proceed with such work. Failure to immediately stop work as provided by this subsection shall constitute a violation of this chapter, in accordance with section 50-5, and may incur penalties for such violation.
- (h) *Schedule of fees, charges and expenses.*
- (1) *Action dependent on fees paid.* Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any zoning, rezoning or development application or on any appeal.
 - (2) *Fee schedule.* The city council shall determine and adopt a fee schedule as currently established or as hereafter adopted by resolution from time to time for the purpose of recovering the administrative costs associated with processing zoning and development requests, including public hearings that are called for in this chapter. Such fees shall be paid by the applicant and shall not be designed to in any way restrict the applicant's ability to seek and receive a hearing or to generate revenue for other than recovery of actual administrative costs incurred by the city in the review and processing of applications. Immediately upon receipt of a complete submission (in accordance with subsection (h)(1) of this section), the city secretary or his designee shall issue a fee receipt and shall create a city record thereof.

(Ord. No. 2008-01, § 10, 2-4-2008)

Sec. 50-35. Building permits; certificates of occupancy and compliance.

- (a) *Building permits required.* No building or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the building official, or his designee. A building permit shall not be issued except in conformity with the provisions of this chapter, unless otherwise authorized by the board of adjustments in the form of a variance or special exception as provided in section 50-33(f) or (g) of this chapter, or authorized to replace or expand a nonconforming use in accordance with section 50-31. A building permit shall not be issued until the property is properly zoned for the intended use, until the property is platted in accordance with chapter 40, pertaining to subdivisions, and not until all appropriate plans have been approved by the city and all applicable ordinances have been met and all fees have been paid.
- (b) *Cancellation of building permit.* Failure of an applicant or any of his agents, representatives or contractors to erect, construct, reconstruct, alter, use or maintain any building, structure or premises in conformance with the approved plans upon which a building permit was issued, when such failure constitutes a violation of any provision of this chapter and applicant fails to make corrections upon proper notice, shall render such building permit void, and the building official, or his designee, is hereby authorized and directed to revoke any such permit by giving written notice to the applicant or his agent or representative, and all work upon such building, structure or premises shall be immediately discontinued until such building, structure or premises shall be brought into conformance with the approved plans and with all applicable provisions of this chapter. Expiration of building permits shall be in accordance with the building codes of the city.
- (c) *Certificate of occupancy.*
- (1) *Required.* A certificate of occupancy shall be required for any of the following:
 - a. Occupancy and use of a building hereafter erected or structurally altered;
 - b. Change in use of an existing building and/or the use of land to a use of a different classification.
 - (2) *No work before certificate of occupancy issued.* No such use, or change of use, shall take place until a certificate of occupancy therefor shall have been issued by the building official or his designee. The application fees for a certificate of occupancy shall be as set forth by resolution of the city council.
 - (3) *Record of certificate of occupancy.* A record of all certificates of occupancy shall be kept on file in the building official's office or his designee's office, and copies shall be furnished upon request to any person in accordance with state laws governing public records.
 - (4) *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. Said certificate shall be issued after the building official, or his designee, orders the building or structure inspected and finds no violations of the provisions of this chapter or other regulations which are enforced by the building official or his designee. Said certificate shall be issued by the building official, or his designee, after the erection or alteration of such building or part thereof has been completed in conformity with all applicable provisions of this chapter.
 - (5) *Procedure for vacant land or a change in building use.* Written application for a certificate of occupancy for the use of vacant land, a change in the use of land or a change in the use of a building, or for a change from a nonconforming use to a conforming use, shall be made to the building official or his designee. If the proposed use is a conforming use, as in this chapter provided, written application shall be made to said building official or his designee. If the proposed use is found to be in conformity with the provisions of this chapter, the certificate of occupancy shall be issued after the application for same has been made and all required inspections are completed and approved by the building official or his designee.
 - (6) *Contents of certificate of occupancy.* Every certificate of occupancy shall contain the following:

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- a. Building permit number;
 - b. The address of the building;
 - c. The name and address of the owner;
 - d. A description of that portion of the building for which the certificate is issued;
 - e. A statement that the described portion of the building has been inspected for compliance with the requirements of the city's building codes for the particular group and division of occupancy;
 - f. The name of the building official or his designee;
 - g. Uses allowed;
 - h. Maximum number of persons/occupants; and
 - i. Issue date of certificate of occupancy.
- (7) *Posting of certificate of occupancy.* The certificate of occupancy shall be posted in a conspicuous place on the premises on a location approved by the building official and shall not be removed except by the building official or his designee.
- (8) *Revocation of certificate of occupancy.* The building official (or his designee) may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this chapter whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this chapter or the building code and other codes adopted by the city, and any amendments thereto.
- (9) *Exemptions.* Single-family and duplex (two-family) dwellings do not require a certificate of occupancy but do require a final clearance or whatever approval is utilized in the building code to allow residential occupancy.
- (d) *Completion of buildings in progress.* Nothing contained in this section shall require any change in the plans, construction or designated use of a building, the foundation for which has been completely constructed as of the effective date of the ordinance from which this chapter is derived, and the remaining construction of which shall have been completed within one year (i.e., 365 calendar days) following the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2008-01, § 11, 2-4-2008)

Sec. 50-36. Submission and review of concept plans, building permit plans and site plans.

- (a) *Approval process.*
- (1) *Maximum of three steps.* The review process shall include up to three steps:
 - a. Preapplication conference with the city manager or his designee. (refer to section 50-36(b));
 - b. Concept plan, building permit plan, or site plan review and approval; and
 - c. Construction of project (after city approval of all required plans and plats).
 - (2) *Type of plan required.*
 - a. *Concept plan.*
 1. A concept plan shall be required for all planned development applications.
 2. All requirements for such applications are included in section 50-80 for planned developments.

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3. A concept plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37
 - b. *Building permit plan.*
 1. A building permit plan shall be required for development within all zoning districts. A site plan or concept plan shall be submitted and approved first in those districts where required.
 2. The approval process for a building permit plan shall generally be review for conformance to city ordinances and approval by the building official or his designee.
 3. A building permit plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37
 - c. *Site plan.*
 1. A site plan shall be required for development within all zoning districts except single-family residential districts.
 2. The approval process for a site plan shall generally be review for conformance to city ordinances and approval by the city engineer (or his designee).
 3. A site plan validity and/or lapse or expiration shall be in accordance with sections 50-34(b)(6) and 50-37
 - d. *Required plans.* For the purposes of this zoning chapter, the term "required plans" is intended to refer to any of the plans listed in subsections (2)a through c of this section, as applicable.
- (3) *Payment of all indebtedness attributable to the subject property.* No person who owes delinquent taxes, delinquent paving assessments, or any other fees, delinquent debts or obligations or is otherwise indebted to the city, and which are directly attributable to a piece of property shall be allowed to submit any application for any type of rezoning, building permit, or plan review until the taxes, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof to the city shall have been first fully discharged by payment, or until an arrangement satisfactory to the city has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence or proof that all taxes, fees, etc., have been paid, or that other arrangements satisfactory to the city have been made for payment of said taxes, fees, etc.
 - (4) *Official submission date, completeness of application, and expiration of application.* All applications must be submitted, reviewed for completeness and approved in accordance with section 50-34(b).
 - (5) *Supplemental requirements.* The city's staff may require other information and data for specific required plans. Approval of a required plan may establish conditions for construction based upon such information.
- (b) *Preapplication conference.* Prior to formal application for approval of any required plan, the applicant may wish to consult with the city manager or his designee, the building official, the city engineer, and any other pertinent city officials in order to become familiar with the city's development regulations and the development process. At the preapplication conference, the developer may be represented by his land planner, engineer, surveyor, or other qualified professional. If such conference is desired, then the applicant shall sign a form or submit a letter stating the conference shall not establish vesting of property rights.
 - (c) *Site plan.*
 - (1) *Purpose.* This section establishes a review process for non-single-family developments, including those within a planned development or utilizing a conditional use permit. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.

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- (2) *Applicability.* Submission and approval of a site plan shall be required for all development within the following zoning districts: all nonresidential and multifamily districts.
- (3) *Building permit and certificate of occupancy.* A site plan shall be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed later within this section). No building permit shall be issued until a site plan, as required, and all other required engineering/plats/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the site plan and engineering/construction plans, as approved by the city.
- (4) *Extent of area that should be included in a site plan.* When the overall development project is to be developed in phases, the area included within the site plan shall include only the portion of the overall property that is to be developed/constructed. The city manager or his designee may require a concept of the future phases to be submitted in conjunction with the site plan, but such plans are not part of the approval process and only to determine if the initial phases will work.
- (5) *Procedures and submission requirements for site plan approval.* All site plans shall be prepared by a qualified civil engineer, land planner, architect and/or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of site plan applications.
- (6) *Review and approval of a site plan.*
 - a. *City staff review of site plans.*
 1. Upon official submission of a complete application of a site plan for approval, the city shall review the application. Specifically, the city engineer, and the building official or his designee, shall review the site plan for conformance to this and other adopted city ordinances. Determination of application completeness, notice to applicant of missing documents and information within ten business days and expiration of application within 45 calendar days due to incompleteness shall be in accordance with section 50-34(b).
 2. Site plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.
 3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected site plan to the city manager or his designee.
 4. The city manager or his designee shall approve, approve with conditions or deny the corrected plan.
 5. It should be noted that the city manager or his designee shall deny the original plan application if the corrected version is not resubmitted within the prescribed time period.
 6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.
 - b. *Site plan appeal process.*
 1. The applicant or property owner may appeal a denied site plan by the city staff to the planning and zoning commission by filing a written notice of appeal in the office of the city manager or his designee no later than ten calendar days after the date upon which staff denied the site plan.
 2. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The commission shall consider the appeal at a public meeting no later than 30 calendar days after the date upon which the notice of appeal was filed.

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3. The applicant or property owner may appeal a denial of the appeal by the planning and zoning commission to the city council.
 4. The city council may affirm or reverse the decision of the planning and zoning commission by a simple majority vote.
 5. The city council may also, where appropriate, remand the site plan application back to the commission for reconsideration if it believes that there is a compelling reason to do so (such as the introduction of significant new facts or testimony, etc.).
- (7) *Revisions to the approved site plan.*
- a. *Minor revisions/amendments.*
 1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved site plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved site plan. Such minor modifications shall be submitted on an amended site plan, which shall substantially conform to the previously approved site plan.
 2. Submission materials and requirements for approval of an amended site plan shall be as determined by the city manager or his designee.
 - b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (c)(7)a of this section), a revised site plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised site plan warrants a review and approval as outlined in subsection (c)(7)a of this section.
- (8) *Effect of review/approval.* The site plan shall be considered authorization to proceed with construction of the site provided all other required plans and city approvals are obtained (such as final plat, civil engineering plans, etc.).
- (9) *Validity, lapse, and reinstatement of site plan.* Refer to section 50-37
- (d) *Building permit plan.*
- (1) *Purpose.* This section establishes a review process for all development within zoning districts in which a site plan or concept plan is not required. The purpose is to ensure that development projects are in compliance with all applicable city ordinances and guidelines prior to commencement of construction.
 - (2) *Applicability.* Submission and approval of a building permit plan shall be required for all development within all zoning districts in accordance with the adopted building codes of the city.
 - (3) *Building permit and certificate of occupancy.* Building permit plans shall be submitted in conjunction with a building permit application. No building permit shall be issued until a building permit plan, as required, and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the building permit plan and engineering/construction plans, as approved by the city.
 - (4) *Extent of area that should be included in a building permit plan.* When the overall development project is to be developed in phases, the area included within the building permit plan shall include only the portion of the overall property that is to be developed/constructed.
 - (5) *Procedures and submission requirements for building permit plan approval.* All building permit plans shall be prepared in accordance with the adopted building codes by a qualified civil engineer, land planner, architect and/or surveyor, if required, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of applications.

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(6) *Review and approval of a building permit plan.*

a. *City staff review and approval of building permit plans.*

1. Upon official submission of a complete application of a building permit plan for approval, the city shall review the application. Specifically, the city manager, city engineer, and the building official (or their designee) shall review the building permit plan. Determination of application completeness, notice in writing to applicant of missing documents and information within ten business days and expiration of application with 45 calendar days due to incompleteness shall be in accordance with section 50-34(b)(6)c.
2. Building permit plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.
3. Following city staff review, the city manager or his designee shall approve, approve subject to certain conditions, or deny approval of the building permit plan.

b. *Building permit plan appeal process for zoning reasons.*

1. The applicant or property owner may appeal the denial of a building permit plan for not meeting the regulations contained in this chapter to the planning and zoning commission by filing a written notice of appeal in the office of the city manager or his designee no later than ten calendar days after the date upon which the city manager or his designee denied the building permit plan. Appeals of denials of permits for not meeting the regulations contained in the adopted building codes shall be processed in accordance with the procedures contained in those codes.
2. The notice of appeal shall set forth in clear and concise fashion the basis for the appeal. The planning and zoning commission shall consider the appeal at a public meeting not later than 60 calendar days after the date upon which the notice of appeal was filed.
3. The planning and zoning commission may affirm or may change the decision of the city manager or his designee by a simple majority vote.
4. The planning and zoning commission may also, where appropriate, remand the building permit plan application back to the city manager or his designee for reconsideration if it believes that there is a compelling reason to do so (such as the introduction of significant new facts or testimony, etc.).

(7) *Revisions to the approved building permit plan.*

a. *Minor revisions/amendments.*

1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved building permit plan. In such cases, the city manager, or his designee shall have the authority to approve minor modifications to an approved building permit plan. Such minor modifications shall be submitted on an "amended building permit plan", which shall substantially conform to the previously approved building permit plan.
2. Submission materials and requirements for approval of an amended building permit plan shall be as determined by the city manager or his designee.

- b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (d)(7)a of this section), a revised building permit plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised building permit plan warrants a review and approval as outlined in subsection (d)(7)a of this section.

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(8) *Effect of review/approval.* The building permit plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).

(9) *Validity, lapse, and reinstatement of building permit plan.* Refer to section 50-37

(Ord. No. 2008-01, § 12, 2-4-2008)

Sec. 50-37. Vested rights and review procedure.

(a) *Land use upon annexation validity and lapse.* Vested rights in land use upon annexation shall be governed by V.T.C.A., Local Government Code § 43.002.

(b) *Permit, plan or planned development validity and lapse.*

(1) *Site plan validity and lapse of approval.* A site plan shall be considered a "permit" as described by state law in V.T.C.A., Local Government Code § 245.005.

a. *Valid for two years.* Any approved site plan shall be deemed expired two years from the date on which the site plan was originally approved by the city council if no progress has been made toward completion of the project.

b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:

1. Plans for construction and an application for a building permit for at least one of the buildings on the approved site plan are submitted within two years following approval of the site plan;

2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;

3. Costs have been incurred for developing the project, including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or

5. Utility connection fees or impact fees for the project have been paid to the city.

c. *Expiration.* If one of the items listed in subsection (b)(1)b.1 through 5 of this section is not accomplished within the two-year period, the approved site plan shall expire upon the second anniversary of its approval by the city council and shall become null and void.

d. *Extension and reinstatement procedure.*

1. Prior to the lapse of approval for a site plan, the applicant may petition the city (in writing) to extend the site plan approval.

2. Such petition shall be recommended for approval or denial by the planning and zoning commission, and shall be granted approval or denial by the city council.

3. If no petition is submitted, then the site plan shall be deemed to have expired and shall become null and void. Any new request for site plan approval thereafter shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.

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4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:
 - (i) The reasons for the lapse;
 - (ii) The ability of the property owner to comply with any conditions attached to the original approval; and
 - (iii) The extent to which development regulations would apply to the site plan at that point in time.
- (2) *Building permit plan and validity and lapse of approval.* A building permit plan shall be considered a "permit" as described in V.T.C.A., Local Government Code § 245.005.
- a. *Valid for two years.* Any approved building permit plan shall be deemed expired two years from the date on which the building permit plan was originally approved by the city council if no progress has been made toward completion of the project.
 - b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:
 1. Plans for construction and an application for a building permit for at least one of the buildings on the approved building permit plan are submitted within two years following approval of the building permit plan;
 2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;
 3. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
 4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or
 5. Utility connection fees or impact fees for the project have been paid to the city.
 - c. *Expiration.* If one of the items listed in subsection (b)(2)b.1 through 5 of this section is not accomplished within the two-year period, then the approved building permit plan shall expire and shall become null and void.
 - d. *Extension and reinstatement procedure.*
 1. Prior to the lapse of approval for a building permit plan, the applicant may petition the city (in writing) to extend the building permit plan approval.
 2. Such petition shall be recommended for approval or denial by the planning and zoning commission and shall be granted approval or denial by the city council.
 3. If no petition is submitted, then the building permit plan shall be deemed to have expired and shall become null and void. Any new request for building permit plan approval shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.
 4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:
 - (i) The reasons for the lapse;

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- (ii) The ability of the property owner to comply with any conditions attached to the original approval; and
 - (iii) The extent to which development regulations would apply to the building permit plan at that point in time.
- (3) *Conditional use permit (CUP) concept plans; validity and expiration.* A CUP concept plan shall be considered a "permit" as described in V.T.C.A., Local Government Code § 245.005.
 - a. *Valid for two years.* Any approved CUP concept plan shall be deemed expired two years from the date on which the CUP concept plan was originally approved by the city council if no progress has been made toward completion of the project.
 - b. *Progress benchmarks.* The term "progress" shall be as defined based on V.T.C.A., Local Government Code § 245.005 as follows:
 - 1. Plans for construction and an application for a building permit for at least one of the buildings on the approved CUP concept plan are submitted within two years following approval of the CUP concept plan;
 - 2. A good-faith attempt is made to file with the city an application for a permit necessary to begin or continue towards completion of the project;
 - 3. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
 - 4. Fiscal security is posted with the city to ensure performance of an obligation required by the city; or
 - 5. Utility connection fees or impact fees for the project have been paid to the city.
 - c. *Expiration.* If one of the items listed in subsection (b)(3)b.1 through 5 of this section is not accomplished within the two-year period, then the approved CUP concept plan shall expire and shall become null and void.
 - d. *Extension and reinstatement procedure.*
 - 1. Prior to the lapse of approval for a CUP concept plan, the applicant may petition the city (in writing) to extend the CUP concept plan approval.
 - 2. Such petition shall be recommended for approval or denial by the planning and zoning commission and shall be granted approval or denial by the city council.
 - 3. If no petition is submitted, then the CUP concept plan shall be deemed to have expired and shall become null and void. Any new request for CUP concept plan approval shall be deemed a new permit, and shall be submitted with a new application form, with a new filing fee, and with new plans and materials in accordance with the procedures set forth in this section. The new request shall also be reviewed for compliance with the ordinances and regulations in effect at the time the new application is made.
 - 4. In determining whether to grant a request for extension, the planning and zoning commission and the city council shall take into account:
 - (i) The reasons for the lapse;
 - (ii) The ability of the property owner to comply with any conditions attached to the original approval; and
 - (iii) The extent to which development regulations would apply to the CUP concept plan at that point in time.

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- (4) *Planned development (PD) concept plans; validity and expiration.* In conformance with V.T.C.A., Local Government Code § 245.005, the applicant shall retain the following rights related to concept plan:
- a. *Preliminary plat submittal within two years required.* An application for a preliminary plat shall be submitted for approval within two years of the date of approval of a concept plan, unless otherwise provided in the PD district adopting ordinance. If a preliminary plat consistent with the concept plan is not submitted within such period, the concept plan shall expire.
 - b. *Expiration of an approved concept plan.* Expiration of an approved concept plan (based on subsection (b)(4)a of this section) shall result in suspension of the ability to submit a preliminary plat related to the original concept plan. A new concept plan must be submitted before the development process can continue.
 - c. *Expiration of an approved preliminary plat.*
 1. The expiration of an approved preliminary plat shall be governed by the provisions of the city's subdivision ordinance as provided in chapter 40
 2. If a required development application (e.g., preliminary plat, final plat, building permit) is submitted within the two-year period, but such development application subsequently expires, the associated concept plan shall also expire.
- (5) *Ability to retain the rights to the PD project.* In conformance with V.T.C.A., Local Government Code § 245.005, the applicant shall retain the following rights related to a proposed planned development following submittal and approved of a concept plan.
- a. *Ability to submit applications for five years.* The applicant shall retain the ability to submit a new concept plan for a period of five years following the original approval of the concept plan. Such new concept plan may only be for a substantially similar PD project. However, any such new concept plan shall adhere to any and all new standards and regulations that the city has adopted in relation to a concept plan and/or any other PD application requirements.
 - b. *Expiration of project in five years.* Any PD project for which no preliminary plat has been submitted for a period of five years following the approval of the related concept plan shall expire on the last day of that five-year period.
 - c. *Planning and zoning commission consideration.* After such five-year period has ended and the project expires, the planning and zoning commission shall consider whether the undeveloped land within a PD district should be changed to another zoning classification in accordance with the procedures for a zoning amendment pursuant to section 50-34. The commission thereafter shall recommend to the city council whether the right to submit a preliminary plat or other development application for the same PD project should be reinstated, or whether the property should be rezoned to another classification.
 - d. *City council consideration.* The commission's recommendation (as outlined in subsection (b)(5)c of this section) shall be considered by the city council in accordance with procedures for a zoning amendment pursuant to section 50-34. The council shall determine whether the right to submit the preliminary plat or other development application for the same PD District project should be reinstated, or whether the property should be rezoned to another classification. In making such determination, the city council shall consider the following factors:
 1. Whether the PD district remains consistent with the comprehensive plan;
 2. Whether the uses authorized in the PD district are compatible with existing and planned land uses adjacent to the site;

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3. Whether there are extenuating circumstances justifying the failure to submit a preliminary plat or other development application during the applicable time period; and
 4. Whether rezoning the property to another classification constitutes confiscation of a vested property right or deprives the owner of the economically viable use of the land.
- e. *Council action.* Upon subsections (b)(5)d2 through 4 of this section occurring, the city council may take the following actions:
1. Reinststate the right to submit the preliminary plat or other development application for the original PD district project within a certain time period, subject to any conditions that may be appropriate to ensure that significant progress will be made toward development of land within the PD District;
 2. Modify the PD district regulations applicable to the property; or
 3. Repeal the PD district for the affected portions of the property and zone such property to another zoning district classification.

(c) *Vested rights request.*

- (1) Any property owner who believes that he has obtained a vested right under V.T.C.A., Local Government Code ch. 245 shall submit to the city secretary a letter explaining the factual and legal bases upon which the property owner relies in his contention that he has a particular vested right and, consequently, is exempt or not subject to a particular city order, regulation, ordinance, rule, expiration date, or other properly adopted requirement (hereinafter referred to collectively as "regulations"). Such written submission shall include, at a minimum, the following:
 - a. The name, mailing address, phone number and fax number of the property owner (or the property owner's duly authorized agent);
 - b. Identification of the property for which the property owner claims a vested right;
 - c. Identification of the "project," as that term is defined in V.T.C.A., Local Government Code § 245.001(3);
 - d. Identification of the original application for the first permit in the series of permits required for the project, as described in V.T.C.A., Local Government Code §§ 245.001(1) and 245.002(a) and (b);
 - e. The date that the first permit in the series of permits required for the project was filed with the city;
 - f. A chronology of the history of the project, with special emphasis on facts establishing that the project was in progress on or commenced after September 1, 1997, as required by V.T.C.A., Local Government Code § 245.003;
 - g. Identification of all city regulations in effect at the time the original application for the permit was filed that the owner contends are vested and the owner contends controls the approval, disapproval, or conditional approval of an application for a permit, pursuant to V.T.C.A., Local Government Code § 245.002(a) and (b);
 - h. Identification of all city regulations that the property owner contends do not apply to the project due to the vested rights provided the property owner by V.T.C.A., Local Government Code ch. 245; and
 - i. Identification of all city regulations that the property owner contends would apply to the project that predate the regulations the property owner contends do not apply.
- (2) If a property owner contends that certain city regulations do not apply to the project, the property owner is expected to identify, with particularity, all requirements that the property owner contends do not apply. Global references to a particular ordinance, or set of criteria, may

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be deemed insufficient and the city may consider the request for a vested rights determination to be incomplete and, hence, not subject to a staff determination at that time.

- (d) *Vested rights determination.* The city secretary shall promptly forward the owner's vested rights request pursuant to section 50-37(d), along with any supporting information or documentation provided along with the request, to the city manager and city attorney for their respective reviews. The city manager, after consultation with the city attorney, shall issue a final administrative determination of whether a vested right exists in relation to the project, and shall identify, with particularity, all claims for vested rights that have been granted and all claims for vested rights that have been denied. Prior to rendering his final determination, the city manager may request a pre-determination conference with the owner to discuss the owner's vested rights claim and to ensure that the nature of the claim is fully and completely understood by the city manager prior to a final determination being rendered.
- (e) *Appeals to the board of adjustments.* If the property owner and/or the city council believes that the city manager's vested rights determination is in error, the property owner and/or the city council shall have the right to appeal such determination to the board of adjustments, which will have jurisdiction to hear and decide the appeal pursuant to this chapter and/or V.T.C.A., Local Government Code ch. 211. The property owner may also request the board of adjustments to grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in this chapter and/or V.T.C.A., Local Government Code ch. 211. The property owner may also request the board of adjustments to grant a variance from the regulations at issue under the same standards governing variances for other matters, as set forth in this chapter and/or V.T.C.A., Local Government Code ch. 211.
- (f) *Judicial review.* Should the property owner, any aggrieved person, and/or the city council be dissatisfied with the actions of the board of adjustments, they may avail themselves of all legal remedies to review the board of adjustments' decision as set forth in V.T.C.A., Local Government Code § 211.011.
- (g) *Binding determination.* The city manager's final determination, if not timely appealed to the board of adjustments, shall be immediately filed in the city's files related to the project and the determination shall be considered binding upon the city and the property owner for the duration of the project. Similarly, any decision by the board of adjustments regarding a vested right claim, if not timely appealed pursuant to V.T.C.A., Local Government Code § 211.011, shall be filed in the city's files related to the project and the determination shall be considered binding upon the city and the property owner for the duration of the project. Notwithstanding the binding nature of the city manager's final determination and any ruling by the board of adjustments, the city and the property owner may, at any time, enter into a development agreement that, to the extent authorized by law, modifies the final determination and the applicable development regulations to be applied to the project.

(Ord. No. 2008-01, § 48, 2-4-2008)

Secs. 50-38—50-62. Reserved.

ARTICLE III. DISTRICT REGULATIONS

[Sec. 50-63. Zoning district map.](#)

[Sec. 50-64. Zoning district boundaries.](#)

[Sec. 50-65. Compliance required and applications of regulations.](#)

[Sec. 50-66. Zoning upon annexation.](#)

[Sec. 50-67. Zoning districts established.](#)

[Sec. 50-68. Agricultural District \(AG\).](#)

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[Sec. 50-69. Single-Family Estate Residential District \(SF-20-E\).](#)

[Sec. 50-70. Single-Family Residential District \(SF-9\).](#)

[Sec. 50-71. Single-Family Residential District \(SF-6\).](#)

[Sec. 50-72. Duplex \(Two-Family\) Residential District \(D\).](#)

[Sec. 50-73. Multifamily Residential District \(MF\).](#)

[Sec. 50-74. Manufactured Home Park District \(MHP\).](#)

[Sec. 50-75. Office District \(O\).](#)

[Sec. 50-76. General Retail District \(GR\).](#)

[Sec. 50-77. Commercial District \(C\).](#)

[Sec. 50-78. Light Industrial District \(LI\).](#)

[Sec. 50-79. Old Town and Mixed-Use District \(OT and MU\).](#)

[Sec. 50-80. Planned Development District \(PD\).](#)

[Sec. 50-81. Conditional Use Permit \(CUP\).](#)

[Sec. 50-82. Use regulations \(charts\).](#)

[Sec. 50-83. Summary of area regulations by district.](#)

[Secs. 50-84—50-111. Reserved.](#)

Sec. 50-63. Zoning district map.

- (a) The city is hereby divided into zones, or districts, and the boundaries of zoning districts set out in this article are delineated upon the zoning district map of the city, which may also be cited as the zoning map, said map being adopted as a part of this chapter as fully as if the same were set forth herein in detail.
- (b) One original of the zoning district map shall be filed in the office of the city secretary and labeled as "Official Zoning Map of the city, Texas—Ordinance No. 2008-01." This copy shall be the original zoning district map adopted with this chapter and shall bear the signature of the mayor, attested by the city secretary, and shall bear the seal of the city under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 3 of the Zoning Ordinance, Ordinance No. 2008-01 of the City of Tomball, Texas, adopted on the 4th day of February, 2008." This copy shall not be changed in any manner. In case of any question, this copy, together with amending ordinances, shall be controlling.
- (c) A copy of the official zoning district map shall be placed in the office of the city manager or his designee. The map copy shall be used for reference and shall be maintained up to date by posting thereon all subsequent amendments. Any changes or amendments made to the zoning district boundaries shall be made on the map copy after the amendment has been approved by the city council in accordance with section 50-34. Each entry for a zoning map amendment shall include an ordinance number that references the zoning ordinance amendment.
- (d) Reproductions for informational purposes may be made of the official zoning district map or this copy in print version or digitally by electronic files, computer disks or on the web, provided all reproductions are clearly labeled as such with a "Current as of _____/_____/_____" date indication. A disclaimer should also be provided that the actual zoning can only be verified by contact with the city and review of the official map.

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- (e) In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret due to age, exposure, or the nature or number of changes or additions, the city council may adopt, by ordinance following a public hearing, a new official zoning map which shall replace and supersede the prior zoning map, but which shall not, in effect, amend or otherwise change the original official zoning map or any subsequent amendment thereto. The new official zoning map shall bear the signature of the mayor, attested by the city secretary, and shall bear the seal of the city under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the original Official Zoning Map referred to in Section 3 of the Zoning Ordinance, Ordinance No. 2008-01 of the City of Tomball, Texas, adopted on the 4th day of February, 2008." Unless the prior official zoning map has been lost or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

(Ord. No. 2008-01, § 3, 2-4-2008)

Sec. 50-64. Zoning district boundaries.

The zoning district boundary lines shown on the zoning district map are usually along streets, alleys, property lines, or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the zoning district map, the following rules shall apply:

- (1) Boundaries shown as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.
- (2) Boundaries shown as approximately following platted lot lines shall be construed as following such lot lines.
- (3) Boundaries shown as approximately following city limits shall be construed as following such city limits.
- (4) Boundaries shown as following railroad lines shall be construed to be located along the centerline of the railroad right-of-way lines.
- (5) Boundaries shown as approximately following the centerlines of streams, rivers, creeks, canals, bodies of water, or drainageways shall be construed to follow such centerlines, and in the event of change in any such centerlines shall be construed to move with such centerlines.
- (6) Boundaries shown as parallel to, or extensions of, features described in subsections (1) through (5) of this section shall be so construed. Distances not specifically indicated on the zoning district map shall be determined by the approximate scale of the map and verified by a survey.
- (7) Whenever any street, alley or other public way is vacated by official action of the city council, or whenever such area is franchised for building purposes, the zoning district line adjoining each side of such street, alley or other public way shall be automatically extended to the centerline of such vacated street, alley or public way (or to the new property ownership boundary line, if it is not determined to be at the former centerline) and all areas so involved shall then and henceforth be subject to all regulations of the extended districts.
- (8) The zoning classification applied to a tract of land adjacent to a street shall extend to the centerline of the street unless, as a condition of zoning approval, it is stated that the zoning classification shall not apply to the street.
- (9) Where physical features on the ground are at variance with information shown on the zoning district map, or if there arises a question as to how or whether a parcel of property is zoned and such question cannot be resolved by the application of subsections (1) through (8) of this section, then the board of adjustments shall interpret the zoning district boundaries.
- (10) If the zoning of property is invalidated by a judgment of a court of competent jurisdiction, the property shall be considered classified as AG Agricultural District in the same manner as provided for newly annexed territory.

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(11) For legal descriptions, refer to the adopting ordinances for each particular rezoning change.

(Ord. No. 2008-01, § 4, 2-4-2008)

Sec. 50-65. Compliance required and applications of regulations.

- (a) All land, buildings, structures or appurtenances thereon located within the city, which are hereafter occupied, used, constructed, erected, removed, placed, demolished, and/or converted shall be occupied, used, erected, altered, removed, placed, demolished and/or converted in conformance with the zoning regulations prescribed for the zoning district in which such land or building is located, as hereinafter provided, or such shall be subject to penalties as per section 50-5. All of the standards and regulations prescribed herein shall be considered as the minimum requirement unless explicitly stated otherwise.
- (b) No uses shall be allowed which are prohibited by state or federal law or which operate in excess of state or federal environmental, pollution or performance standards as determined by the U.S. Environmental Protection Agency (EPA), Texas State Department of Health (TSDH), Texas Commission of Environmental Quality (TCEQ), Federal Aviation Administration (FAA), Federal Communications Commission (FCC), or any other applicable state or federal agency, as the case may be.
- (c) No lot upon which a building has been erected shall later be so reduced in area that the setbacks, yards and/or open spaces shall be smaller than those required by this chapter, nor shall a part of a yard or other open space required by this chapter for any building/lot be included as a part of a yard or other open space similarly required for another building/lot.
- (d) Unless otherwise provided herein, no building shall hereafter be erected or altered:
 - (1) To have more narrow or smaller front, side or rear yards than those required by this chapter;
 - (2) To exceed the maximum height allowed by this chapter;
 - (3) To occupy a greater percentage of lot area than allowed by this chapter; or
 - (4) To accommodate or house a greater number of families than is specified within this chapter for the zoning district in which such building is located.

(Ord. No. 2008-01, § 5, 2-4-2008)

Sec. 50-66. Zoning upon annexation.

- (a) Proceedings to establish zoning may be undertaken concurrently with annexation procedures (i.e., notified at the same time, public hearings scheduled at the same time as annexation, etc.), however, zoning approval and formal adoption of the ordinance establishing zoning must occur after annexation approval and adoption have occurred, and as a separate and distinct action by the city council. For any period of time following official annexation by the city until a zoning action has been officially adopted to zone the land, the interim zoning of the land shall be considered to be agricultural (AG), and all zoning and development regulations of the AG zoning district shall be adhered to with respect to the development and use of the land.
- (b) The initial zoning of a land parcel, whether by initiation of the landowner or by initiation of the city, must meet the requirements for notification and public hearings as set forth in section 50-34 and all other applicable state laws.
- (c) The owner of land to be annexed may submit an application for zoning the property simultaneously with submission of the petition for annexation, but no such annexation application may be made conditioned upon the approval of any particular zoning classification.
- (d) Within an area classified as AG Agricultural:

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- (1) No permit for the construction of a building or use of land shall be issued by the building official, or his designee, other than a permit which will allow the construction of a building or use permitted in the AG Agricultural District, unless and until such territory has been classified in a zoning district other than the AG Agricultural District by the city council in the manner prescribed by section 50-34, except as provided in subsection (b) of this section.
- (2) If plans and preparations for developing a property for a use other than those specified in the AG Agricultural District were already in progress prior to annexation of the property into the city, in accordance with section 50-37, then the city council may authorize construction of the project by a majority vote. Application of this subsection is contingent upon the following:
 - a. The applicant must be able to demonstrate that plans and other preparations for developing the property commenced prior to (i.e., were already in progress at the time of) annexation into the city.
 - b. Existing land uses shall be allowed to continue in conformance with V.T.C.A., Local Government Code ch. 43 and section 50-37
- (e) In its deliberations concerning authorization to proceed with construction of a project which meets the criteria in subsections (a) through (d) of this section, the city council shall take into consideration the appropriate land use for the area as shown on the city's future land use plan. Upon approval by the city council, the city manager or his designee shall notify the building official or his designee of such approval.

(Ord. No. 2008-01, § 6, 2-4-2008)

Sec. 50-67. Zoning districts established.

- (a) The city is hereby divided into the following zoning districts. The use, height, area regulations, and other standards, as set out in this chapter apply to each district. The districts established herein shall be known as:

BASE DISTRICTS

Abbreviated Designation	Zoning District Name
AG	Agricultural
SF-20-E	Single-Family Estate Residential-20 (minimum 20,000-square-foot lots)
SF-9	Single-Family Residential-9 (minimum 9,000-square-foot lots)
SF-6	Single-Family Residential-6 (minimum 6,000-square-foot lots)
D	Duplex (Two-Family) Residential
MF	Multifamily Residential (apartments)
MHP	Manufactured Home Park
O	Office

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GR	General Retail
C	Commercial
LI	Light Industrial

SPECIAL DISTRICTS

Abbreviated Designation	Zoning District Name
OT and MU	Old Town and Mixed-Use District
PD	Planned Development
CUP	Conditional Use Permit

- (b) A summary of the area regulations for the foregoing zoning districts is included section 50-83
- (c) Certain terms and definitions used within this chapter can be found in the definitions section 50-2
- (d) Other requirements are contained within article IV of this chapter.
(Ord. No. 2008-01, § 13, 2-4-2008)

Sec. 50-68. Agricultural District (AG).

- (a) *General purpose and description.* The AG Agricultural District is designed to permit the use of land for the ranching, propagation and cultivation of crops and similar uses of vacant land. Single-family uses on large lots are also appropriate for this district. Territory that has been newly annexed into the city may be initially zoned agricultural, and the district is considered a temporary holding zone until permanent zoning is approved. It is anticipated that agricultural zoned land will ultimately be rezoned to another zoning classification for its intended use in accordance with the comprehensive plan in the future. Zoning to the final, permanent classification will be considered an initial rezoning for the purposes of notice and protest requirements. The AG Agricultural District is also appropriate for areas where utilities or city services are not readily available.
- (b) *Permitted uses.*
 - (1) Those uses listed for the AG Agricultural District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
 - (2) Livestock and domesticated animals shall only be allowed in accordance with the adopted ordinances of the city.
 - (3) One manufactured home may be utilized as a temporary construction living quarters by the owner of the property, so long as a valid permit exists and construction is proceeding. In

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addition, non-occupied storage buildings may be allowed without a main structure for as long as a valid permit for construction of a main structure is valid.

- (c) *Height regulations.* The maximum height in the AG district shall be:
 - (1) Three stories, and not to exceed 45 feet, for the main building/house.
 - (2) Forty-five feet for agricultural structures (e.g., barns, silos, water towers, etc.), provided they are no closer than 100 feet from any residential structure on the premises, and they are set back at least 100 feet or three times their height (whichever is greater) from any front, side or rear property line.
 - (3) Twenty-five feet for other accessory buildings, including detached garage, garden shed, accessory dwelling units, etc.
- (d) *Area regulations.*
 - (1) Size of lots.
 - a. Minimum lot area: One acre (i.e., 43,560 square feet).
 - b. Minimum lot width: 100 feet.
 - c. Minimum lot depth: 200 feet.
 - (2) Size of yard.
 - a. Minimum front yard: 60 feet.
 - b. Minimum side yard: 30 feet; provided, however, a detached single-family dwelling and private garage may be located not less than 15 feet from the side property line or not less than 25 feet from the side property line adjacent to an arterial street, whichever is greater.
 - c. Minimum rear yard: 25 feet for the main building and any accessory buildings.
 - (3) *Maximum coverage lot.* Maximum lot coverage is 40 percent for main buildings and accessory buildings.
 - (4) *Minimum floor area.* Minimum floor area per dwelling unit is 1,600 square feet of heated and/or air-conditioned floor area.

Illustration 50-68-1: Lot and yard regulations for the Agricultural District

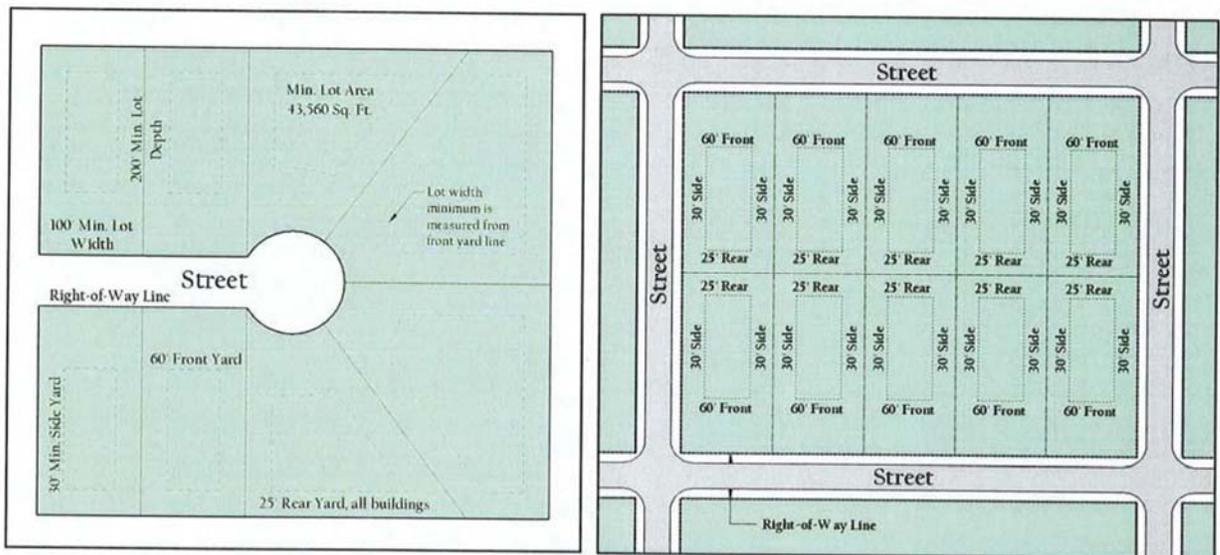
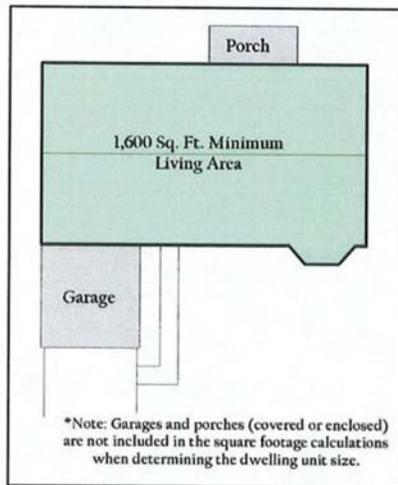


Illustration 50-68-2: Floor area for the Agricultural District



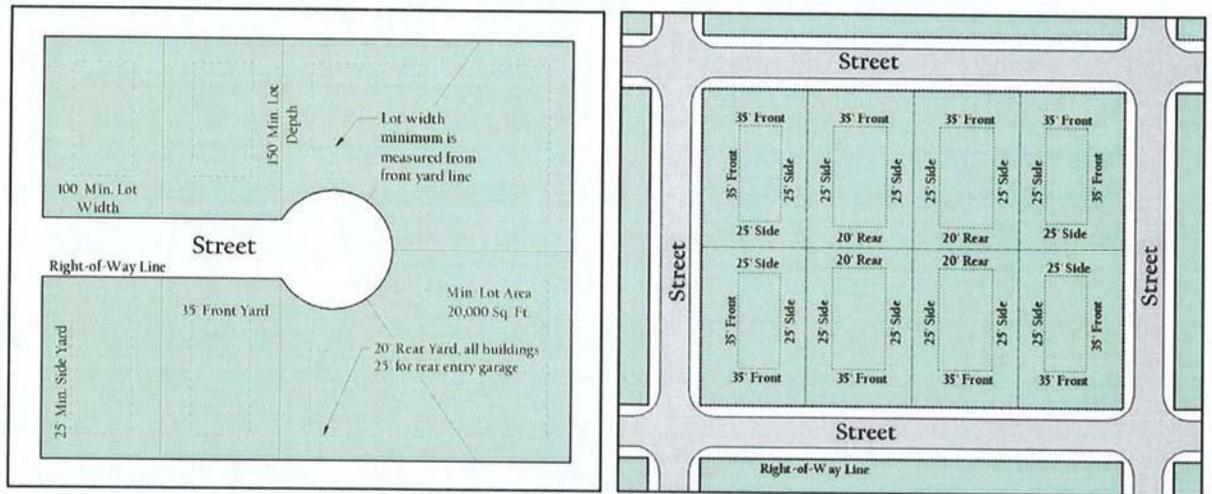
(Ord. No. 2008-01, § 14, 2-4-2008; Ord. No. 2009-31, § 2, 11-2-2009)

Sec. 50-69. Single-Family Estate Residential District (SF-20-E).

- (a) *General purpose and description.* The SF-20-E Single-Family Residential District is intended to provide for development of primarily very low-density detached, single-family residences on lots of not less than 20,000 square feet in size, churches, schools and public parks. It is intended for large lot subdivisions and also for the more rural type residential areas that don't meet the AG Agriculture District requirements but may want to have additional accessory buildings and animals.
- (b) *Permitted uses.* Those uses listed for the SF-20-E Single Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the SF-20E district shall be:
- (1) Three stories, and not to exceed 45 feet, for the main building/house.
 - (2) Two stories for other accessory buildings, including detached garage, garden shed, detached accessory dwelling units, gazebo, etc.
- (d) *Area regulations.*
- (1) *Size of lots.*
 - a. Minimum lot area: 20,000 square feet.
 - b. Minimum lot width: 100 feet. Radial lots shall have a minimum width of 100 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.
 - c. Minimum lot depth: 150 feet.
 - d. Nonconforming lots: where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

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Illustration 50-69-1: Lot and yard regulations for the SF-20-E District



(2) *Size of yards.*

- a. Minimum front yard: 35 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.
- b. Minimum side yard: 25 feet.
- c. Minimum rear yard: 20 feet for the main building and any accessory buildings; 25 feet for rear garage entry.

(3) *Minimum floor area.* Minimum floor area per dwelling unit is 1,600 square feet of heated and/or air-conditioned floor area.

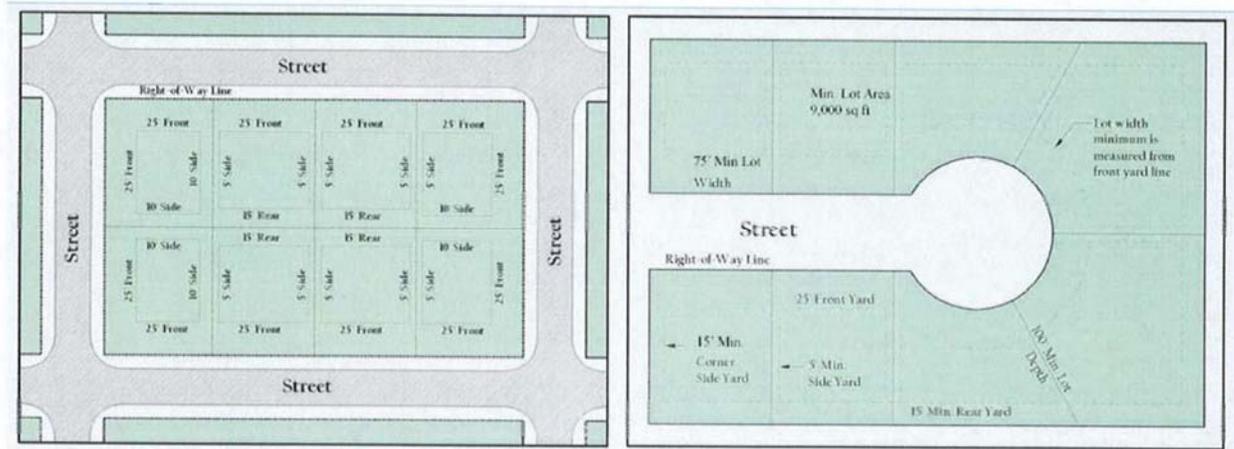
(Ord. No. 2008-01, § 15, 2-4-2008)

Sec. 50-70. Single-Family Residential District (SF-9).

- (a) *General purpose and description.* The SF-9 Single-Family Residential District is intended to provide for development of primarily low-density detached, single-family residences on lots of not less than 9,000 square feet in size, churches, schools and public parks in logical neighborhood units.
- (b) *Permitted uses.* Those uses listed for the SF-9 Single-Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the SF-9 district shall be:
 - (1) Two stories, not to exceed 35 feet, for the main building/house.
 - (2) Two stories for other accessory buildings, including detached garage, garden shed, gazebo, etc.

Illustration 50-70-1

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(d) *Area regulations.*

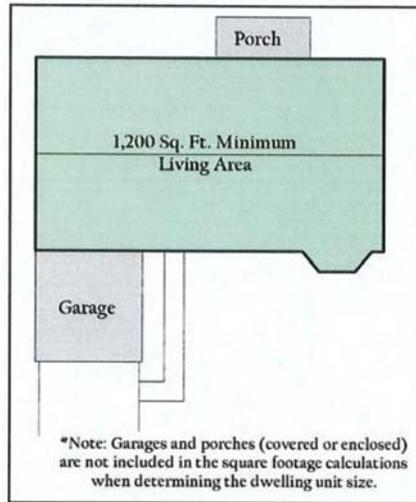
(1) *Size of lots.*

- a. Minimum lot area: 9,000 square feet.
- b. Minimum lot width: 75 feet. Retail lots shall have a minimum width of 80 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.
- c. Minimum lot depth: 100 feet.
- d. Nonconforming lots. Where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.

(2) *Size of yards.*

- a. Minimum front yard: 25 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
- b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet.
- c. Minimum rear yard: 15 feet. The rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20-foot alley shall have a five foot minimum rear yard and abutting a 15 foot alley shall have a 7.5-foot minimum rear yard.
- d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

Illustration 50-70-2: Floor Area for the SF-9 District



- (3) *Maximum lot coverage.* Maximum lot coverage is 40 percent, including main buildings and accessory buildings.
- (4) *Minimum floor area.* Minimum floor area per dwelling unit is 1,200 square feet of heated and/or air-conditioned floor area.

(Ord. No. 2008-01, § 16, 2-4-2008)

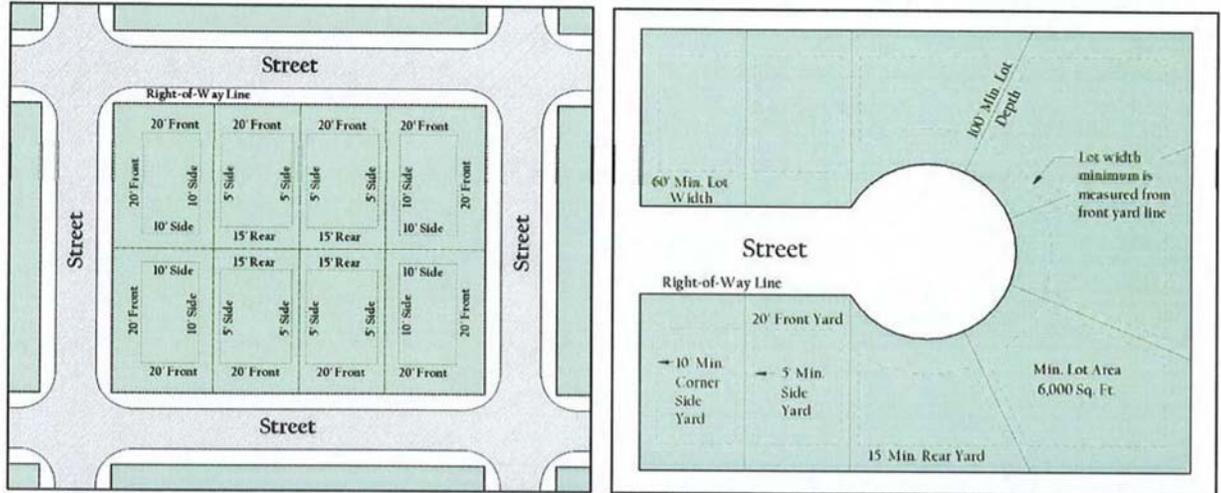
Sec. 50-71. Single-Family Residential District (SF-6).

- (a) *General purpose and description.* The SF-6 Single-Family Residential District is intended to provide for development of primarily low-density detached, single-family residences on lots of not less than 6,000 square feet in size, churches, schools and public parks in logical neighborhood units.
- (b) *Permitted uses.* Those uses listed for the SF-6 Single-Family Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the SF-6 district shall be:
 - (1) Two stories, not to exceed 35 feet, for the main building/house.
 - (2) One story for other accessory buildings, including detached garage, garden shed, gazebo, etc.
- (d) *Area regulations.*
 - (1) *Size of lots.*
 - a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 50 feet. Retail lots shall have a minimum width of 60 feet at and for a distance of 30 feet behind the front yard/building line. No lot shall be created that has a front yard with less than 30 feet of frontage on the front street.
 - c. Minimum lot depth: 100 feet.
 - d. Nonconforming lots: where a lawfully existing lot having less area, depth, or width than required in this section existed in separate ownership on the effective date of the ordinance from which this chapter is derived, the foregoing regulations relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.
 - (2) *Size of yards.*

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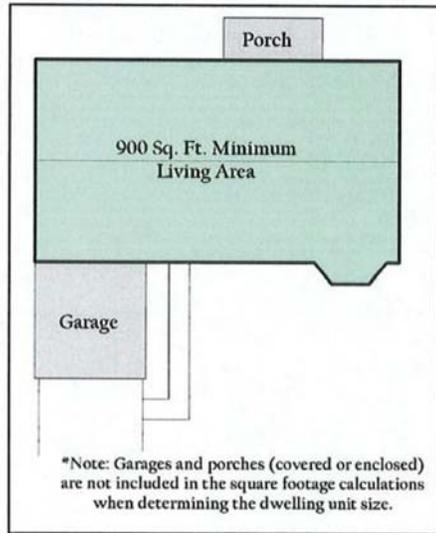
- a. Minimum front yard: 20 feet; where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

Illustration 50-71-1: Lot and yard regulations for the SF-6 District



- b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet.
- c. Minimum rear yard: 15 feet. The minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20-foot alley shall have a 5 foot minimum rear yard and abutting a 15-foot alley shall have a 7.5-foot minimum rear yard.
- d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.

Illustration 50-71-2: Floor area for the SF-6 District



- (3) *Maximum lot coverage.* Maximum lot coverage is 45 percent including main buildings and accessory buildings.
- (4) *Minimum floor area.* Minimum floor area per dwelling unit is 900 square feet of heated and/or air-conditioned floor area.

(Ord. No. 2008-01, § 17, 2-4-2008)

Sec. 50-72. Duplex (Two-Family) Residential District (D).

- (a) *General purpose and description.* The D Duplex (Two-Family) Residential District is intended to promote stable, quality multiple-occupancy residential development at slightly increased densities. Individual ownership of each side of the duplex (two-family) units is encouraged, but must meet all platting, building codes and have separate utilities. This district is typically used as a buffer or transition district between lower density residential areas and higher density or nonresidential areas or major thoroughfares.
- (b) *Permitted uses.* Those uses listed for the D Duplex (Two-Family) Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the D Duplex (Two-Family) Residential District shall be:
 - (1) Two stories, not to exceed 36 feet, for the main building/house.
 - (2) One story for other accessory buildings, including detached garage, garden shed, gazebo, etc.

Illustration 50-72-1: Lot, yard and floor area regulations for the Duplex District

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- a. Minimum lot area is 10,200 square feet for a duplex (two-family) lot or 6,000 square feet each for duplex townhomes (no more than two attached) when each side is sold off separately and each unit is located on its own platted lot with separate utilities. The buildings, while attached, are separately owned with a common wall meeting the fire and separation requirements of the adopted fire and building codes.
 - b. Minimum lot width is 85 feet. Duplex townhomes (no more than two attached) sold off on separate lots shall have a minimum of 45 feet of width each. Radial lots shall have a minimum width of 85 feet and 45 feet respectively at and for a distance of 30 feet behind the front yard/building line. No lot for duplexes shall be created that has a front yard with less than 60 feet of frontage on the front street or 30 feet per townhome.
 - c. Minimum lot depth is 100 feet.
- (2) *Size of yards for D Duplex (Two Family) Residential District homes.*
- a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side yard: five feet. The minimum side yard of a corner lot adjacent to a street shall not be less than 15 feet, except that where a lot sides on a designated arterial street, such side yard shall not be less than 25 feet. On duplex townhomes (no more than two attached) with separate ownership of lots, there shall be no setback from the one common lot line, provided all other requirements including the definition have been met and there are no more than two units sharing a lot line.
 - c. Minimum rear yard: 15 feet. The minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20 foot alley shall have a five foot minimum rear yard and abutting a 15 foot alley shall have a 7.5 foot minimum rear yard.
 - d. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.
- (3) *Maximum lot coverage.* Maximum lot coverage for D Duplex (Two-Family) Residential District homes is 45 percent by main buildings and accessory buildings.
- (4) *Minimum floor area.* Minimum floor area per dwelling unit for D Duplex (Two-Family) Residential District homes is 900 square feet of heated and/or air-conditioned floor area per unit.

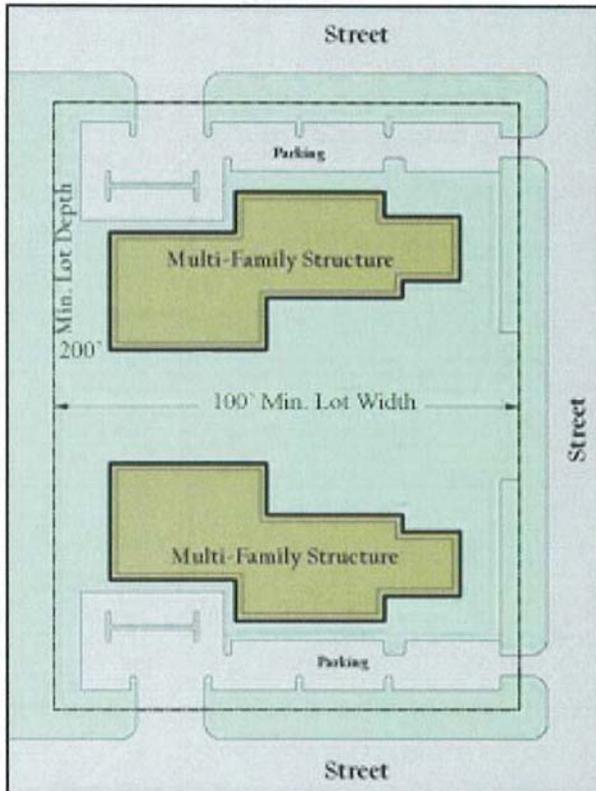
(Ord. No. 2008-01, § 20, 2-4-2008)

Sec. 50-73. Multifamily Residential District (MF).

- (a) *General purpose and description.* The MF Multifamily Residential District is an attached residential district intended to provide the highest residential density of up to 20 dwelling units per acre. With the addition of carports in accordance with section 50-112(c), a density of up to 26 units to the acre could be provided. The principal permitted land uses will include low- and mid-rise multifamily dwellings and garden apartments. Recreational, religious, health and educational uses normally located to service residential areas are also permitted in this district. This district should be located adjacent to a major thoroughfare and serve as a buffer between nonresidential development or heavy automobile traffic and medium- or low-density residential development.

Illustration 50-73-1: Area regulation for multiple-family structures

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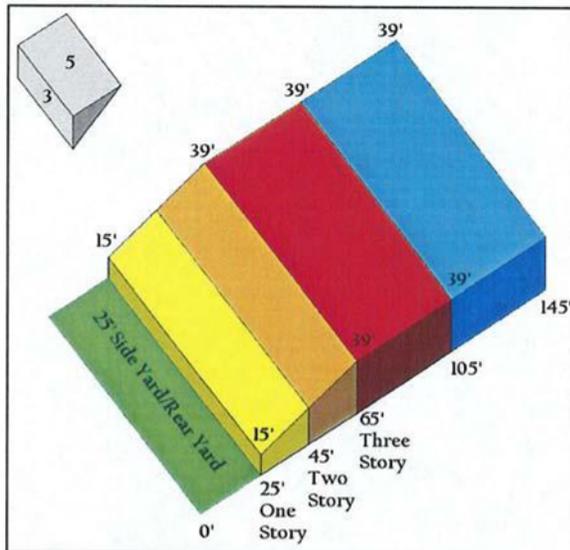


- (b) *Permitted uses.* Those uses listed for the MF Multifamily Residential District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the MF district shall be:
- (1) Three stories or 45 feet, whichever is less for the main buildings.
 - (2) One story for other accessory buildings, including detached garages, carports, clubhouses, gazebos, mail kiosks, laundry rooms, etc.
 - (3) Refer to side and rear setbacks related to height.
- (d) *Area regulations.*
- (1) *Size of lots.*
 - a. Minimum lot area: 1,816 square feet per dwelling unit, not to exceed 20 dwelling units per acre (calculated on gross acreage), except with density bonuses up to 26 dwelling units per acre for covered parking as described in off-street parking, section 50-112(c). The minimum lot (i.e., project) size shall be ten acres.
 - b. Minimum lot width: 120 feet.
 - c. Minimum lot depth: 200 feet.
 - d. Special exception: if a property was platted or permitted for MF Multifamily Residential District prior to the effective date of the ordinance from which this chapter is derived, then it can remain its original size and configuration and does not have to meet the minimum project size, lot width or lot depth stated in this section. The property shall conform to all other MF Multifamily Residential District development standards herein, unless the building setbacks shown on a recorded plat vary from those contained herein, in which case the platted setbacks shall prevail unless a replat modifies same.

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- (2) *Size of yards.* The following minimum yards shall be required for lots or tracts containing multifamily dwelling buildings, measured from the applicable property line; provided, however if the lot is encumbered with a street easement, such yard shall be measured from the boundary line of such street easement.
- a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side yard:
 - 1. Interior: five feet.
 - 2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes is 25 feet. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-73-2. Setback measurements shall be calculated by story.
 - 3. Side yard adjacent to a street: 15 feet.
 - 4. Side yard adjacent to a designated arterial: 25 feet.

Illustration 50-73-2: Setback and height relationship for multiple-family structures]



- c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then rear setbacks (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the setback shall be 20 feet.
- d. Zero lot line exception: notwithstanding the foregoing, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear building line if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.
- e. Windows: all multiple-story buildings within a multifamily development complex shall be constructed so that there shall be no windows above the first floor on any sides which are within 100 feet of property zoned for single-family uses, existing residential platted lots or existing single-family residences.
- f. Minimum building separation requirements:

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1. One-story buildings: 15 feet for buildings without openings; 20 feet for buildings with openings.
 2. Two-story buildings (or a two-story building adjacent to a one-story building): 20 feet for buildings without openings; 35 feet for buildings with openings.
 3. Over two-story buildings (or an over two-story building adjacent to a one-or two-story building): 35 feet for buildings with or without openings, or as required by the adopted building code, whichever is greater.
 4. Between a main building and an accessory building: ten feet, or as required by the adopted building code, whichever is greater.
- (3) *Minimum floor area per dwelling unit.*
- a. Efficiency unit: 500 square feet per unit.
 - b. One-bedroom unit: 725 square feet per unit.
 - c. Two or more bedroom unit: 800 square feet for the first two bedrooms, plus an additional 125 square feet for every bedroom over two (e.g., three-bedroom unit must have 925 square feet, etc.).
- (4) *Maximum lot coverage.* Maximum lot coverage of 50 percent total, including main and accessory buildings, pools and ponds.
- (5) *Green space; recreational areas.* A minimum of 50 percent of the gross platted area shall be open green space and common recreational areas. The minimum percentage of open space and common recreational areas may be reduced by the planning and zoning commission at the time of site plan approval to 20 percent of the gross platted area, provided the area is intensively landscaped with underground irrigation systems and continuous maintenance is provided for. The open green space and common recreational areas shall be areas not specifically designated or used as building sites for dwelling units, buildings sites for utility or storage buildings, parking lots, garages, streets or driveways within the multifamily development. The actual surface area of open green space, such as lawns and landscaping, and common recreational areas, such as swimming pools and surrounding paved deck, tennis courts, community rooms, saunas, and other recreational areas, shall be considered in calculating the minimum requirement for open green space and common recreational areas. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of green space and common recreational areas.
- (6) *Screening.* In addition to the requirements in section 50-115, the following screening requirements shall apply to multifamily dwelling developments.
- a. All refuse containers shall be screened.
 - b. A six-foot solid fence, wall, or other similar opaque screening device shall be constructed on the side or rear of any multifamily dwelling complex adjacent to a single-family zoned property.
- (e) *Special requirements.*
- (1) *Other types of residential development.* Single-family or duplex (two family) residential units constructed in this district shall conform to SF-6 or D district standards, respectively.
 - (2) *Fire easements accessible.* All points on the exterior facades of all buildings shall be within 150 feet of a dedicated fire lane easement (as measured by an unobstructed pathway or route for fire hoses).
 - (3) *Fire sprinkler system.* All multifamily developments shall be provided with a fire sprinkler system in accordance with all other city ordinances.

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- (4) *Walkways.* A four-foot-wide paved walkway shall connect the front door of each ground floor unit to a parking area. The minimum width of any sidewalk adjacent to head-in parking spaces shall be six feet to accommodate a two-foot bumper overhang for vehicles. Sidewalks of concrete cement or other masonry construction shall be provided between the dwelling units and all community facilities provided for residents in accordance with applicable city standards and specifications. All walks shall be lighted at night with a minimum intensity of two foot-candles' illumination.
- (5) *Building length.* Buildings shall not exceed 200 feet in length.
- (6) *Oversized parking areas.* Boats, campers, trailers and other recreational vehicles shall be prohibited unless oversized parking areas are provided and approved by the city. This parking area shall not be used to meet the minimum parking requirements and shall not be visible from a public street.
- (7) *Signage—Address numbers.* All buildings containing residential units shall provide signage which clearly identifies the numbers (i.e., addresses) of the units within each building. Signage shall be visible from entrances into the complex and/or from vehicular drive aisles within the complex such that each individual unit is easy to locate by visitors, delivery persons, and/or emergency personnel.
- (8) *Lighting.* All parking areas shall have appropriate lighting and shall be positioned such that lights are shielded and do not adversely impact adjacent residential areas.
- (9) *Gated/secured entrances.* Gated/secured entrances shall be in accordance with the design standards for gated/secured entrances on private streets as adopted.
- (10) *Streets or driveways.* Each multifamily dwelling complex shall have driveways constructed of concrete cement or hot mixed asphalt, shall be curbed and guttered in accordance with existing requirements of the city, and shall be at least 28 feet in width throughout. All driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination.

(Ord. No. 2008-01, § 22, 2-4-2008)

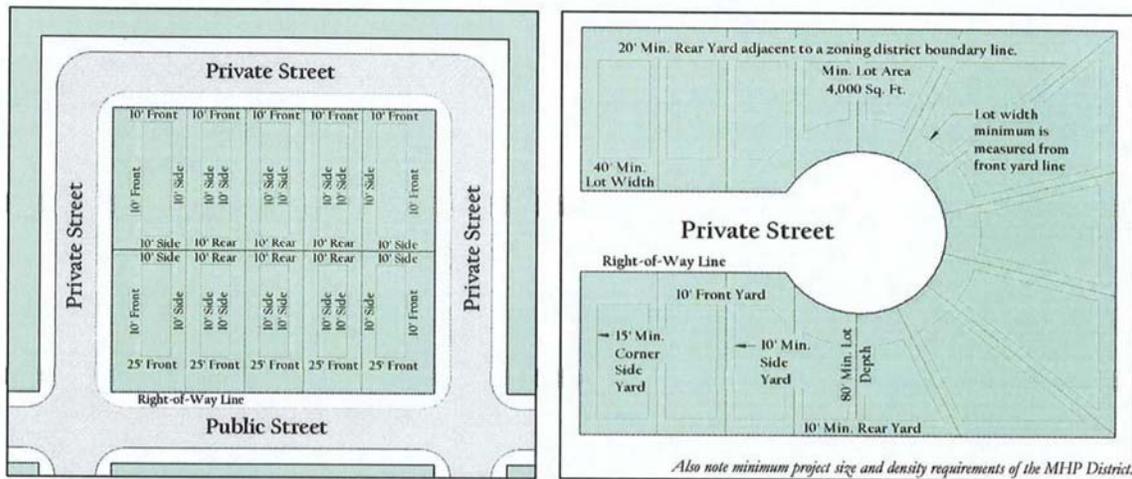
Sec. 50-74. Manufactured Home Park District (MHP).

- (a) *General purpose and description.* The MHP Manufactured Home Park District is a detached residential district establishing standards for the development of manufactured, HUD-Code manufactured home parks and subdivisions. A manufactured or mobile home park offers spaces for the placement of manufactured/mobile home units on a lease/rental basis or on a lot-for-sale basis. The MHP Manufactured Home Park District establishes area and design requirements for parks and subdivisions, as well as yard requirements for individual lots. Both parks and subdivisions provide open space and recreational areas appropriate for the acreage and number of units contained.
- (b) *Permitted uses.* Those uses listed for the MHP Manufactured Home Park District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Area regulations.*
 - (1) *Size of spaces.*
 - a. Minimum lot area: 4,000 square feet per unit.
 - b. Minimum lot width: 40 feet.
 - c. Minimum lot depth: 80 feet.
 - (2) *Size of yards.*
 - a. Minimum front yard: 20 feet from a dedicated street; ten feet from any private street or drive.

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- b. Minimum side yard: ten feet; 20 feet between units; 20 feet from zoning district boundary line; 15 feet for corner lots.
 - c. Minimum rear yard: ten feet; 20 feet from any zoning district boundary line.
 - d. If a garage is provided, the entry (i.e., door) side of the garage shall have a 20-foot setback as measured from any property or street right-of-way line.
- (3) *Maximum floor area.* Minimum floor area per dwelling unit is 750 square feet.
- (4) *Maximum lot coverage.* Maximum lot coverage is 50 percent for main building/unit plus any accessory buildings.

Illustration 50-74-1: Lot and yard regulations for the MHP District]



- (5) *Area for manufactured home parks.* Minimum project area is 20 acres; maximum project area 35 acres.
 - (6) *Density for manufactured home parks.* No manufactured home park shall provide less than 20 spaces, and there shall be a maximum of ten spaces per gross acre within the park.
 - (7) *Maximum height limit.*
 - a. Two stories, not to exceed 35 feet, for the main building/house.
 - b. One story for other accessory buildings, including detached garages, carports, management offices, clubhouses, gazebos, mail kiosks, etc.
- (d) *General requirements for manufactured/mobile home parks.*
- (1) *Access.* Each manufactured/mobile home community shall have direct access from an improved public street in accordance with chapter 40, pertaining to subdivisions, and access to individual spaces shall be from private paved drives within the site. Where an internal private street provides access to individual lots or dwelling units, the same shall be paved in accordance with city standards, and it shall be dedicated to the public as an emergency access or fire lane easement to allow for the rapid and safe movement of vehicles used in providing emergency health or public safety services. The width, design, and construction shall be adequate to accommodate the traffic generated by the park and emergency and service vehicles, as determined by the city engineer, but in no case shall the width of a driving surface be less than 26 feet. Dead-end streets are not allowed. Cul-de-sac streets shall not exceed 400 feet in length. Fire lane easements shall be maintained by the manufactured/mobile home park. Gated/secured entrances shall be in accordance with the design standards for gated/secured entrances on private streets.

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- (2) *Street names and signs.* Within each manufactured/mobile home park, all streets shall be named, and manufactured/mobile homes numbered in a logical and orderly fashion. Street signs shall be of a color and size contrasting with those on public streets and roadways so that there is no confusion regarding which are private and which are public streets. These signs and numbers shall be of standard size and placement to facilitate location by emergency vehicles. Street names shall be submitted to the city manager or his designee and city engineer or his designee, along with the preliminary plat application, reviewed by the appropriate city staff with respect to street naming procedures set forth within chapter 40 and/or this Code, and approved by the planning and zoning commission on the preliminary plat for the subdivision. The street names shall be set with preliminary plat approval, and shall not be changed on the final plat without city approval.
- (3) *Other signs.* Along all sections of emergency access easements, the owner or agent shall erect metal signs prohibiting parking. The sign type, size, height and location shall be in accordance with the Manual of Uniform Traffic Control Devices and approved by the city.
- (4) *Intersections.* Internal streets shall intersect adjoining public streets at approximately 90 degrees and at locations which will eliminate or minimize interference with traffic on those public streets.
- (5) *Street lighting.* Street lighting within the manufactured/mobile home park shall be provided in accordance with chapter 40, pertaining to subdivisions, and shall be maintained by the owners of the manufactured/mobile home park.
- (6) *Electric and telephone service.* All electrical distribution lines and all telephone lines shall be underground except the primary service lines to the park.
- (7) *Drainage and soil protection.* The ground surface in all parts of the park shall be graded and equipped to drain all surface water in a safe, efficient manner. Each manufactured/mobile home space shall provide adequate drainage for the placement of a manufactured/mobile home. Exposed ground surfaces in all parts of every manufactured/mobile home park shall be paved and/or covered with stone, brick paving, or other similar solid material, or protected with a vegetative growth (such as grass) capable of preventing soil erosion and eliminating dust.
- (8) *Firefighting.*
 - a. Approaches to all manufactured/mobile homes shall be kept clear for firefighting.
 - b. The owner or agent of a manufactured/mobile home park shall be responsible for the instruction of any staff in the use of the park fire protection equipment and in their specific duties in the event of a fire.
 - c. The owner shall supply standard city fire hydrants located within 500 feet of all manufactured/mobile home spaces, measured along the drive or street. Such hydrants shall utilize public water contained in public lines within public easements.
 - d. The owner or agent of a manufactured/mobile home park shall be responsible for maintaining the entire area of the park free of dry brush, leaves and weeds in excess of six inches in height.
- (9) *Anchorage of manufactured/mobile homes.* To insure against natural hazards such as tornados, high winds and electrical storms, anchorage for each manufactured/mobile home shall be provided in accordance with the building code and state law.
- (10) *Skirting.*
 - a. All manufactured/mobile home units not attached to a permanent foundation shall provide skirting from the top of the unit's frame to grade. Skirting shall totally enclose and secure from view the unit's axles and all required anchors, footings, and piers.
 - b. All required skirting shall be of an opaque, noncombustible material, and shall be of a color similar to the materials used in the construction of the manufactured/mobile home unit such that it blends with the overall appearance of the unit.

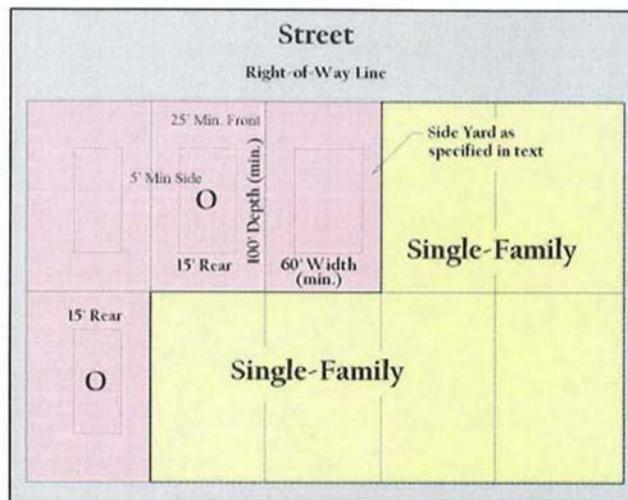
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(Ord. No. 2008-01, § 24, 2-4-2008)

Sec. 50-75. Office District (O).

- (a) *General purpose and description.* The O Office District is established to create an appropriate setting for low intensity office and professional uses. The district can be used as a transition district between residential uses and more intense uses, and with appropriate buffers and landscaping, this district may be located in close proximity to residential districts. Permitted uses should be compatible with adjacent residential areas by limiting heights to one or two stories, and shall not include uses that create excessive amounts of traffic, noise, trash or late-night business operations. Traffic generated by uses in this district shall not be encouraged to travel through residential areas. Adaptive reuse of existing structures is encouraged. Buildings in this district should be compatible and similar in scale with residential uses and adjacent property.
- (b) *Permitted uses.* Those uses listed for the O Office District in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* Maximum height:
 - (1) Seventy feet; also see setback requirements related to height in subsection (d)(2)b of this section.
 - (2) One story for accessory buildings.
- (d) *Area regulations.*
 - (1) *Size of lots.*
 - a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 60 feet.
 - c. Minimum lot depth: 100 feet.

Illustration 50-75-1: Lot and yard regulations for the Office District

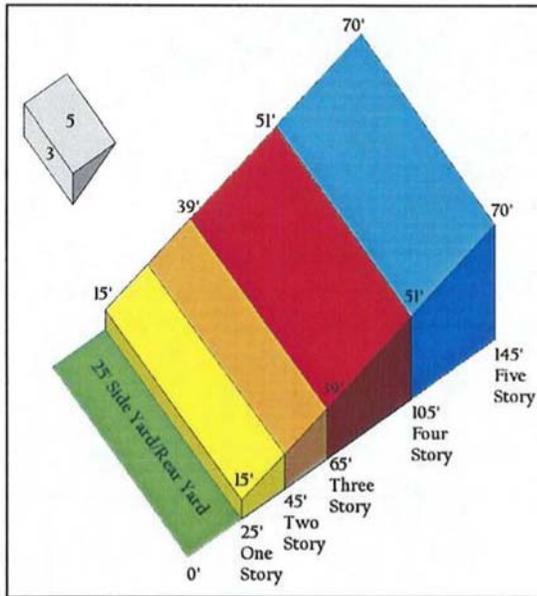


- (2) *Size of yards and setbacks.*
 - a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side yard.

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1. Interior: five feet.
2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes, which does not have an existing business on such single-family residential lot is 25 feet. If adjacent to a single-family, duplex, patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-75-2: Setback and height relationship for structures



- (i) Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
 - (ii) Setback measurements shall be calculated by story.
 - (iii) These measurements shall not limit any building to less than 35 feet.
3. Side yard adjacent to a street: 15 feet.
 4. Side yard adjacent to a designated arterial: 25 feet.
- c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yards (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial, such minimum rear yard shall be 25 feet.
 - d. Zero lot line exception: notwithstanding the requirements of this section, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.
 - e. Minimum underground setback: any underground building structure shall be setback from any lot line by a minimum of 15 feet.
 - f. Minimum pavement setback: all paving, except for driveways and sidewalks, shall be setback from any public street right-of-way by a minimum of ten feet.

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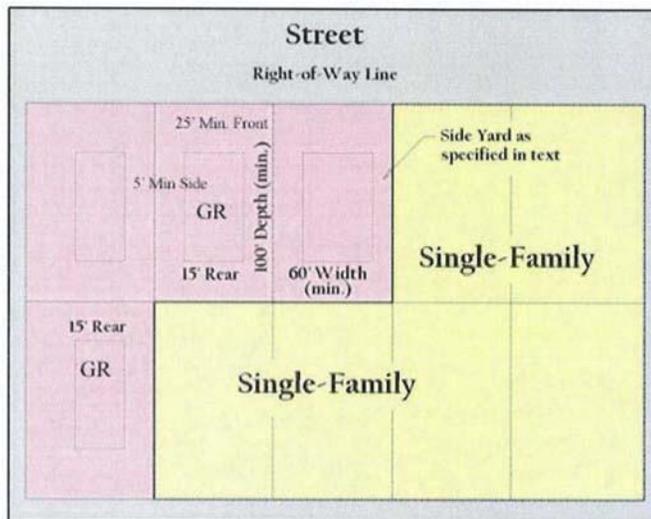
- (3) *Maximum lot coverage.* Maximum lot coverage is 50 percent of the net site area (after right-of-way dedication) for the gross ground floor area of all building structures, including main and accessory buildings.
- (4) *Maximum floor area.* Maximum floor area ratio (FAR) is 1:1.
- (5) *Outdoor sales.* Outdoor sales are prohibited.

(Ord. No. 2008-01, § 25, 2-4-2008)

Sec. 50-76. General Retail District (GR).

- (a) *General purpose and description.* The GR General Retail District is established to provide areas for local neighborhood shopping and service facilities for the retail sales of goods and services. These shopping areas should utilize established landscape and buffering requirements. The GR General Retail District should be located along or at the intersection of major collects or thoroughfares to accommodate higher traffic volumes.
- (b) *Permitted uses.* Those uses listed for the GR district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the GR district shall be:
 - a. Not to exceed 42 feet, for the main buildings.
 - b. One story for accessory buildings.
 - c. Additional height may be approved by CUP.
- (d) *Area regulations.*
 - (1) *Size of lot.*
 - a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 60 feet.
 - c. Minimum lot depth: 100 feet.

Illustration 50-76-1: Lot and yard regulations for the GR District



- (2) *Size of yards.*

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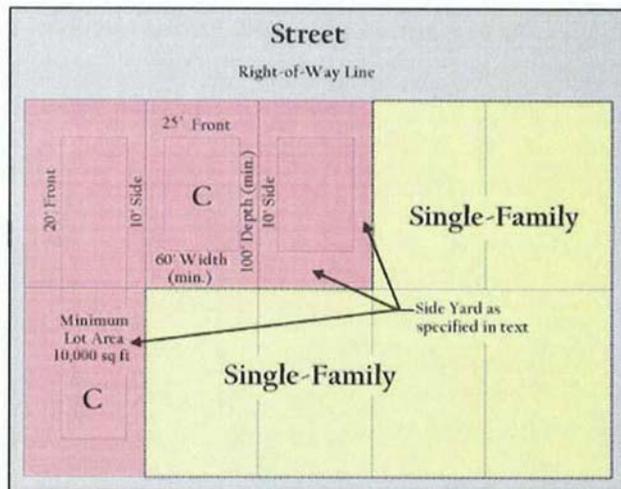
- a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side yard:
 1. Interior: five feet.
 2. Interior adjacent to property zoned for or restricted by a duly recorded subdivision plat for single-family residential purposes, which does not have an existing business on such single-family residential lot: 25 feet.
 3. Side yard adjacent to a street: 15 feet.
 4. Side yard adjacent to a designated arterial: 25 feet.
 - c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yards (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial street, such minimum rear yard shall be 25 feet.
 - d. Zero lot line exception: notwithstanding the foregoing, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily used for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley rights-of-way are excluded from this provision.
 - e. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:
 1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 bypass;
 2. The retail outbuilding contains not more than 100 square feet of floor area;
 3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;
 4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and
 5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.
- (3) *Maximum lot coverage.* Maximum lot coverage is 50 percent including main and accessory buildings; maximum 80 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).
- (4) *Maximum floor area.* Maximum floor area ratio (FAR) is 1:1.
- (5) *Outside storage.* Outside storage, which is differentiated from outdoor sales, shall be limited to a maximum of five percent of the total lot area. For screening requirements, see section 50-115

(Ord. No. 2008-01, § 27, 2-4-2008)

Sec. 50-77. Commercial District (C).

- (a) *General purpose and description.* The C Commercial District is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the C Commercial District will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.
- (b) *Permitted uses.* Those uses listed for the C district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the C district shall be:
 - (1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.
 - (2) One story for accessory buildings.
 - (3) Additional height may be approved by CUP.
- (d) *Area regulations.*
 - (1) *Size of lot.*
 - a. Minimum lot area: 10,000 square feet.
 - b. Minimum lot width: 60 feet.
 - c. Minimum lot depth; 100 feet.
 - (2) *Size of yards.*
 - a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side and rear yard: ten feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-77-1: Setback and height relationship for commercial structures



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1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
 2. Setback measurements shall be calculated by story.
 3. These measurements shall not limit any building to less than 35 feet.
- c. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.
- d. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:
1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 Bypass;
 2. The retail outbuilding contains not more than 100 square feet of floor area;
 3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;
 4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and
 5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.
- (3) *Maximum lot coverage.* Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).
- (4) *Maximum floor area.* Maximum floor area ratio (FAR) is 2:1.
- (5) *The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.*
- (Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

Sec. 50-78. Light Industrial District (LI).

- (a) *General purpose and description.* The LI Light Industrial District is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses do require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad.
- (b) *Permitted uses.* Those uses listed for the LI Light Industrial District in section 50-82 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the LI district shall be:
- (1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.

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- (2) One story for accessory buildings.
 - (d) *Area regulations.*
 - (1) *Size of lot.*
 - a. Minimum lot area: 5,000 square feet.
 - b. Minimum lot width: 50 feet.
 - c. Minimum lot depth: 100 feet.
 - (2) *Size of yards.*
 - a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.
 - b. Minimum side and rear yard: 25 feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:
 - 1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
 - 2. Setback measurements shall be calculated by story.
 - 3. These measurements shall not limit any building to less than 35 feet.
 - (3) *Maximum lot coverage.* Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.)
 - (4) *Maximum floor area.* Maximum floor-area-ratio (FAR) is 2:1.
 - (5) The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.
- (Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

Sec. 50-79. Old Town and Mixed-Use District (OT and MU).

- (a) *Purpose and intent.*
 - (1) Old Town is an area in which many diverse land uses currently exist. The nature of the area, therefore, is a mixture of retail, commercial and other nonresidential uses, along with single-family homes and multiple-family uses. The city's comprehensive plan (the future land use plan) endorses the continuation of the mixture of uses in this area of the city, and specifically states that Retail, Office, Single-Family, Duplex (Two-Family) and Multifamily are the most appropriate uses in these areas. In addition, to serve existing residential areas and their successful integration with future nonresidential uses, increased pedestrian access would be beneficial. The Old Town and Mixed Use District is intended to provide a zoning mechanism for a variety of uses in the original town site and those areas that have a diverse mixture of uses.
 - (2) The development standards in the Old Town area are designed to maintain and encourage development and redevelopment within the central business section (old downtown) of the city. Standards for the district are generally intended to regulate development such that new structures look similar to existing ones within this section of the city. They are also intended to preserve and enhance the image, character and unique qualities of the city's historic original business district. Pedestrian activity and access is also of extreme importance within this district. Pedestrian spaces shall be treated with amenities that are selected based upon their ability to unify the streetscape with the area's historic past. It is important that elements such as construction materials, colors, textures and fixture design complement the area's historic

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qualities. These features shall be repeated throughout the streetscape so as to unify the district as a whole. The following pedestrian-oriented areas are permitted:

- a. Public art spaces;
 - b. Monuments (e.g., statues, benches, fountains);
 - c. Playgrounds;
 - d. Transit waiting areas;
 - e. Museums;
 - f. Plazas;
 - g. Performing art buildings; and
 - h. Outdoor eating areas.
- (3) The Old Town and Mixed Use District is also intended for those areas outside the Old Town area that either currently have or are suitable for a mixture of retail, commercial and other nonresidential uses, along with single-family homes and multifamily uses and are designated for such mixed use on the adopted comprehensive plan. Proposed planned mixed use development may also and is encouraged to utilize a Planned Development District with its flexibility.
- (4) For the purposes of this district and its regulations, the term Old Town Area shall be defined to include all lots shown on the revised map filed of record with the county on July 8, 1912, a true and correct copy of which is on file in the office of the city secretary, and which is identified as the Old Town Tomball Map.
- (b) *Permitted uses.* Those uses listed for the OT and MU district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) *Height regulations.* The maximum height in the OT and MU district shall be:
- (1) Two stories for the main building. A three or four story building may be allowed with a conditional use permit.
 - (2) One story for accessory buildings.
- (d) *Area regulations for residential uses.*
- (1) *Size of lots.*
 - a. Minimum lot area: 5,000 square feet. Duplex (two-family) lots shall be a minimum of 7,000 square feet.
 - b. Minimum lot width: 50 feet; radial lots shall have a minimum width of 50 feet at and for a distance of 30 feet behind the building line. The minimum width of lots for duplexes shall be 70 feet.
 - c. Minimum lot depth: 100 feet.
 - d. Two or more lots of record in existence on the adoption date of the ordinance from which this chapter is derived that do not meet these area requirements and are under the same ownership may be combined into one parcel meeting the requirements of this district. Such parcel shall be considered one lot and all required yards shall be measured from the new lot lines not owned in common. No lot shall be created that has a front yard with less than 50 feet of frontage on the front street.
 - (2) *Size of yards.*
 - a. Minimum area requirements for a single-family residence shall be the same as the SF-6 district.

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- b. Minimum area requirements for a Duplex (Two-Family) or Duplex Townhome shall be the same as the Duplex District.
 - c. Minimum area requirements for a multifamily complex shall be the same as the MF district unless otherwise specified herein.
 - d. Minimum front yard: 20 feet. Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.
 - e. Minimum side yard: five feet; ten feet for a corner lot.
 - f. Minimum rear yard is ten feet; the minimum rear yard where lots back on a designated arterial street shall not be less than 25 feet. However, lots backing up to a 20 foot alley shall have a 5 foot minimum rear yard and abutting a 15 foot alley shall have a 7.5 foot minimum rear yard.
 - g. Encroachment by building eaves and air conditioning units: building eaves and air conditioning compressors may encroach not more than three feet beyond building lines into the required rear and side yard on lots created by subdivision plats for single-family residential use duly approved by the city and recorded with the county clerk of either county, as applicable, on or before November 1, 1999.
- (3) *Minimum floor area.* Minimum floor area per dwelling unit is 650 square feet of heated and/or air conditioned floor area.
- (4) *Nonconforming lots.* Where a lawfully existing lot having less area, depth, or width than required existed in separate ownership on the effective date of Ordinance No. 2004-09, the regulations required by this section relating to the size of such lot shall not prohibit the erection of a single-family dwelling thereon.
- (e) *Area regulations for nonresidential uses.*
- (1) *Size of lot.*
 - a. Minimum lot area: 5,000 square feet.
 - b. Minimum lot width: 50 feet.
 - c. Minimum lot depth: 100 feet.
 - (2) *Size of yards.*
 - a. Minimum area requirements for an office, retail or commercial use shall be the same as required in the Commercial District unless otherwise specified in this section.
 - b. Minimum front yard is 20 feet. Commercial properties located on Main Street, Market Street, and Commerce Street may have a zero front building line.
 - c. Minimum side and rear yard is ten feet or ten percent of the lot width if less than 100 feet of lot width when adjacent to a nonresidential zoning district or use. If adjacent to a Single-Family, Duplex (Two-Family), Patio Home or Single-Family Attached District or use, then side and/or rear setback shall be a minimum of 20 feet. Corner lots shall maintain a ten side yard setback.
 - d. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.
 - e. Old Town area required yard and building line exceptions. A commercial building constructed in the Old Town area before August 16, 1999, and which does not comply with the building lines set forth above, may expand in size provided it maintains a minimum ten-foot front building line and a minimum ten-foot side building line, provided the owner demonstrates and the chief building official determines that the use as conducted and

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managed, or as proposed, has minimal incompatibilities with the neighborhood. Factors used to evaluate this include:

1. That management practices eliminate problems such as noise, waste materials, competition for on-street parking, or similar conflicts.
 2. The use's history of code enforcement complaints against it.
 3. That the use has been maintained in good condition or that the nonconformity represents a disincentive for such maintenance.
 4. Appeal of the chief building official's determination shall be to the planning and zoning commission with the same notice requirements to adjacent property owners as to the board of adjustments.
- f. Vacant land, or lots or tracts formerly used as residential property, may be developed for commercial use without conforming to the building line requirements of this chapter if the property owner or his agent establishes the following:
1. Three or more properties within a three-block distance, whether on the same side of the street or across the street, have the same nonconformity; and
 2. Proposed development plans for the property are no more nonconforming than existing properties on the same street and maintain the same character as existing buildings.
- (f) *Special requirements.*
- (1) *Building facade plan.* The architectural style and scale of new/renovated buildings within the Old Town area on lots fronting on Commerce, Main, Market Streets between Elm and Pine Streets shall be compatible with the styles and scale of other adjacent buildings, and shall be historically accurate to the greatest extent possible in order to preserve the unique character of the city's downtown area. Therefore:
 - a. In addition to the building permit plan which is required by sections 50-35 and 50-36, a building facade plan shall also be required within the above-mentioned Old Town area for new buildings and additions of more than 50 percent of the original structure's size. The building facade plan shall be submitted in conjunction with the building permit plan application.
 - b. The building facade plan shall clearly show how any new structure and/or any structure that is undergoing major exterior renovations will look. Especially significant is the way in which such structures will be viewed from the thoroughfare or alley upon which the property faces and/or sides, and shall portray a reasonably accurate depiction of the materials to be used.
 - c. Review, approval and appeal procedures shall be the same as the procedures for a building permit plan, as outlined in section 50-36
 - d. The city manager or his designee may, as he deems appropriate, require submission of information and materials (possibly actual samples of materials to be used) additional to those initially submitted by the applicant during the building facade plan review process.
 - (2) *Residential uses.*
 - a. *Single-family uses.* Single-family uses shall be permitted and shall be compatible with existing surrounding single-family homes.
 - b. *Multifamily residential and nonresidential uses.* Multifamily residential uses shall be permitted within the Old Town and Mixed Use District in conjunction with nonresidential uses, wherein at least one floor of the building is dedicated to nonresidential use. Such structure shall meet the area requirements of the nonresidential use, provided parking is provided for all uses.

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- c. *Multifamily residential uses.* Multifamily residential uses shall be permitted within the Old Town and Mixed Use District in accordance with the following standards:
 - 1. All dwelling units shall have ground-floor exterior access, which does not include access into a garage or access from a garage into a dwelling unit;
 - 2. All dwelling units shall have a front porch space of at least eight square feet located in front of the front door;
 - 3. All dwelling units shall have a pitched or gabled roof. Flat roofs shall be permitted to allow for the incorporation of terraces;
 - 4. Each dwelling unit shall have varying architectural elevations including varying rooflines, windows, stoop styles, etc.; and
 - 5. Exemptions to these standards may be made during the city's review process if the multifamily use is developed/constructed above (i.e., is located within a second or third story) a nonresidential use.
- (3) *Nonresidential design standards for the Old Town area.*
- a. *Facades.*
 - 1. *Existing nonresidential buildings.* False fronts or parapets may be added to existing buildings in order to add character and detail to simple facades.
 - 2. *Newly constructed nonresidential buildings.* Any new facade shall avoid long, monotonous, uninterrupted exterior walls wherever such facades are publicly visible. No more than 20 feet of horizontal distance of exterior wall shall be provided without facade articulation/architectural relief for any facade facing a street right-of-way or pedestrian-oriented area (refer to subsection (f)(3)e of this section). Facade articulation/architectural relief can include pilasters, windows, entrances, arcades, awnings/canopies, or other types of building massing that modulates the building mass or surface texture.
 - b. *Exterior finishes.* Predominant exterior finish shall be fired brick or other masonry materials. Materials other than fired brick shall be considered during the plan review process, and determination of approval shall be based upon whether such materials are:
 - 1. Similar in appearance and quality to fired brick;
 - 2. Similar in appearance to original materials used within the Old Town area; and/or
 - 3. Cementitious fiberboard such as Hardi-plank may be approved where the appearance is similar in appearance to the original materials used within the Old Town area. The use of glass material shall be permitted for less than 70 percent of the exterior facade of a structure. Trim (i.e., lintels, sills, door jambs, cornices and other similar items) shall be brick, cast stone, stone, cast or wrought iron, or concrete, and colors shall be complementary to the predominant facade colors. Accent colors for friezes, doors and door frames, window frames and mullions, awnings, moldings and other similar features shall be colors that are complementary to, and compatible with, the spirit and intent of the downtown streetscape. Bright or fluorescent colors shall not be permitted on any part of any structure.
 - c. *Windows, doors and other openings.* Reflective glass shall not be used for windows of any structure's first floor; detailing for windows, doors and other openings shall be of wood, glass or a metal material that is complementary to the period or building style.
 - d. *Awnings/canopies.*
 - 1. *Ratio.* Awnings shall be appropriate to the scale of the building's size and configuration. They shall not extend above the roofline of any single-story structure, or above the top of the second floor of any multiple-story structure at the awnings' highest points. Awnings shall not completely obstruct any windows on the building.

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2. *Projection.* Since awnings must extend beyond the building face, a reasonable amount of projection shall be allowed. No awning shall extend more than five feet outward from the building face/surface. Awnings made in such a manner as to be easily removed may encroach into the right-of-way, provided such awnings are at least eight feet above the sidewalk or surface, do not have any structural supports other than those directly attached to the building and are maintained and not allowed to deteriorate or become tattered, rusty, unpainted or unsightly. Awnings encroaching along Main Street may also have to get approval from the state department of transportation.
 3. *Colors.* A mixture of colors is recommended, but no more than three different colors shall be used for awnings on a single building facade (excluding business logo, which may have more colors). Bright or fluorescent colors shall not be permitted.
 4. *Materials.* Materials shall be of cloth, canvas, or metal, or another material that is complementary to the period or building style and that is fire retardant. Plastic shall not be permitted.
 5. *Movement.* Except for slight movements that are normal for fabric canopies (i.e., along fringe, etc.), no movement shall be allowed for awnings and canopy structures.
- e. *Streetscape elements.* Streetscape elements are considered to include the following: planters, window boxes, street furniture/furnishings, trash receptacles, and light features (e.g., fixtures attached to the structure). Such elements are permitted and shall be:
1. Maintained to a high quality (i.e., no peeling paint, broken parts, etc.);
 2. Complementary to the historical time frame of the Old Town area;
 3. Similar to those previously approved by the city;
 4. Complementary in color to the main building color (bright or fluorescent colors shall not be permitted); and
 5. Located a maximum of five feet from the building front/facade.
- (4) *Nonresidential dumpsters and mechanical equipment.*
- a. Dumpsters and any other waste storage areas (refuse areas) shall be screened in accordance with section 50-115
 - b. Mechanical equipment, air conditioning units, transformers, and the like shall be screened with a six-foot screen of shrubs or a masonry wall sufficient to properly shield such areas/containers from public view; required screening shall be at least 70 percent opaque throughout the year, regardless of location. Roof-mounted equipment shall also be screened with devices (e.g., parapet wall) matching the building materials used in the structure upon which the equipment is located.
- (5) *Additional off-street parking space requirements.* The following additional requirements shall modify the parking requirements in section 50-82 and section 50-112 as they apply to the Old Town area. In addition, where there is a conflict, the requirements of this section shall supersede those in section 50-112
- a. *Off-street parking.* For that portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion, there shall not be a minimum off-street parking requirement for mixed use and nonresidential developments. Residential developments shall provide off-street parking stalls in accordance with section 50-82
 - b. *Off-site parking.* Use of off-site parking shall be permitted to satisfy the off-street parking requirements of this chapter if said off-site parking is within the Old Town area or blocks adjacent thereto. Provided further, no off-site parking space shall be designated for use by more than one business for the purposes of satisfying such requirements.

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- c. *On-street parking.* In the area bounded by Main Street, Market Street, and Commerce Street, between Pine and Elm, one parking space credit shall be allowed for every 22 feet of development frontage less five feet reserve on either side of driveways and ten-foot reserve on street intersections.
 - d. *Off-street parking design standards.* Required off-street parking areas within the Old Town area shall have individual spaces marked by painted lines or curbs or other means to indicate individual spaces. Parking schemes which require the use of adjacent public or private streets for maneuvering incidental to such parking shall be allowed, except on Main Street. This requirement shall apply to all parking required for new construction and/or additions to existing buildings.
 - e. *Parking garages.* Parking garages shall meet all requirements of the OT and MU District, including facade, streetscape, and building material requirements. Parking garages must be located to the side or rear of the main building.
- (6) *Residential adjacency considerations.*
- a. *Site design and nuisance concerns.* The building owner must include in his proposal measures for buffering, landscaping, or other site design, and any limitations necessary to address nuisance concerns, such as noise, to protect adjacent property owners.
 - b. *Screening.* Screening of nonresidential uses and refuse areas shall be in accordance with section 50-115
 - c. *Outside storage.* Outside storage, which is differentiated from outdoor sales, shall be limited to a maximum of five percent of the total lot area. For screening requirements see section 50-115

(Ord. No. 2008-01, § 34, 2-4-2008; Ord. No. 2011-06, § 2, 5-2-2011; Ord. No. 2013-15, § 2, 9-3-2013)

Sec. 50-80. Planned Development District (PD).

(a) *General purpose and description.*

- (1) The PD Planned Development District is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., Single-Family, Multifamily, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A PD Planned Development District may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this chapter, to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community by meeting one or more of the following purposes:
- a. To provide for a superior design on lots or buildings;
 - b. To provide for increased recreation and open space opportunities for public use and enjoyment;
 - c. To provide amenities or features that would be of special benefit to the property users or to the overall community;
 - d. To protect or preserve natural amenities and environmental assets such as trees, creeks, ponds, floodplains, slopes, viewscapes, or wildlife habitats;
 - e. To protect or preserve existing historical buildings, structures, features or places;
 - f. To provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and

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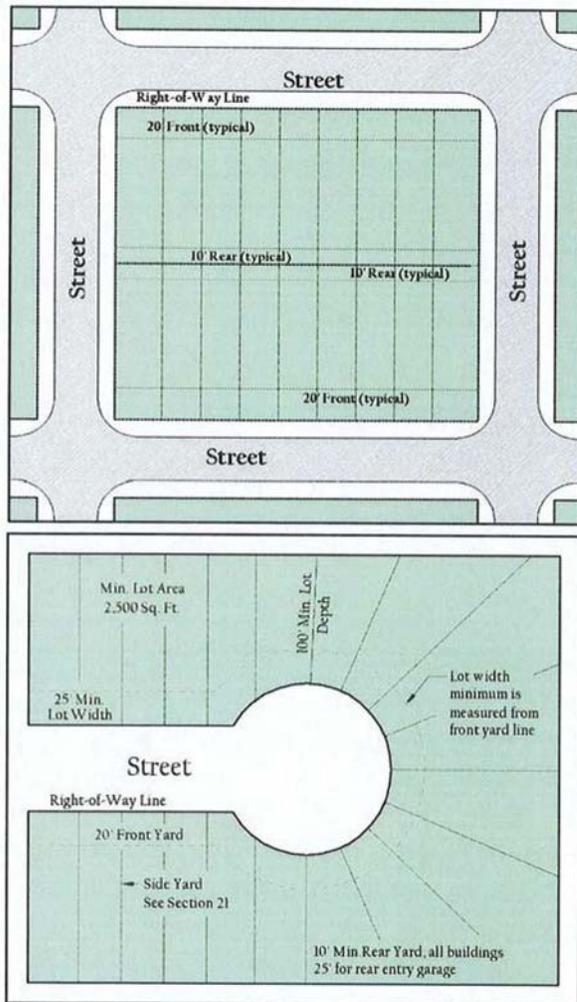
- g. To meet or exceed the standards of this chapter.
 - (2) The city council, after public hearing and proper notice to all parties affected and after recommendation from the planning and zoning commission, may authorize the creation of a PD Planned Development District, in accordance with the provisions of this section and section 50-34
 - (3) The ordinance granting a PD Planned Development District shall include a statement as to the purpose and intent of the PD Planned Development District granted therein, as well as a general statement citing the reason for the PD Planned Development District request.
- (b) *Permitted uses.*
- (1) A PD Planned Development District may be approved with any use or combination of uses allowed by this chapter. The uses permitted in any specific PD Planned Development District shall be enumerated in the ordinance establishing such district, along with any conditions or limitations deemed appropriate for the specified uses.
 - (2) Patio homes, zero lot line homes, single-family attached and townhome single-family residential dwelling units as part of a master planned development with amenities including open space.
- (c) *Area and height regulations.*
- (1) The minimum acreage for a PD Planned Development District request shall be four acres.
 - (2) Each PD Planned Development District shall establish regulations deemed necessary and appropriate for the development of the property within the district and the protection of neighboring properties. These regulations may include, but are not limited to, the following:
 - a. Front, side, and rear yard requirements;
 - b. Minimum lot width, depth, and areas requirements;
 - c. Maximum lot coverage;
 - d. Maximum building size and/or height;
 - e. Landscaping, open space, and screening requirements;
 - f. Off-street parking and loading requirements; and
 - g. Signage requirements.
- (d) *Area and height regulations for patio homes and zero lot line developments.*
- (1) *Minimum acreage.* The minimum acreage for a planned development request for a patio homes/zero lot line single-family residential dwelling unit complex shall be four acres.

Illustration 50-80-1: Floor area for the PD-PH District]

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2. Side—Interior lots. The side building line, to include eaves and appurtenances, shall not be less than five feet. On zero lot line homes the side yards shall be a minimum of zero feet and ten feet respectively. (See Illustration 50-80-2.)
 3. Side—Corner lots are 15 feet, except that where a lot sides on an arterial street, the building line shall not be less than 25 feet.
 4. Rear—Generally are 15 feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway, provided that if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the minimum rear building line shall be not less than 7.5 feet. Zero lot line developments shall be a minimum of ten feet. (See Illustration 50-80-1.)
 5. Rear—Arterial street. The rear building line where a lot backs on an arterial street shall not be less than 25 feet
- (3) *Maximum lot coverage.* Not more than 60 percent of a lot may be covered with buildings, driveways, sidewalks, or other impermeable material, unless approved otherwise at the time of the PD Planned Development District and/or site plan approval by the planning and zoning commission and the city council.
- (4) *Maximum height.* Maximum height is two stories, or 25 feet in total height, including gables.
- (5) *Green space/recreational areas.* A minimum of 30 percent of the gross platted area shall be open green space. The term "open green space" is defined as, and limited to common areas of open space or landscaping and community recreational areas that are irrigated and continuously maintained. The term "open green space" does not include areas specifically designated or used as building sites for patio home or zero lot line units, building sites for utility or storage buildings, parking lots, garages, streets, or driveways within a patio home development. The actual surface areas of open green space, such as common area lawns and landscaping, community swimming pools and surrounding paved deck area, community tennis courts, community rooms, community saunas, and other common recreational areas, shall be considered in calculating the minimum requirement for open green space. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of open green space.
- (6) *Screening requirements.* A fence, wall, or other similar screening device, of not less than six feet nor more than eight feet in height, shall be constructed and maintained along the two sides and the rear of each patio home development complex; provided, however, no such screening device shall be required adjacent to portions of the development which contain green space, lakes, or natural habitat for a distance of 50 feet or more from such perimeter boundary.
- (7) *Sidewalks.* Sidewalks of concrete cement or other masonry construction shall be provided along all streets within a patio home development in accordance with applicable city standards and specifications.
- (8) *Visitor parking.* In addition to the parking required in section 50-112, the on and off street parking shall be analyzed to ensure that a minimum of one additional space per every two dwelling units is available for visitor parking.
- (e) *Area and height regulations for townhomes and single-family attached residential dwelling units.*
- (1) *Minimum acreage.* The minimum acreage for a planned development request for a townhome or single-family attached single-family residential dwelling unit complex shall be four acres.
 - (2) *Regulations.* Each PD Planned Development District shall establish regulations deemed necessary and appropriate for the development of the property within the district and the protection of neighboring properties. The following regulations are minimums but are not limited to, and may be increased or otherwise modified for a particular development:

Illustration 50-80-3: Lot and yard regulations for the PD-Townhome/Attached



- a. Maximum density is 12 dwelling units per acre.
- b. Minimum lot requirements:
 1. Lot size: 3,600 square feet.
 2. Width: 25 feet.
 3. Depth: 100 feet.
- c. Minimum required yards and building lines.
 1. Front is 20 feet, except that where a lot faces on an arterial street, the front building line shall not be less than 35 feet.
 2. Side—Interior lots. There shall be no side yard or building line for a side of an interior lot which is adjacent to another townhome. The two side yard or building lines when two units do not share a common lot line, including eaves and appurtenances, shall be any combination that provides at least ten feet between structures.
- d. Side—Corner lots are 15 feet, except that where a lot sides on an arterial street, the building line shall not be less than 25 feet.

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- e. Rear—Generally are ten feet, except where the rear property line abuts an alleyway, there shall be a minimum of 30 feet between the buildings abutting said alleyway, provided that if the alleyway is a 20-foot alleyway, then the minimum rear building line shall be not less than five feet, and if the alleyway is a 15-foot-wide alleyway, then the minimum rear building line shall be not less than 7.5 feet.
 - f. Rear—Arterial streets. The rear building line where a lot back on an arterial street shall not be less than 25 feet.
- (3) *Maximum lot coverage.* Not more than 60 percent of a lot may be covered with buildings, driveways, sidewalks, or other impermeable material.
 - (4) *Maximum height.* Two stories, or 25 feet in total height, including gables, shall be the maximum height.
 - (5) *Green space/recreational areas.* A minimum of 30 percent of the gross platted area shall be open green space. The term "open green space" is defined as, and limited to common areas of open space or landscaping and community recreational areas that is irrigated and continuously maintained. The term "open green space" does not include areas specifically designated or used as building sites for patio home or zero lot line units, building sites for utility or storage buildings, parking lots, garages, streets, or driveways within a patio home development. The actual surface areas of open green space, such as common area lawns and landscaping, community swimming pools and surrounding paved deck area, community tennis courts, community rooms, community saunas, and other common recreational areas, shall be considered in calculating the minimum requirement for open green space. Required buffer yards, except surfaced parking and driveways located within said buffer yards, if any, may be included in computing the minimum required area of green space.
 - (6) *Screening requirements.* A fence, wall, or other similar screening device, of not less than six feet nor more than eight feet in height, shall be constructed and maintained along the two sides and the rear of each patio home development complex; provided, however, no such screening device shall be required adjacent to portions of the development which contain green space, lakes, or natural habitat for a distance of 50 feet or more from such perimeter boundary.
 - (7) *Sidewalks.* Sidewalks of concrete cement or other masonry construction shall be provided along all streets within a townhome development in accordance with applicable city standards and specifications.
 - (8) *Visitor parking.* In addition to the parking required in section 50-112, the on and off street parking shall be analyzed to ensure that a minimum of one additional space per every two dwelling units is available for visitor parking.
- (f) *Approval process.*
 - (1) *Maximum of four steps.* The review process for a planned development shall include up to four steps:
 - a. Preapplication conference with the city manager or his designee (refer to section 50-36);
 - b. Adoption of ordinance establishing planned development district;
 - c. Concept plan; and
 - d. Construction of project (after city approval of all required plans and plats).
 - (2) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36
 - (3) *Official submission date and completeness of application.* Refer to section 50-34
 - (4) *Supplemental requirements.* Refer to section 50-36
 - (g) *Concept plan.*

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- (1) *Purpose.* This section establishes a review process for planned developments. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.
- (2) *Applicability.* Submission and approval of a concept plan shall be required for all planned developments.
- (3) *Building permit and certificate of occupancy.* A concept plan shall be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed within this section). No building permit shall be issued until a concept plan and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the concept plan and engineering/construction plans, as approved by the city.
- (4) *Extent of area that should be included in a concept plan.* When the overall development project is to be developed in phases, the area included within the concept plan shall include only the portion of the overall property that is to be developed/constructed.
- (5) *Procedures and submission requirements for concept plan approval.* All concept plans shall be prepared by a qualified civil engineer, land planner, architect or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of concept plan applications.
- (6) *Review and approval of a concept plan.* The approval process for a concept plan shall generally be reviewed by city staff, recommendation by the planning and zoning commission, and approval by the city council.
 - a. *City staff review of concept plans.*
 1. Upon official submission of a complete application of a concept plan for approval, the city shall review the application. Specifically, the city manager or his designee, city engineer, and the building official or their designee shall review the concept plan prior to the concept plan being forwarded to the planning and zoning commission. Determination of application completeness, notice to the applicant in writing of missing documents and information within ten business days and expiration of application within 45 calendar days due to incompleteness shall be in accordance with section 50-34
 2. Concept plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.
 3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected concept plan to the city manager or his designee.
 4. The city manager or his designee shall then submit the corrected plan to the planning and zoning commission.
 5. It should be noted that the city manager or his designee shall forward the original plan application to the commission if the corrected version is not resubmitted within the prescribed time period.
 6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.
 - b. *Planning and zoning commission review of concept plans.*
 1. All concept plan applications shall be reviewed by the planning and zoning commission.

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2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the planning and zoning commission within 30 calendar days after the application is received.
 3. The planning and zoning commission shall review the concept plan and shall recommend to the city council approval, approval subject to certain conditions, or denial of the concept plan.
- c. *City council review of and action on concept plans.*
1. All concept plan applications shall be reviewed by the city council after being reviewed by the planning and zoning commission.
 2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the city council.
 3. The city council shall review the concept plan and shall approve, approve subject to certain conditions, or deny approval of the concept plan.
- (7) *Revisions to the approved concept plan.*
- a. *Minor revisions/amendments.*
1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved concept plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved concept plan. Such minor modifications submitted on an amended concept plan, which shall substantially conform to the previously approved concept plan.
 2. Submission materials and requirements for approval of an amended concept plan shall be as determined by the city manager or his designee.
- b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (g)(7)a of this section), a revised concept plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised concept plan warrants a review and approval as outlined in subsection a. of this section.
- (8) *Effect of review/approval.* The concept plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).
- (9) *Validity, lapse, and reinstatement of concept plan.* Refer to section 50-37
- (h) *List of planned development districts.* All Planned Development zoning districts approved in accordance with the provisions of this chapter, as may be amended, shall be prefixed by a "PD" designation and assigned a unique identification number (e.g., PD-1, PD-2, PD-3, etc.), and shall also be referenced on the zoning district map. A list of such Planned Development Districts, showing the uses permitted and any other special stipulations of each PD Planned Development District shall be maintained as part of this chapter.
- (i) *Prior planned development ordinances remaining in effect.* Prior to adoption of the ordinance from which this chapter is derived, the city council previously established by platting certain townhome, patio home and zero lot line developments, some of which are to be continued in full force and effect. The ordinances, parts of ordinances and/or plats approved prior to adoption of the ordinance from which this chapter is derived that applied to these developments, specified in appendix A-1 on file in the office of the city secretary, shall be carried forth in full force and effect and shall become the conditions, restrictions, regulations and requirements which apply to the respective PD Planned Development Districts shown on the zoning district map as of the effective date of the ordinance from which this chapter is derived for the property the requirements apply to. Each townhome, patio home and zero lot line development in existence at the time of adoption of the ordinance from which this chapter is derived is hereby assigned a unique identification number (e.g., PD-1, PD-2, PD-3, and so

on) as shown in appendix A-1, and subsequent PD ordinances adopted after the effective date of the ordinance from which this chapter is derived shall be similarly numbered for identification purposes.

(Ord. No. 2008-01, § 36, 2-4-2008)

Sec. 50-81. Conditional Use Permit (CUP).

(a) *Purpose and intent.*

- (1) *Nature of conditional use.* A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions. This section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional use permit (CUP) applications.
- (2) *Permit required.* No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of this section and section 50-34. An application for a CUP shall be accompanied by a concept plan prepared in the manner described in subsection (e) of this section.

(b) *Status of conditionally permitted uses.* The following general rules apply to all conditional uses:

- (1) The designation of a use in a zoning district as may be permitted by CUP in section 50-82 (shown as "C" in the use charts of said chapter does not constitute an authorization or assurance that such use will be approved.)
- (2) Approval of a CUP shall authorize only the particular use for which the CUP is issued.
- (3) No use authorized by a CUP shall be enlarged, extended or relocated, nor may the number of dwelling units be increased, unless an application is made for approval of a new CUP in accordance with the procedures set forth in this section and section 50-34
- (4) Development of the use shall not be carried out until the applicant has secured all the permits and approvals required by this chapter, this Code, and any permits that may be required by regional, state or federal agencies.

(c) *Application for conditional use permit; requirements.* An application for a CUP may be submitted by the property owner or by the property owner's designated representative to the city. The application shall be accompanied by a concept plan prepared in accordance with the requirements of subsection (e) of this section. If a base zoning district amendment is required or requested, such rezoning application shall accompany the application for a CUP.

(d) *Approval process.*

- (1) *Maximum of four steps.* The review process for a CUP shall include up to four steps:
 - a. Preapplication conference with the city manager or his designee (refer to section 50-36);
 - b. Adoption of ordinance granting a CUP;
 - c. Concept plan; and
 - d. Construction of project (after city approval of all required plans and plats).
- (2) *Payment of all indebtedness attributable to the subject property.* Refer to section 50-36
- (3) *Official submission date and completeness of application.* Refer to section 50-34
- (4) *Supplemental requirements.* Refer to section 50-36

(e) *Concept plan.*

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- (1) *Purpose.* This section establishes a review process for conditional use permits. The purpose is to ensure that a development project is in compliance with all applicable city ordinances and guidelines prior to commencement of construction.
- (2) *Applicability.* Submission and approval of a concept plan shall be required for all conditional use permits.
- (3) *Building permit and certificate of occupancy.* A concept plan may be submitted in conjunction with a building permit application (this is a different application than the building permit plan that is discussed within this section). No building permit shall be issued until a concept plan and all other required engineering/construction plans are first approved by the city. No certificate of occupancy shall be issued until all construction and development conforms to the concept plan and engineering/construction plans, as approved by the city.
- (4) *Extent of area that should be included in a concept plan.* When the overall development project is to be developed in phases, the area included within the concept plan shall include only the portion of the overall property that is to be developed/constructed.
- (5) *Procedures and submission requirements for concept plan approval.* All concept plans shall be prepared by a qualified civil engineer, land planner, architect or surveyor, and it shall clearly show in detail how the site will be constructed (such as paving, buildings, landscaped areas, utilities, etc.). To ensure the submission of adequate information, the city is hereby empowered to maintain and distribute a separate list of specific requirements for the review of concept plan applications.
- (6) *Review and approval of a concept plan.* The approval process for a concept plan shall generally be review by city staff, recommendation by the planning and zoning commission, and approval by the city council.
 - a. *City staff review of concept plans.*
 1. Upon official submission of a complete application of a concept plan for approval, the city shall review the application. Specifically, the city manager, city engineer, and the building official or their designees shall review the concept plan prior to the concept plan being forwarded to the planning and zoning commission.
 2. Concept plans shall be evaluated to ensure that all developments are, to the best extent possible, constructed according to the city's codes and ordinances.
 3. Following city staff review, and following discussions regarding necessary revisions, the applicant shall resubmit additional copies of the corrected concept plan to the city manager or his designee.
 4. The city manager or his designee shall then submit the corrected plan to the planning and zoning commission.
 5. It should be noted that the city manager or his designee shall forward the original plan application to the commission if the corrected version is not resubmitted within the prescribed time period.
 6. It should also be noted that a corrected plan that is incomplete or is otherwise not ready for consideration shall be subject to denial.
 - b. *Planning and zoning commission review of concept plans.*
 1. All concept plan applications shall be reviewed by the planning and zoning commission.
 2. The city manager, or his designee, shall schedule consideration of any concept plan application on the regular agenda of the planning and zoning commission within 30 calendar days after the application is received.

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3. The planning and zoning commission shall review the concept plan and shall recommend to the city council approval, approval subject to certain conditions, or denial of the concept plan.
- c. *City council review of and action on concept plans.*
1. All concept plan applications shall be reviewed by the city council after being reviewed by the planning and zoning commission.
 2. The city manager, or his designee, shall schedule consideration of the concept plan application on the regular agenda of the city council.
 3. The city council shall review the concept plan and shall approve, approve subject to certain conditions, or deny approval of the concept plan.
- (7) *Revisions to the approved concept plan.*
- a. *Minor revisions/amendments.*
1. It is recognized that final architectural and engineering design may necessitate minor changes in the approved concept plan. In such cases, the city manager, or his designee, shall have the authority to approve minor modifications to an approved concept plan. Such minor modifications submitted on an amended concept plan, which shall substantially conform to the previously approved concept plan.
 2. Submission materials and requirements for approval of an amended concept plan shall be as determined by the city manager or his designee.
- b. *Major revisions.* In the event of revisions that are more extensive in nature (i.e., do not conform to the description for minor amendments in subsection (e)(7)a of this section), a revised concept plan must be resubmitted, reviewed, and approved by the city manager or his designee. The city manager or his designee shall have the authority to determine whether a revised concept plan warrants a review and approval as outlined in this subsection (e).
3. Any proposed or existing building or land use that is newly established, enlarged, modified, structurally altered, or otherwise changed from the originally approved concept plan shall be deemed a major revision.
- (8) *Effect of review/approval.* The concept plan shall be considered authorization to proceed with construction of the site provided all other required city approvals are obtained (such as final plat, engineering plans, etc.).
- (9) *Validity, lapse, and reinstatement of concept plan.* Refer to section 50-37
- (f) *Standards.*
- (1) *Factors for consideration.* When considering applications for a conditional use permit, the city shall, on the basis of the concept plan and other information submitted, evaluate the impact of the conditional use on, and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. Specific considerations shall include the extent to which:
 - a. The proposed use at the specified location is consistent with the goals, objectives and policies contained in the adopted comprehensive plan.
 - b. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.
 - c. The proposed use meets all supplemental standards specifically applicable to the use as set forth in this chapter.
 - d. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances,

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includes improvements or modifications either onsite or within the public rights-of-way to mitigate development-related adverse impacts, including, but not limited to:

1. Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire;
 2. Off-street parking and loading areas;
 3. Refuse and service areas;
 4. Utilities with reference to location, availability, and compatibility;
 5. Screening and buffering features to minimize visual impacts, and/or setbacks from adjacent uses;
 6. Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
 7. Required yards and open space;
 8. Height and bulk of structure;
 9. Hours of operations;
 10. Exterior construction material and building design; and
 11. Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.
- e. The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.
- (2) *Conditions.* In approving the application, the planning and zoning commission may recommend, and the city council may impose, such additional conditions (e.g., hours of operation) as are reasonably necessary to assure compliance with the standards, purpose, and intent of this section, and in accordance with the rezoning procedures in section 50-34. Any conditions imposed shall be set forth in the ordinance approving the conditional use, and shall be incorporated into or noted on the concept plan. The city manager or his designee shall verify that the concept plan incorporates all conditions set forth in the ordinance authorizing the conditional use. The city shall maintain a record of such approved conditional uses and related conditions attached thereto.
- (3) *Prohibition on waivers and variances.* The foregoing additional conditions (i.e., standards of development for the CUP) shall not be subject to variances that otherwise could be granted by the board of adjustments, nor may conditions imposed by the city council subsequently be waived or varied by the board of adjustments.
- (g) *Other regulations.* The board of adjustments shall not have jurisdiction to hear, review, reverse, or modify any decision, determination, or ruling with respect to the specific land use designated by any conditional use permit.
- (h) *Use regulations.* Uses allowed by CUPs are specified in section 50-82 (specifically shown with a "C" within the use charts).

(Ord. No. 2008-01, § 37, 2-4-2008)

Sec. 50-82. Use regulations (charts).

- (a) *Conformance with the use charts.*
- (1) *Generally.* The use of land and/or buildings shall be in accordance with those listed in the following use charts. No land or building shall hereafter be used and no building or structure

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shall be erected, altered, or converted other than for those uses specified in the zoning district in which it is located. The legend for interpreting the permitted uses in the use charts are:

P	Designates use permitted in the zoning district indicated
(Blank)	Designates use prohibited (i.e., not allowed) in the zoning district indicated
C	Designates use may be permitted in the zoning district indicated by a CUP (also see section 50-81
‡	The land use is defined within section 50-2

- (2) *Unlisted uses.* If a use is not listed (or is blank) in the use charts, it is not allowed in any zoning district (see subsection (a)(4) of this section).
- (3) *Use chart organization.* The land uses are listed in the use charts in alphabetical order.
- (4) *Classification of new/unlisted uses.* It is recognized that new types of land use will arise in the future, and forms of land use not presently anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use in the use charts shall be made as follows:
 - a. *Initiation.*
 1. A person, city department, the planning and zoning commission, or the city council may propose zoning amendments to regulate new and previously unlisted uses.
 2. A person requesting the addition of a new or unlisted use shall submit to the city manager or his designee, all information necessary for the classification of the use, including but not limited to the following:
 - (i) The nature of the use and whether the use involves dwelling activity, sales, services, or processing;
 - (ii) The type of product sold or produced under the use;
 - (iii) Whether the use has enclosed or outside storage and the amount and nature of the storage;
 - (iv) Anticipated employment typically anticipated with the use;
 - (v) Transportation requirements;
 - (vi) The nature and time of occupancy and operation of the premises;
 - (vii) The off-street parking and loading requirements;
 - (viii) The amount of noise, odor, fumes, dust, toxic materials and vibration likely to be generated;
 - (ix) The requirements for public utilities such as sanitary sewer and water and any special public services that may be required; and
 - (x) Impervious surface coverage.
 - b. The city manager, or his designee, shall refer the question concerning any new or unlisted use to the planning and zoning commission, requesting a recommendation as to the zoning

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classification into which such use should be placed. The referral of the use interpretation question shall be accompanied by the statement of facts in subsection (a)(4)a.2 of this section. An amendment to this chapter shall be required as prescribed by section 50-34

- c. The planning and zoning commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts and determine the zoning district or districts within which such use is most similar and should be permitted (by right or by CUP).
- d. The planning and zoning commission shall transmit its findings and recommendations to the city council as to the classification proposed for any new or unlisted use. The city council shall approve or disapprove the recommendation of the planning and zoning commission or make such determination concerning the classification of such use as is determined appropriate based upon its findings. If approved, the new or unlisted use shall be amended in the use charts of subsection(b) of this section according to section 50-34
- e. Standards for new and unlisted uses may be interpreted by the city manager, or his designee, as those of a similar use. When a determination of the appropriate zoning district cannot be readily ascertained, the same criteria outlined in subsection (a)(b) of this section shall be followed for determination of the appropriate district. The decision of the city manager, or his designee, may be appealed according to the process outlined in subsections (a)(4)a2 through (a)(4)d of this section.

(b) Use charts.

Types of Land Uses	Residential Zoning Districts							Nonresidential Zoning Districts				OT&M U	Parking ratio (Also see section 50-112)	
	A	SF	SF	SF	D	M	MH	O	G		C			L
	G	-	-9	-6		F	P		R			I		
		20												
		-E												
Agriculture														
Bulk grain and/or feed storage	P											C	C	1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	P	P	P	P	P	P	P		P	P	P	None
Feed and grain store/farm supply store ‡	C								C		P	P	C	1 space per 500 square feet
Flour and other grain												P		1 space per 1,000 square

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Dwelling, industrialized home ‡	P	P	P	P		P	P	P									C	2 spaces per dwelling
Dwelling, multiple-family ‡							P										P	2 spaces per dwelling
Dwelling, single-family attached ‡						P	P										P	2 spaces per dwelling
Dwelling—Single-family detached ‡	P	P	P	P		P	P										P	2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡						P	P										P	2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡						P	P										P	2 spaces per dwelling
Home occupation ‡	P	P	P	P		P	P			P		P	P				P	None
Residential use ‡	P	P	P	P		P	P	P	C	C		C					P	2 spaces per dwelling
Private street subdivision	P	P	P	P		P	P			C		C					P	None
Office																		
Clinic, emergency care											P		P	P			C	1 space per 150 square feet
Clinic, medical and/or dental										P	P		P	P			P	1 space per 300 square feet
Credit agency										P	P		P	P			P	1 space per 300 square feet

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Bank, savings and loan, or credit union (no motor bank services)										P	P		P	P	P	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)										C	P		P	P	P	1 space per 300 square feet
Office, professional and general business ‡										P	P		P	P	P	1 space per 300 square feet
Office, parole-probation											P		P	P	C	1 space per 300 square feet
Office showroom/warehouse ‡										C	C		P	P	P	1 space per 300 square feet
Security monitoring company (no outside storage)										P	P		P	P	P	1 space per 300 square feet
Telemarketing agency										C	C		C	P	C	1 space per 250 square feet
Telephone exchange/switching station ‡	C									P	P		P	P	C	1 space per 500 square feet
Temporary real estate field office	P	P	P	P		P	P	P	P	P			P	P	P	4 spaces
Model home (including sales office)	P	P	P	P		P	P	P	P	P			C	C	P	2 spaces per model
Personal and Business																

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Motion picture theater (indoors)																			P		P	P	P	See section 50-112	
Nursery ‡																				P		P	P	P	1 space per 1,000 square feet of sales area
Garden shop ‡																				P		P	P	P	1 space per 200 square feet
Painting and refinishing shop																				C		P	P	P	1 space per 500 square feet
Piano and musical instruments (retail only)																				P		P	P	P	1 space per 200 square feet
Shoe repair shop (retail only)																				P		P	P	P	1 space per 200 square feet
Sign shop (small scale, such as a storefront; includes sign and banner making for retail sale only; no outside storage)																				P		P	P	P	1 space per 300 square feet
Stone monuments and gravestones, engraving and retail sales only																				C		P	P	C	1 space per 500 square feet
Trophy engraving																				P		P		P	1 space per 300 square feet
Upholstery shop (nonauto)																				P		P	P	P	1 space per 200 square

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Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	C		C	C		C	C			C	P		P	P	C	None
Personal watercraft sales (new/repair)											P		P	P	P	See section 50-112
Railroad team tracks, unloading docks, and spurs													P	P	C	None
Railroad yards, round house or shop													C	P	C	1 space per 1,000 square feet
Taxi/limousine service											C		P	P	C	1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡													P	P	P	1 space per 1,000 square feet
Tire sales (outdoors, with outside storage) ‡													C	P	C	1 space per 1,000 square feet
Transfer station (refuse/pick-up) ‡	C												C	C		1 space per 500 square feet
Transit terminal ‡													P	P	C	See section 50-112
Truck and bus leasing ‡													P	P	C	1 space per 1,000 square feet

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Swimming pool, private (use by membership) ‡	P	P	P	P		P	P	P	P	P		P	P	P	1 space for each 100 square feet of gross water surface and deck area	
Swimming pool, commercial ‡									C	P		P	P	P	1 space per 100 square feet of gross water surface and deck area	
Tennis court (private/not lighted)	P	P	P	P		P	P	P	P	P		P	P	P	2 spaces per court	
Tennis court (private/lighted)	C	C	C	C		C	C	C		C		C	C	C	2 spaces per court	
Institutional/Governmental																
Adult day care (business)	See Household care facility															
Antenna (commercial)	See section 50-116															
Antenna (noncommercial)	See section 50-116															
Armed services recruiting center										P	P		P	P	P	1 space per 300 square feet
Assisted living facility (continuing care retirement community) ‡								P		C	P		P		P	1.5 spaces per dwelling unit plus any additional space for accessory uses

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Governmental building or use (county, state or federal) ‡	C	C	C	C		C	C	C	P	P		P	P	P	1 space per 300 square feet
Heliport ‡									C	C		C	C	C	3 spaces
Helistop									C	C		C	C	C	3 spaces
Hospital ‡									C	P		P	P	P	1 space per bed
Household care facility ‡	P	P	P	P		P	P	P						P	1 space per 6 clients
Household care institution										P		P	P		1 space per 6 clients
Institution for alcoholic, narcotic, or psychiatric patients ‡										C		C	P	C	1 space per 200 square feet
Institution of religious, educational or philanthropic nature	C	C	C	C		C	C	C	C	P		P	P	P	1 space per 200 square feet
Municipal facility or use ‡	P	P	P	P		P	P	P	P	P		P	P	P	1 space per 300 square feet
Museum									C	P		P	P	P	See section 50-112
Park and/or playground (private) ‡	P	P	P	P		P	P	P	P	P		P	P	P	
Park and/or playground (public, municipal) ‡	P	P	P	P		P	P	P	P	P		P	P	P	
Penal or correctional institutions	C											P	P	C	1 space per 500 square

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School, public or denominational ‡	P	P	P	P		P	P	P	P	P		P	P	P	See section 50-112
School, other than public or denominational ‡									C	P		P	P	P	
Sheltered care facility ‡							C			C		C	C	C	1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡	See ch. 34 of this Code														
Skilled nursing facility ‡							P		C	C		P		C	See section 50-112
Studio for radio and/or television (no towers) ‡									P	P		P	P	P	1 space per 200 square feet
Commercial and Wholesale Trade															
Animal kennel (outdoor pens)	P												C	P	1 space per 500 square feet
Appliance repair										P		P	P	P	1 space per 500 square feet
Book binding												P	P	P	1 space per 500 square feet
Carpet and rug cleaning plant										C		P	P	C	1 space per 1,000 square feet

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Petroleum distribution/storage ‡																				C	P			1 space per 1,000 square feet	
Plastic products, molding, casting and shaping																					P	P			1 space per 1,000 square feet
Poultry hatchery																									1 space per 1,000 square feet
Poultry slaughtering and processing																									1 space per 1,000 square feet
Printing ink manufacture																						P			1 space per 1,000 square feet
Reduction of fats, ores, metals, garbage, offal, etc.; rendering plant																									1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions	C																					C			1 space per acre
Rug and carpet manufacture																						C	P		1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡	C																					C	P		1 space per 1.5 employees, plus five per acre
Shellac and varnish																						C			1 space per 1,000 square

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Sec. 50-83. Summary of area regulations by district.

Table 50-83-1

Area Regulations Summary for Residential Districts

Area Requirements		AG	SF-20	SF-9	SF-6	PD SF PH, ZL
Size of lots	Minimum lot area	One acre (43,560 square feet)	20,000 square feet	9,000 square feet	6,000 square feet	4,000 square feet *Note: Min. project size 3 acres max density of ten du per acre
	Minimum lot width	100 feet	100 feet	75 feet	50 feet	40 feet
	Minimum Lot Depth	200 feet	150 feet	100 feet	100 feet	100 feet
Size of yards	Minimum front yard	60 feet	35 feet	25 feet	20 feet, 25 feet arterial	20 feet, 25 feet arterial
	Minimum side yard	30 feet	25 feet	5 feet; 15 feet for corner lot, 25 feet arterial	5 feet; 15 feet for corner lot, 25 feet arterial	5 feet or one side—0 feet; other side 10 feet; 15 feet corner
	Minimum rear yard	25 feet	20 feet; 25 feet for rear entry garage	15 feet, 25' feet arterial, 5 feet for 20 feet alley, 7.5 feet for 15 feet alley	15 feet, 25 feet arterial, 5 feet for 20 feet alley, 7.5 feet for 15 feet alley	15 feet or as required in section 50-80
Maximum lot coverage		40%	40%	40%	45%	n/a
Minimum floor area per dwelling unit		1,600 square feet	1,600 square feet	1,200 square feet	900 square feet	1,400 square feet

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Table 50-83-1

Area Regulations Summary for Residential Districts
(Continued)

Area Requirements		D	PD-SFA	MF	MHP
Size of lots	Minimum lot area	10,200 square feet or 6,000 square feet per side on duplex townhomes	3,600 square feet *Note: Min. project size 5 acres, max. density 12 units per gross acre	20-26 units per acre depending on carports, 1,816 per dwelling unit **Note: Min project size 10 acres	4,000 square feet ***Note: Max project size 35 acres, min. project size 3 acres, no park less than 20 spaces, max. density 10 spaces per gross acre
	Minimum lot width	85 feet or 45 feet duplex townhome lot	25 feet	120 feet	40 feet
	Minimum lot depth	100 feet	100 feet	200 feet	80 feet
Size of yards	Minimum front yard	25 feet	20 feet, 35 feet arterial	25 feet, 35 feet arterial	20 feet from public street; ten feet from private street
	Minimum side yard	Five feet; 15 feet for corner lot, 25 feet arterial	0, 15 feet corner, 25 feet arterial See section 50-80	15 feet; see section 50-73 for setbacks related to height when MF adjacent to other residential	10 feet, 20 feet between units, 20 feet zoning boundary, 15 feet for corner lot; see section 50-74
	Minimum rear yard	15 feet, 25 feet arterial, five feet for 20 feet alley, 7.5 feet for 15 feet alley	10 feet; 25 feet for rear entry garage see section 50-80	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley	10 feet; 20 feet from any zoning district boundary line; 20 feet for rear entry garage
Maximum lot coverage		45%	70%	50%	50%

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Minimum floor area per dwelling unit	900 square feet	See section 50-80	See section 50-73	750 square feet
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Table 50-83-2

Area Regulations Summary for Nonresidential and Mixed Use Districts

Area requirements		O	GR
Size of lots	Minimum lot area	6,000 square feet	6,000 square feet
	Minimum lot width	60 feet	60 feet
	Minimum lot depth	100 feet	100 feet
Size of yards	Minimum front yard	25 feet, 35 feet arterial	25 feet, 35 feet arterial
	Minimum side yard	5 feet; 15 feet corner, 25 feet arterial see section 50-75 feet for setback standards from residential	5 feet, 15 feet corner, 25 feet arterial see section 50-76 feet for other setback standards
	Minimum rear yard	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley	15 feet, 25 feet arterial, 60 feet adjacent to other residential, 20 feet with alley
Maximum lot coverage		50 percent	50%, 80% impervious coverage

Table 50-83-2

Area Regulations Summary for Nonresidential and Mixed Use Districts (Continued)

Area	C	LI	OT and MU
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Requirements				Residential Uses	Nonresidential Uses
Size of lots	Minimum lot area	10,000 square feet	5,000 square feet	5,000 square feet, duplex 7,000	5,000 square feet
	Minimum lot width	60 feet; 120 feet for any sites with frontage	50 feet	50 feet	50 feet
	Minimum lot depth	100 feet; 150 feet for any sites with frontage along U.S. 59 or Loop 287	100 feet	100 feet	100 feet
Size of yards	Minimum front yard	25 feet, 35 feet arterial	25 feet, 35 feet arterial'	SF shall meet SF-6 standards. Duplex shall meet duplex standards. Mf shall meet MF standards	20 feet or as specified in section 50-79
	Minimum side yard	10 feet; see section 50-77 for other setback standards	25 feet; see section 50-78 for other setback standards	same	See section 50-79
	Minimum rear yard			same	
Maximum lot coverage		60% for buildings; 90% impervious coverage	60% for buildings; 90% impervious coverage	n/a	n/a
Maximum FAR		2:1	2:1	n/a	n/a

(Ord. No. 2008-01, app. A, 2-4-2008)

Secs. 50-84—50-111. Reserved.

ARTICLE IV. DEVELOPMENT STANDARDS

[Sec. 50-112. Off-street parking and loading requirements.](#)

[Sec. 50-113. Landscape requirements.](#)

[Sec. 50-114. Accessory buildings and related use regulations.](#)

[Sec. 50-115. Screening, buffering and fencing requirements.](#)

[Sec. 50-116. Supplemental regulations.](#)

[Sec. 50-117. Home occupation regulations.](#)

Sec. 50-112. Off-street parking and loading requirements.

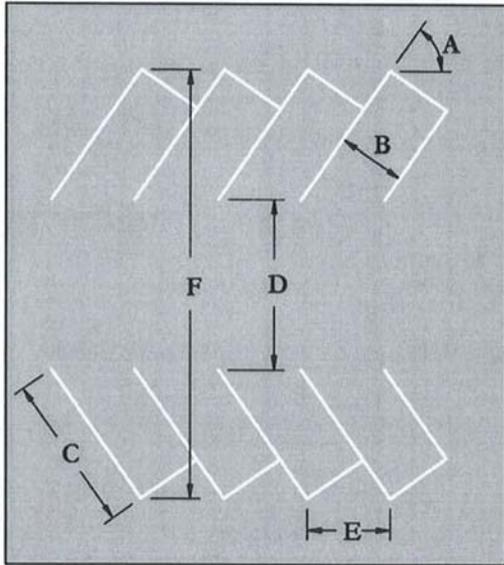
- (a) *Purpose.* The purpose of this article is to secure safety from fire, panic, and other dangers; to lessen congestion on public streets; to facilitate the adequate provision of transportation; to conserve the value of buildings; and to encourage the most appropriate and efficient use of land. The minimum off-street parking and loading shall be provided as set forth in the following schedules and provisions.

Table 50-112-1

MINIMUM REQUIREMENTS FOR PARKING SPACE CONFIGURATION, ARRANGEMENT, SIZE AND CIRCULATION

A	B	C	D		E	F
Parking Angle (in degrees)	Stall Width (in feet)	Stall Depth (in feet)	Aisle Width for One-Way Traffic (in feet)	Aisle Width for Two-Way Traffic (in feet)	Curb Length Per Car (in feet)	Parking Lot Width (curb-to-curb, in feet)
0°	8.0	20.0	12.0	24.0	23.0	
30°	9.0	17.3	12.0	24.0	18.0	37.5
45°	9.0	19.6	13.0	24.0	12.7	46.5
60°	9.0	21.0	18.0	24.0	10.4	65.5
90°	9.0	19.0	24.0	24.0	9.0	

Illustration 50-112-1: References for Table 50-112-1



(b) *Residential districts; off-street parking provisions.*

- (1) Parking regulations for the AG, SF-20-E, SF-9, SF-6, and D Districts and for Planned Developments for zero lot line, patio home, townhome and single-family attached dwelling units. For every single-family dwelling unit, a minimum of two off-street parking spaces shall be provided on the same lot as the main structure. For duplexes, two off-street parking spaces for each dwelling unit shall be required. For the purposes of this subsection, the first two parking spaces contained in covered garages and/or covered carports for each dwelling unit shall not be considered as off-street parking spaces. For example, if a dwelling has a three-car garage, one additional off-street parking space would be required in addition to that included within the garage. For the purposes of this subsection, the minimum dimensions of each parking space shall be in accordance with Table 50-112-1; provided, however, two spaces shall be not less than 12 feet by 40 feet if aligned linearly. All required driveways and parking areas shall have a topping, which is the same as the abutting street, or they may be concrete cement. All additional parking in a required yard must also be of the same material as the abutting street or concrete cement.
- (2) Parking regulations for the MHP District.
 - a. *Tenant/owner parking.* Two spaces per unit located on the same lot as the unit served. Each parking space shall be in accordance with city standards, and shall be located to eliminate interference with access to parking areas provided for other manufactured/mobile homes and for public parking in the park.
 - b. *Visitor and supplemental parking.* In addition to parking spaces required for each manufactured/mobile home unit, there shall be parking provided for the manufactured/mobile home community in general in compliance with the following:
 1. One visitor parking space for every three manufactured/mobile home spaces.
 2. Boats, campers, trailers and other recreational vehicles shall be prohibited unless oversized parking areas are provided and are approved by the city. This parking area shall not be used to meet the minimum parking requirements and shall not be visible from a public street.
 3. Each parking space will be not less than nine feet by 20 feet (nine feet by 20 feet), or as required in Table 50-112-1, which is not to be included in the lot size.
- (3) All required vehicle parking shall be on a concrete or asphalt paved surface.

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- (4) All driveways and approaches to parking spaces shall be on a concrete or asphalt paved surface, except in the AG District.
 - (5) All existing driveways within the Old Town area as of the effective date of this chapter shall be deemed as conforming (unless they represent a threat to public health, safety and welfare, in which case the city may require removal and/or relocation and/or refurbishment).
 - (6) No required parking space, garage, carport, or other automobile storage space shall be used for the storage of any heavy load vehicle (see definitions section). No such vehicle shall be stored or parked for more than 72 hours within a 30-calendar-day period or on a regular, repetitive basis on any street, or within any front yard or street side yard. Such a vehicle shall be parked in a space that is located on a concrete or asphalt paved surface.
 - (7) Additional parking shall be required in accordance with this section for any recreational uses, clubhouse, office, sales offices and other similar accessory structures and uses.
- (c) *Nonresidential and MF Districts; off-street parking provisions.*
- (1) Parking regulations for the MF District.
 - a. Off-street parking. Each dwelling unit within a multifamily dwelling complex shall be provided with on-site off-street parking as follows:
 1. Two parking spaces for each one bedroom unit;
 2. Two and one-half parking spaces for each two bedroom unit; and
 3. Three parking spaces for each three bedroom unit.
 - b. All parking areas shall be constructed of the same material as the adjoining street, or of concrete cement. No on-street parking shall be counted as meeting the requirements of this chapter and may be restricted or prohibited by the city. All parking areas shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, curbing, or other protection device in accordance herewith and in accordance with other applicable city specifications.
 - c. Covered parking and density bonuses.
 1. An increase in density of a total of up to 24 units per acre is permitted when at least 50 percent of the required parking spaces are constructed as covered or enclosed spaces.
 2. An increase in density of a total of up to 26 units per acre is permitted when 100 percent of the required parking spaces are constructed as covered or enclosed spaces.
 - d. No parking space may be located closer than six feet from any building or closer than two feet from any side or rear lot line.
 - (2) To prevent nuisance situations, all parking area lighting shall be designed, shielded and operated so as not to reflect or shine on adjacent properties and in accordance with city ordinances. All streets and driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination if off-street parking or loading facilities are to be used at night.
 - (3) For safety and fire-fighting purposes, free access through to adjacent nonresidential parking areas shall be provided in accordance with section subsection (j) of this section.
 - (4) All off-street parking, driveways, maneuvering, and loading areas shall be designed in accordance with Table 50-112-1 and Illustration 50-112-1 and shall be paved with a concrete or asphalt surface and shall be curbed, in accordance with the city's parking lot paving requirements. All such areas shall be drained to prevent damage to abutting properties and/or public streets and alleys.

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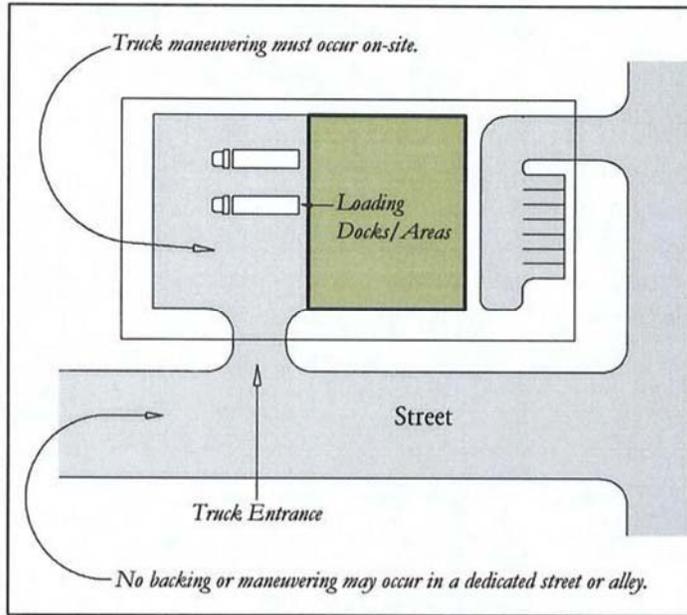
- (5) For new construction only, all vehicle maneuvering shall take place onsite. No public right-of-way shall be used for backing or maneuvering into or from a parking space (except business locations in the downtown area that are already in existence as of the effective date of the ordinance from which this chapter is derived), or for circulation within the parking lot.
 - a. All entrances into parking lots shall be at least 20 feet in width, or a maximum of 40 feet in width.
 - b. Divided entrances into parking lots shall have a minimum ingress lane of 18 feet, a minimum landscaped median width of five feet for an unbroken distance of at least 100 feet, and a minimum egress lane of 22 feet. All divided entrances shall be a maximum of 45 feet in width.
- (6) In all nonresidential and multifamily zoning districts, the perimeter of all parking lots and driveways shall be provided with concrete curbs. Parking shall not be permitted to encroach upon the public right-of-way.
- (7) Refuse storage facilities placed in a parking lot shall not be located in a designated parking or loading space. Each refuse facility shall be located so as to facilitate pickup by refuse collection agencies and ease of egress from the site without having to back up further than 20 feet and without having to go the wrong way in a traffic aisle.
- (8) Parking spaces for persons with disabilities and other associated provisions (e.g., clear and unobstructed pathways into building, crosswalks across parking lots, etc.) shall be provided according to building codes, state laws, and requirements of the Americans with Disabilities Act (ADA).
- (9) Designated parking and loading areas shall not be used for the repair, storage, dismantling or servicing (except for normal maintenance of a private vehicle) of vehicles or equipment, or for the storage of materials or supplies, or for any other use in conflict with the designated parking and loading areas (i.e., advertising or outside storage of raw materials).
- (10) To ensure that all requirements set forth in this section are carried forward, it will be the responsibility of the owner of the parking area to adequately maintain the facility. All off-street parking areas shall be kept free of trash, debris, vehicle repair operation or display and advertising uses. At no time after initial approval of the parking area layout can changes be made in the location and number of provided spaces without city approval of a revised plan, as described in section 50-36
- (11) A stacking space shall be an area on a site measuring at least eight feet wide by 20 feet long that has direct forward access to a service window or station of a drive-through facility and that does not constitute space for any other circulation driveway, parking space, or maneuvering area. An escape lane of at least eight feet in width and with negotiable geometric design must be provided to allow vehicles to get out of the stacking lane if necessary. Off-street stacking requirements for drive-through facilities shall be as follows:
 - a. For financial institutions with drive-through facilities, each teller window or station, human or mechanical, shall be provided with a minimum of five stacking spaces. One escape lane shall be provided.
 - b. For each service window of a drive-through restaurant, a minimum of five spaces shall be provided for the first vehicle stop, and two spaces shall be provided for each additional vehicle stop (order/pick-up windows, etc.). One escape lane shall be provided from the beginning of the stacking lane to the first vehicle stop.
 - c. For a full-service car wash, each vacuum or gas pump lane shall be provided with a minimum of four stacking spaces. For the finish/drying area, adequate vehicle stacking and storage space must be provided to keep finished vehicles out of circulation aisles, access easements, fire lanes, streets, etc.

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- d. For each automated self-service (drive-through/rollover) car wash bay, a minimum of three stacking spaces, in addition to the wash bay itself, shall be provided. One stacking space shall be provided at the exit end of each wash bay for window-drying and other detailing.
 - e. For each wand-type self-service (open) car wash bay, a minimum of two stacking spaces, in addition to the wash bay itself, shall be provided. One stacking space shall be provided at the exit end of each wash bay for window-drying and other detailing, unless a separate area/shade structure is provided (outside of circulation aisles) for these activities.
 - f. For automobile quick-lube type facilities, a minimum of three stacking spaces shall be provided for each service bay in addition to the service bay itself.
 - g. For all other types of land use that provide drive-up service, a minimum of three stacking spaces for each service window shall be provided.
- (12) Dead-end parking areas shall be avoided if possible. If dead-end parking is necessary, then it shall be designed such that it is no more than five parking spaces deep, unless adequate turnaround space is provided. A minimum five-foot deep hammerhead back-up space shall be provided at the end of any dead-end parking area.
- (13) All parking structures must conform to the construction and design standards of the zoning district in which they are located.
- (14) A parking analysis and tabulation shall be required on the site plan for each development and shall be a part of the site plan submittal. Each analysis shall include an explanation of applicable parking requirements (as a minimum, include occupancy classification type, building square footages, and number of employees), total parking spaces required and provided for Americans with Disabilities Act (ADA) accessible spaces, and required and provided ADA van accessible spaces. When the director of public works, or designee determines necessary, an additional traffic impact study may be required to determine the impacts of a development on the off-site public street system.
- (d) *Off-street loading space—All districts.*
- (1) All retail and similar nonresidential structures shall provide and maintain off-street facilities for receiving and loading merchandise, supplies and materials within a building or on the lot or tract. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks off-street. Each site shall provide a designated on-site maneuvering area for trucks (see Illustration 50-112-1). Such off-street loading space may be adjacent to (but not any portion of) a public alley or private service drive, or it may consist of a truck berth within the structure. The minimum dimensions of a "regular" loading space shall be ten feet by 30 feet, and a "large" loading space shall be at least ten feet by 65 feet. Loading spaces or berths shall be provided as deemed appropriate by the planning director (or designee).

Illustration 50-112-2: Truck maneuvering related to loading areas

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- (2) Loading docks for any establishment which customarily receives goods between the hours of 9:00 p.m. and 8:00 a.m. and is adjacent to a residential use or district shall be designed and constructed so as to minimize the effects of the noise of the operation on adjacent residences. Other screening/buffering alternatives may be approved on the applicable required plan (see section 50-116) provided that the city makes a finding that the method of screening/buffering will be adequate to protect nearby residences. Below grade loading docks are required to have operational sump pumps or other approved drainage.
 - (3) Kindergartens, elementary schools, day schools, and similar child training and care establishments shall provide one paved off-street pedestrian loading and unloading space for an automobile on a through, "circular" drive for each ten students cared for (excluding child care in a residence). An additional lane shall also be required to allow pass by or through traffic to move while automobiles waiting or parked to pick up children occupy loading/unloading areas.
 - (4) Loading spaces that are adjacent and easily accessible to several buildings or uses, including buildings and uses on separate lots, shall be allowed to satisfy the loading requirements for the individual buildings or uses.
 - (5) Loading spaces to be shared among separate lots shall be in reasonably close proximity to all potential users and an agreement granting mutual use by the owners of each building shall be executed and provided to the city manager (or his designee).
- (e) *Parking access from a public street—All districts.*
- (1) Consideration shall be given to providing entrance/exit drives that extend into the site to provide adequate queuing of vehicles on the site.
 - (2) Entrance/exit drives shall be appropriately designed and located to minimize traffic congestion or conflict within the site and with adjoining public streets. Based upon analysis by the city, if projected volumes of traffic entering or leaving a development are likely to interfere with the projected peak traffic flow volumes on adjoining streets, additional right-of-way and paving in the form of a deceleration lane, a turn lane, or other roadway improvements may be required of a developer in order to reduce such interference and to help ensure traffic safety and efficiency. The dedication of additional right-of-way or street paving may also be required, and shall be determined at the time the required plan (see section 50-36) and final plat are approved by the city.

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- (3) Vehicular access to nonresidential uses shall not be permitted from alleys serving residential areas, and shall not be configured as "head-in" parking spaces that are accessed directly from the street.
- (4) Parking space configuration, arrangement, size and circulation in all districts shall be constructed according to Illustration 50-112-1 and Table 50-112-1.
- (f) *Parking requirements based upon use.* In all districts, there shall be provided at the time any building or structure is erected or structurally altered, or change of use, off-street parking spaces in accordance with the use chart, section 50-82. Further descriptive requirements have been included herein where applicable, as referenced within the use chart:
 - (1) *Accessory uses.* All areas for accessory uses not listed above or in other parts of this section (such as restaurants, office, etc.), shall be calculated in with the minimum specified for those individual uses.
 - (2) *Auto dealer (new and/or used auto sales); motorcycle sales/dealer; personal watercraft sales (new/repair).* One parking space for each 500 square feet of sales floor/office and other indoor uses, plus one parking space for each 1,000 square feet of exterior lot area used for storage, sales and parking areas, plus one parking space per repair bay in service areas (indoors or outdoors).
 - (3) *Community center (public), museum, library, or art gallery.* Ten parking spaces plus one additional space for each 300 square feet of floor area in excess of 2,000 square feet. If an auditorium is included as a part of the building, its floor area shall be deducted from the total and additional parking provided on the basis of one space for each four seats that it contains (see section 50-82).
 - (4) *Convenience store (with or without gasoline sales) or gasoline station.* One space per 200 square feet of floor area, plus one parking space for each side of a gasoline pump unit (a unit may have up to six nozzles for gasoline disbursement). Spaces within pump areas qualify as spaces for the parking requirement. If no gasoline sales are provided, then the parking requirements shall be the same as for a retail store. Adequate space shall be provided for waiting, stacking, and maneuvering automobiles for refueling.
 - (5) *Funeral home or mortuary.* One parking space for each 200 square feet of floor space in slumber rooms, parlors or individual funeral service rooms, or one space for each three seats in the auditorium/sanctuary (see section 50-82), whichever is greater. Adequate on-site stacking spaces shall also be provided for the organization and forming of processions such that these activities do not cause excessive or extended traffic congestion/delays on a public roadway.
 - (6) *Golf driving range.* 1½ spaces for each driving tee.
 - (7) *Hotel/motel.* One space per guest room for the first 250 rooms and 0.75 space per room for each room over 250, plus one space per five restaurant/lounge area seats (based upon maximum occupancy), plus one space per 125 square feet of meeting/conference areas.
 - (8) *Mini-warehouse/self storage.* Four spaces per establishment, plus two spaces for an on-site manager's residence (if applicable), plus one appropriately sized space for any type of vehicle to be stored on-site (e.g., rental trucks, boats, RVs, etc.)
 - (9) *Motion picture theater (indoors).*
 - a. One space per 3½ seats for single-screen theaters;
 - b. One space per five seats for motion picture theaters with two or more screens.
 - (10) *Motor freight transportation, storage, and terminal/transit terminal/truck terminal/other similar transportation uses.* For warehouse and staging/loading areas, one space for each 1,000 square feet of floor area; for bus depot or other human transportation use, one space per 100 square feet of passenger waiting area, plus parking spaces for any warehouse and staging/loading areas on the premises (as above).

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- (11) *Places of public assembly not otherwise specified.* One space for each four seats provided.
- (12) *Retail or personal service establishment not otherwise specified.* One space per 200 square feet of gross floor area in addition to any required stacking spaces for drive-through facilities in subsection (c)(11)d of this section.
- (13) *Schools.*
- a. Public or denominational—Elementary. Two spaces for every classroom and office;
 - b. Public or denominational—Junior high. Three spaces for every classroom and two spaces for each office;
 - c. Public or denominational—High school. Eight spaces for every classroom and two spaces for each office;
 - d. Other than public or denominational. Same as above, depending on grade.
- (14) *Skilled nursing facility.* One space per six beds; plus one parking space for each 300 square feet of floor area devoted to offices, cafeterias, exercise/therapeutic rooms, and other similar ancillary uses.
- (g) *Rules for computing number of parking spaces and miscellaneous off-street parking requirements.* In computing the number of parking spaces required for each of the above uses, the following rules shall govern:
- (1) The term "floor area" means the gross floor area of the specific use.
 - (2) The term "seat" shall be interpreted as follows:
 - a. For fixed (e.g., church pews, grandstands, benches, etc.) seating, one seat equals 1.75 feet of length; and
 - b. For flexible (e.g., folding chairs, etc.) seating areas, one seat equals eight square feet of floor area occupied by such seating area (includes aisles).
 - (3) Where fractional spaces result, the parking spaces required shall be calculated by rounding to the nearest whole number.
 - (4) The parking space requirements for a new or unlisted use not specifically mentioned herein shall be the same as required for a use of similar nature. If the proposed use is not similar to any of the uses listed herein, a determination shall be made/approved by the city, in conjunction with the request for classification of the new or unlisted use, as provided in section 50-82(b).
 - (5) Whenever a building or use is changed or enlarged in floor area, number of dwelling units, seating capacity or otherwise, to create a need for an increase of ten percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. If a building or use that was in existence prior to the effective date of the ordinance from which this chapter is derived is enlarged by more than 50 percent in floor area, number of employees, number of dwelling units, seating capacity or otherwise, then said building or use shall be required to conform with the parking requirements herein for the entire building or use.
 - (6) For buildings which have a combination of uses within the same structure or on the same premises (such as retail or office), the off-street parking requirement shall be calculated as the summation of the parking requirements for each use, and no parking space for one particular use shall be allowed to count toward the parking requirement for some other use on the premises except in the case of a shared parking arrangement (see subsection (h) of this section).
 - (7) Shared parking. Shared parking may be allowed in the case of mixed uses (different buildings) under the following conditions: Up to 50 percent of the parking spaces required for a theater or other place of evening entertainment (after 6:00 p.m.), or for a church, may be provided and used jointly by banks, offices, and similar uses not normally open, used, or operated during

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evening hours. Shared parking must be on the same parking lot. Reduction due to shared parking shall only be allowed if approved by the city on the applicable required plan (see section 50-36). To ensure retention of the shared parking spaces, each property owner shall properly draw and execute an irrevocable mutual parking agreement document expressing the same, shall file this agreement in the county real property records, and shall provide a copy of the filed agreement to the city prior to issuance of a certificate of occupancy for any use that relies upon the parking agreement.

- (h) *Location of parking spaces.* In any case where any additional parking spaces are required and are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, approval by the planning and zoning commission is required subject to the following conditions:
 - (1) Except for location, all other requirements relating to off-street parking shall be met.
 - (2) Such space shall be conveniently usable without unreasonable:
 - a. Hazard to pedestrians;
 - b. Hazard to vehicular traffic;
 - c. Traffic congestion; or
 - d. Detriment to the appropriate use of other properties in the vicinity.
 - (3) A written agreement shall be drawn to the satisfaction of the city attorney and executed by all parties concerned, assuring the continued availability of the off-street parking facility for the development it is intended to serve.
- (i) *Use of required parking spaces—Nonresidential districts.* Off-street parking and loading spaces shall be used only for these respective purposes and shall not be used for refuse containers, cart corrals, recycling kiosks, signs or sign support structures, telecommunications towers or support structures, storage or permanent display of boats, trailers, campers, motor vehicles or other goods, materials, or products for sale/lease/rent.
- (j) *Fire lanes.* Fire lanes shall be provided in all multifamily (and in some single-family attached) developments, manufactured (mobile) home parks, and nonresidential developments, as required by the adopted fire code of the city (also see chapter 40, pertaining to subdivisions, for certain fire lane regulations).
- (k) *Special regulations for recreational vehicles or equipment.* No recreational vehicle shall be left unattended or parked for more than 24 hours within any parking lot, parking spaces, drive aisle, vacant or unused property, or pervious/unpaved surface area (except an appropriately zoned and approved/paved parking lot for such vehicles). An owner or tenant of a residential lot may park a recreational vehicle that they own on the same lot in accordance with city regulations. Such vehicle parking must also meet all other required city ordinances.

(Ord. No. 2008-01, § 39, 2-4-2008)

Sec. 50-113. Landscape requirements.

- (a) *Purpose.* Landscaping is accepted as adding value to property and is in the interest of the general welfare of the city. The provision of landscaped areas also serves to increase the amount of a property that is devoted to pervious surface area that, in turn, helps to reduce the amount of impervious surface area, stormwater runoff, and consequent non-point pollution in local waterways. Therefore, landscaping is hereafter required of new development, except single- and two-family and agricultural uses.
- (b) *Scope and enforcement.*
 - (1) The standards and criteria contained within this section are deemed to be minimum standards and shall apply to all new nonresidential and multifamily construction, and shall apply in the

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case of an addition to a nonresidential or multifamily structure or site that alters such structure or site by greater than 25 percent.

- (2) Any use requiring a conditional use permit (CUP) or a PD Planned Development zoning designation must comply with these landscape standards unless special landscaping standards are otherwise provided for in the ordinance establishing the CUP or PD District. In no case shall the standards provided for in the CUP or PD ordinance be less than the standards required by this section.
- (3) The provisions of this section shall be administered and enforced by the city manager or his designee.
- (4) The landscape standards in this section apply only to nonresidential and multifamily developments (including uses such as schools and churches within a residential zoning district).
- (5) If at any time after the issuance of a certificate of occupancy, the approved landscaping is found to be not in conformance with the standards and criteria of this section, the building official (or his designee) shall issue notice to the owner, citing the violation and describing what action is required to comply with this section. The owner, tenant or agent shall have 30 calendar days from date of said notice to establish/restore the landscaping, as required. If the landscaping is not established/restored within the allotted time, then such person shall be in violation of this chapter.

(c) *Permits.*

- (1) No permits shall be issued for building, paving, or construction until a detailed landscape plan is submitted and approved by the city manager or his designee, along with other required plans. A landscape plan shall be required as part of other required submissions and may be shown on the concept plan, building permit plan, or site plan, as required by section 50-36, or may be drawn on a separate sheet. Except as provided in subsection (c)(2) of this section, prior to the issuance of a certificate of occupancy for any building or structure, all screening and landscaping shall be in place in accordance with the landscape plan.
- (2) In any case in which a certificate of occupancy is sought at a season of the year in which the city manager, or his designee, determines that it would be impractical to plant trees, shrubs or groundcover, or to successfully establish turf areas, a temporary certificate of occupancy may be issued, provided a letter of agreement and financial assurance by a check or performance bond equivalent to the work yet to be performed from the property owner is submitted that states when the installation shall occur. Such financial guarantee shall be returned when the work is completed.

(d) *Landscape plan.*

- (1) The city manager or his designee shall review the plans for completeness in writing within ten business days after filing. If the plans are incomplete, notice shall be sent within the ten business days to the applicant specifying the document or other information to complete the application and the date the plan submission will expire and be considered denied if the applicant fails to provide such information. If the required application and plans are not corrected or completed within 45 calendar days after submission, then the required plan will be deemed to have expired and it will be returned to the applicant together with any accompanying applications. If the plans are deemed complete, or if ten business days passes without notice, the city manager, or his designee, shall review such plans and shall approve same if the plans are in accordance with the criteria of these regulations. If the plans are not in conformance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.
- (2) Landscaping plans shall be drawn in a legible engineering scale and shall contain the following minimum information:
 - a. The scale shown in both written and graphic form.

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- b. Location, size and species of all trees to be preserved (do not use tree stamps unless they indicate true size and location of trees).
 - c. Where credited trees are proposed, a plan indicating how these existing trees will be protected from damage during construction.
 - d. Location of all plant and landscaping material to be used, including plants, paving, benches, screens, fountains, statues, earthen berms, ponds (to include depth of water), topography of site, or other landscape features.
 - e. Species and common names of all plant materials to be used.
 - f. Size of all plant material to be used (container size, planted height, etc.).
 - g. Spacing of plant material where appropriate.
 - h. North arrow/symbol and a small map showing where the property is located.
 - i. Date of the landscape plan.
- (3) No major change to an approved landscape plan shall be made prior to the submission and approval of a revised landscape plan meeting the criteria found within this section.
- (4) Upon a recommendation by the city manager or his designee, an alternative plan that is not in compliance with these landscape provisions may be approved. The alternative plan must clearly be superior to a plan or layout that would otherwise be in compliance. In making the determination, the city manager or his designee may consider:
- a. The topography, shape, size, and/or other natural features of the property;
 - b. The ability of the alternative plan to enhance a natural feature that is particular to the site; and/or
 - c. The opportunity to create a unique atmosphere, attraction, or other similar factors.
- (e) *General standards.* The following criteria and standards shall apply to landscape materials and installation:
- (1) All required landscaped open areas shall be completely covered with living plant material. Landscaping materials such as wood chips and gravel may be used under trees, shrubs and other plants.
 - (2) Plant materials shall conform to the standards of the approved plant list for the city. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects.
 - (3) Alternate landscaping design. The planning and zoning commission may consider and approve an alternative plan, which is not in compliance with the requirements of this chapter. Such alternative plan must meet the objectives and purposes of this chapter, as determined by the planning and zoning commission, may not reduce the standards set forth herein, and clearly be superior to a plan that would otherwise be in compliance. In making this determination, the planning commission may consider the topography, shape, size, or other natural features of the building site; the suitability of any alternative screening or buffering proposal; and other similar factors.
 - (4) Replacement of dead landscaping plants. If any required landscaping tree, shrub, or groundcover plant should die, the owner shall replace these plants by the end of the next planting season.
 - (5) Replacement of existing landscape development. Any major or significant modification to a landscape development constructed or installed in association with this section must be in accordance with this section and must be approved by the city's building official.
 - (6) Required crown size, caliper, and height of trees.

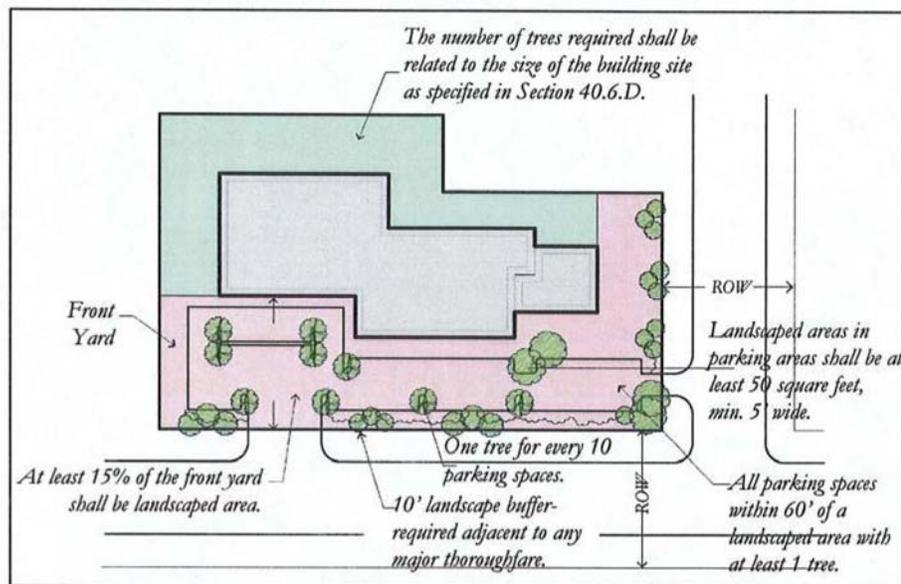
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- a. Trees shall have an average spread of crown of greater than 15 feet at maturity. Trees having a lesser average mature crown of 15 feet may be substituted by grouping the same so as to create the equivalent of 15 feet of crown spread.
 - b. Grouping collectively equals a crown spread of 15 feet.
 - c. Large trees shall be a minimum of four inches in caliper measured 12 inches above the ground, and shall be a minimum of seven feet in height at time of planting.
 - d. Small trees shall be a minimum of two inches in caliper, measured six inches above the ground, and shall be a minimum of five feet in height at time of planting.
- (7) Shrubs not of a dwarf variety shall be a minimum of two feet in height when measured immediately after planting. Hedges, where installed for general screening purposes, shall be planted and maintained so as to form a continuous, unbroken, solid visual screen that will be six feet in height within three years after the time of initial planting. Hedges, where installed for screening parking areas, shall be planted and maintained so as to form a continuous, solid visual screen that will be three feet in height within two years after the time of initial planting.
- (8) Grass areas shall be sodded, plugged, sprigged, hydro-mulched and/or seeded, except that solid sod shall be used in swales, earthen berms or other areas subject to erosion.
- (9) Ground covers used in lieu of grass in whole and in part shall be planted in such a manner as to present a finished appearance and reasonably completed coverage within one year of planting.
- (10) Earthen berms shall have side slopes not to exceed 33.3 percent (three feet of horizontal distance for each one foot of vertical height). All berms shall contain necessary drainage provisions as may be required by the city's engineer.
- (f) *Minimum landscaping requirements for nonresidential and multifamily developments.*
- (1) *General requirements.* The following requirements shall apply:
 - a. For all nonresidential and multifamily developments (including schools, churches, day care facilities, and other similar uses in a residential district), at least 15 percent of the front yard shall be permanently landscaped area (see Illustration 50-113-1. In addition, with the exception of industrial tracts, the following shall apply:
 1. Sites of up to 20,000 square feet shall have five percent of the area not covered by building or structure permanently landscaped.
 2. Sites of 20,000 to 200,000 square feet shall have 7.5 percent of the area not covered by building or structure permanently landscaped.
 3. Sites of over 200,000 square feet shall have ten percent of the area not covered by building or structure permanently landscaped.
 - b. Landscape development located within the rear setback area of a building site, screened from adjacent properties and not adjacent to a public street shall not be considered when determining the minimum requirements of this section.
 - c. Only shrubs and groundcovers (i.e., no trees) shall be used under existing or proposed overhead utility lines.
 - d. Necessary driveways from the public right-of-way shall be permitted through required landscaping in accordance with city regulations.
 - (2) *Requirements along major thoroughfares.* For the purpose of these requirements, a major thoroughfare is defined as a thoroughfare having a right-of-way of at least 60 feet. The following requirements shall be credited toward the 15 percent landscaped front yard requirement, as specified in subsection (f)(1)a of this section.
 - a. A minimum ten foot landscape buffer adjacent to the right-of-way of any major thoroughfare is required, except as specified below.

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- b. Any nonresidential or multifamily parcel that fronts onto Main Street shall provide a minimum 15 foot landscape buffer.
 - c. Corner lots fronting two major thoroughfares shall provide the appropriate required landscape buffer on both street frontages (i.e., ten feet on major thoroughfares, and 15 feet on Main Street).
 - d. All other street frontages shall observe a minimum five foot landscape buffer.
 - e. One large tree shall be required per 40 linear feet (or portion thereof) of street frontage. Trees should be grouped or clustered to facilitate site design and to provide an aesthetically pleasing, natural looking planting arrangement; this shall be credited toward the total number of trees required, as specified in subsection (f)(4)d of this section.
- (3) *Requirements for landscaping in and around parking lots.* The following requirements shall be credited toward the 15 percent landscaped front yard requirement, and total landscaping requirement as specified in subsection (f)(1)a of this section.
- a. Landscape areas shall be a minimum of 50 square feet in area. Landscape areas shall be a minimum of five feet wide.
 - b. There shall be a landscaped area with at least one tree within 60 feet of every parking space.
 - c. There shall be a minimum of one tree planted in the parking area for every ten parking spaces for parking lots having more than 20 spaces.
 - d. There shall be a landscaped area that is a minimum of 12 feet wide to separate parking areas that have 200 or more parking spaces.
 - e. Landscape areas should be located to define parking areas and to assist in clarifying appropriate circulation patterns. All landscape areas shall be protected by a monolithic concrete curb or wheel stops, and shall remain free of trash, litter, and car bumper overhangs.

Illustration 50-113-1: Selected landscaping requirements illustrated



- (4) *Requirements for trees.* The following requirements shall apply:

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- a. All existing trees that are to be preserved shall be provided with undisturbed, permeable surface area under (and extending outward to) the existing dripline of the tree.
- b. All new trees shall be provided with a permeable surface under the dripline a minimum of five feet by five feet.
- c. A minimum of 50 percent of the total trees required for the property shall be large shade trees as specified on the approved plant list in this section.
- d. Minimum number of trees required. The number of trees specified as required herein shall be in addition to those required for major thoroughfares as outlined in this section. The minimum number of trees shall be provided and maintained on the building site, as outlined below, based on the area of the site not covered by a building or structure:
 - 1. Less than 3,000 square feet: two.
 - 2. 3,001 to 7,000 square feet: three.
 - 3. 7,001 to 10,000 square feet: four.
 - 4. 10,001 to 20,000 square feet: five.
 - 5. 20,001 to 30,000 square feet: six.
 - 6. 30,001 to 40,000 square feet: seven.
 - 7. 40,001 or greater, per 20,000: three.

Square feet (rounded up to the whole tree)

(h) *Tree preservation.* The following provisions shall apply:

- (1) During any construction or land development, the developer shall clearly mark all trees to be preserved/retained on-site, and may be required to erect and maintain protective barriers around all such trees or groups of trees. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the dripline of any trees that are designated for preservation.
- (2) During the construction stage of development, the developer shall not allow cleaning of equipment or material under the canopy of any tree or group of trees that are being preserved. Neither shall the developer allow the disposal of any waste/toxic material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy of any tree or groups of trees to remain.
- (3) No attachment or wires of any kind, other than those of a protective or supportive nature, shall be attached to any tree.
- (4) Tree credits.
 - a. Landscape plans that preserve existing trees that are found on the approved list shall be given credit toward the total number of trees required as outlined in the following:

Diameter of Existing Tree (inches)	Credit Against Tree Requirement
One inch—three inches	1.0 trees
Over three inches—9 inches	Two trees

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Over 9 inches—15 inches	Three trees
Over 15 inches	Six trees

- b. If a credited tree dies for any reason, it must be replaced with the credit number of trees within 120 days.
 - c. The following activities shall be prohibited within the limits of the drip line of any existing tree to be retained under the provisions of a landscape plan required by this chapter:
 - 1. Material storage. No materials intended for use in construction or waste materials accumulated due to excavation or demolition;
 - 2. Equipment cleaning/liquid disposal. No equipment shall be cleaned or other liquids deposited, including paint, oil, solvents, asphalt, concrete, mortar, or other materials;
 - 3. Tree attachments. No signs, wires, or other attachments, other than those of a protective nature, which have been approved in the tree disposition plan; and
 - 4. Vehicular traffic. No vehicle, construction equipment or parking is allowed.
 - d. On development sites requiring 100 parking spaces or more, the number of parking spaces may be reduced by one percent for every ten percent increase in tree credits provided above the minimum. However, the parking requirement shall not be reduced by more than five percent.
- (i) *Sight distance and visibility.* The following provisions shall apply:
- (1) Rigid compliance with these landscaping requirements shall not be such as to cause visibility obstructions and/or blind corners at intersections.
 - (2) Whenever an intersection of two or more public rights-of-way occurs, a triangular visibility area in accordance with chapter 38, article II shall be created. Landscaping, screening and fencing within the triangular visibility area shall be in accordance with such requirements and provide unobstructed cross-visibility at a level between 36 inches and 15 feet. Trees may be permitted in this area provided they are trimmed in such a manner that no limbs or foliage extend into the cross-visibility area. In addition to the 45 foot visibility triangle at the intersection of two streets as required in chapter 38, article II, the following visibility triangular areas meeting the same requirements are required:
 - a. The areas of property on both sides of the intersection of an alley accessway and public right-of-way shall have a triangular visibility area with two sides of each triangle being a minimum of ten feet in length from the point of intersection and the third side being a line connecting the ends of the other two sides.
 - b. The areas of property located at a corner formed by the intersection of a private driveway onto a public road shall have a triangular visibility area with two sides of each triangle being a minimum of 20 feet in length along the right-of-way lines (or along the driveway curbline and the road right-of-way line) from the point of the intersection and the third side being a line connecting the ends of the other two sides. (See Illustration 50-116-5 of this chapter).
 - (3) Landscaping, except required grass and low ground cover, shall not be located closer than three feet from the edge of any accessway pavement on arterial or collector streets as shown on the adopted comprehensive plan.

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- (4) In the event other visibility obstructions are apparent in the proposed landscape plan, as determined by the city manager or his designee, the requirements set forth herein may be reduced to the extent to remove the conflict.
- (j) *Approved plant list.* The city council shall, by resolution, establish a list of trees, shrubs, and plants that are suitable for and may be used to satisfy the landscape requirements of this section.
- (k) *Maintenance.* The following provisions shall apply to maintenance:
 - (1) The owner, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include, but not to be limited to, mowing (of grass six inches or higher), edging, pruning, fertilizing, watering, weeding, and other such activities common to the maintenance of landscaping. Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
 - (2) Required plant materials which die shall be replaced with plant material of similar variety and size, within 90 calendar days. Trees with a trunk diameter in excess of six inches measured 24 inches above the ground may be replaced with ones of similar variety having a trunk diameter of no less than three inches measured 24 inches above the ground on a caliper-inch for caliper-inch basis (e.g., for a six-inch tree, two three-inch replacement trees shall be required).
 - (3) A time extension for replacement of plant materials may be granted by the city manager or his designee, if substantial evidence is presented to indicate abnormal circumstances beyond the control of the owner or his agent.
 - (4) Failure to maintain any landscape area in compliance with this section is considered a violation of this section and may be subject to penalties of section 50-5

(Ord. No. 2008-01, § 40, 2-4-2008)

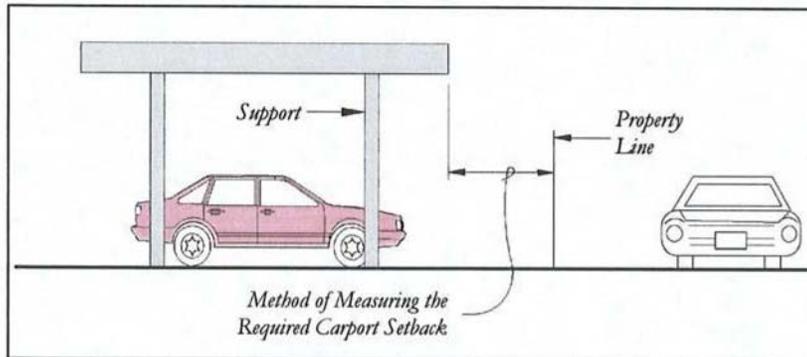
Sec. 50-114. Accessory buildings and related use regulations.

- (a) *Description and regulations.* Regulations according to zoning district:
 - (1) *Residential districts.* In a single-family or multifamily district, an accessory building is a subordinate or incidental building, attached to or detached from the main building, not used for commercial purposes and not rented. Accessory buildings shall be located toward the rear portion of the property, and shall conform to applicable provisions of the building code.
 - a. Accessory dwellings (including garage/accessory dwellings and detached units) may be permitted as a matter of right or with a conditional use permit, if approved, as specified within a particular residential zoning district (see regulations for the specific district, and the use charts, section 50-82), and shall conform to the height limitations of the zoning district.
 - b. No accessory dwelling or quarters shall be used or occupied as a place of abode or residence by anyone other than a caretaker who is actually and regularly employed by the landowner or occupant of the main building, or is a guest or family member of the owner/occupant. Only one accessory dwelling unit (i.e., garage/accessory dwelling, servants/caretakers quarters, etc.) shall be allowed on any lot within a residential zoning district, and they shall be clearly incidental to the primary use. These accessory living structures shall not, in any case, be leased or sold.
 - (2) *Nonresidential districts.* In nonresidential districts, an accessory building is a subordinate building, the use of which is secondary to and supportive of the main building. Accessory buildings should, wherever possible, be located toward the rear portion of the property. Accessory buildings shall conform to applicable provisions of the building code.
- (b) *Area regulations for accessory buildings in residential districts.* Size of yards:

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- (1) *Front yard.* Accessory buildings shall be prohibited in front of the main building.
- (2) *Side yard.* Accessory buildings shall conform to the same minimum side yard requirements as the main building, except that:
 - a. Garages or carports located and arranged so that entry is from an interior side yard shall have a minimum setback of 25 feet from the side lot line. Carports or garages arranged so that entry is from the side yard, facing a public street, shall have a minimum setback from the side lot line that is equal to the required side yard for the main building or 20 feet, whichever is greater.
 - b. Swimming pools may encroach to within three feet of the lot line, provided it does not encroach upon any easement.
- (3) *Rear yard.* With the exception of the AG and SF-20-E districts, accessory buildings shall have a minimum rear yard of three feet from any lot line or alley or utility easement line.
 - a. Carports, garages, or other accessory buildings, located within the rear portion of a lot as heretofore described, constructed closer than ten feet to the main building, shall have a rear yard equivalent to the rear yard requirement for the main building;
 - b. Garages and/or carports that are arranged so as to be entered from an alley or rear alley easement shall be set back from the rear property line or alley easement line a minimum distance of 25 feet.

Illustration 50-114-1: Carport setback measurement



- c. Carports shall be measured from the part of the carport (usually the roof) that is closest to the street or alley (see Illustration 50-114-1). In single-family and two-family zoning districts, carports shall be a maximum of 500 square feet.

(Ord. No. 2008-01, § 41, 2-4-2008)

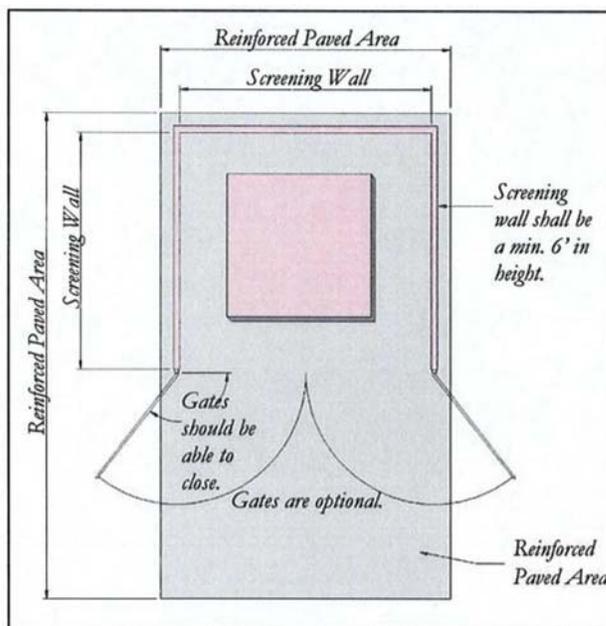
Sec. 50-115. Screening, buffering and fencing requirements.

- (a) *Purpose of screening and buffering.* The purpose of screening and buffering is to encourage the most appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.
- (b) *Screening of nonresidential, multifamily areas and manufactured (mobile) home parks.* The following provisions shall apply to screening of nonresidential, multifamily areas and manufactured (mobile) home parks:

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- (1) An opaque screening wall of not less than six feet, nor more than eight feet, in height shall be erected on the property line separating zoning districts in the following cases:
 - a. When a multifamily use, nonresidential use, or manufactured (mobile) home park sides or backs upon a single-family, two-family or residential PD District;
 - b. When any nonresidential use is on a tract, lot or parcel that is less than 15 acres and the nonresidential use sides or backs upon a multiple-family district; and
 - c. When a commercial or industrial use is established on a building site located adjacent to any residential area, a ten-foot side landscaped open-space buffer shall be installed and maintained by the owner, developer, or operator of the commercial or industrial property between it and the adjacent residential area. The provisions of this section shall not apply where the residential area is separated by a public street, drainage ditch, or canal with a minimum easement of 30 feet. With written approval of the planning and zoning commission, and otherwise full compliance with landscaping standards, a required buffer may include a stormwater detention area. In no event, however, shall the following uses be allowed in buffers: playfields, stables, swimming pools, tennis courts, or similar active recreation uses.
- (2) Refuse areas which are not within a rear service area and which are visible from a public right-of-way for all nonresidential, multifamily and manufactured/mobile home park uses shall be visually screened by a minimum six-foot solid wall or fence on at least three sides (see Illustration 50-115-1 for refuse container enclosure diagrams). The fourth side, which is to be used for garbage pickup service, may provide an optional gate to secure the refuse storage area. Alternate equivalent screening methods may be approved by the city. Each refuse facility shall be located so as to facilitate pickup by refuse collection agencies. Adequate reinforced paved areas shall be provided for refuse facilities and their approaches for loading and unloading, as per Illustration 50-115-1.

Illustration 50-115-1: Refuse area screening



- (3) The purpose of the screening wall is to provide a visual and protective barrier between the properties, and therefore the following shall apply:

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- a. The owner of the multifamily development, nonresidential development, or manufactured (mobile) home property shall be responsible for and shall build and maintain the required wall on the property line dividing the property from the single-family or duplex residential district, unless a buffer is provided and then it shall be on the inside edge of the buffer parallel to the property line.
 - b. Any screening wall required under the provisions of this section or under a conditional use permit, PD Planned Development District, or other requirement shall be constructed of treated wood, masonry, reinforced concrete, or other similar suitable permanent materials which do not contain openings. All wall openings shall be equipped with gates equal in height and screening characteristics to the wall.
 - c. Alternative equivalent screening may be approved at the time the required plan is approved (see section 50-36).
- (4) See chapter 38, article II and this section for sight visibility requirements.
- (5) Junkyards. Any junkyard, whether a primary use or an accessory use, shall provide an opaque screening device in conformance with the materials and methods described in section 50-116. Said screening device shall be of uniform height in relation to the ground that screens the view from adjoining lots and/or public places from junk. Stacking of junk above the height of the screening device that allows visibility from an adjoining lot or public place shall be prohibited.
- (c) *Purpose of fencing requirements.* To encourage safety in residential neighborhoods, regulations are prescribed for the location and type of fencing devices to be used in conjunction with specific site elements.
- (d) *Fences in residential areas.* The following provisions shall apply to fences in residential areas:
- (1) No fence or gate in a residential district, except as specified in subsection (d)(5) of this section, shall exceed eight feet in height. Fences and gates shall be maintained in good repair at all times, including, but not limited to, ensuring that there be no missing, broken, or leaning slats or panels, and that the condition not to endanger life or property. Such maintenance shall be the responsibility of the owner of the property on which the fence or gate is located.
 - (2)
 - a. Residential fences and gates shall be constructed of materials and colors in character with the area, and may contain a mix of building materials. Residential fences and gates shall consist of durable wood, vinyl, metal, stone, or other materials commonly used in conventional fence construction. Chainlink fencing may be utilized within the area of a rear yard, as defined in section 50-2. Non-opaque hog fencing in a framed construction or installation, no more than six feet in height, may be permitted within the Single-Family Estate Residential-20 District and Agricultural District subject to approval by the city manager or his/her designee.
 - b. Except as noted above, fences or gates composed of chain link or similar material (barbed/chicken wire, hog fencing), as well as electrified fences, or any fence upon which spikes, nails, razor wire or other sharp or pointed instruments or security materials are fixed, attached or placed shall be prohibited. Ornamental features on the top of any fencing may be permitted as part of the original construction.
 - (3) Fencing between the front property line and the closest primary or accessory structure on the site shall be as follows:
 - a. For lots which are less than five acres, the maximum height of a fence shall be four feet.
 - b. For lots that are five acres or larger, the maximum height of a fence shall be six feet.
 - c. Non-opaque wrought iron fencing or similar metal building material fencing may be permitted within the Single-Family Estate Residential-20 District and the Agricultural District with a maximum height of six feet. Said fencing shall be subject to approval by the city manager or his/her designee.

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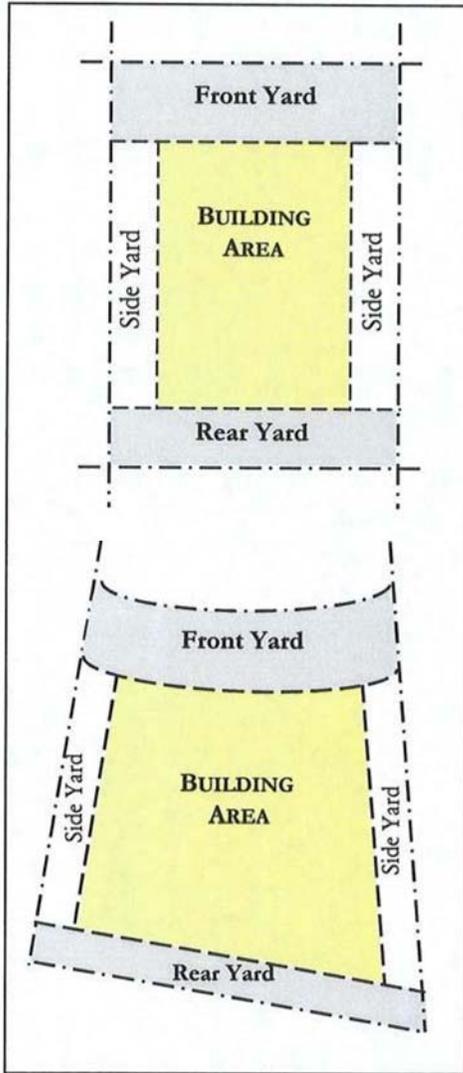
- (4) Gates designed for vehicular access shall be set back from the edge of street or road pavement a minimum of 25 feet. Locking mechanisms for vehicular gates shall be subject to approval by the city fire marshal or his/her designee.
- (5) Special purpose fencing, and their associated gates, that does not exceed ten feet in height shall be limited to only the perimeter of tennis/ball courts, play areas/fields, or gardens. This type of fencing may be constructed of chain link or fabric-type material in addition to durable wood, vinyl, metal, stone, or other materials commonly used in conventional fence construction. In no case shall barbed/chicken wire, hog fencing, etc., or electrified fences, or any fence upon which spikes, nails, razor wire or other sharp or pointed instruments or security materials are fixed, attached or placed be utilized. Said fences shall not be erected within any setback, easement, or site visibility area detailed in subsection (d)(6) of this section. Such fencing shall be subject to approval by the city manager or his/her designee.
- (6) All fencing shall comply with sections 38-31 through 38-34 and section 50-113(i) for sight visibility requirements.
- (e) *Fences in nonresidential areas, multiple-family areas, and manufactured (mobile) home parks.* Any fence required under the provisions of this chapter or under a conditional use permit, PD Planned Development District, or other requirement shall be constructed of treated wood, masonry, reinforced concrete, or other similar suitable permanent materials which do not contain openings. The fence or wall may be a diagonal, horizontal, or vertical stockade-type privacy fence, although the framing of such fence may be of metal. All fence openings shall be equipped with gates equal in height and characteristics (e.g., materials, aesthetics, etc.) to the fence.

(Ord. No. 2008-01, § 42, 2-4-2008; Ord. No. 2012-51, § 2, 2-14-2013)

Sec. 50-116. Supplemental regulations.

- (a) *Setbacks and lot configurations.* The following requirements shall apply to setbacks and lot configurations:
 - (1) *Measuring yards.* All yard measurements shall be made in accordance with Illustration 50-116-1.
 - (2) *Configuration of lots.* Wherever possible, flag lots (i.e., lots with minimal, or panhandle type, frontage) shall be avoided. Similarly, through (i.e., double frontage) lots (particularly within residential zoning districts) shall also be avoided wherever possible. (Also see chapter 40, pertaining to subdivisions, for regulations pertaining to the configuration of lots.)
 - (3) *Building setbacks.* All setbacks established on a recorded plat shall be enforced, even if they exceed the required setbacks in this chapter. Setbacks established on a recorded plat shall only be changed through replat proceedings (see chapter 40, pertaining to subdivisions).

Illustration 50-116-1: Measuring yards

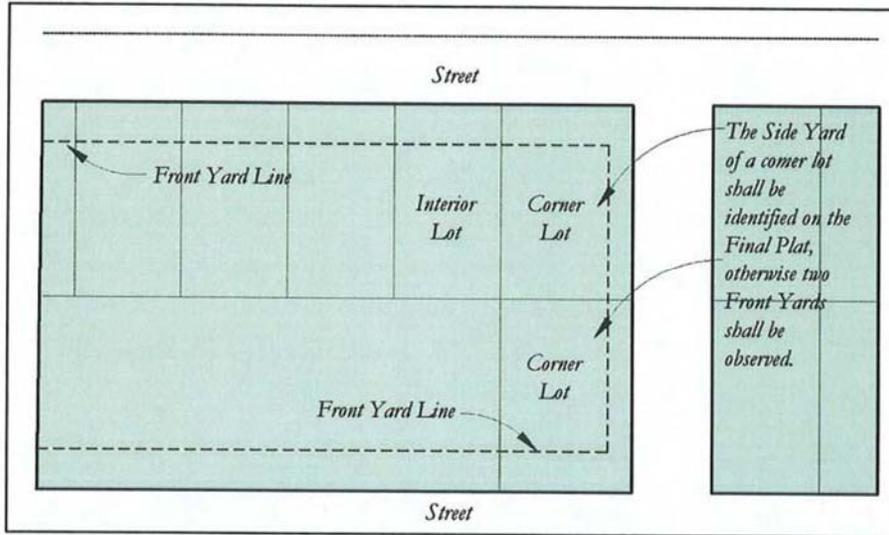


(b) *Front yard.*

- (1) *Corner and key lots.* On all key lots, the front yard setback shall be observed along the frontage of both intersecting streets. On all other lots, a front and side yard shall be provided as required by the zoning district in which the property lies. Where single-family and duplex (two family) lots have double frontage, extending from one street to another, or are on a corner, a required front yard shall be provided on both streets unless a side or rear yard building line has been established along one frontage on the plat, in which event only one required front yard need be observed. The side and/or rear yards in the case of single-family and duplex uses shall be identified and the front of the structure shall not face the side or rear yard. See Illustration 50-116-2.

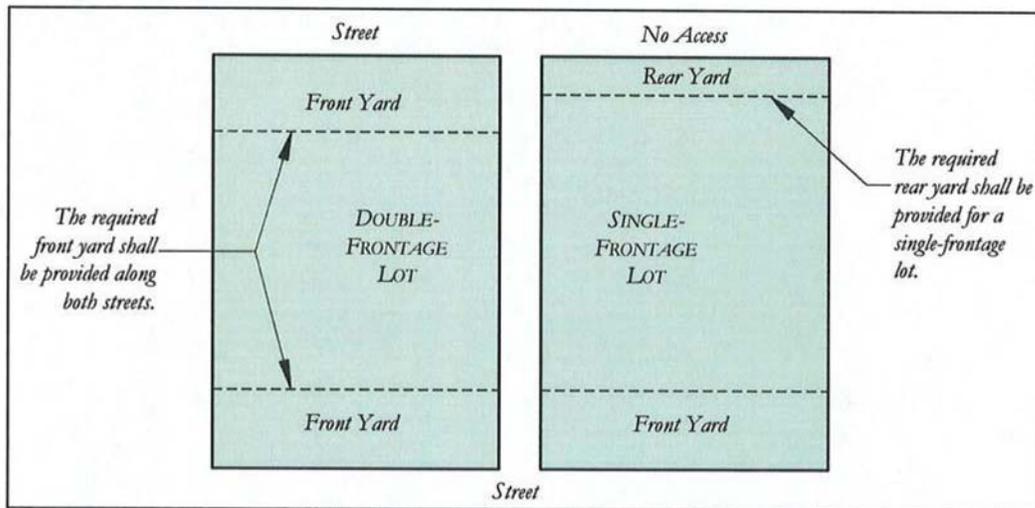
Illustration 50-116-2: Corner lots

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- (2) *Double frontage.* Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets. See Illustration 50-116-3.

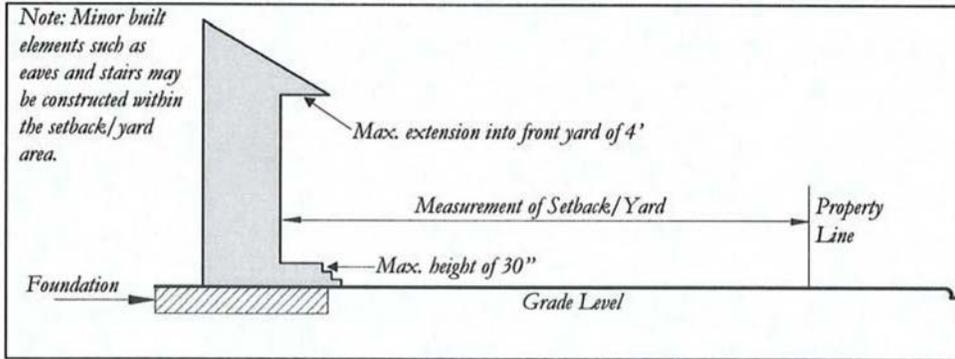
Illustration 50-116-3: Double-frontage lots



- (3) *Front yard measurement.* The front yard shall be measured from the property line to the front face of the building, to the nearest supporting member of a covered porch or terrace or to any attached accessory building. Eaves and roof extensions or a porch without posts or columns may project into the required front yard for a distance not to exceed four feet, and subsurface structures, platforms or slabs may not project into the front yard to a height greater than 30 inches above the average grade of the yard. See Illustration 50-116-4. Open porches extending into the front yard shall not be enclosed.

Illustration 50-116-4: Measuring front yard

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- (4) *Lots on curved streets.* Minimum lot widths for lots with predominate frontage on the curved radius of a street (e.g., cul-de-sac or "eyebrow" portion of a street) shall be measured as the linear distance of the curved front building line, and shall be shown on the subdivision plat. Lot widths for all lots shall be as set forth in the respective zoning district for each lot.
 - (5) *Gasoline service station pump islands.* Gasoline service station pump islands and related canopy posts that parallel a public street shall be located a minimum of 25 feet to the property line adjacent to a public street. For pump islands that are perpendicular or diagonal to a public street, the setback shall be 30 feet in order to prevent vehicles stacking out into the street while waiting for a pump position. The actual canopy itself may encroach up to four feet into the required setback, provided no posts or vertical structures encroach.
 - (6) *Rights-of-way.* Where a right-of-way line has been established for future widening or opening of a street or thoroughfare, upon which a lot abuts, then the front, side, or rear yard shall be measured from the right-of-way line.
- (c) *Side and rear yards.*
- (1) *Projections.* Every part of a required side and rear yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, and other architectural features not to exceed 12 inches into the required side or rear yard, and roof eaves projecting not to exceed 24 inches into the required side or rear yard. Air conditioning compressors and similar equipment are permitted in the side or rear yard. Open porches extending into a side or rear yard shall not be enclosed.
 - (2) *Future rights-of-way.* Where a future right-of-way line has been established for future widening or opening of a street or thoroughfare, upon which a lot abuts, then the front, side, or rear yard shall be measured from the future right-of-way line.
- (d) *Special requirements.*
- (1) *Residential districts.* For all residential districts, OT and MU Districts, and PD Districts allowing mixed uses, the following shall apply:
 - a. *Use of RVs, travel trailers, and motor homes.* Recreational vehicles, travel trailers or motor homes may not be used for on-site dwelling purposes.
 - b. *Perimeter fencing.* Electrical fencing and barbed wire is prohibited as perimeter fencing except for containment of farm animals on parcels of one or more acres.
 - c. *Setbacks for garages.* Single-family homes with side-entry garages where lot frontage is only to one street (not a corner lot) shall have a minimum of 20 feet from the door face of the garage or carport to the side property line for maneuvering. The minimum setback from any garage door to a street or alley right-of-way line shall also be 20 feet.
 - d. *Swimming pools.* Swimming pools shall conform to city adopted ordinances.
 - e. *Nonresidential uses and structures in residential districts.* A site plan (see section 50-36) shall be required for any nonresidential use (e.g., school, church, child care center, private

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recreation facility, etc.) within a residential zoning district. Any nonresidential use which may be permitted in a residential zoning district shall conform to the O Office District standards, unless otherwise stated in this chapter or in an ordinance establishing a PD District.

- f. *Elements permitted to extend above height limitations.* For all residential zoning districts except the AG District, cooling towers may extend for an additional height not to exceed 50 feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, ornamental cupolas, city or school district buildings, and institutional buildings may be approved to exceed the height limit at the time the city reviews the applicable required plan.
 - g. *Refuse facilities in the MF and MHP Districts.* Refuse containers shall be located no closer than 30 feet to any adjacent single-family property, shall be located so as to provide safe and convenient pickup by refuse collection agencies, and shall be screened in accordance with section. (See Illustration 50-115-1 within this chapter for refuse container enclosure diagrams).
 - h. *Other regulations may apply.* Other regulations may be established by the individual residential district, article III of this chapter and by other regulations within this development standards part of the zoning ordinance. In any case in which regulations conflict, the more stringent standards shall apply.
- (2) *Nonresidential districts.* For all nonresidential zoning districts, the following shall apply:
- a. *Temporary outdoor sales.* Temporary outdoor retail sales, excluding those uses in the use charts (section 50-82) with normal outdoor sales such as automobile lots, which involve the outside display of merchandise and seasonal items (refer to the section 50-2, definitions), shall be limited to the following:
 - 1. Shall not be placed/located more than 30 feet from the main building in GR, and C Districts, and not more than 12 feet from the main building in the Old Town area.
 - 2. Shall not occupy any of the parking spaces that are required by this chapter for the primary uses of the property (except on a temporary basis only, which is a maximum of 30 days per display and a maximum of two displays per calendar year).
 - 3. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or off site, in any way.
 - 4. Shall not extend into public right-of-way or onto adjacent property.
 - 5. All outside display items shall be removed at the end of business each day (except for large seasonal items such as Christmas trees).
 - 6. All merchandise shall be displayed in a neat, orderly manner, and the display area shall be maintained in a clean, litter-free manner.
 - b. *Temporary seasonal sales.* Temporary seasonal sales shall be limited to the following:
 - 1. Are allowed in the GR, C, and OT and MU Districts.
 - 2. May occupy the parking spaces that are required by this chapter for the primary uses of the property for seasonal sales on a temporary basis only, which is a maximum of 30 days per display of seasonal materials and a maximum of two displays per calendar year, provided parking is adequate and not overloading the streets or adjacent properties.
 - 3. Shall not pose a safety or visibility hazard, nor impede public vehicular or pedestrian circulation, either onsite or off site, in any way.
 - 4. Shall not extend into public right-of-way or onto adjacent property.

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5. All merchandise shall be displayed in a neat, orderly manner, and the display area shall be maintained in a clean, litter-free manner.
- c. *Outside storage.* Outdoor storage shall be limited to the following:
1. Is prohibited in O District.
 2. Is permitted in the GR, OT and MU and C Districts with certain standards outlined in the zoning district.
 3. Is permitted in the Industrial District.
 4. Shall be located behind the front building line and observe all setback requirements for the main structure or building.
 5. Shall be visually screened from any public street or adjacent property with a minimum six-foot solid wall or fence.
 6. Note: Outside storage is not outdoor sales; see definitions in section 50-2
- d. *Temporary storage containers.* Temporary storage containers shall be limited to the following:
1. Are prohibited in O and OT and MU Districts, except in accordance with c. below.
 2. Are allowed in GR, C and I Districts provided they do not occupy required parking or loading areas and is behind required setbacks and not contained in a front or side setback adjacent to a street.
 3. May be used in all nonresidential districts on a temporary basis during construction while a valid permit exists. If the business is closed or limited during construction, the containers may occupy required parking.
- e. *Use of RVs, travel trailers, and motor homes.* Recreational vehicles, travel trailers or motor homes may not be used for nonresidential purposes.
- f. *Elements permitted to extend above height limitations.* Cooling towers may extend for an additional height not to exceed 50 feet above the average grade line of the building. Water stand pipes and tanks, church steeples, domes and spires, ornamental cupolas, city or school district buildings, and institutional buildings may be approved to exceed the height limit at the time the city reviews the applicable required plan.
- g. *Other regulations may apply.* Other regulations may be established by the individual residential district, article III of this chapter and by other regulations within this development standards part of this chapter. In any case in which regulations conflict, the more stringent standards shall apply.
- (e) *Communications antennas and support structures/towers.* The following requirements shall apply to communications antennas and support structures/towers:
- (1) *Applicability.*
- a. These regulations apply to all commercial and amateur antennae and support structures, unless exempted in subsection (e)(1)b of this section.
 - b. Direct broadcast satellite reception, multi-channel multi-point distribution (as defined by the FCC), television reception antenna, and amateur radio antennae meeting the following requirements do not require a permit unless mounted on a pole or mast that is 20 feet or more in height:
 1. In any zoning district, antennae that are one meter (i.e., 39 inches) or less in diameter;
 2. In a nonresidential zoning district, antennae that are two meters or less in diameter;
 3. In any zoning district, antennae designed to only receive television broadcasts;

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4. In any zoning district, amateur radio antennae concealed behind or located upon or within attics, eaves, gutters or roofing components of the building; and
 5. In any zoning district, amateur radio ground-mounted whips and wire antennae.
- c. Support structures or antennae legally installed before the effective date of the ordinance from which this chapter is derived are not required to comply with this chapter, but must meet all applicable state, federal and local requirements, building codes and safety standards.
- (2) *Special definitions.* For the purpose of this section, the following special definitions shall apply:

Antenna, microwave reflector, wireless communication, and antenna support structure means an antenna is the arrangement of wires or metal rods used in transmission, retransmission and/or reception of radio, television, electromagnetic or microwave signals (includes microwave reflectors/antennae). The term "microwave reflector" means an apparatus constructed of solid, open mesh, bar-configured, or perforated materials of any shape/configuration that is used to receive and/or transmit microwave signals from a terrestrial or orbitally located transmitter or transmitter relay. Microwave reflectors are also commonly referred to as satellite receive only earth stations (T.V.R.O.S.), or satellite dishes. The term "antenna support structure" includes any tower, mast, pole, tripod, box frame, or other structure utilized for the purpose of supporting one or more antennae or microwave reflectors. This definition specifically includes towers (radio, television, microwave, wireless, etc.), mobile antennas, and any type of similar structure that may be temporary.

Antenna (commercial) means an antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain (e.g., commercial broadcasting, cellular/wireless telecommunications, etc.). A satellite dish antenna that exceeds six feet in diameter shall also be considered as a commercial antenna.

Antenna (non-commercial/amateur) means an antenna or antenna support structure used for the purpose of transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use and not for the purpose of operating a business and/or for financial gain. A satellite dish antenna not exceeding six feet in diameter shall also be considered as a non-commercial antenna.

Collocation means the use of a single support structure and/or site by more than one communications provider.

Communications operations (commercial) means the transmission, retransmission, and/or reception of radio, television, electromagnetic, or microwave signals primarily for the purpose of operating a business and/or for financial gain.

Communications operations (non-commercial/amateur) means the transmission, retransmission and/or reception of radio, television, electromagnetic, or microwave signals for private or personal use, and not for the purpose of operating a business and/or for financial gain.

Height means the distance measured from the finished grade of the lot/parcel to the highest point on the support structure or other structure, including the base pad and any antennae.

(3) *General requirements.*

- a. Antennae and support structures may be considered either principal or accessory uses.
- b. Antenna installations shall comply with all other requirements of this chapter and the city Code of Ordinances with the exception of those specifically cited within these regulations.
- c. No commercial antenna support structure shall be closer to any residential district boundary line or residential dwelling than a distance equal to twice the height of the support structure. Such setback/distance shall be measured as the shortest possible

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distance in a straight line from the structure to the closest point of a residential district boundary line or residential dwelling. Setbacks from residentially zoned property do not apply to antennas attached to utility structures that exceed 50 feet in height, or to antennae placed wholly within or mounted upon a building (refer to subsection (c) of this section).

- d. No amateur or commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations or support wires or appurtenances shall be located within any required setback area for the front, side or rear yards.
- e. All antenna and support structures must meet or exceed the current standards and regulations of the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), and/or all other applicable federal, state and local authorities. If those standards change, then the owner/user of an antenna or support structure must bring the antenna/structure into compliance within 180 calendar days or as may otherwise be required by the applicable regulating authority.
- f. A building permit is required to erect or install an antenna, antenna support structure and related structures/equipment, unless the particular antenna is exempt from these regulations (see subsection (e)(3)b of this section). All installations shall comply with applicable federal, state and local building codes and the standards published by the electronic industries association. Owners/users shall have 30 calendar days after receiving notice that an installation is in violation of applicable codes in order to bring it into full compliance.
- g. Antennae (amateur or commercial) shall not create electromagnetic or other interference with the city's and the county's radio frequencies and public safety operations, as required by the FCC. In accordance with FCC regulations, antennae also shall not interfere with radio or television reception of nearby property owners. In no manner shall the use of such equipment infringe upon adjoining property owners.
- h. No antenna or support structure shall be located so as to create a visual obstruction within critical visibility areas (such as at street intersections or where a private driveway enters a roadway) or a traffic safety problem.
- i. Safeguards shall be utilized to prevent unauthorized access to an antenna installation (e.g., on a water tower or utility structure, a free-standing installation, etc.). Safeguards include certain devices identified/recommended by the manufacturer of the antenna or support structure, a fence, a climbing guard, or other commercially available safety devices. Climbing spikes or other similar climbing device, if utilized, shall be removed immediately following use.
- j. Temporary antenna shall only be allowed in the following instances:
 1. In conjunction with a festival, carnival, rodeo or other special event/activity;
 2. In case of an emergency (e.g., severe weather, etc.) or a news coverage event;
 3. When needed to restore service on a temporary basis after failure of an antenna installation. The city must be notified within 72 hours of the placement of a temporary antenna. If the temporary antenna is to be needed for more than seven calendar days, then the owner/user must apply for and acquire a permit for the temporary installation on or before the eighth day following initial placement of the antenna.
- k. Collection is greatly encouraged by the city.
 1. All new support structures over 50 feet in height shall be constructed to support antennae for at least two carriers, unless the structure is an alternative or stealth design, or the support structure is replacing an existing utility structure or light standard. Sufficient area for associated structures and equipment shall also be provided.

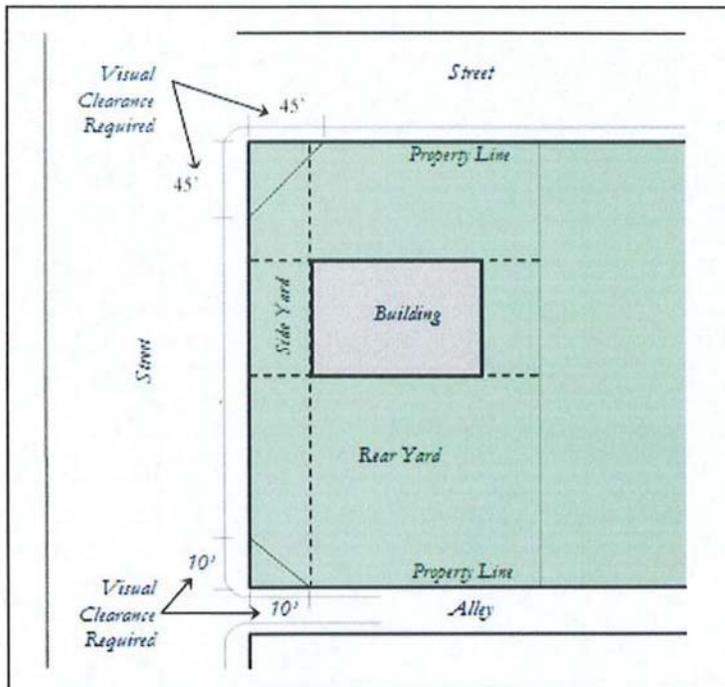
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2. A support structure which is modified or reconstructed in order to accommodate collection shall be of the same type, design and height as the existing structure, and it may be moved on the same property within 50 feet of its original location provided that it is not moved any closer to residentially zoned property (if the structure was allowed by CUP, then its new location shall be within the physical/land boundaries of the CUP). The original (i.e., former) support structure shall be removed from the property within 30 calendar days following completion of the new structure.
 3. Where an additional antenna is to be attached to an existing support structure that already has an antenna mounted upon it, the new antenna shall comply with and be compatible with the design of the existing antenna on the collocated structure.
- l. Support buildings and equipment storage areas/buildings shall be screened from public view if mounted on a rooftop. When ground mounted, they shall meet all applicable front, side and rear yard setback requirements of the applicable base zoning district.
 - m. Satellite dishes, television antennas, and other similar antennas shall be permitted on the roof of a building, as long as satellite dishes do not exceed one meter (39 inches) in diameter and antennae do not extend over ten feet above the roof of the building. A letter certifying the roof's/building's structural stability shall be written and sealed by a registered architect or engineer, and shall be submitted to the building official, or his designee, prior to any approval of a roof-mounted antenna. Roof-mounted antenna that comply with the provisions of these regulations do not require additional yard setbacks or setbacks from residential areas or dwellings.
 - n. Only one amateur antenna/support structure shall be permitted per residential lot, except that a maximum of two satellite dishes may be allowed if both units are no larger than one meter (39 inches) in diameter (only one allowed if over one meter in diameter).
 - o. All commercial signs, flags, lights and attachments other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and/or FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be placed upon light standards that are altered or replaced in order for them to serve as antenna support structures provided that said lights are not commercial (i.e., for-profit) in nature, and provided that said lights are placed/replaced as the same size, configuration, number of bulbs, degree of luminance, etc. as they previously existed prior to support structure modification/replacement.
 - p. Any publicly owned antennae or antenna support structures are exempt from regulation by this chapter (e.g., public safety communications, etc.).
 - q. Location requirements for commercial antennas. A commercial antenna support structure not allowed by right through another provision of this section may be allowed in any zoning district by conditional use permit (CUP) provided that it shall be no closer than a distance equal to twice the height of the support structure to any residentially zoned lot and/or to any residential use. Such setback shall be measured as the shortest distance in a straight line from the structure to the closest point of any residential zoned lot other than the lot upon which the support structure is located.
- (f) *Sight visibility.* The following requirements shall apply to sight visibility:
- (1) Visual clearance shall be provided in all zoning districts so that no fence, wall, architectural screen, earth mounding, landscaping or other feature obstructs the vision of a motor vehicle driver approaching any street, alley, or driveway intersection. Whenever an intersection of two or more public street rights-of-way occurs, a 45-foot triangular visibility area in accordance with chapter 38, article II shall be created and apply to landscaping, fences, walls, signs, earthen berms and other features. Any features within the triangular visibility area shall be in accordance with such requirements and provide unobstructed cross-visibility at a level between 36 inches and 15 feet. Trees may be permitted in this area in accordance with section 50-113 provided they are trimmed in such a manner that no limbs or foliage extend into the cross-

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visibility area. In addition to the 45-foot visibility triangle at the intersection of two streets as required in chapter 38, article II, the following visibility triangular areas meeting the same requirements are required:

Illustration 50-116-5: Visual clearance



- a. The areas of property on both sides of the intersection of an alley accessway and public right-of-way shall have a triangular visibility area with two sides of each triangle being a minimum of ten feet in length from the point of intersection and the third side being a line connecting the ends of the other two sides.
- b. The areas of property located at a corner formed by the intersection of a private driveway onto a public road shall have a triangular visibility area with two sides of each triangle being a minimum of 20 feet in length along the right-of-way lines (or along the driveway curbline and the road right-of-way line) from the point of the intersection and the third side being a line connecting the ends of the other two sides. (See Illustration 50-116-5 of this chapter).
- (2) Landscaping, except required grass and low ground cover, shall not be located closer than three feet from the edge of any accessway pavement on arterial or collector streets as shown on the adopted comprehensive plan.
- (3) Shrubs and plant materials that are typically less than 24 inches in height at maturity may be located within sight visibility areas provided that they are kept maintained at a maximum height of 24 inches.
- (4) A limited number of single-trunked trees having a clear trunk (i.e., branching) height of at least eight feet may be located within sight visibility areas, provided that they are trimmed in such a manner that no limbs or foliage extend into the cross-visibility area defined in this section, and provided that they are spaced and positioned such that their trunks will not produce a visibility inhibiting, "picket-fence" effect when they attain mature size.
- (g) *Garage or yard sales.* In connection with the residential or institutional occupancy of a structure, the tenants may offer their personal belongings and household effects for sale to the general public

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provided that such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.

- (h) *Temporary structures and uses.* Any temporary use, structure or building permitted under this chapter shall comply with all applicable development standards and setback requirements in the district in which the temporary use, structure or building is located, unless otherwise specified herein.
- (1) Temporary construction office. Temporary construction offices, including trailers and modular offices, are permitted on or adjacent to any site during which construction is undertaken pursuant to a valid building permit. Temporary construction offices may be occupied for office or security purposes, or may be used for storage of equipment and material used during construction of the site. Upon completion or abandonment of construction or expiration of the building permit, the temporary construction office shall be removed at the owner's expense.
 - (2) Temporary real estate field office. Temporary real estate sales offices, including trailers and modular offices, shall be permitted in accordance with section 50-82, use regulations when incidental to a residential development. Temporary sales offices shall be located and developed in compliance with the following standards:
 - a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold or leased; and on a property whereon a recorded plat exists and a valid permit for construction has been issued;
 - b. Parking shall be permitted on the lot in which the office is located or on an adjacent lot;
 - c. Permitted temporary real estate sales offices shall not be used as any type of dwelling;
 - d. Use of the temporary real estate sales office for the sale or lease of residential sites or projects located off-site is prohibited; and
 - e. All temporary real estate sales offices shall be removed within 30 days after the sale of the last dwelling unit in the development, or within 30 days after 12 continuous months of no construction or sales activity.
- (i) *Model home (including sales office).* Model homes with or without a sales office shall be permitted in accordance with section 50-82, use regulations when incidental to a residential development. Model homes shall be located and developed in compliance with the following standards:
- (1) The model home shall be located within the boundaries of the subdivision or tract of land where the real property to be sold or leased is situated.
 - (2) Parking shall be permitted on the lot in which the model home is located or on an adjacent lot.
 - (3) The model home shall be designed as a permanent structure and shall comply with the provisions of this chapter, all applicable building codes of the city, and state law.
 - (4) All exterior lighting shall be limited to typical household exterior lighting. The use of commercial grade ground mounted floodlights and search lights are prohibited.
 - (5) The model home shall cease operation within 30 days after the sale of the last dwelling unit in the development, at which time the model home shall be vacated and a building permit issued to return the model home to its intended residential use only.
 - (6) There shall be no permanent use of temporary buildings or temporary structures.
 - (7) Temporary signage and flagpoles advertising the sale of property within the residential development shall not be prohibited provided they comply with the sign ordinance, are permitted, and are maintained at least ten feet away from all lot lines.
 - (8) Temporary buildings shall be permitted for denominational schools and public school districts with the following conditions:
 - a. Denominational schools and public school districts may have temporary buildings for a time period not to exceed two years for each temporary building.

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- b. Denominational schools and the public school district shall not place a temporary building on any property before receiving approval by city council. Prior to city council review, each building must be inspected by an independent building inspector. The cost of the inspection shall be borne by the applicant.
- c. City council may approve by resolution two year extensions for each temporary building. Prior to issuance of any extension, each building must be inspected by an independent building inspector. The cost of the inspection shall be borne by the applicant.
- d. The use of the temporary buildings must be to further the core mission of the denominational school or public school district.
- e. A temporary building may only be placed on an active school campus where students are in attendance.
- f. Each temporary building must be located on property owned by the denominational school or public school district.
- g. A temporary building shall be screened by landscaping, as approved by the city manager or his designee.

(Ord. No. 2008-01, § 43, 2-4-2008; Ord. No. 2010-09, § 3, 5-3-2010; Ord. No. 2012-30, § 2, 9-17-2012; Ord. No. 2013-14, § 2, 2-9-2013)

Sec. 50-117. Home occupation regulations.

- (a) *Purpose.* Standards for home occupations are set forth to minimize annoyance and inconvenience to neighboring property owners within residential areas. These standards are intended to allow reasonable and comfortable enjoyment of adjacent and nearby property by their owners and by occupants of neighboring residential dwellings, while providing opportunities for the pursuit of home-based businesses. For the purposes of these regulations, a home occupation is described as an occupation that is carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises only, which is clearly incidental and secondary to the use of the premises for residential purposes, and which can be conducted without any significantly adverse impact on the surrounding neighborhood.
- (b) *Special provisions for home occupations.*
 - (1) Home occupations shall be permitted as accessory uses in single- and two-family residential zoning districts, provided that they comply with all restrictions herein.
 - (2) The occupation shall produce no alteration or change in the character or exterior appearance of the principal building from that of a residential dwelling, shall have no signs and performance of the occupation activity shall not be visible from the street.
 - (3) Such use shall be incidental and secondary to the use of the premises for residential purposes, and shall not utilize floor area exceeding 25 percent of the combined gross floor area of dwelling unit and any accessory buildings that are used for the home occupation. In no case shall the combined floor area utilized for a home occupation exceed 500 square feet.
 - (4) Not more than two patron or business-related vehicles shall be present at one time.
 - (5) The operation of such an occupation shall be between the hours of 8:00 a.m. and 6:00 p.m. for outdoor activities, and between 8:00 a.m. and 10:00 p.m. for indoor activities.
 - (6) The occupation activity shall not increase vehicular traffic flow beyond what normally occurs within a residential district, and shall not require regular and frequent deliveries by large delivery trucks or vehicles with a rated capacity in excess of 1½ tons, according to the manufacturer's classification.
 - (7) There shall be no outside storage, including trailers, or outside display related to the home occupation use.

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- (8) No mechanical or electrical equipment shall be employed on the premises other than that which is customarily found in a home environment, and that which is customarily associated with a hobby or avocation which is conducted solely for pleasure and not for profit or financial gain.
 - (9) The home occupation shall not generate noise, vibration, glare, fumes/odors, heat or electrical interference beyond what normally occurs within a residential district.
 - (10) The occupation shall not require the use of chemicals on the property that are obnoxious or hazardous to the welfare of the neighborhood.
 - (11) The home occupation shall not involve the use of advertising signs or window displays, or any other device that calls attention to the business use of the premises through audio and/or visual means.
 - (12) The occupation shall not offer a ready inventory of any commodity for sale on the premises (e.g., arts and crafts items, handmade clothing, etc.).
 - (13) The occupation shall not be harmful or detrimental to the health, welfare and safety of the neighborhood, nor shall it interfere with the comfortable enjoyment of life, property and recreation by residents of the area.
- (c) *Applicability of other regulations.* Home occupations shall also be subject to any and all other provisions of local, state and/or federal regulations and laws that govern such uses.
- (d) *Uses allowed as home occupations.* Subject to the provisions of subsection (b) of this section, home occupations may include the following uses:
- (1) Office facility of an accountant, architect, landscape architect, attorney, engineer, consultant, insurance agent, realtor, broker, or similar profession;
 - (2) Author, artist or sculptor;
 - (3) Dressmaker, seamstress or tailor;
 - (4) Music/dance teacher, or similar types of instruction, provided that instruction shall be limited to no more than four pupils at a time;
 - (5) Individual tutoring and home schooling;
 - (6) Millinery;
 - (7) Office facility of a minister, rabbi, priest or other clergyman;
 - (8) Home crafts, such as rug weaving, model making, etc;
 - (9) Office facility of a salesman, sales or manufacturer's representative, etc., provided that no retail or wholesale transactions or provisions of services are personally and physically made on the premises;
 - (10) Repair shop for small electrical appliances, cameras, watches/clocks, and other small items, provided that the items can be carried by one person without using special equipment, and provided that the items are not equipped with an internal combustion engine;
 - (11) Food preparation establishments such as cake making/decorating or catering, provided that there is no on-premises consumption by customers, and provided that all aspects of the business comply with all state and local health regulations;
 - (12) Registered family homes (see definition in section 50-2), in compliance with applicable state laws, which are incorporated herein by reference, with no more than six children;
 - (13) Swimming lessons and water safety instruction, provided that such instruction involves no more than four pupils at any one time; and
 - (14) The building official or his designee shall have discretion to examine all the above factors and any supplemental information provided by the applicant and make a determination of whether the size, scale and effect on neighboring properties and authorize or deny a particular home

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occupation. Appeals of his decision shall be to the board of adjustments upon proper notice to adjacent property owners.

- (e) *Home occupation uses not classified.* Any use that is not expressly allowed by subsection (d) of this section is considered prohibited, unless and until such use is classified by amendment to this chapter.

(Ord. No. 2008-01, § 44, 2-4-2008)