



August 22, 2024

JOINT CITY COUNCIL & PLANNING & ZONING WORK SESSION

Notice is hereby given of a Joint Meeting and Work Session of Nacogdoches City Council and the Nacogdoches Planning and Zoning Commission, to be held on the above date at the C.L. Simon Recreation Center, 1112 North Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to address the City Council about items listed on the agenda, as well as on matters that are not specifically listed on the agenda. Alternatively, a citizen may address the City Council about an agenda item when the item comes up for consideration during the meeting. In order to address the City Council, please complete the Public Comment Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, the City Council will not discuss, deliberate, or make any decisions on items not listed on the agenda. Comments are limited to 3 minutes per person.
4. WORK SESSION. Items included under Work Session are intended to provide opportunities for City Council to study and discuss various issues, and gather and analyze information. Council will not take formal action on matters presented at a work session, but may direct staff to place items relating to the matter on future agendas for formal consideration.
 - A. Review of proposed Text Amendments for the City of Nacogdoches Code of Ordinances Chapter 118 concerning definitions, non-conforming parcels and land use types. Planned Developments and corrections to the Zoning Board of Adjustment process and procedures; Chapter 46 - Regarding CBD and vape shops; and Chapter 78 - On-premise signs for "feather signs", commonly referred to as "teardrop" signs. (Planning Consultant)
5. EXECUTIVE SESSION. Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
 - A. Consultation with City Attorney - Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or

contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, clearly conflicts with this chapter. (City Attorney)

6. ADJOURN.



Rhonda Lewis
City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at (936) 559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on August 19, 2024, at 5:30 p.m., and remained posted until the meeting convened.

Rhonda Lewis, City Secretary

PRESENTER: Nathan Dietrich, Planning Consultant

ITEM/SUBJECT: Review of proposed Text Amendments for the City of Nacogdoches Code of Ordinances Chapter 118 concerning definitions, non-conforming parcels and land use types. Planned Developments and corrections to the Zoning Board of Adjustment process and procedures; Chapter 46 - Regarding CBD and vape shops; and Chapter 78 - On-premise signs for "feather signs", commonly referred to as "teardrop" signs. (Planning Consultant)

SUMMARY/BACKGROUND: This is the second (2nd) joint meeting related to the proposed text amendments as described above.

We will use the spiral-bound notebook to reference "WHY" we are asking for these amendments. The assumption is that all have read these details, so we do not have to make another presentation as to the WHY. Our goal is to be effective and efficient but still provide time for this important discussion. However, based on the responses, staff believes the best way to move forward would be to categorize these amendments into categories of which ones we are moving forward in the immediate future. This will continue the momentum to get some of these important changes on the books (especially if there were no questions), but acknowledge the ones that need further scrutiny.

I have created three (3) documents. First is the summary as to how we are proposing organization. The second Excel document is the spreadsheet of the questions posed by the respective Board or Commission, referenced page number in the WHY document, what the comment/question was, the Staff's response, and the suggested category of next steps to follow. Lastly, the final document is the conclusion summary, sorting each respective change and the recommended next step made by staff. In the staff's eyes, this continues the conversation without necessarily starting over.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Nathan Dietrich, Planning Consultant
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(936) 559-2574

ATTACHMENTS:

1. Introduction to Proposed Ordinance Changes (Civic Clerk Attachment)
2. Excel Spreadsheet

3. Conclusion and Next Steps
4. CC/P&Z Workshop Packet- 05.07.2024

Introduction to Proposed Ordinance Changes

The purpose of our meeting today is to discuss a series of proposed changes to the city ordinance, focusing on straightforward updates that enhance clarity, context, and definitions. Our intention in selecting these sections for revision was to address areas where improvements could be made with minimal disruption—essentially, the "low-hanging fruit" that can streamline our processes.

It is important to emphasize that these changes are not intended to diminish the authority of any board or commission. Instead, our goal is to address common concerns related to the complexity of existing procedures, unnecessary steps, and lingering "because we've always done it this way" practices that may no longer serve our community effectively. We are here to help make these processes more efficient and understandable, not to alter the fundamental roles of our boards.

I want to make it clear that these proposed changes are a collaborative effort, with input from city staff and stakeholders. Many of these revisions stem from either staff recommendations or feedback we've received on how current procedures are interpreted, which often lack the rationale they once had.

I appreciate the active participation and feedback we received following our Joint Workshop in April. If you haven't yet shared your thoughts, please do so today. We've categorized the proposed changes based on the level of feedback and discussion they generated:

- **Category 1:** Items that received little to no concern and are ready for review and adoption with little input or received little input.
- **Category 2:** Items that prompted some questions, which we hope to resolve, possibly today, but with further guidance during this meeting or in future meetings.
- **Category 3:** Items that sparked significant discussion and concerns, which may require additional group discussion before moving forward.

Your input is invaluable as we work together to refine and improve our ordinances.

To make this meeting efficient and effective, please re-review the packet (spiral bound handout given at the May meeting) and we will use the Amendments Workshop handout as our guide. Additionally, I created an additional spreadsheet of what I call the WHY. These are the comments that staff received by either P&Z or Council and are formatted showing the topic, page number cited, the Council/Board/Commission comment, Staff's Response, and then which category the text amendment was grouped for future scheduling and next steps.

Comment Origination	Pg #	Topic/ Agenda #	Proposed comment/ Issue or Concern	Staff Response and suggested changes	What Text amendments in order
PZ	5,11	Dwelling, multiple-family	The term families is used in the definition, but doesn't R4 allow (by right)>2 unrelated individuals to occupy a multi-family unit? If we tried to enforce the definition of family in a court of law, wouldn't the R4 take precedent? I wasn't able to find a state law that says R4 allows more than 2 unrelated persons in a single unit. Is there one? The way multi family dwelling and family is defined, how could a dwelling be occupied by three unrelated students (which happens frequently and needs to be allowed somewhere).	This amendment was simply to add a definition for duplex, add the definition of public right of way and street to the zoning ordinance for clarity. Additionally, in efforts to make things easier for users of our ordinance we are requesting to re-org all of the residential dwelling unit types together vs. being spread-out in the definitions area of the ordinance utilizing dwelling as the common theme. We do agree with that this definition should change and i thnk we should add this to the list of itmes we could bring back to the group for a bigger debate/discussion since the outcome has bigger consequences. There is an argument why is it a problem if there are unrelated group of people living like a family unit living under one roof. Standard definitions of what a family looks like is being second guessed nationally, especially when affordable housing is being discussed. I agree a solution to this conundrum would be helped by adding the wording "or unrelated individuals" after "three or more families" in this definition, which could help in the multi family arena but when it comes to single family use...	1
PZ	10	Rehab care facility/institution	Would the term...."or criminal conduct" be subject to further restrictions in the SUP? Such as "no sex offenders"	Focus of this text amendment was to give the City a more robust types of multi person care,housing and rehabilitation options. Previously the City had 5 types proposed change to 10 types in order to better define the differences in the uses. When we bring these back we will not only review the final definitions but also the locations of what zoning district they can be placed. These are fairly standard types per comparison. This brings up a good point that I think should be governed by the State's definitions to these land uses. I think we need to make sure that the definitions and related uses are updated and need to be careful of protective classes and we are not putting our committees at risk when discussing these sensitive matters. Issues of policing those conditions is a real problem. There can be too much involvement and we need to be aware of that . There are other agency and authority in this process and I think that we make sure that these other steps in the process are being met since this kind of oversight is already being done. Reviewing the State definitions and some of the other hoops that these folks go through.	

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CC	11	dwelling unit	defined as occupied or intended to be occupied by one family; should say enclosed living quarters unit, with kitchen, sleeping and restroom facilities for common use by occupants. (Take out single family)	Happy to change however the Dwelling Unit, family are linked this way. I think that this has a larger discussion which would discuss the possible changing the definition of family to increase to three maybe four non-related people in the dwelling unit? Look to other means and methods in order to police (some already in place, might need to consider the means in the way that it is enforced focus our efforts on the enforcement. Lots of rules, but only can be enforced when the problem is noticed. Please view definition of the family. Many other cities with similar issues like San Marcos have the same definitions. Les focus on the re-org and new definitions for now and these bigger issues at a later date.	1
PZ	11	Sheltered care	Is the term "special needs" defined somewhere?	Not that I can find. We can add Definition "Special Needs - Or I think as we have already stated under 118-(1)(b) any undefined term shall have the customary meaning assigned to the dictionary defined as "Any physical, emotional, behavioral or learning disability that causes and individual or group of individuals to require additional or specializes services or accommodations". We are open to whatever solutions that you would like to do, this is an option.	3
CC	12	dwelling multifamily	This has a contradiction. It says it has 3 or more family units; also says may include duplexes. ? Better definition is any dwelling in R4 zone or above/ If it's a duplex in an R4 it's multifamily--you can't stop it from being multifamily.	Agreed, however, honestly I think this means if and when a rental community or duplexes is built or a horizontal type of multi-family is built with duplexes as an option. I agree this could be confusing if you are thinking that there are only designated home built for specific districts.	1
CC	12	dwelling single family	It should say a single dwelling unit on a lot located in an R1, R2 or R3 zone	This is true, but a single family homes can be built in R-4 so I do not want to confuse. (i.e. horizontal apartments rental communities)	1
CC	12	dwelling duplex	It should say 2 dwelling units in one structure and located in lot in R3 zone; All of these are more workable definitions because they are tied to the zoning, which ultimately determines the number of families allowed. It makes no difference what something is designed for.	Agreed, however, there are more options than the one that you are giving. The number of occupants and ownership of the parcel really drives this. Trying to keep these as definitions so there is limited conflict. This is true, but duplexes can be built in R-4 so I do not want to confuse. (i.e. horizontal apartments rental communities) We could add illustrations and further descriptions in order to distinguish? If this is the direction then we can bring this back at a later date. Regarding the definitions we would like to keep the same and widen the discussion in the future. Again the real impetus for this text change was the re-org and additional definitions that were lacking.	1

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CC		Banner signs	It's good to regulate banners since they wear out and fade so quickly. I'm not sure about the FOUR times a year part of the ordinance. Four times a year for a banner permit with each permit lasting 30 days will lead to spill over of signs not being removed and code enforcement overworked playing catchup trying to take down all the out of permit signs. I think twice a year for a banner permit is plenty. Also, one company can just apply for a different banner permit every month and bypass the 30 day rule by putting a new sign on the same property 50 feet over and taking the old one down. At least that is the way I read the ordinance. When you say "each occupancy" does that mean for each "apartment" being advertised, or for each company placing the banners?	Agreed but policing this out weighs the Con's. This all comes down to preference. We tried to exhaust all scenarios and again proposed to CE which they agreed to the proposed wording. The goal was to be fair for all. Each occupancy could have up to 4 feather signs a year for 30 days each. New software Camino will help in policing and making sure that people do not find the loop holes Move forward and tweak if needed.	1
PZ	37	Feather signs	Are these currently prohibited? How does code enforcement currently deal with these? They are a blight. How much of a burden would this addition be on CE? So our choice is to regulate them as suggested or include an outright prohibition on them?	Staff contacted CE regarding these types of signs and liked the suggested changes and limitations on these types of signs. They were at the initial meeting to show support and would explain that these changes would help with enforcement. To answer the question on is it "either/or scenario" the answer is whatever you would like to decide. This comment came up by a City council member and there was interest in suggesting a change the sign ordinance to add these in as a specific sign type and limit there overall use in the community.	1
CC	47	feathered signs	I think they should be restricted to major arteries, not allowed in neighborhoods or primarily residential areas. Help! Definitely NOT on Garner street.	Appreciate the input. This can be suggested and written in the final draft for the next meeting if that is what you would like to see. The change to the ordinance was simple to include a definition of the sign type and then where they are prohibited. Final new section was to give the exception of when, where, and how many they can be used including the overall size and height limitation.	1

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PZ	68	Parking	I strongly support item 2 - minimum allotment for parking in front yard of not more than 50%. Would this become a code violation on existing homes with too much driveway or would they be grandfathered in? Also, I see front yards covered with vehicles that are on the grass, not a driveway...is that currently a code violation? If not, this would make that a violation right? Also want to confirm that item (4) on page 71 refers only to residential properties.	Yes, I agree. However, this will include an update to the where parking is allowed. Currently the ordinance states that there is no required parking allowed in the defined front yard (defined as from building line forward to the property line). Looking into this further if the goal is not to park on the grass and to limit the parking in all of the front yard then the wording needs to change. For example, if the goal is to remove people from parking on the grass, we need to add that the vehicle needs to be parked on an approved hard surface. Additionally, if the goal is have people park on this surface and to have two offstreet parking areas out of the front yard, difficult to enforce. none of the offstreet parking can happen in the front there may be some adjustment in the front yard definition to ensure that we are not creating a huge amount of non-conformity.	2
PZ	72	Parking	Item (5) seems to say that nonresidential can park more than 50% on front area as long as back from curb or property line. please confirm.	Yes, as illustrated in the code. Would you like an illustration in the code for example?	2
PZ	74	Top of page - empty box	Should that empty box say "multi-family"....and the ** isn't tied to single family attached is it? A little confusing. Why not just have a row for multi-family?	ayes tied to the previous page. That is a formatting issue we can have municide fix or change on the next round of changes.	1
CC	74	parking	This is very unclear.... It seems like you are saying that any dwelling unit in R4 should comply with multifamily parking requirements, but these asterisks are a bit confusing.	Yes that is correct, if built as single family then they shall have one parking requirement however, if built in R-4 regardless if having 2 off-street parking you shall conform to multifamily parking since it could be used for multifamily uses. (Logansport debate) The asterisks would be shown on the table and then at the bottom of the page explaining why the asterisk is being called out.	1
CC	91	alternative parking	To some extent this makes sense, but right now I'm not comfortable with this.... Perhaps you can send a report to us each time you make an exception, and we can bring it up if we have questions. We don't need to be involved unless there is something that appears questionable....	Ok, appreciate the feedback. Again this proposal was to make things less red tape for some small adjustments. I can respect your response that if it does not meet, then variance is needed. There are just times when the modification is so minor that it really is very inconsequential Maybe a provided solution could mean the City Planner or City ENG could agree to alternative parking plan if it was less than 5% of the need. Still needs to be filed and everything else (which provides transparency)???	3
PZ	92	Parking	Item 3 - how does applicant make APP public? Publish in Paper? How would public know?	Would not need to be published since it meets the approved direction of the Council. I think what also needs to be placed in this wording is the applicant would be able to appeal the decision of staff, not the general public. To make process transparent, giving options for some situations that staff felt they could administer and only bring bigger issues to the Variance process.	3

Comment Origination	Pg #	Topic/ Agenda #	Proposed comment/ Issue or Concern	Staff Response and suggested changes	What Text amendments in order
PZ			Item 4 - Appeal to P&Z - so either the applicant or the public can appeal the PD/Engineer decision? What happens after the appeal to P&Z? does it then go to City Council or ZBA?	No, I think what also needs to be placed in this wording is the applicant would be able to appeal the decision of staff I that would go to P&Z for this minor adjustment. No, it would not go to CC. This change would allow for these minor adjustments and changes to the process and all would be good because the City Council Would sign off on this. Mutual trust throughout the system and only bring large more complicated issues to the City Council.	3
PZ			Item 2 - covers two situations. Perhaps an "also" would clarify....after The City Planner may also require that.....	Yes, if that would help.	
PZ			Big question on this section is how is this handled now? Does it have to go to ZBA or Council for a variance?	Currently, any parking related issues would go to ZBA for appeal. This is a zoning related matter. BOA appointed to hear these sorts of things so Council does not have to.	
PZ	97	Protesting zone changes	Somewhere I thought I saw "to overturn the recommendation of the PnZ Commission" but that is wrong its if 20% of respondents were against the change. Do all protests have to be in writing? it requires 3/4 of ALL city council members. So, if one council member is not in attendance and 3 out of 4 present vote to allow the zone change, that is a failure to allow the zone change, right? (a) if a park or other public (not necessarily city owned) property comprises part of the total area in the 200-ft zone, is it included in the total?	No. P&Z still recommends regardless but there 3/4's or super majority approval vote of City council if P&Z disapprove its recommendation and then also have a supermajority approval if there is an protest that is made by 20% of either: 1)the area of the lots of land covered by the proposed change; or 2) the area of the lots or land immediately adjoin in the area covered by the proposed change and extending 200 ft from that area. (TLGC 211.006 3 (d), (e), (f)	1

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CC	102	appeal of decision	we HAVE to keep it at 90 days... you don't find out about these things until they break ground, long after approvals. Neighbors need this amount of time.	I understand your concern. However, this is a state mandated timeline. Cities can be more stringent but need to meet this as a minimum. As a reminder any change to occupancy can happen at any time and if the land use falls within the uses called out in the land use table, there will be no public awareness given. Only if there is a change to the zoning, or a request to waiver or vary from the current zoning code would there be an opportunity for neighbors to "weigh in". Actually, there has been some pretty significant changes that have already been done to make sure people are made aware of changes happening to their area: for example like the community meeting mandated by the Council prior to making SUP or zoning change to the area, posting a sign at the property, posting in the paper and city website including post cards to people within a 500 foot boundary. There are other process introductions that we could take to help make sure people are even more aware of changes but I would recommend we also take a look at the cost of these additional services. However, it is not our goal to be an enterprise fund for the City but we should at least recoup our costs and currently we are not doing that. I would say as a City you have created a lot of great changes to address this matter and now need to look at some fee changes to help in recouping costs of just doing business. Additionally changes could be Biweekly reports produced to submit to Council and posted on website to keep Council and constituents aware of happenings in the City.	3
CC	102	special exception	I don't understand how this is different from a variance, and why it's needed. I need examples and clarification.	Variance grants a property owner the ability to use their property in a way that directly contradicts local regulations (Building Lines, height, lot size). Needs to present undue hardship to allow .Special exception, are items recognized that can be waived but do not have to confirm an undue hardship to approve.I will show you. I will get so examples biggest change is that hardship is not needed to determine approval.	
PZ	104	Sec 118-132	(a) (c) capitalize City Planner?	Yes, will make the change	1
PZ	106	PDs	Sec 118-139 (2). My understanding is that P&Z has always made a recommendation, not the final determination. Please confirm. Or is this a change?	If I am understanding this correctly, there is a recommendation to change that wording to "determinations" to " recommendations"	3
CC	107	approval w conditions	only when approving? what does this mean?	Sorry, I was complicating matters, it is obvious that you only can have conditions if it approved, there would not be conditions if disapproved..	1
PZ	107	(c)(2)	This is just a more properly worded edit and doesn't change the meaning of the ordinance?	Yes,	2

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PZ	107-111	(c)(5)	Did you just move a bunch of stuff around? Or are there substantive changes?	Yes I moved around. Going back to each process essentially they were following all of the same steps. Each of these steps were being called out and restated for each process. What I did was call out all of the processes in the beginning and then associate all of the types of applications with the same steps vs calling them out individually. (Removing redundancy). I may need to add some additional verbiage in order to ensure that this is what is happening.	1
PZ	115	PD approval process	I am glad to see this simplification because many developers were rezoning to R1 to avoid the PD process and that doesn't usually result in the best use of the land/development. I would like to see "cluster zoning" and other approaches we have discussed before, added to the zoning categories so that (perhaps) a PD could be avoided altogether. Ask Juan to show you the slide show Alaina made with examples.	Yes, there will be a bit of re-education. The idea of the why the PD is requested needs to be honored otherwise it would be used as a loop hole. Further review shows that we have overlays but not real approval process in creating new ones. Something to add to the list.	3
PZ		Sec. 118-387 (1) (2) (3)	update numbering	Yes, just to confirm that I am not missing something changing the number starting at 137 forward?	1
PZ	117	(2) 2.	I have been trying to get P staff to include a location map on all figures, (including PDs) and they don't seem to be able to. Please help them fix this and I will reject any PD plan that doesn't have one. It should be standard.	There should be no reason why we could not. Actually we might be able to discuss with GIS that on the public portal adding the opportunity to create there own types of maps with a city template when it is printed.	1
PZ	117	(2) 6.	Please add "wetlands" or "waters of the U.S." to this (suggest after the word creeks,). We can discuss this, but it's stopped a PD in its tracks recently because the developer didn't know he might need a permit to put a Stormwater pond on top of a jurisdictional wetland. We should discuss this. It is the single most important thing to me because I am a wetland scientist and want to see our communities' water resources protected. I am not alone in this.	Agreed, this should be part of the pre dev process where this should be asked and we should have the appropriate GIS Layer maintained or a letter of confirmation that there are no jurisdictional wetlands on the property. This already should be something that is reviewed. Just confirming where this is at in our current process.	3
PZ	117	add	proposed stormwater detention facilities should be depicted on plans, showing which creek or drainageway it will release to	Yes agreed if needed.	3

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PZ	117	add	what landscaping ordinances would kick in here? Landscaping details and locations should be shown. Landscaping requirements should be added to R1 and R2 so that developers don't opt for those zones to avoid landscaping a PD.	I agree. A PD is technically its own little zoning district. Its use is to allow the development of a site with issues. Maybe part of the site is unbuildable due to elevation and you want to increase density to make up for it. These trade offs usually add items that the City would want to see in these developments added vegetation, beautification, interest, something to bring people to the area that would not otherwise be used,	2
PZ	117	add	Do we have a requirement for open space based on developed area? A park or open space requirement for PD's should be pursued.	I do not disagree, but this is a larger conversation. Park Dedication Ordinance or specified language in the PD ordinance of the code can be one, but currently we do not have this. If you would like to discuss further we will bring back how to propose or verbiage to the process to require these items.	2
PZ	118	-3	Can P&Z request changes prior to recommending approval of a PD? How would that work in such a way that the process isn't delayed?	Yes that is correct, included as part of the recommendation and stated within the motion.	1
PZ	125	(c)	Is plan expires now, does City Council have to approve reversion to original zoning? Or does it automatically happen?	Yes, it needs to go back through a City Council meeting and be acknowledged of the change. We would like to have this on record to show that change and acknowledge by Staff, Council and public. Something that can be confirmed per the process with a date of approval and why. Goal is to track using GIS and associated zoning layer for PD's and links directly back to the code adopting the district.	3
PZ	125	(e) PD Project Review	We should discuss this in the next meeting because I don't understand what is being said here. How would you define "been timely fulfilled"		2
PZ	126	(b) district amendments	The problem with this is that not everything can be measured with percentages. And 10% may be way too high depending on the item being modified.	Exactly, however, this exception is if a developer moves some trees or parking spaces, adjusts the signage, Reducing the number of trees and parking lot but replanted elsewhere. Again, not taking approval authority just making it easy for some revisions that are made to continue the process. Currently any change has to go before the council again for review. without getting into the weeds what is acceptable in approving.	3
CC	128	nonconforming	Differentiating between nonconforming structures and uses, But there might also be section on nonconforming lots.... you should not be able to make substantial changes on a nonconforming lot, and one without a structure should require a variance to build anything.	I agree, This is something that needs to be cleaned up. Lots, Uses and structures are all non-conforming types in the code. There is an area to discuss lots but then it is not discussed again. However when dealing with single family use there are positive response when options like this are offered. Need to walk through the "WHY"	1
PZ	129	(4) single family legal non-conforming	Can you give some examples of this?	Single family home occupied in an industrial district is a legal non conforming use. A commercial structure located in a single family residential neighborhood is legal non-conforming.	3

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PZ	132-133	non-conforming lot dimensions	How are minimum lot sizes determined? If the site is trapezoidal, is lot width the average of front and back or just the street-facing distance? These need to be defined better.	Any platted lots shall be determined conforming since they were subdivided legally. they will need to meet all other property development standards. regardless of size are to be considered legal since they are already platted lots. Definition for lot width could be better and we will bring a more suitable definition during the text amendment.	
CC		Definitions:	Focus on definitions for your workshop without trying to change the decision making process for staff.	yes to the definitions, just giving options and if that is not the direction, then no problem	
CC		Single Family Zoning	"Dwelling Unit" in effect waters down the spirit of single family zoning for Nacogdoches	Dwelling Unit is needed to express density. What would you rather see? Are you wanting to see a change to the definition? how can we make this single family stronger for the City. Would you like us to find examples?	
CC		Alternative parking plans	I'm NOT in favor of developers proposing "alternative parking plans" to short circuit the rules in place. Once more stick to your stated purpose of clearing up definitions in the codes and stop trying to change the rules. "Construction of bicycle parking may be substituted for some required parking on a site to encourage alternative forms of transportation". This is NOT city staff's directive or task at this time. This workshop is also NOT to alter parking requirements or make adjustments like "shared parking" or "percentage adjustments for time of day". That decision should not be given over to city staff. Once more, stop changing the rules that are currently in force in the city. Those kinds of changes need to be discussed in the new comprehensive plan when a NEW city planner is in place.	Understood. I was taking this opportunity in proposing alternatives to a situation that was presented and why it could be beneficial. Telling applicants to "Meet the Requirement" is also a very reasonable response. Again, suggestions being brought forward based off Data or situational issues that could have managed that scenario better. Examples giving other options similar to bike racks or other things that the City may want to encourage. Sometimes there is a shape of the lot that might make the meeting the ordinance difficult and this helps with a transparent solution with oversight.	
CC		City Planner and city engineer	The city planner and city engineer are NOT the final word on how much parking is allowed...follow the current ordinances until the council can vote on a comprehensive plan.	This wording is used since they are the highest level supervisor that people believed we could use to enforce and so that Council and Commission knows that it has gone through a hierarchy of steps to get this approval. The supervisor/director being the accountable person.	

Comment Origination	Pg #	Topic/ Agenda #	Proposed comment/ Issue or Concern	Staff Response and suggested changes	What Text amendments in order
Overall General comments					
PZ	general	comment	I want to acknowledge that this package took a considerate amount of time and effort.... and I appreciate the P&Z team's initiative to begin to "modernize" and improve our ordinances. A sincere thanks to the entire team for this effort!! (Now the fun begins!)	Thank you for acknowledging this...I know that staff appreciates this sentiment.	
CC	general	comment	I understand the need to take out some language that is redundant, but in doing so, don't change the spirit or intentions of the original ORDINANCE.	Thank you for this comment. Our goal is not to change the intent. Due to comments and suggestions by staff, board members citizens (both residential and commercial) there was a request to make suggested changes in all of the proposed areas of the ordinance that were brought before you. If there is something specific that i may have done inadvertantly that it is believed that I have changed the spirit or intentions of this Code, please point this out and i will either attempt to explain or make the necessary changes that the Council directs us to do.	
CC	general	comment	Don't confuse "streamlining" with transferring power to city planning staff.	Thank you for the comment. It is not my or staff's goal to transfer power to them. The goal was to remove "red tape" on some the actions that in review do not need City Council oversight since it is already regulated by the ordinances and if they meet ordinance, they should be approved.	

Comment Origination	Pg #	Topic/ Agenda #	Proposed comment/ Issue or Concern	Staff Response and suggested changes	What Text amendments in order
CC	general	comment	My experience with the planning and zoning staff for the last four years has been that the staff favors developers over the affected citizens residing nearby. I can't remember a time where staff did not support the applicant in regard to the "conditions" for approval...noise, lighting, etc. I'm sure there may be an example of them turning down a developer, but I've not seen it.	Appreciate this comment as well, most times that you are looking at staff approval is most people do not want to bring a proposal forward if it is not "sponsored" "recommended" for approval by staff. Staff is the first line of ordinance defense in which they not only review for ordinance compliance but also review using the more subjective tools in our toolchest (Comprehensive Plan, Future Land Use Plan, Utility Plan, Flood, etc.) . Part of staff's job is to work with these citizens or developers to attempt to make the development or zoning case in the best situation before coming to Council is looking since we should know what you are looking for. Staff always explains that Council is the decision maker and we only can direct per the ordinance. Our job is to provide an accurate account of how the land use or development meets or does not meet ordinance. We also make sure to give you the overall picture and remind you of the overall vision of the City. As a reminder, if the land use meets zoning requirements it shall be approved. Spot Zoning and conditional zoning is not something that the City wants to be accused. SUPS and variances are the only spots where conditions can be added to the approval of these types of requests.	
CC	general	comment	There is an underlying theme in this workshop of REVAMPING parking, zoning, streets instead of waiting until we have a permanent city planner in place who may have a completely different idea of where our city may need to go. I suggest you slow down and give the new city manager time to put the proper people in place for each open position. I also believe that we need to finish our new comprehensive plan before changing so much in this document.	Again, I appreciate any and all comments. I am a contract employee of the City with oversight by Planning and Engineering. Part of my objective and direction is to help fulfill things that have not been available to do due to lack of staff time but still needs to be done. These suggested text amendments were seen as some "low hanging fruit " in getting some obvious updates to definitions, processes, and other items that have been causing issues, conflicts and contradiction for staff members. Whatever you would like me to do in efforts to help staff until you fill these roles with permanent folks I will be happy to do. happy to help with Comp Plan, whenever a path has been put together to continue with its process. Again, this process is not to be adversarial but more of a collaborative one. In my eyes a great opportunity to change or amend conflict or fix issues that start from an interpretation or an "out of date" ordinance. I agree having the comprehensive plan complete would be a great asset, However, in the meantime we still use the adopted version even though outdated to ensure consistency.	
CC	general	comment	anything in dwellings (or any other place for that matter) that discusses intent should be eliminated.... Intent means nothing, particularly when	NC	
CC	general	comment	developers will say anything they think will work.	NC	

Comment Origination	Pg #	Topic/ Agenda #	Proposed comment/ Issue or Concern	Staff Response and suggested changes	What Text amendments in order
CC	general	comment	Everything we do has to not only clarify, etc. (your goal), but protect neighborhoods, be mindful of drainage, and protect fragile historic areas	Agreed, none of these points will be removed from consideration with any of the proposed changes. These changes will not remove the need for drainage, and not remove standards that remove protection to neighborhoods or fragile historic areas.	
CC	general	comment	what on earth is the structure on Appleby Sand (industrial housing)? And how can we prevent this in the future, or appeal decisions that this is ok in R1?	House Bill 2439 passed in 2019 limiting Municipal oversight into building materials and aesthetics. Cities do not have the authority to govern when it comes to this property development Standard. As long as it meets code, we do not "oversee pretty". A couple of options that that this can be used and governed are Development Agreements like in a Public Improvement District or a Chapter 380 agreement.	3

Conclusion and Next Steps

Staff recognizes that a significant number of amendments are being proposed in this meeting. However, we are confident that, given the limited comments received, we can compile a substantial list of amendments to move forward with.

To help guide our discussion today, staff has prepared a conclusion table summarizing our progress. Items that received no comments are strong candidates for inclusion in the proposed text amendments list. Items with some feedbacks are marked as "Category 2" and will be discussed and clarified during today's proceedings. Lastly, "Category 3" items, which have raised significant concerns or appear to have a greater impact than anticipated, will likely be deferred for further consideration in a future meeting.

Proposed Change	# of Comments Generated	Category Progression	Comments needing to be discussed	Conclusion	Keep on the list for next review
Definitions added and re-org of Res dwelling types in definitions table (pg 11-12)	1	1	Discussion of the change to the multifamily definition making it more in line with the current reality	Move forward – as submitted.	Yes, the multi-family definition and implications of this definition
Group use Living definitions (pg 21-32)	1	1	Moving from 5 types to 10. Adding definitions for special needs since used in Shelter Care and to add further definitions of Boarding houses including descriptions for sex offenders or should be conditions in approval	Move forward with all definitions as submitted. No special needs are needed.	Protective classes
Feathered Flags (pg37,43,47)	3	1	CE, number of times per year, location, and what district, circumventing the intent	Moving forward, the concerns can all be flushed out during the meeting.	
Vape Shops (pg 51, 57, 61)	0	1	No comments	Move forward as presented	
Parking (pg 69,74,83,89, 91, 92)	7	3	Alternative parking agreement and who allows it (oversight), depending on what is built in R4, R4 parking requirement is enforced, parking in the front yard needs fixing with definitions and CE	Table all items for future meetings except parking req's for vape shops and multifamily requirements for any construction in R4, shopping center parking req's	Yes, alternative parking, front yard parking

Proposed Change	# of Comments Generated	Category Progression	Comments needing to be discussed	Conclusion	Keep on the list for next review
Word Swap 118-141 (b) pg 96	0	1	Change word from Commission to Council	Move forward	
BOA changes to the text to match policies and procedures manual (pg 100-102)	2	1	Adding points in the ordinance that recognized in policies and procedures when we changed those early in year, simple wording changes, changes to appeal timeline and when to have meeting and special exception wording	Move forward	
Protest (pg 103)	2	1	90-day timeframe for appeal changing to 20 days	Move forward, state law need to meet minimum.	Further discussion
Zoning Amend (pg 104)	3	1	Wording changes to require pre-app meeting, wording updates, Comp plan ref and zoning initially as AG if no zoning called out., reminder of conditions for SUP, PD, all procedures are so very similar and the steps the same so removed redundancy.	Move forward, with pre-dev req. Hold the changes to the SUP, PD, Overlay Zoning etc and duplications of steps. Noticed a larger error that needs additional help.	Depending on the conversation this may be something that I will fix for the actual submission explain the issues.
PD (pg. 115)	11	3	Many changes remove redundancy and one full step in the process reducing the timeframe e for the overall process. Still, get the same while reducing timeline Goal to reduce the red tape but still having oversight.	Hold for next time.	Noticed revisions needed.

Proposed Change	# of Comments Generated	Category Progression	Comments needing to be discussed	Conclusion	Keep on the list for next review
Non-conforming structures and uses (Pg 127-130)	4	2	3 types of non-conforming; lot, structure and use. Need to fix the mixing of the use and structure and segregate the two for clarity. Adding lot is an option but need to be careful of not to allow use of someone property, do not want to consider it a "taking". Also wanted to give exceptions for SFR uses to give reasonable updates to property that by definition would not be expanding the property. Additionally how to look at the expansion of a non-conforming structure, adding onto area that is in conformity should be allowed just no expansion of the home in the area of non-conformity (reasonable)	Some small other adjustments It will be ready for submission. Giving better examples and understanding why we are asking for exceptions to SFR.	Depending on Committee's feeling to move forward with it at this time.
Lot size memo (pg 131) District Property development standards (132)	2	1	Recognize lots created prior to subdivision and zoning ordinances. Allowing platted lots to exist without being considered non conforming for lot width, depth or size. Still need to meet all other property development standards. Defining that these minimums are per the dwelling unit and noting the reason per asterisk.	Move forward	



CITY COUNCIL/ P&Z JOINT WORKSHOP

Ordinance Amendments

Tuesday, May 7th at 3:30 p.m.



May 7, 2024

Notice is hereby given of a Work Session Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 3:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to address the City Council about items listed on the agenda, as well as on matters that are not specifically listed on the agenda. Alternatively, a citizen may address the City Council about an agenda item when the item comes up for consideration during the meeting. In order to address the City Council, please complete the Public Comment Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, the City Council will not discuss, deliberate, or make any decisions on items not listed on the agenda. Comments are limited to 3 minutes per person.
4. WORK SESSION. Items included under Work Session are intended to provide opportunities for City Council to study and discuss various issues, and gather and analyze information. Council will not take formal action on matters presented at a work session, but may direct staff to place items relating to the matter on future agendas for formal consideration.
 - A. Review of proposed Text Amendments for the City of Nacogdoches Code of Ordinances Chapter 118 concerning definitions, non-conforming parcels, and land use types. Planned Developments and corrections to the Zoning Board of Adjustment process and procedures; Chapter 46 - Regarding CBD and vape shops; and Chapter 78 - On-premise signs for "feather signs", commonly referred to as teardrop" signs. (Planning Consultant)
5. ADJOURN.

Rhonda Lewis
City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at (936) 559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on May 2, 2024 at 5:00 p.m. and remained posted until the meeting convened.

Rhonda Lewis, City Secretary

PRESENTER: Nathan Dietrich, Planning Consultant

ITEM/SUBJECT: Review of proposed Text Amendments for the City of Nacogdoches Code of Ordinances Chapter 118 concerning definitions, non-conforming parcels, and land use types. Planned Developments and corrections to the Zoning Board of Adjustment process and procedures; Chapter 46 - Regarding CBD and vape shops; and Chapter 78 - On-premise signs for "feather signs", commonly referred to as teardrop" signs. (Planning Consultant)

SUMMARY/BACKGROUND:

FINANCIAL:

N/A

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

CITY CONTACT: Nathan Dietrich, Planning Consultant
dietrichn@nactx.us
(936) 559-2574

ATTACHMENTS:

1. Definitions Duplex and PROW Memo Why
2. CON Sec. 118_1. Definitions. Duplex Redline
3. Definitions Group type Memo Why
4. Sec. 118_1. Definitions Redline Multi person.
5. Signs Feather flag Memo Why
6. Sec. 78_1. Definitions_rev (redline)
7. Sec. 78_4. Signs_prohibited_rev (redline)
8. Sec. 78_98. Signs_permitted_in_B_1_B_3_and_M_zoning_districts_rev2 (redline)
9. Other City Examples feather signs
10. Definitions Vape Shop- Why
11. Ordinance Smoke shop redline
12. tcllc-guide-licensing-and-zoning-2016
13. Parking Memo Why
14. DIVISION_2. OFF_STREET_PARKING_STANDARDS Nathan Redline
15. 118-141 Memo Why
16. Sec. 118_141. Protest_of_proposed_change_in_zoning. (Final)
17. ZBA Memo- Why
18. DIVISION_3. BOARD_OF_ADJUSTMENT (1)
19. DIVISION_4. AMENDMENT_PROCEDURE
20. Planned Dev Memo Why
21. ARTICLE_V. PLANNED_DEVELOPMENTS

- 22.Expansion SFR reasonable Memo Why
- 23.DIVISION_5.____NONCONFORMING_STRUCTURES_AND_USES
- 24.Lot size Memo Why -
- 25.Sec._118_427.____District_development_standards^

City Planner Initiated Text Changes

Subject:

1. Adding definitions for Duplex, public right of way and street to the Zoning Ordinance.
2. Reorganizing types of dwelling units in the definitions to make more user friendly. This way users that will review our ordinance will see all dwelling unit types in one location in the definitions table for ease and understanding.

Why:

1. Currently, there are specific definitions inside the zoning ordinance describing duplex, street, and public right of way within this ordinance. However, there are definitions for street and right of way are located in other ordinances. So, in an effort to help make definitions within the code consistent we would like to use the definition that best suits all chapters within the ordinance. Currently, there are several different chapters having different definitions for the same word. We would like to choose one definition and link it back to the zoning ordinance when used in other Chapters. This will maintain consistency and limit any sort of contradiction within the ordinance.

Adding these definitions would help simplify the explanation of how to use these words in this ordinance to avoid interpretation and clarity.

2. Reorganizing the dwelling unit info will just help navigate the code.

Research - What Staff found:

Duplex is not defined anywhere explicitly within the ordinance so its definition should be located within the zoning ordinance. In regard to the definitions of street (Chapters 1, 90 and 98) and public right of way (Chapters 78 and 98) they are defined differently. It would be the goal of these new changes to be in line with the rest of the ordinances when making any textual changes to be consistent and in line with the intent. Staff worked with ENG and PW in coming up with the proposed definitions shown in the attached redlined ordinances.

Staff proposed the changes to dwellings and the varying types of dwellings within the ordinance. The proposed restructure just puts all of these uses in one location in the definitions so easier for our users. Staff reviewed numerous other ordinances (Baytown, Kilgore, Longview) in effort to find the best definitions that would represent all departments.

Proposed Dwelling type Re-org

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 (quadruplex), as well as traditional apartments.

Dwelling, single-family attached or townhome means a dwelling that 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 is occupied by one family, has a common entrance, and 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. 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.

Dwelling unit means a building or portion of a building that 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.

Where the words are defined in other chapters in the current ordinance

Duplex - A building designed for two attached dwellings under one common ownership, each side designed to be occupied by one family.

Public right-of-way - means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the city has an interest. The term does not include:

- (1) A private easement; or
 - (2) The airwaves above a public right-of-way with regard to wireless telecommunications.
- (Chapter 98)

Street - means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

(Chapter 98 Telecommunications)

Public right-of-way (public street) means that land dedicated for public use commonly as a street, roadway, alley, bridge, or thoroughfare, and most often extends the entire width

between property lines of any roadway, **street**, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

(Chapter 78 Signs)

Street means a public right-of-way however designated, which provides primary vehicular access to adjacent land. The term "street" is further defined as follows:

- (1) Arterial street primarily provides vehicular circulation to various sections of the city.
- (2) Collector street primarily provides circulation within neighborhoods, to carry traffic from minor streets to arterial streets, or to carry traffic through or adjacent to commercial or industrial areas.
- (3) Minor street is one used primarily for access to abutting residential property.

(Chapter 90)

Street. The term "street" shall be construed to include any street, avenue, boulevard, road, alley, lane and viaduct in the city, dedicated and devoted to public use.

(chapter 1)

Sec. 118-1. Definitions.

(a) *Word interpretations.* Interpretations of certain words used in this chapter shall be as follows:

- (1) All words used in the present tense shall include the future.
- (2) All words in the singular number include the plural number, and all words in the plural number include the singular number.
- (3) The term "structure" includes the word "building," and the term "dwelling" includes the terms "residence" and "place of habitation."
- (4) The term "person" includes a corporation, co-partnership, association, and individual.
- (5) The term "shall" is mandatory and not discretionary.

(b) *Undefined terms.* Terms not defined in this section shall have the meanings assigned to them in the city building codes. Terms not defined in this section or in the building codes shall have the customary meaning assigned to them.

(c) *Words and terms defined.* The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Accessory apartment means an accessory dwelling for the use and occupancy by any person employed on the premises on a full-time basis for domestic or medical help or family members to the second degree of consanguinity and affinity. Such dwelling shall not have separate utility services or meters. This may also include an accessory dwelling located in a commercial or industrial district for the use of any person employed by the business or property owner to provide management, maintenance or security for the property.

Accessory use means a structure or use that:

- (1) Is clearly incidental to and customarily found in connection with a principal building or use.
- (2) Is subordinate to and serves a principal building or a principal use; is subordinate in area, extent, or purpose to the principal building or principal use served.
- (3) Is located on the same lot as the principal building or use served.

Accessory use (residential) means a subordinate use which is detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service. Accessory buildings include but are not limited to an automobile storage garage, laundry room, garden shelter, hobby room and mechanical room.

Airport or landing field means a landing facility for fixed wing aircraft containing a minimum of 60 acres.

All-weather surface means a hard smooth paved surface of either hot-mixed asphaltic concrete (HMAC) or Portland cement concrete (PCC) and the appropriate base material, meeting the following minimum specifications:

- (1) Hot-mixed asphaltic concrete:
 - a. Surface: 1.5 inches of type D or type C material.
 - b. Base: six inches of compacted iron ore gravel or the equivalent flexible base, or four inches of compacted hot sand asphaltic base.
- (2) Portland cement concrete:
 - a. Surface: five inches of class A, 3,000 psi concrete, reinforced with WWF 6 × 6, W 2.9 - 2.9.

b. Base: four inches of compacted granular material.

Material shall conform to city and state department of transportation specifications. Other possible types of paved surfaces will be considered on a case-by-case basis by the city's planning and engineering departments.

Amusement, commercial (indoor) means an amusement enterprise wholly enclosed in a building, including but not limited to a bowling alley, bingo parlor or amusement arcade, but not including a billiard parlor or pool hall.

Amusement, commercial (outdoor) means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including but not limited to a golf driving range, archery range, and miniature golf course.

Animal hospital or clinic means a facility for the treatment or care of domestic animals, which includes a veterinarian's office, and may include overnight stays, but does not include outside pens.

Animal pound. See *Animal hospital or clinic* with outside pens.

Antique shop means an establishment offering for sale articles such as glass, china, furniture or similar furnishing and decorations which have value and significance as result of age, design or sentiment; and when all such items displayed or offered for sale are housed within a building and there is no exterior display except the usual sign or advertising.

Apartment means a dwelling unit in a multiple-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family. See *Dwelling, Multifamily; (apartments)*.

Area of lot means the square-foot area of a lot within the bounding property lines and exclusive of dedicated streets or alleys.

Artificial lot means an area within a platted lot, for the purpose of satisfying the requirements of this chapter, that is delineated on the building site plan and the landscape plan and approved by the city planner.

Arts school or studio means a school for instruction and practice of the performing, visual or martial arts.

Banks and financial institutions means activities and institutions for the extension of credit and the custody, loan or exchange of money.

Bed and breakfast establishment means a private single-family residence in which lodging for one or more nights and breakfast is provided by the resident owner for compensation.

Billiard parlor or pool hall means a facility for the playing of billiards and pool. Food service may be allowed as an ancillary use.

Block means an area enclosed by streets, or if such word is used as a term of measurement, it shall mean the distance along a side of a street between two intersecting streets, or if the street is of a dead-end type, a block shall be considered to be measured between the nearest street and the end of such dead-end street.

Board means the board of adjustment as provided for in division 3 of article II of this chapter.

Boardinghouse or roominghouse means a building, other than a hotel or multiple-family dwelling, where lodging is provided for five or more persons for compensation, where meals may or may not be served and where facilities for food preparation are not provided in the individual rooms. Where meals are served, they shall be served only to the residents of the boardinghouse.

Building means any structure designed, built or intended for the shelter or enclosure of persons, animals, chattels or movable property of any kind or for an accessory use. When separated by an absolute fire separation, each portion of such structure so separated shall be deemed a separate building. This definition includes structures wholly or partly enclosed with an exterior wall.

Building line means a line established, in general, parallel to the front property line, over which no part of a building shall project, except as otherwise provided in this chapter.

Building and landscape materials and lumber sales (outside sales) means a facility for the sale of home, lawn and garden supplies and construction materials such as brick, lumber and other similar materials. The facility may include outside sales.

Cabinet and woodwork shop (custom) means a shop for the repair or creation of individual items of furniture and wooden home furnishings on a custom basis, not a factory, planing mill or similar woodworking plant.

Carnival or circus (temporary) means a temporary traveling show or exhibition usually housed in tents, and which has no permanent structure or installation.

Carwash means a facility or area for the cleaning or steam cleaning, washing, polishing or waxing of passenger vehicles by machine or hand-operated facilities. A carwash may be a single unit, multiple single washing units, or a tunnel type which can wash several vehicles in tandem.

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

Chemical and allied products includes the manufacturing of industrial inorganic and organic chemicals, plastics materials, and synthetic resins, synthetic rubber, synthetic and other manmade fibers; drugs; soap, detergents, cleaning preparations, perfumes, and other toilet preparations; paints, varnishes, lacquers, enamels, and allied products; gum and wood products; agricultural chemicals; and other chemical and allied products.

Church or place of worship means a facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue or other structure, together with its customary accessory structures and uses, including a parsonage or rectory. This does not include home meetings or other religious activities conducted in a privately occupied residence.

City council means the official governing body of the City of Nacogdoches.

Club, private means a clubroom or suite of rooms or a building available to restricted membership for meetings, dining and entertainment. Such facilities may include a private tennis court, swimming pool or similar recreation facilities, none of which are available to the general public.

College or university means an institution of higher learning beyond the level of a secondary school.

Community center (private) means:

- (1) A building or group of rooms designed and used as an integral part of a residential or apartment project by the tenants of such a project for a place of meeting, recreation or social activity and under the management and unified control of the operators of the project.
- (2) A private nonprofit community center operated as a boys' or girls' club or similar use. A private community center shall not be operated as a place of public meetings, or as a business.

Community center (public) means a building and grounds owned and operated by a governmental body for the social, recreational, health or welfare of the surrounding community.

Convenience store means any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with such and having a gross floor area of less than 7,500 square feet.

Convent or monastery means the living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

Contractor or maintenance yard means an open storage yard for supplies and operational equipment, including buildings, but not constituting a junkyard, wrecking yard or salvage yard.

Country club (private membership) means an area of 20 acres or more containing a golf course and a clubhouse and available only to a private specific membership. Such a club may contain as adjunct facilities a private club and dining room, swimming pool, tennis courts and similar recreation facilities.

Coverage means the percent of a lot area which is covered by a roof, floor or other structure and is not open to the sky. Roof eaves to the extent of two feet, and ordinary projections from the building not exceeding 12 inches, shall not be counted in computing coverage.

Custom sewing and millinery means custom making of items of apparel and millinery, by a seamstress, but not involving a factory.

Day care means a facility or area used regularly to provide daytime care, training, education, custody, treatment or supervision to more than four children, adults or elderly in other than a family setting for less than 24 hours a day, whether for compensation or not. This definition includes preschools, private kindergartens, nurseries and other similar uses not listed elsewhere in this chapter.

Density means as follows:

- (1) *Residential density* means the relationship of dwelling units or rooms to the area of the lot or tract upon which a residential structure is located or erected, and is expressed in "units per acre."
- (2) *Nonresidential density* means the ratio of the area of the building to the area of the site. See *Floor area ratio (FAR)*.

~~*Dwelling unit* means a building or portion of a building which is arranged, occupied or intended to be occupied as a single living quarters and includes facilities for food preparation and sleeping.~~

~~*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.~~

~~*Dwelling, Industrialized*, means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.~~

~~*Dwelling, manufactured, Manufactured home* means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.~~

~~*Dwelling, Mobile home, Mobile home* means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.~~

Dwelling, multi-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, multi-family," may include duplexes, three-family units (triplex) and four-family units (quadraplex), as well as traditional apartments or rental communities.

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

Eating place with drive-in or curb service means an establishment offering food for sale to customers in automobiles and wherein the food for sale is to customers in automobiles and wherein the food service is to the automobile.

Eating place without drive-in or curb service means any eating establishment, cafeteria, restaurant or inn where food service is offered to the customers not in automobiles.

Emergency ambulance service means a facility for the operation and dispatch of emergency medical vehicles. Typically this operation is ancillary to a hospital or a fire station, but it may also be a primary use on a property.

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

Fabricated metal products includes the manufacturing of ordnance and accessories; machinery, equipment and supplies; transportation equipment; and other fabricated metal products.

Fairground means a specific facility that hosts special indoor and outdoor events including exhibits or competitions of agricultural products, livestock, machinery, etc.; a large exhibition or show of products from various countries; an exhibition or sale of fancywork or other items for the benefit of some cause; or a gathering of buyers or sellers of some product or service.

Family means any number of individuals living together as a single housekeeping unit, in which not more than two individuals are unrelated by blood, marriage or adoption.

Family home and family group home means a community-based residential home licensed by the state department of mental health and mental retardation providing food and shelter, personal guidance, care, rehabilitation services, or supervision. Family homes shall have a maximum of six clients plus two staff members residing in a house. Family group homes shall have a minimum of seven and a maximum of 15 clients plus staff residing in a house.

Farm, ranch, garden or orchard means an area of three acres or more which is used for growing of usual farm products, vegetables, fruits, trees and grain for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, including a private stable and also 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 city ordinance or law.

Farmers' market means the retail sale of farm products by individual vendors either within a building or outside. Items sold may include fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey. The sale of new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise are not included.

Feed store, retail (livestock, no mill) means an establishment for the sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

Flea market means a building or open area in which stalls or sales areas are set aside and rented, or otherwise provided, and which are intended for the sale of articles that are either homemade, homegrown, hand-crafted, old, obsolete, or antique and may include the retail selling of goods by businesses or individuals who are generally engaged in retail trade. This does not include garage sales.

Floor area means the total square-foot area of all floors in the building measured to the outside faces of exterior walls or to the line of an omitted wall, whichever includes the largest area.

Floor area ratio (FAR) means the ratio between the total square feet of floor area in the building to the total square feet of land in the lot or tract; e.g., "2:1" means that the building contains twice the amount of area as there is in the lot.

Foster home means a facility or area providing full-time parental care for six or more unrelated minor children for which compensation or fee is received in return for such services. This must comply with statutory licensing requirements.

Fraternity/sorority house means any building occupied and maintained by a social association of college students, or where organization-sponsored functions are regularly held.

Garage or estate sale: means a sale for the purpose of offering clothing, household furniture or appliances belonging to the residents may be conducted as home occupation provided that no such sale may be held on any lot or premise more often than twice in each calendar year, and not to exceed three days during each sale.

Garden shop and plant sales (display or greenhouse) means an enclosed or open area for the retail sale of plants and gardening products, including fertilizers, soil and gardening implements.

Golf course (public or private) means a golf course owned or controlled publicly or privately. This includes such uses as a clubhouse, food service, retail, and other customary accessory uses.

Golf driving range means a facility for the organized practice of golf techniques. It may include a practice green for putting, a clubhouse and other minor ancillary uses.

Government facility means a facility for public purposes, owned or operated by the city, county, state or federal government. These typically include city hall, courthouse, police and fire stations, public library or museum.

Grain mill products includes the manufacturing of flour and other grain mill products, feeds for animals and fowl, cereal preparations, rice milling, blending and preparing flour, and wet corn milling.

Guesthouse (detached) means a secondary structure on a lot or tract containing dwelling accommodations but excluding kitchen facilities and separate utility services or meters and intended for the temporary occupancy by guests and not rented or used for permanent occupancy.

Halfway house (criminal) means a facility for the housing, rehabilitation, and training of persons on probation or parole from correctional institutions, or other persons found guilty of criminal offenses.

Health club or studio means a wholly enclosed facility for fitness training and practice.

Height means the vertical distance from the average grade of the finish ground level at the center of all walls to the highest finished roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height.

Home occupation means an occupation carried on in the home by a member of the occupant's family, being incidental to the primary occupancy of the home as a dwelling; without the display or advertising of any commodity or service for sale on the premises; without the employment of any persons other than members of the immediate family; without the use of any sign, lighting or display; without the use of other than domestic or household equipment or appliances; and the conduct of which does not generate noise, odor, fumes, vibration, additional vehicle traffic or any other condition visible, obnoxious or detrimental to abutting or adjacent properties.

Hospice means a facility for the terminally ill, where patients are under the supervision of a doctor, but undergo limited curative treatment, and which is licensed by the state.

Hospital (chronic care) means an institution where those persons suffering from generally permanent types of illnesses, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis and which is licensed by the state.

Hospital (general acute care) means an institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state.

Hotel or motel means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 20 individual guestrooms or units and shall furnish the customary hotel services such as linen, maid service, telephone, use and upkeep of furniture, and the accommodations shall not be designed as permanent dwelling units.

Household appliance and equipment repair means a shop for the repair of household and home equipment, such as electrical appliances, lawn mowers, tools, and similar items, where all such items are stored within a building or a storage area surrounded by a solid fence, wall or screen.

Ice or roller skating rink means a facility for the practice of ice or roller skating. Accessory uses may include food service and other indoor amusements, contained entirely within the primary structure.

~~*Industrialized housing* means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.~~

Laundry or dry cleaning, self-service, means an establishment providing facilities for washing or dry cleaning garments and similar items and where the customer may personally supervise and handle the cleaning operation.

Legal height means the maximum height of a building imposed by the Federal Aviation Administration for the airport, this chapter, the building code, or any other legal ordinance or code.

Library, art gallery or museum (public) means any institution for the loan or display of books, objects of art or science which is sponsored by a public or responsible quasipublic agency and which institution is open and available to the general public.

Livestock auction pens or sheds means a facility or area for the auction of livestock. Accessory uses may include but are not limited to feed pens, stalls, and outside pens or runs.

Lot means a platted parcel of land intended to be separately owned, developed, and otherwise used as a unit.

Lot, corner, means a lot situated at the intersection of two dedicated streets and having frontage along both streets extending from the intersection.

Lot, double frontage, means a lot having frontage on two or more dedicated streets other than a corner lot.

Lot lines means the property or lease lines bounding a lot or tract.

Lot line, interior, means a lot line delineating the division between two contiguous lots on the interior of a block and not adjacent to a street.

Lot of record means a lot which is part of a subdivision plat which has been recorded in the office of the county clerk or a tract of land described by metes and bounds, the description of which is recorded in the office of the county clerk.

Lot width means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.

Lumber and wood products manufacturing includes logging camps and contractors; sawmills and planing mills; and the manufacturing of millwork, veneer, plywood, prefabricated structural wood products, wood furniture; and other lumber and wood products.

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

~~*Manufactured home* means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.~~

Manufactured home park means a unified development of manufactured home sites, plots, or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate manufactured homes for permanent duration.

Meat products processing or manufacturing includes meat, poultry, and small game packing and the manufacturing of sausages and other prepared meat products, but not including the slaughtering of animals or poultry.

Microbrewery means a business which:

- (1) Operates under a manufacturer's license, as described in V.T.C.A., Alcoholic Beverage Code, ch. 62, issued by the Texas Alcoholic Beverage Commission ("T.A.B.C.");
- (2) May operate, but is not required to operate under a brewer's permit as described in V.T.C.A., Alcoholic Beverage Code, ch. 12, issued by T.A.B.C.;
- (3) Has a total maximum production per year of beer, malt liquor and ale of not more than 15,000 barrels (or 465,000 standard gallons); and
- (4) Does not produce or generate any generally obnoxious odors.

~~*Mobile home* means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent~~

~~chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.~~

Mobile home park means a unified development of mobile home sites, plots or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate mobile homes for a permanent duration.

~~*Multifamily (apartments)* means any building or portion thereof which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.~~

Nightclub or dancehall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- (1) Live, recorded or televised entertainment, including but not limited to performances by magicians, musicians or comedians;
- (2) Dancing; or
- (3) Any combination of subsections (1) and (2) of this definition.

This does not include theaters, auditoriums and stadiums with fixed row seating; private clubs; bars; teen clubs; or any establishment defined elsewhere in this chapter as an adult entertainment establishment.

Nursing and convalescent homes means an establishment which furnishes, in single or multiple facilities, food and shelter to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment and, in addition, provides minor treatment under the direction and supervision of a physician, or services which meet some need beyond the basic provision of food, shelter and laundry.

Office (general and professional) means a facility for the regular transaction of business, wherein services are performed involving predominantly administrative, professional or clerical operations not specifically listed elsewhere in this chapter.

Open space means an area on a lot that is open and unobstructed to the sky except for the ordinary projections of cornices and eaves, and is exclusive of driveways or parking areas.

Open storage (no enclosure) means storage in the open of vehicles, machinery or any equipment or commodity where permitted as a primary use of land and accessory storage in the open of commercial and industrial products where such storage is not enclosed by a fence, wall or building.

Open storage with visual screen means the permitted storage of any equipment or commodity in an open area which is enclosed by a fence or wall, as defined in this chapter, or surrounded by a building so as to create an effective visual screening of the storage from the adjacent property.

Orphanage means an institution for the care of orphans or other abandoned children.

Paper and allied products manufacturing includes the manufacture of pulp, paper, paperboard, converted paper and paperboard products, paperboard containers and boxes, building paper and building board.

Pawnshop means a building or premises, other than a bank, savings and loan or mortgage banking company, used for the business of lending money on the security of pledged goods, or for the business of the purchase of tangible personal property on condition that it may be redeemed or repurchased by the seller for a certain price within a certain period of time, and licensed by the state to conduct such a business.

Pet shop means a place for the display and sale of small animals and birds as pets, such as dogs, cats, parakeets or canaries, but not involving the boarding or treating of dogs or similar pets.

Petroleum refining and related industries includes the refining of petroleum and the manufacturing of paving and roofing materials; lubricating oils and greases and other petroleum and coal products.

Piercing studio means any establishment that performs any type of body piercing.

Pool house (detached) means a secondary structure on a lot with a swimming pool, excluding separate utility services or meters, and intended for temporary recreation use and not used as a permanent occupancy.

Poultry hatchery means a commercial facility for the hatching and raising of domestic fowl, including a research facility for such activity.

Primary metal products manufacturing includes blast furnaces, steel works and the rolling and finishing of ferrous metals; iron and steel foundries; primary smelting and refining of nonferrous metals and alloys, rolling, drawing and extruding of nonferrous metals; and nonferrous foundries.

Professional, scientific and controlling instruments; photographic and optical goods; watches and clocks manufacturing includes the manufacturing of engineering, laboratory and scientific and research instruments and associated equipment; instruments for measuring, controlling, and indicating physical characteristics; optical instruments and lenses; surgical, medical, and dental instruments and supplies; ophthalmic goods; photographic equipment and supplies; and watches, clocks, clockwork-operated devices and parts.

Psychiatric hospital or institution means a facility or area for providing health services primarily for inpatient medical care for alcoholic, narcotic, or psychopathic patients, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices that are an integral part of the facilities. This includes a substance abuse and rehabilitation facility.

Public right-of-way (public street) means that land dedicated for public use commonly as a roadway, alley, bridge, or thoroughfare, and most often extends the entire width between property lines of any roadway, , alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

Racetrack means an indoor or outdoor facility for the recreational or competitive racing of horses, canines, or motor vehicles, including the necessary accessory uses such as retail sales, automobile maintenance, veterinarian supplies and shops, exercise areas and stables.

Radio or television transmission station (commercial) means a facility used for the production and transmission of programming by radio or television to the general public. Included are commercial, religious, educational and other stations.

Radio, television, microwave or cellular communication tower (commercial) means structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

Radio tower (noncommercial) means a radio tower located on a residential property which is for home use, only, and which is not taller than 15 feet above the maximum building height allowed in the district.

Recreation club or area (private) means a building, park or recreation area, the use of which is restricted to private membership such as by a church, neighborhood association, fraternal or social organization, and which may contain the normal active and passive facilities as provided in a park or playground, or public recreation facility.

Recreation facility (public) means a facility or area sponsored by a public entity and devoted to sports, entertainment, games of skill or recreations to the general public. This may include swimming pools, tennis courts, playgrounds, community clubhouses, park facilities and other similar uses.

Retirement home means a residential facility principally designed for persons 55 years of age or older. Dwelling units may include full kitchen facilities, and recreational, social, nursing or other services may be available. This does not include a nursing or convalescent home.

Rubber and miscellaneous plastics manufacturing includes the reclaiming of rubber and the manufacture of tires and innertubes; rubber footwear; plastic products; and other fabricated rubber products.

Satellite dish means the dish and its structural elements that is commonly used in the reception of television signals from orbiting satellites.

School, K—12, public or private, means a school and customary accessory uses under the sponsorship of a public or religious agency having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

School, vocational means a business operating for profit and offering instruction and training in a service or art, such as a secretarial school, barber college, commercial art school; or offering instruction and training in a trade such as welding, bricklaying, machinery operation and other similar manual trades. This does not include truck or heavy equipment driving schools.

Service station means any facility where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include facilities where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work are conducted.

Single-family dwelling (attached) means a dwelling unit on a separately owned lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate walls and occupied by not more than one family.

Single-family dwelling (detached) means a detached building having a single dwelling unit and occupied by not more than one family.

Single-family dwelling (zero lot line) means a dwelling unit on a separately owned lot on which one wall of the principal dwelling is located within one foot of the side property line of an adjacent residential lot, and the other side yard meets or exceeds the minimum required side yard for the district.

Stable, commercial, means a facility housing horses or mules which are boarded or rented to the public or any stable other than a private stable; but not including a sales barn, auction, or similar trading activity.

Stable, private, means a facility or area for keeping horses, mules or other domestic animals for the private use of the property owner.

Stone, clay, glass and concrete products manufacturing includes the manufacturing of glass; flat glass and glassware; cement; structural clay products; pottery and related products; concrete, gypsum and plaster products; cut stone and stone products; and abrasive, asbestos and other nonmetallic mineral products.

Street - means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "street" does not include the curb or the sidewalk. The term "street" is further defined as follows:

- (1) Arterial streets primarily provide vehicular circulation to various sections of the city.*
- (2) Collector street primarily provides circulation within neighborhoods, to carry traffic from minor streets to arterial streets, or to carry traffic through or adjacent to commercial or industrial areas.*
- (3) Minor street is one used primarily for access to abutting residential property.*

Studio (art, drama, speech, or dance) means a building or rooms in a building used for the instructing, coaching or counseling in drama, speech, dance or similar personal skills or arts.

Tattoo salon means an establishment or facility in which tattooing is performed.

Teen club means a nightclub that caters to teenage patrons.

Tennis court (lighted) means an outside tennis court with elevated lighting for nighttime play.

Tennis court (no lights) means an outside tennis court without elevated lighting for nighttime play.

Textile mill products manufacturing includes the manufacturing of woven fabrics, knit goods, rugs, carpets, yarns, and threads, and other textile goods; and the dyeing and finishing of textiles.

Theater, movie or live (enclosed) means a facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

Tobacco products manufacturing includes the manufacturing of cigarettes, cigars, chewing and smoking tobacco, snuff; tobacco stemming and redrying.

Travel trailer/RV park means any lot upon which two or more travel trailer or other recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. The area is intended for use on a shortterm basis by campers, vacationers, and travelers.

Truck or heavy equipment driving school means a type of vocational school where education is provided behind the wheel of trucks or heavy equipment.

~~*Two-family dwelling* means a detached building having two dwelling units and occupied by not more than two families.~~

Use, nonresidential, means any use other than a one- or two-family residence, or a roominghouse or boardinghouse, and their bona fide accessory uses.

Use, residential, means a one- or two-family residence, or a roominghouse or boardinghouse, together with bona fide accessory uses.

Utility facilities (major) includes such uses as electrical substations, wastewater treatment plants, elevated water storage and water treatment plants.

Utility lines and transmission includes local utilities such as electric power, telephone, gas, water, sewer, and air monitoring stations. It also includes inline facilities such as gas regulating stations and water wells or pumping stations; sewage pumping stations; telephone exchange, switching and transmitting equipment; and electrical transmission lines operated by a municipality or a franchised utility company. It does not include major utility facilities.

Veterinary office (no hospital or clinic) means a facility for the diagnosis and treatment of animals, without an overnight stay.

Warehouse/storage (inside) means a building or group of buildings providing enclosed shelter and protection for commodities stored therein. No open or unenclosed storage shall be classified as a warehouse.

Wrecking yard, junkyard, salvage yard or reclamation yard means a yard or building where automobiles, machinery, appliances or other used commodities and equipment are stored, dismantled, and/or offered for sale as whole units or as salvaged parts.

Yard means an open space on the lot on which a building is situated and which is open and unobstructed to the sky.

Yard, front, required, means a yard facing and abutting a street and extending across the front of the lot between the side lot lines and having a minimum horizontal depth measured from the street equal to the depth of the minimum front yard specified for the district in which the lot is located. The required front yard line represents the line in front of which no building or structure may be erected.

Yard, rear, required, means a yard extending across the rear of the lot between side lot lines and having a minimum depth measured from the rear lot line as specified for the district in which the lot is located.

Yard, side, required, means a yard located on a lot and extending from the required front yard to the required rear yard and having a minimum width measured from the side lot line as specified for the district in which the lot is located. Any lot line which is not a rear or front line shall be deemed a side lot line.

Zoning district map means the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this chapter and, together with the zoning text in this chapter, make up the zoning ordinance for the city.

Zoo, zoological park, animal park, or aviary means an institution which owns and maintains captive wild animals and under the direction of a professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled basis for the purposes of education, conservation, scientific study and recreation.

(Ord. No. 1130, art. III, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1351-2-04, 2-3-2004; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1535-11-09, § 3, 11-17-2009; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1708-6-16, § 2, 6-21-2016)

Cross reference(s)—Definitions generally, § 1-2.

City Planner Initiated Text Changes

Subject:

1. Adding definitions for other sorts of group use types in the City.
2. Updating and adding to recognized types of multi or group living.

Why:

1. Currently, the ordinance does not reference certain types of group-type housing. Proposing to see if this is something that the Commission and Council would like to discuss so we can better understand these housing types. This would give the City better use of tables. Adding these definitions would help staff direct folks to avoid interpretation.
2. Updating with terminology more relevant to current housing types.

Research - What Staff found:

Staff did find that these proposed definitions are commonly referenced in other codes. Due to a recent application requesting a use not specifically defined in the ordinance, these definitions will help define the use.

If these proposed changes are something that the Commission and Council would like to see, we will come back with these definitions and add or amend the use table to accommodate. Again, this request is to help with the hard questions we recently dealt with and feel this would help staff and applicants to determine where certain uses can be located or not located.

Staff reviewed numerous other ordinances (San Marcus, Tomball, Baytown) in efforts to find the best definitions that represent these land uses better.

Sec. 118-1. Definitions.

- (a) *Word interpretations.* Interpretations of certain words used in this chapter shall be as follows:
- (1) All words used in the present tense shall include the future.
 - (2) All words in the singular number include the plural number, and all words in the plural number include the singular number.
 - (3) The term "structure" includes the word "building," and the term "dwelling" includes the terms "residence" and "place of habitation."
 - (4) The term "person" includes corporation, copartnership, association, and individual.
 - (5) The term "shall" is mandatory and not discretionary.
- (b) *Undefined terms.* Terms not defined in this section shall have the meanings assigned to them in the city building codes. Terms not defined in this section or in the building codes shall have the customary meaning assigned to them.
- (c) *Words and terms defined.* The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Accessory apartment means an accessory dwelling for the use and occupancy by any person employed on the premises on a full-time basis for domestic or medical help or family members to the second degree of consanguinity and affinity. Such dwelling shall not have separate utility services or meters. This may also include an accessory dwelling located in a commercial or industrial district for the use of any person employed by the business or property owner to provide management, maintenance or security for the property.

Accessory use means a structure or use that:

- (1) Is clearly incidental to and customarily found in connection with a principal building or use.
- (2) Is subordinate to and serves a principal building or a principal use; is subordinate in area, extent, or purpose to the principal building or principal use served.
- (3) Is located on the same lot as the principal building or use served.

Accessory use (residential) means a subordinate use which is detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service. Accessory buildings include but are not limited to an automobile storage garage, laundry room, garden shelter, hobby room and mechanical room.

Airport or landing field means a landing facility for fixed wing aircraft containing a minimum of 60 acres.

All-weather surface means a hard smooth paved surface of either hot-mixed asphaltic concrete (HMAC) or Portland cement concrete (PCC) and the appropriate base material, meeting the following minimum specifications:

- (1) Hot-mixed asphaltic concrete:
 - a. Surface: 1.5 inches of type D or type C material.
 - b. Base: six inches of compacted iron ore gravel or the equivalent flexible base, or four inches of compacted hot sand asphaltic base.
- (2) Portland cement concrete:
 - a. Surface: five inches of class A, 3,000 psi concrete, reinforced with WWF 6 × 6, W 2.9 - 2.9.

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- b. Base: four inches of compacted granular material.

Material shall conform to city and state department of transportation specifications. Other possible types of paved surfaces will be considered on a case-by-case basis by the city's planning and engineering departments.

Amusement, commercial (indoor) means an amusement enterprise wholly enclosed in a building, including but not limited to a bowling alley, bingo parlor or amusement arcade, but not including a billiard parlor or pool hall.

Amusement, commercial (outdoor) means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including but not limited to a golf driving range, archery range, and miniature golf course.

Animal hospital or clinic means a facility for the treatment or care of domestic animals, which includes a veterinarian's office, and may include overnight stays, but does not include outside pens.

Animal pound. See *Animal hospital or clinic* with outside pens.

Antique shop means an establishment offering for sale articles such as glass, china, furniture or similar furnishing and decorations which have value and significance as result of age, design or sentiment; and when all such items displayed or offered for sale are housed within a building and there is no exterior display except the usual sign or advertising.

Apartment means a dwelling unit in a multiple-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family. See *Multifamily; (apartments)*.

Area of lot means the square-foot area of a lot within the bounding property lines and exclusive of dedicated streets or alleys.

Artificial lot means an area within a platted lot, for the purpose of satisfying the requirements of this chapter, that is delineated on the building site plan and the landscape plan and approved by the city planner.

Arts school or studio means a school for instruction and practice of the performing, visual or martial arts.

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.).

Banks and financial institutions means activities and institutions for the extension of credit and the custody, loan or exchange of money.

Bed and breakfast establishment means a private single-family residence in which lodging for one or more nights and breakfast is provided by the resident owner for compensation.

Billiard parlor or pool hall means a facility for the playing of billiards and pool. Food service may be allowed as an ancillary use.

Block means an area enclosed by streets, or if such word is used as a term of measurement, it shall mean the distance along a side of a street between two intersecting streets, or if the street is of a dead-end type, a block shall be considered to be measured between the nearest street and the end of such dead-end street.

Board means the board of adjustment as provided for in division 3 of article II of this chapter.

Boardinghouse or roominghouse means a building, other than a hotel or multiple-family dwelling, where lodging is provided for five or more persons for compensation, where meals may or may not be served and where

facilities for food preparation are not provided in the individual rooms. Where meals are served, they shall be served only to the residents of the boardinghouse.

Building means any structure designed, built or intended for the shelter or enclosure of persons, animals, chattels or movable property of any kind or for an accessory use. When separated by an absolute fire separation, each portion of such structure so separated shall be deemed a separate building. This definition includes structures wholly or partly enclosed with an exterior wall.

Building line means a line established, in general, parallel to the front property line, over which no part of a building shall project, except as otherwise provided in this chapter.

Building and landscape materials and lumber sales (outside sales) means a facility for the sale of home, lawn and garden supplies and construction materials such as brick, lumber and other similar materials. The facility may include outside sales.

Cabinet and woodwork shop (custom) means a shop for the repair or creation of individual items of furniture and wooden home furnishings on a custom basis, not a factory, planing mill or similar woodworking plant.

Carnival or circus (temporary) means a temporary traveling show or exhibition usually housed in tents, and which has no permanent structure or installation.

Carwash means a facility or area for the cleaning or steam cleaning, washing, polishing or waxing of passenger vehicles by machine or hand-operated facilities. A carwash may be a single unit, multiple single washing units, or a tunnel type which can wash several vehicles in tandem.

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

Chemical and allied products includes the manufacturing of industrial inorganic and organic chemicals, plastics materials, and synthetic resins, synthetic rubber, synthetic and other manmade fibers; drugs; soap, detergents, cleaning preparations, perfumes, and other toilet preparations; paints, varnishes, lacquers, enamels, and allied products; gum and wood products; agricultural chemicals; and other chemical and allied products.

Church or place of worship means a facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue or other structure, together with its customary accessory structures and uses, including a parsonage or rectory. This does not include home meetings or other religious activities conducted in a privately occupied residence.

City council means the official governing body of the City of Nacogdoches.

Club, private means a clubroom or suite of rooms or a building available to restricted membership for meetings, dining and entertainment. Such facilities may include a private tennis court, swimming pool or similar recreation facilities, none of which are available to the general public.

College or university means an institution of higher learning beyond the level of a secondary school.

Community center (private) means:

- (1) A building or group of rooms designed and used as an integral part of a residential or apartment project by the tenants of such a project for a place of meeting, recreation or social activity and under the management and unified control of the operators of the project.
- (2) A private nonprofit community center operated as a boys' or girls' club or similar use. A private community center shall not be operated as a place of public meetings, or as a business.

Community center (public) means a building and grounds owned and operated by a governmental body for the social, recreational, health or welfare of the surrounding community.

Convenience store means any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with such and having a gross floor area of less than 7,500 square feet.

Convent or monastery means the living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

Contractor or maintenance yard means an open storage yard for supplies and operational equipment, including buildings, but not constituting a junkyard, wrecking yard or salvage yard.

Country club (private membership) means an area of 20 acres or more containing a golf course and a clubhouse and available only to a private specific membership. Such a club may contain as adjunct facilities a private club and dining room, swimming pool, tennis courts and similar recreation facilities.

Coverage means the percent of a lot area which is covered by a roof, floor or other structure and is not open to the sky. Roof eaves to the extent of two feet, and ordinary projections from the building not exceeding 12 inches, shall not be counted in computing coverage.

Custom sewing and millinery means custom making of items of apparel and millinery, by a seamstress, but not involving a factory.

Day care means a facility or area used regularly to provide daytime care, training, education, custody, treatment or supervision to more than four children, adults or elderly in other than a family setting for less than 24 hours a day, whether for compensation or not. This definition includes preschools, private kindergartens, nurseries and other similar uses not listed elsewhere in this chapter.

Density means as follows:

- (1) *Residential density* means the relationship of dwelling units or rooms to the area of the lot or tract upon which a residential structure is located or erected, and is expressed in "units per acre."
- (2) *Nonresidential density* means the ratio of the area of the building to the area of the site. See *Floor area ratio (FAR)*.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as a single living quarters and includes facilities for food preparation and sleeping.

Eating place with drive-in or curb service means an establishment offering food for sale to customers in automobiles and wherein the food for sale is to customers in automobiles and wherein the food service is to the automobile.

Eating place without drive-in or curb service means any eating establishment, cafeteria, restaurant or inn where food service is offered to the customers not in automobiles.

Emergency ambulance service means a facility for the operation and dispatch of emergency medical vehicles. Typically this operation is ancillary to a hospital or a fire station, but it may also be a primary use on a property.

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

Fabricated metal products includes the manufacturing of ordnance and accessories; machinery, equipment and supplies; transportation equipment; and other fabricated metal products.

Fairground means a specific facility that hosts special indoor and outdoor events including exhibits or competitions of agricultural products, livestock, machinery, etc.; a large exhibition or show of products from various countries; an exhibition or sale of fancywork or other items for the benefit of some cause; or a gathering of buyers or sellers of some product or service.

Family means any number of individuals living together as a single housekeeping unit, in which not more than two individuals are unrelated by blood, marriage or adoption.

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.

~~Family home and family group home means a community-based residential home licensed by the state department of mental health and mental retardation providing food and shelter, personal guidance, care, rehabilitation services, or supervision. Family homes shall have a maximum of six clients plus two staff members residing in a house. Family group homes shall have a minimum of seven and a maximum of 15 clients plus staff residing in a house.~~

Farm, ranch, garden or orchard means an area of three acres or more which is used for growing of usual farm products, vegetables, fruits, trees and grain for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, including a private stable and also 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 city ordinance or law.

Farmers' market means the retail sale of farm products by individual vendors either within a building or outside. Items sold may include fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey. The sale of new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise are not included.

Feed store, retail (livestock, no mill) means an establishment for the sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

Flea market means a building or open area in which stalls or sales areas are set aside and rented, or otherwise provided, and which are intended for the sale of articles that are either homemade, homegrown, hand-crafted, old, obsolete, or antique and may include the retail selling of goods by businesses or individuals who are generally engaged in retail trade. This does not include garage sales.

Floor area means the total square-foot area of all floors in the building measured to the outside faces of exterior walls or to the line of an omitted wall, whichever includes the largest area.

Floor area ratio (FAR) means the ratio between the total square feet of floor area in the building to the total square feet of land in the lot or tract; e.g., "2:1" means that the building contains twice the amount of area as there is in the lot.

Foster home means a facility or area providing full-time parental care for six or more unrelated minor children for which compensation or fee is received in return for such services. This must comply with statutory licensing requirements.

Fraternity/sorority house means any building occupied and maintained by a social association of college students, or where organization-sponsored functions are regularly held.

Garage or estate sale: means a sale for the purpose of offering clothing, household furniture or appliances belonging to the residents may be conducted as home occupation provided that no such sale may be held on any lot or premise more often than twice in each calendar year, and not to exceed three days during each sale.

Garden shop and plant sales (display or greenhouse) means an enclosed or open area for the retail sale of plants and gardening products, including fertilizers, soil and gardening implements.

Golf course (public or private) means a golf course owned or controlled publicly or privately. This includes such uses as a clubhouse, food service, retail, and other customary accessory uses.

Golf driving range means a facility for the organized practice of golf techniques. It may include a practice green for putting, a clubhouse and other minor ancillary uses.

Government facility means a facility for public purposes, owned or operated by the city, county, state or federal government. These typically include city hall, courthouse, police and fire stations, public library or museum.

Grain mill products includes the manufacturing of flour and other grain mill products, feeds for animals and fowl, cereal preparations, rice milling, blending and preparing flour, and wet corn milling.

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.

Guesthouse (detached) means a secondary structure on a lot or tract containing dwelling accommodations but excluding kitchen facilities and separate utility services or meters and intended for the temporary occupancy by guests and not rented or used for permanent occupancy.

~~*Halfway house (criminal)* means a facility for the housing, rehabilitation, and training of persons on probation or parole from correctional institutions, or other persons found guilty of criminal offenses.~~

Health club or studio means a wholly enclosed facility for fitness training and practice.

Height means the vertical distance from the average grade of the finish ground level at the center of all walls to the highest finished roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height.

Home occupation means an occupation carried on in the home by a member of the occupant's family, being incidental to the primary occupancy of the home as a dwelling; without the display or advertising of any commodity or service for sale on the premises; without the employment of any persons other than members of the immediate family; without the use of any sign, lighting or display; without the use of other than domestic or household equipment or appliances; and the conduct of which does not generate noise, odor, fumes, vibration, additional vehicle traffic or any other condition visible, obnoxious or detrimental to abutting or adjacent properties.

Hospice means a facility for the terminally ill, where patients are under the supervision of a doctor, but undergo limited curative treatment, and which is licensed by the state.

Hospital (chronic care) means an institution where those persons suffering from generally permanent types of illnesses, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis and which is licensed by the state.

Hospital (general acute care) means an institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state.

Hotel or motel means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 20 individual guestrooms or units and shall furnish the customary hotel services such as linen, maid service, telephone, use and upkeep of furniture, and the accommodations shall not be designed as permanent dwelling units.

Household appliance and equipment repair means a shop for the repair of household and home equipment, such as electrical appliances, lawn mowers, tools, and similar items, where all such items are stored within a building or a storage area surrounded by a solid fence, wall or screen.

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.

Ice or roller skating rink means a facility for the practice of ice or roller skating. Accessory uses may include food service and other indoor amusements, contained entirely within the primary structure.

Industrialized housing means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.

Laundry or dry cleaning, self-service, means an establishment providing facilities for washing or dry cleaning garments and similar items and where the customer may personally supervise and handle the cleaning operation.

Legal height means the maximum height of a building imposed by the Federal Aviation Administration for the airport, this chapter, the building code, or any other legal ordinance or code.

Library, art gallery or museum (public) means any institution for the loan or display of books, objects of art or science which is sponsored by a public or responsible quasipublic agency and which institution is open and available to the general public.

Livestock auction pens or sheds means a facility or area for the auction of livestock. Accessory uses may include but are not limited to feed pens, stalls, and outside pens or runs.

Lot means a platted parcel of land intended to be separately owned, developed, and otherwise used as a unit.

Lot, corner, means a lot situated at the intersection of two dedicated streets and having frontage along both streets extending from the intersection.

Lot, double frontage, means a lot having frontage on two or more dedicated streets other than a corner lot.

Lot lines means the property or lease lines bounding a lot or tract.

Lot line, interior, means a lot line delineating the division between two contiguous lots on the interior of a block and not adjacent to a street.

Lot of record means a lot which is part of a subdivision plat which has been recorded in the office of the county clerk or a tract of land described by metes and bounds, the description of which is recorded in the office of the county clerk.

Lot width means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.

Lumber and wood products manufacturing includes logging camps and contractors; sawmills and planing mills; and the manufacturing of millwork, veneer, plywood, prefabricated structural wood products, wood furniture; and other lumber and wood products.

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

Manufactured home means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

Manufactured home park means a unified development of manufactured home sites, plots, or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate manufactured homes for permanent duration.

Meat products processing or manufacturing includes meat, poultry, and small game packing and the manufacturing of sausages and other prepared meat products, but not including the slaughtering of animals or poultry.

Microbrewery means a business which:

- (1) Operates under a manufacturer's license, as described in V.T.C.A., Alcoholic Beverage Code, ch. 62, issued by the Texas Alcoholic Beverage Commission ("T.A.B.C.");
- (2) May operate, but is not required to operate under a brewer's permit as described in V.T.C.A., Alcoholic Beverage Code, ch. 12, issued by T.A.B.C.;
- (3) Has a total maximum production per year of beer, malt liquor and ale of not more than 15,000 barrels (or 465,000 standard gallons); and
- (4) Does not produce or generate any generally obnoxious odors.

Mobile home means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.

Mobile home park means a unified development of mobile home sites, plots or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate mobile homes for a permanent duration.

Multifamily (apartments) means any building or portion thereof which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.

Nightclub or dancehall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- (1) Live, recorded or televised entertainment, including but not limited to performances by magicians, musicians or comedians;
- (2) Dancing; or

(3) Any combination of subsections (1) and (2) of this definition.

This does not include theaters, auditoriums and stadiums with fixed row seating; private clubs; bars; teen clubs; or any establishment defined elsewhere in this chapter as an adult entertainment establishment.

Nursing and convalescent homes means an establishment which furnishes, in single or multiple facilities, food and shelter to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment and, in addition, provides minor treatment under the direction and supervision of a physician, or services which meet some need beyond the basic provision of food, shelter and laundry.

Office (general and professional) means a facility for the regular transaction of business, wherein services are performed involving predominantly administrative, professional or clerical operations not specifically listed elsewhere in this chapter.

Open space means an area on a lot that is open and unobstructed to the sky except for the ordinary projections of cornices and eaves, and is exclusive of driveways or parking areas.

Open storage (no enclosure) means storage in the open of vehicles, machinery or any equipment or commodity where permitted as a primary use of land and accessory storage in the open of commercial and industrial products where such storage is not enclosed by a fence, wall or building.

Open storage with visual screen means the permitted storage of any equipment or commodity in a open area which is enclosed by a fence or wall, as defined in this chapter, or surrounded by a building so as to create an effective visual screening of the storage from the adjacent property.

Orphanage means an institution for the care of orphans or other abandoned children.

Paper and allied products manufacturing includes the manufacture of pulp, paper, paperboard, converted paper and paperboard products, paperboard containers and boxes, building paper and building board.

Pawnshop means a building or premises, other than a bank, savings and loan or mortgage banking company, used for the business of lending money on the security of pledged goods, or for the business of the purchase of tangible personal property on condition that it may be redeemed or repurchased by the seller for a certain price within a certain period of time, and licensed by the state to conduct such a business.

Pet shop means a place for the display and sale of small animals and birds as pets, such as dogs, cats, parakeets or canaries, but not involving the boarding or treating of dogs or similar pets.

Petroleum refining and related industries includes the refining of petroleum and the manufacturing of paving and roofing materials; lubricating oils and greases and other petroleum and coal products.

Piercing studio means any establishment that performs any type of body piercing.

Pool house (detached) means a secondary structure on a lot with a swimming pool, excluding separate utility services or meters, and intended for temporary recreation use and not used as a permanent occupancy.

Poultry hatchery means a commercial facility for the hatching and raising of domestic fowl, including a research facility for such activity.

Primary metal products manufacturing includes blast furnaces, steel works and the rolling and finishing of ferrous metals; iron and steel foundries; primary smelting and refining of nonferrous metals and alloys, rolling, drawing and extruding of nonferrous metals; and nonferrous foundries.

Professional, scientific and controlling instruments; photographic and optical goods; watches and clocks manufacturing includes the manufacturing of engineering, laboratory and scientific and research instruments and associated equipment; instruments for measuring, controlling, and indicating physical characteristics; optical instruments and lenses; surgical, medical, and dental instruments and supplies; ophthalmic goods; photographic equipment and supplies; and watches, clocks, clockwork-operated devices and parts.

Psychiatric hospital or ~~institution~~ Sanatarium means a facility or area for providing health services primarily for inpatient medical care for alcoholic, narcotic, or psychopathic patients, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices that are an integral part of the facilities. This includes a substance abuse and rehabilitation facility.

Racetrack means an indoor or outdoor facility for the recreational or competitive racing of horses, canines, or motor vehicles, including the necessary accessory uses such as retail sales, automobile maintenance, veterinarian supplies and shops, exercise areas and stables.

Radio or television transmission station (commercial) means a facility used for the production and transmission of programming by radio or television to the general public. Included are commercial, religious, educational and other stations.

Radio, television, microwave or cellular communication tower (commercial) means structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

Radio tower (noncommercial) means a radio tower located on a residential property which is for home use, only, and which is not taller than 15 feet above the maximum building height allowed in the district.

Recreation club or area (private) means a building, park or recreation area, the use of which is restricted to private membership such as by a church, neighborhood association, fraternal or social organization, and which may contain the normal active and passive facilities as provided in a park or playground, or public recreation facility.

Recreation facility (public) means a facility or area sponsored by a public entity and devoted to sports, entertainment, games of skill or recreations to the general public. This may include swimming pools, tennis courts, playgrounds, community clubhouses, park facilities and other similar uses.

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.

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. This does not include a nursing or convalescent home

Retirement home means a residential facility principally designed for persons 55 years of age or older. Dwelling units may include full kitchen facilities, and recreational, social, nursing or other services may be available. This does not include a nursing or convalescent home.

Rubber and miscellaneous plastics manufacturing includes the reclaiming of rubber and the manufacture of tires and innertubes; rubber footwear; plastic products; and other fabricated rubber products.

Sanitarium – see psychiatric hospital.

Satellite dish means the dish and its structural elements that is commonly used in the reception of television signals from orbiting satellites.

School, K—12, public or private, means a school and customary accessory uses under the sponsorship of a public or religious agency having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

School, vocational means a business operating for profit and offering instruction and training in a service or art, such as a secretarial school, barber college, commercial art school; or offering instruction and training in a trade such as welding, bricklaying, machinery operation and other similar manual trades. This does not include truck or heavy equipment driving schools.

Service station means any facility where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include facilities where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work are conducted.

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

Single-family dwelling (attached) means a dwelling unit on a separately owned lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate walls and occupied by not more than one family.

Single-family dwelling (detached) means a detached building having a single dwelling unit and occupied by not more than one family.

Single-family dwelling (zero lot line) means a dwelling unit on a separately owned lot on which one wall of the principal dwelling is located within one foot of the side property line of an adjacent residential lot, and the other side yard meets or exceeds the minimum required side yard for the district.

Stable, commercial, means a facility housing horses or mules which are boarded or rented to the public or any stable other than a private stable; but not including a sales barn, auction, or similar trading activity.

Stable, private, means a facility or area for keeping horses, mules or other domestic animals for the private use of the property owner.

Stone, clay, glass and concrete products manufacturing includes the manufacturing of glass; flat glass and glassware; cement; structural clay products; pottery and related products; concrete, gypsum and plaster products; cut stone and stone products; and abrasive, asbestos and other nonmetallic mineral products.

Studio (art, drama, speech, or dance) means a building or rooms in a building used for the instructing, coaching or counseling in drama, speech, dance or similar personal skills or arts.

Tattoo salon means an establishment or facility in which tattooing is performed.

Teen club means a nightclub that caters to teenage patrons.

Tennis court (lighted) means an outside tennis court with elevated lighting for nighttime play.

Tennis court (no lights) means an outside tennis court without elevated lighting for nighttime play.

Textile mill products manufacturing includes the manufacturing of woven fabrics, knit goods, rugs, carpets, yarns, and threads, and other textile goods; and the dyeing and finishing of textiles.

Theater, movie or live (enclosed) means a facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

Tobacco products manufacturing includes the manufacturing of cigarettes, cigars, chewing and smoking tobacco, snuff; tobacco stemming and redrying.

Travel trailer/RV park means any lot upon which two or more travel trailer or other recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. The area is intended for use on a shortterm basis by campers, vacationers, and travelers.

Truck or heavy equipment driving school means a type of vocational school where education is provided behind the wheel of trucks or heavy equipment.

Two-family dwelling means a detached building having two dwelling units and occupied by not more than two families.

Use, nonresidential, means any use other than a one- or two-family residence, or a roominghouse or boardinghouse, and their bona fide accessory uses.

Use, residential, means a one- or two-family residence, or a roominghouse or boardinghouse, together with bona fide accessory uses.

Utility facilities (major) includes such uses as electrical substations, wastewater treatment plants, elevated water storage and water treatment plants.

Utility lines and transmission includes local utilities such as electric power, telephone, gas, water, sewer, and air monitoring stations. It also includes inline facilities such as gas regulating stations and water wells or pumping stations; sewage pumping stations; telephone exchange, switching and transmitting equipment; and electrical transmission lines operated by a municipality or a franchised utility company. It does not include major utility facilities.

Veterinary office (no hospital or clinic) means a facility for the diagnosis and treatment of animals, without an overnight stay.

Warehouse/storage (inside) means a building or group of buildings providing enclosed shelter and protection for commodities stored therein. No open or unenclosed storage shall be classified as a warehouse.

Wrecking yard, junkyard, salvage yard or reclamation yard means a yard or building where automobiles, machinery, appliances or other used commodities and equipment are stored, dismantled, and/or offered for sale as whole units or as salvaged parts.

Yard means an open space on the lot on which a building is situated and which is open and unobstructed to the sky.

Yard, front, required, means a yard facing and abutting a street and extending across the front of the lot between the side lot lines and having a minimum horizontal depth measured from the street equal to the depth of the minimum front yard specified for the district in which the lot is located. The required front yard line represents the line in front of which no building or structure may be erected.

Yard, rear, required, means a yard extending across the rear of the lot between side lot lines and having a minimum depth measured from the rear lot line as specified for the district in which the lot is located.

Yard, side, required, means a yard located on a lot and extending from the required front yard to the required rear yard and having a minimum width measured from the side lot line as specified for the district in which the lot is located. Any lot line which is not a rear or front line shall be deemed a side lot line.

Zoning district map means the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this chapter and, together with the zoning text in this chapter, make up the zoning ordinance for the city.

Zoo, zoological park, animal park, or aviary means an institution which owns and maintains captive wild animals and under the direction of a professional staff, provides its collection with appropriate care and exhibits

them in an aesthetic manner to the public on a regularly scheduled basis for the purposes of education, conservation, scientific study and recreation.

(Ord. No. 1130, art. III, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1351-2-04, 2-3-2004; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1535-11-09, § 3, 11-17-2009; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1708-6-16, § 2, 6-21-2016)

Cross reference(s)—Definitions generally, § 1-2.

City Planner Initiated Text Changes

Subject:

1. Adding feathered flag or teardrop sign type and definitions.
2. Proposing exceptions for their use.

Why:

There was a request by a council member regarding this type of on-premise signage. We came to find out that this type of signage was not defined in our ordinance and was currently not being permitted.

Research - What Staff found:

In researching these sign types, we noticed regulations for these signs fluctuated. Some cities allowed them with no exceptions, some allowed them with limited exceptions while others prohibited them.

These types of on-premise signs either can be seen as helpful advertising or could be the blight of the City. We would like to discuss what you think. Our current ordinance does not limit these signs. I think there is a happy medium when looking at what is acceptable and there are many ways we can look or not look at regulating them. Staff also met with code enforcement to discuss what is reasonable and how this would look. Staff discussed how they will be submitted, paid for, and enforced. Code appreciated the involvement and provided that a limited allowance to 4x a year would work best.

Staff reviewed numerous other ordinances (San Antonio, Alvin, Baytown, Tomball) to find them to compare best practices.

This also be a good time to recognize some of the other dated requirements of the sign code and the update or establishment of new sign permit fees.

Sec. 78-1. Definitions.

All words used in the present tense shall include the future.

All words in the singular number include the plural number and all words in the plural number include the singular number.

The word "person" includes "corporation", "co-partnership", "association", and "individual".

The word "shall" is mandatory and not discretionary.

Terms not herein defined shall have the meaning assigned to them in the Building Codes of the City of Nacogdoches. Terms not defined herein or in the building codes shall have the customary meaning assigned to them.

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:

Abandoned sign means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

Advertising means to convey information, to seek the attraction of or to direct the attention of the public to any location, event, person, activity, goods, services, or merchandise.

Authority having jurisdiction means knowledgeable and qualified employees of the city who have backgrounds which will enable them to understand easily and quickly the issues presented in relation to rendering of interpretations of this chapter. The authority having jurisdiction is responsible for reviewing sign applications, issuing sign permits, and accepting variance requests and is responsible in enforcing all aspects of this chapter.

Awning means a shelter projecting from and supported by the exterior wall of a building constructed of nonrigid materials on a supporting framework (compare "marquee").

Awning sign means a sign painted on, printed on, or attached flat against the surface of an awning.

Balloon or inflatable signs mean any form of advertisement in the form of or attached to a balloon or other inflatable, inflated or floating device, which is larger than two feet in diameter.

Banner sign means a strip of durable fabric on which a sign is printed; paper or reinforced cardboard type signs are not considered banner signs.

Billboard. See "off-premises sign."

Board of sign control and appeals. See section 78-33.

Building means any structure that encloses a space used for sheltering any occupancy. Each portion of a building separated from other portions by a fire-wall shall be considered as a separate building.

Building official means the officer or other designated authority or his duly authorized representative, charged with the administration and enforcement of the construction codes.

Cabinet means a sign component that houses the other components of a sign.

Changeable copy sign (automatic) means a sign on which the copy changes automatically on a lamp bank or through mechanical means, e.g., electrical or electronic time and temperature units.

Changeable copy sign (manual) means a sign on which copy is changed manually in the field, e.g., reader boards with changeable letters.

City-owned property means property owned or controlled by the City of Nacogdoches, Texas.

Clearance (of a sign) means the smallest vertical distance between the grade of the adjacent street or street curb and the lowest point of any sign, including framework and embellishments, extending over that grade.

Community support signs mean on-premise signs not consisting of a portable sign as defined by this chapter, which promote community spirit and support public or semi-public organizations; but do not advertise a commercial product or service or special event. Examples include, but are not limited to "Home of a Nacogdoches Dragon" signs or "SFA Game today" signs.

Construction sign means a temporary sign identifying an architect, contractor, subcontractor, and/or material supplier participating in construction on the property on which the sign is located.

Copy means the wording on a sign surface in either permanent or removable letter form.

Curbline means an imaginary line drawn along and parallel to the outermost part or back of the curb and gutter on either side of a public street; or, if there is no curb and gutter, along and parallel to the outermost portion of the paved street; or, if there is no paved street, along and parallel to the outermost edge of the traveled portion of the street.

Day means the portion of one calendar day from sunrise to sunset.

Directional/information sign means an on-premises sign giving directions, instructions, or facility information and which may not contain the name or logo of an establishment and which may contain no advertising copy, e.g., parking or exit and entrance signs.

District means any section of the city for which the regulations governing the use of land and the use, density, bulk, height, and coverage of buildings and other structures are uniform for each class or kind of building therein. Also see "zoning district."

Double-faced sign means a sign with two faces.

Early voting period as defined in V.T.C.A., Election Code § 85.001.

Electioneering as defined in V.T.C.A., Election Code § 85.036.

Electrical sign means a sign or sign structure in which electrical wiring, connections, or fixtures are used.

Electronic message centers means a sign or portion of a sign, that displays an electronic image or video, which may or may not include text, including any sign or portion of a sign that uses changing lights or similar form of electronic display such as LED to form a sign message or messages with text and or images wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. This definition includes without limitation television screens, plasma screens, digital screens, flat screens, LED displays, video boards, and holographic displays.

Facade means the entire building front including the parapet.

Face of sign means the area of a sign on which the copy is placed.

Feather sign (aka tear drop) means a sign in a feather, flutter, square, teardrop and half drop shape usually self-supported or supported by a flexible pole(s) and firmly affixed to the ground.

Festoons means a string of ribbons, tinsel, small flags, or pinwheels.

Flag, corporate. The official flag of a company including logo flags.

Flag, spirit. School flags or flags that contain crests, pictures and such but contain no advertising.

Flashing sign means a sign which contains an intermittent or sequential flashing light source used primarily to attract attention, utilizing a lighting source such as an incandescent or fluorescent light bulb, LED or other source of illumination. The term does not include changeable copy signs, animated signs, or signs which, through

reflection or other means, create an illusion of flashing of intermittent light (compare "animated sign" and "changeable copy sign").

Freestanding sign means a sign supported upon the ground by poles or braces and not attached to any building.

Frontage means the length of the property line of any one premises along a public right-of-way on which it borders.

Frontage (building) means the length of an outside building wall on a public right-of-way.

Government sign means any temporary or permanent sign erected and maintained by the city, county, state, or federal government for traffic direction or for designation of or direction to any school, hospital, historical site, or public service, property, or facility.

Height (of a sign) means the vertical distance measured from the highest point of the sign, excluding decorative embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less (compare "clearance").

Holiday signs means temporary signs containing only holiday messages and no commercial advertising.

Home occupation means any occupation or activity conducted within a dwelling unit which is clearly incidental and subordinate to the use of the premises for dwelling purposes (see chapter 118, zoning).

Identification sign means a sign whose copy is limited to the name and address of a building, institution, or person and/or to the activity or occupation being identified.

Illegal sign means a sign which does not meet the requirements of this chapter and any applicable state laws or which has not received exempt status.

Illuminated sign means a sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

Incidental sign means a small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises, e.g., a credit card sign or a sign indicating hours of business, and not exceeding two square feet. The term means any sign located within the confines of a project which is not legible from any public right-of-way.

LED means light emitting diode.

Lot means a parcel of land legally defined on a subdivision map recorded with the appraisal district, or a parcel of land defined by a legal record or survey map.

Low profile sign means a sign having a maximum height of 11 feet and a maximum sign area of 60 square feet or less.

Maintenance means the cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign.

Mansard means a permanent roof-like structure or canopy of rigid materials supported by and extending from the facade of a building (compare "awning").

Marquee means a permanent canopy, awning, or roof-like structure of rigid materials supported by and extending from the facade of a building. A marquee is considered to be part of the building.

Marquee sign means any sign attached to or supported by a marquee structure.

Nameplate means a nonelectric on-premises identification sign giving only the name, address, and/or occupation of an occupant or group of occupants.

Night means the portion of two calendar days from sunset to sunrise.

Nits means candela per meter square used as a measurement of brightness.

Occupancy means the portion of a building or premises owned, leased, rented, or otherwise occupied for a given use.

Office, retail, downtown, (B-1, B-2, B-3) means an identification of city zoning districts; refer to the zoning map for the location of districts.

Off-premises sign means a sign advertising an establishment, merchandise, service, or entertainment which is not sold, produced, manufactured, or furnished at the property on which the sign is located, e.g., billboards or outdoor advertising.

On-premises sign means a sign which pertains to the use of the premises on which it is located. Refer to chapter 118, zoning.

Owner means a person recorded as such on official records or the on-premises person in control of the premises. For the purposes of this chapter, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the building official, e.g., a sign leased from a sign company.

Painted wall sign means any sign which is applied with paint or similar substance on the face of a wall.

Parapet means the extension of a false front or wall above a roofline.

Pennant means a triangular-shaped or other shaped ribbon or device which is greater than one inch in length and used either singularly or in groups on a line or pole for advertising purposes or for attracting the attention of the public.

Person means any individual, corporation, association, firm, partnership, or similarly defined interest.

Point of purchase display means advertising of a retail item accompanying its display, e.g., an advertisement on a product dispenser.

Pole covers means covers enclosing or decorating poles or other structural supports of a sign.

Pole banners mean banners located on private light standards and poles, not to exceed 24 total square feet per pole.

Political sign means a temporary sign used in connection with a local, state, or national election or referendum.

Portable sign means any sign designed or constructed to be easily moved from one location to another and not permanently affixed to the ground or to a structure or building, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier, or other nonmotorized mobile structure. A portable sign which has its wheels removed shall still be considered a portable sign under this definition.

Premises means a tract of land with buildings or part of a building, with its appurtenances.

Prohibited area is the area within which V.T.C.A., Election Code § 85.036(a) prohibits electioneering during the time an early voting or voting place is open for the conduct of early voting or voting.

Projecting sign means a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign.

Public property means property owned or controlled by a public entity.

Public right-of-way (public street) means that land dedicated for public use commonly as a street, roadway, alley, bridge, or thoroughfare, and most often extends the entire width between property lines of any roadway, street, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is

open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

Real estate sign means a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Roof sign means any sign erected over or on the roof of a building (compare "wall signs").

Roofline means the top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys, or minor projections.

Rotating sign means a sign in which the sign itself or any portion of the sign moves in a revolving or similar manner. Such motion does not refer to methods of changing copy.

Searchlight means an apparatus containing a strong light source and a reflector for projecting a bright beam of light, usually truck or trailer mounted.

Shopping center. See "strip center."

Sign includes but is not limited to any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any person, persons, political party, event, establishment, product, goods, or services.

Sign, area of, means the area determined as follows:

- (1) *Projecting and freestanding signs.* The area of the sign shall be measured as follows:
 - a. If the sign is composed of one or two individual cabinets, the area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.
 - b. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single, continuous geometric figure shall be the area of the sign. Pole covers and other embellishments shall not be included in the area of measurement if they do not bear advertising copy.
 - c. Only one face of a double-faced sign will be used to figure the total square footage.
- (2) *Wall signs.* The area shall be within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of the advertising message. If the sign is composed of individual letters or symbols using the wall as the background with no added decoration, the total sign area shall be calculated by measuring the area within the perimeter of each symbol or letter. The combined areas of the individual figures shall be considered the total sign area.

Snipe sign means a temporary sign or poster affixed to a tree, fence, etc. (such as a garage sale sign), less than four square feet.

Special event or public announcement signs mean a sign or notice posted to announce public information concerning special events, bazaars, rallies, or other similar activities. These special events, bazaars, rallies, or other similar activities must be sponsored by charitable, religious, philanthropic, educational or civic institutions.

State-maintained highway means any state-owned or state-maintained roadway within the city or its extraterritorial jurisdiction.

Strip center (shopping center) means a building plot developed or ultimately to be developed with three or more stores, shops, or commercial enterprises, and which has shared parking facilities or access.

Subdivision identification sign means a freestanding or wall sign identifying a recognized subdivision, condominium complex, or residential development.

Temporary changeable advertisement means a promotional placard such as, but not limited to signs between pumps at service stations. Such signs are constructed of cardboard, wallboard, plastic, or metal, not to exceed six square feet in size and not intended for long term use. A portable sign shall not be considered a temporary sign.

Under-canopy sign means a sign suspended beneath a canopy, ceiling, roof, or marquee.

Use means the purpose for which a building, lot, sign, or structure is intended, designed, occupied, or maintained.

Wall sign means a sign attached parallel to and extending not more than 12 inches from the wall of a building. This definition includes painted, individual letter, and cabinet signs, and signs on a mansard.

Window sign means a sign installed inside a window and intended to be viewed from the outside, made of wood, paper, paint, or vinyl and not illuminated.

Zoning district means A (agricultural-open space), R-1, R-2, (single-family residential), R-3, R-4 (multifamily residential), B-1, B-2, B-3 (commercial district), I (industrial), M (medical district), and PD (planned development). Also see "district."

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 78-4. Signs prohibited.

The following types of signs are prohibited in all districts:

- (1) Abandoned signs.
- (2) Banners, except allowed in sections 78-98 and 78-100.
- (3) Signs imitating or resembling official traffic or government signs or signals.
- (4) Snipe signs or signs attached to trees, utility poles, public benches, or streetlights.
- (5) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying the sign. This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business. Vehicles or trailers must have a current license and inspection. Also see section 78-77(6) for approval of motor vehicles.
- (6) Off-premises signs except as allowed in subsection (10)a and b of this section.
- (7) Portable and trailer signs.
- (8) Signs on public rights-of-way, as follows:
 - a. With the passage of the ordinance creating this chapter, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb or other public improvement in any public street or grounds, on any public bridge or part of same or utility pole, or on any public building or structure of any kind belonging to the city, or in any public place or on any public improvement unless express consent therefore shall have been first granted by the city manager. However, coin-operated devices used to display and vend newspapers may be so placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection (8)a does not apply to public property leased for private business purposes.
 - b. Any unlawful sign found within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and the removal thereof is authorized. The authority having jurisdiction, police officer and the department of inspection services are authorized to impound any unauthorized signs found on a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the authority having jurisdiction for storage. The custodian of the storage area shall maintain records of where such signs were located when they were so impounded and the date on which they were so impounded and shall hold the signs in the storage area for a period of not more than 30 days. Any sign so held may be redeemed by the owner thereof upon the payment of a fee to the city through the custodian thereof for hauling the same to storage plus a per-day storage fee for each day the sign is stored. Such fees are on file in the city secretary's office and shall be in addition to and not in lieu of any fine imposed upon such owner for violation of this chapter.
 - c. Signs permitted under subsection 78-77(23) are not prohibited by this section.
- (9) Balloon signs except as allowed in sections 78-98 through 78-100.
- (10) Off-premises signs, both commercial and noncommercial, except on public property, where there has been a determination of the authority having jurisdiction that the display of the sign:
 - a. Promotes a positive image of the city for the attraction of business or tourism; and
 - b. Depicts an accomplishment of an individual or group.

Upon such determination, the city can authorize, upon approved construction plans, a sign to be located on city right-of-way. The sign shall be displayed for a period ordered by the authority having jurisdiction.

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- (11) Off-premises commercial signs and portable signs within the extraterritorial jurisdiction of the city.
 - (12) Signs painted on rooftops.
 - (13) Flashing signs.
 - (14) Any sign which emits sound, odor, or visible matter.
 - (15) Pennants and festoons except as allowed in sections 78-98 through 78-100.
 - (16) Searchlights.
 - (17) Temporary changeable advertisements except as allowed in sections 78-98 through 78-100.
 - (18) Pole banners except as allowed in sections 78-98 through 78-100.

(19) Feather signs except as allowed in sections 78-98 through 78-100.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

Sec. 78-98. Signs permitted in B-1, B-3, and "M" zoning districts.

Signs are allowed as follows in B-1, B-3, historic and "M" zoning districts:

- (1) All signs as permitted in sections 78-96 and 78-97.
- (2) For the historic district-downtown historic district, see article VI of this chapter.
- (3) One freestanding sign shall be allowed subject to the requirements set forth in table 2 in section 78-101.
- (4) Wall signage for each occupancy shall not exceed one and one-half square feet in sign area for each linear foot of that occupancy's building frontage on each street frontage up to a maximum of 300 square feet.
- (5) Where an occupancy is on a corner or has more than one street frontage, one additional freestanding sign will be allowed on the additional frontage, not to exceed the size allowed in section 78-101.
- (6) Strip centers and malls may place additional freestanding signs with a minimum 200 feet of separation on two acres or larger or have multiple signs on a single freestanding sign subject to the requirements set forth in table 1 in section 78-101.
- (7) Signage on freestanding gas station canopies shall not exceed 30 total square feet in area. The lettering and logo shall not be more than two feet in height. This signage shall not be computed in the number of allowable freestanding or wall signs.
- (8) On-premises banner signs and may be used only during business or activity opening, or special promotions, subject to the following:
 - a. Banners must be mounted on a building face. All four corners and at least three sides of the banner must be secured to the building.
 - b. Banners must be maintained in a good condition. Torn, frayed, or tattered banners must be removed.
 - c. Each occupancy is allowed one banner per each building face that is visible from the right-of-way. There may be no more than one banner mounted on each building face at any given time.
 - d. All banners must be placed at least 12 feet from the back of the curb, or property line, whichever is greater.
 - e. Permits must be obtained before the placement of banners.
 - f. Each occupancy may obtain eight banner permits per year, for a period of 30 days for each permit.
 - g. The total area of banner signage allowed at each occupancy is based on table 1 below:

Table 1

Frontage (Feet)	Max Area (Square Feet)
0—100	25
101—200	50
201—300	75
301—400	100
401—500	125
501—600	150

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- (9) Only one under-canopy sign per elevation not to exceed 40 percent of the total elevation area shall be allowed.
- (10) Awning signs not more than 30 percent of the surface area of the awning.
- (11) Temporary changeable advertisements may be used, subject to the following:
- a. Permits must be obtained before the placement of temporary changeable advertisements
 - b. Each occupancy may display no more than one temporary changeable advertisement at the same time.
 - c. Each occupancy may obtain two temporary changeable advertisements per year, and each permit is valid for six months.
 - d. All temporary changeable advertisements must be at least 12 feet from the back of the curb or property line, whichever is greater.
 - e. All temporary changeable advertisements must be securely fastened to a permanent structure such as a building, a privately owned light pole, a gas pump, etc. No signs may be attached to public utility poles or public street lights.
- (12) Pole banners may be used, subject to the following regulations:
- a. Limited to not more than two pole banners on any pole.
 - b. Limited to no more than 24 total square feet of banners per pole.
 - c. Minimum height of 14 feet as measured from adjacent grade to the bottom of the pole banner.
 - d. Maximum height of 20 feet to the top of the pole banner.
 - e. Pole banners shall be maintained in good repair, should they become tattered or torn, they shall be replaced or removed.
 - f. Pole banners shall not be illuminated, except for indirect lighting associated with the main lamp of the pole to which it is mounted.
 - g. Pole banners shall be placed on privately owned poles within the interior of the property, and may not be placed on utility poles or street light poles.
 - h. Spacing shall be no closer than 80 feet between pole banners.
 - i. The number of banners shall not exceed one per 50 vehicle parking spaces.
 - j. Such pole banners shall be allowed in addition to site signage otherwise allowed by this article.
 - k. Permits must be obtained before the placement of pole banners.
 - l. Permits must be obtained once a year or each time the pole banners are changed, whichever is sooner.
 - m. Fees for pole banner permits shall be based on the overall pole banner package, not on a per-banner basis.
 - n. The following types of pole banners shall be allowed:
 - i. Pole banners on perimeter of private property.
 - ii. Pole banners may be installed along the periphery within 12 feet of property lines fronting public or private streets.
 - iii. Pole banners on the interior of the property.

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- iv. Pole banners within the interior of the parking lot, and may advertise products and services on the site.
- (14) Balloon or inflatable signs may be used, subject to the following regulations:
- a. The following specific types of balloon or inflatable signs are allowed to be permitted:
 - i. Lighter than air devices.

Anchorage for devices of this type must be adequate to keep the device in the desired location with the anchorage device remaining stationary.
 - ii. Air filled devices.

No device of this type may be filled with any explosive or flammable gas.
 - iii. Air powered devices.

This type of device must be located in a place so as to not interfere with any vehicles or pedestrians or enter onto public or other private property if the air supply fails.
 - b. The following regulations apply to all such balloon or inflatable signs:
 - i. No device shall be tethered or anchored in or on public right-of-way.
 - ii. No device shall be tethered or anchored so that it may blow into or onto a public right-of-way.
 - iii. No device shall be placed closer than 12 feet from the back of the curb, or property line, whichever is greater.
 - iv. No device shall be placed on public property without the written consent of the governing agency.
 - v. The tethering or anchorage shall be such that if part of the tethering or anchorage becomes unattached, the remaining anchorage or tethering will prevent the device from interfering with vehicles or pedestrians or enter onto public or private property.
 - vi. No device shall be located so that it interferes with or removes the use of the required parking of an occupancy.
 - vii. The device shall be displayed for no more than 18 consecutive hours in any 24-hour period and for no more than ten consecutive days.
 - c. Permits must be obtained prior to the placement of balloon or inflatable signs.
 - d. Each occupancy may obtain one balloon or inflatable sign permit per year.
 - e. Each permit will be valid for ten days.
- (15) Pennants and festoons may be used, subject to the following regulations:
- a. Pennants and festoons may only be strung from buildings or privately owned poles.
 - b. No devices may be strung from poles located on the public right-of-way.
 - c. No such devices may be nearer to the ground than 14 feet.
 - d. No such devices may be attached to any temporary pole or structure.
 - e. Any device missing ten percent or more of the flags, by the determination of the authority having jurisdiction, must be removed or replaced.
 - f. All pennants and festoons must be permitted prior to their placement.

-
- g. Permits must be obtained once per year for each occupancy or each time new pennants or festoons are installed, whichever is sooner.
 - h. Fees for pennant and festoon permits shall be based on the overall pennant and/or festoon package, not on a per pennant and/or festoon basis.

(12) Feather signs may be used, subject to the following regulations:

- a. Securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.
- b. Shall not be so located in an area so as to create an obstruction that would create a visual obstruction/traffic hazard to motorists. It may not be located on the public right of way.
- c. Maximum area of 20 square feet.
- d. Maximum height of 12 feet measured from ground to top of the sign.
- e. Shall be maintained in good repair, and should the sign become tattered or torn, it shall be replaced or removed.
- f. Shall not be illuminated.
- g. Spacing shall be no closer than fifty (50) feet between feather signs.
- h. Permits must be obtained before the placement of feather signs.
- i. Each permit will be valid for thirty (30) days.
- j. Each occupancy may obtain no more than four (4) feather sign permits per year.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1587-2-12, 2-7-2012)

City of San Antonio:

Feather sign (aka feather-type sign) means a sign in a feather, flutter, square, teardrop and half drop shape usually self-supported or supported by a pole(s) and firmly affixed to the ground.

Sec. 28-47. - Provisions applicable to nonresidential zoning districts.

(e) Special regulations for nonresidential zoning districts.

...

(3) *Ground-mounted flag/feather type signs.* In addition to other authorized signs, businesses shall be allowed ground-mounted flag/feather type signs on the non-residential lot provided all the following conditions listed below are met.

a. The ground-mounted flag/feather type sign is securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.

b. No sign shall be so installed/located as to create an obstruction that would interfere with use of any public right-of-way or to create a visual obstruction/traffic hazard to motorists.

c. The sign is installed on non-residentially zoned and/or non-residentially used private property. It may not be located on the public right-of-way.

d. The sign has a maximum area of twenty (20) square feet and maximum height of twelve (12) feet measured from ground to top of the sign.

e. Each ground-mounted flag-feather type flag is spaced/separated from any other ground mounted flag/feather type sign a minimum of fifty (50) feet.

Exception: Up to three (3) ground-mounted feather type flags may be installed in a grouping with less than fifty (50) feet separation, so long as the grouping is separated from another individual and/or grouping of ground-mounted feather type flags.

Commentary: Note ground-mounted flag/feather type devices without lettering or symbols are not considered signs per this section are therefore are not regulated as such. Note that while these devices without letters or symbols are not considered signs they are still not permitted to be installed in the public right-of-way.

City of Elgin:

Feather sign means a sign that is shaped like a feather, these signs are typically on a single staff and are designed to flap in the wind.

Sec. 32-267. - Enumerated.

The following are expressly prohibited unless specifically stated otherwise in this chapter:

- (1) *Animated and moving signs.* Including, but not limited to, pennants, feather signs, flags with commercial messages, banners, streamers, propellers, discs and searchlights.

City of Alvin:

Feather flag means a freestanding flexible or rigid pole (not a flagpole) temporarily mounted in the ground to which one side of a flexible fabric in the shape of a feather or similar shape, is attached and which is used for the primary purpose of advertising or attention getting. Feather flags are also known and sold under names which include, but are not limited to, "feather sign," "feather banner," "feather banner sign," "quill sign," "banana banner," "blade banner," "flutter banner," "flutter flag," "bow flag," "teardrop banner," etc. This definition includes functionally similar display devices. Feather flags are prohibited with limited exceptions (see section 17½-5(24).

Sec. 17½-5. - Exceptions and exemptions.

The below-listed classes of signs are allowed to be erected or placed within the city:

...

(24) For any business establishment, one temporary on-premises feather flag may be allowed and displayed on private property owned by any individual or group, subject to the following restrictions:

- a. No such feather flag shall be erected unless a permit is first obtained from the Code Enforcement Officer.
- b. Feather flag shall be constructed of plastic, fabric or film.
- c. Feather flag shall not exceed thirty-two (32) square feet and only one feather flag may be displayed with each permit.
- d. The permit for such feather flag shall be issued for a maximum of twenty-eight (28) consecutive days four (4) times a year, with a permit for each occurrence. Each occurrence may be taken as one twenty-eight-day permit or divided into two (2) fourteen-day permits.
- e. At no time shall a feather flag project above the roofline or hang from awnings, attached with rope between pillars or poles of any building on the premises or in any right-of-way or easement.
- f. All feather flags shall be kept in good repair (i.e., not tattered, unanchored, faded, frayed or unsightly). All feather flags shall be installed in a secure manner and not obstructing view of traffic.
- g. If any violations are found or exist, the Code Enforcement Officer has the authority to issue citations and/or discretion to remove the feather flag without further notice to the property owner. Any feather flags removed by the Code Enforcement Officer will be immediately disposed of.
- h. Any new business is allowed an additional fourteen (14) consecutive days within ninety (90) days from the date on the Certificate of Occupancy (see section 17½-58(c), special event signs, grand opening signs).

City Planner Initiated Text Changes

Subject:

Regulating the land use as a potential public safety opportunity.

Why:

Regulating smoke and vaping can be seen as a public health and safety issue. These establishments deal in products that can have significant health consequences for both users and bystanders. By implementing regulations, authorities can ensure that these shops adhere to strict standards regarding the sale, distribution, and promotion of tobacco and vaping products. This includes age restrictions to prevent underage access, proper labeling and packaging to inform consumers about potential risks, and limitations on advertising to minimize exposure, especially to vulnerable populations like youth and non-smokers.

Furthermore, regulating smoke and vape shops helps in curbing the proliferation of harmful substances and counterfeit products in the market. It allows authorities to monitor and enforce compliance with health and safety standards, including product quality control and hygiene practices. By creating a framework of regulations, governments can protect public health, reduce the prevalence of smoking-related illnesses, and promote responsible consumption of tobacco and vaping products within the community.

Research - What Staff found:

Staff reviewed the option of regulating this land use via zoning. The proposal offers an allowance of land use inside the City by right in some districts but only allowed in others by SUP. Additionally, we are proposing a 1000 ft distancing requirement from a church or place of worship; a public or private elementary or secondary school; a public park; a hospital; or another retail tobacco/vape/smoke store.

City of Nacogdoches:

Sec. 46-101. - Definitions.

Electronic smoking device. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

~~*Retail electronic smoking device store* means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.~~

Retail tobacco/vapor/smoke store means a retail store utilized primarily for the sale of: (1) any organic or synthetic products intended, designed, or marketed for the purpose of smoking, including tobacco, plants, herbs, or similar substances; ~~of tobacco products~~ (2) electronic smoking devices; and/or (3) any and paraphernalia, equipment, or accessories intended, designed, or marketed for the purpose of smoking. For purposes of this division, a retail tobacco/vapor/smoke store is one in which the sale of other products, not associated with smoking, is merely incidental; i.e. not exceeding ten (10) percent of gross sales.

Smoking means inhaling, exhaling, or burning of any organic or synthetic products, including tobacco-product, plants, herbs, or similar substances, in any manner or any form. "Smoking" This term also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter, including, but not limited to, pipes, bongs, hookahs, and similar devices for holding burning material.

Sec. 118-1. - Definitions.

Retail tobacco/vapor/smoke store has the same meaning as stated in chapter 46, section 46.101 of this Code.

Sec. 118-273. Land use schedule.

- (a) *Use of land and buildings.* Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:
- (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
 - (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
 - (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.
 - (4) An asterisk (*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.

- (5) A blank square shall mean that the use is not allowed in that zoning district.
- (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.
- (b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE											
(*) Signifies Uses with Special Guidelines (Italic) Signifies a Defined Term											
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1	I-2
					AGRICULTURAL USES						
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P	P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P	P
P					Feed Store and Tack for live Stock - No Mill		P			P	P
S					Livestock Auction Pens or Sheds						P
S					Poultry Hatchery						P
S					Stables (Commercial)						P
					RESIDENTIAL USES						
					Household Units						
P	P	P	P	P	Home Occupation	P	P	P	P		
				P	Multifamily - Apartments	S	P	P	P		
			P	P	Single Family Attached						
P	P	P	P	P	Single Family Detached						
			P	P	Single Family Zero Lot Line						
			P	P	Two Family Dwelling						
A	A	A	P	P	Pool House (Detached)*	P	P	P	P		
					Special Unit Types						
P	P	P	P	P	Industrialized Housing*						
					Manufactured Home						
				S	Manufactured Home Park		S				
					Mobile Home (House Trailer, Camp)						
				S	Mobile Home Park		S				
				S	Travel Trailer/ RV Park	S	S			S	
					Lodging/Group Quarters						

S	S	S	S	P	Bed and Breakfast* - 4 or Less Patrons	P	P	P	P		
				P	Bed and Breakfast* - 5-8 Patrons	S	P	P	P		
				P	Boarding or Rooming House	S	P	P	S		
S	S	S	S	P	Accessory Apartment*	P	P	P	P		
S	S	S	S	P	Convent or Monastery	S	P	P	S		
S				P	Family Group Home	S	P	P	P		
P	P	P	P	P	Family Home	P	P	P	P		
P	P	P	P	P	Foster Home	P	P	P	P		
P	A	A	P	P	Guest House (Detached)	P	P	P	P		
S			S	S	Half-way House - Criminal	S	P	P	S		
					Hotel or Motel	S	P	P	P	P	
S				P	Orphanage	S	P	P	S		
				P	Retirement Home	P	P	P	P		
					AMUSEMENT /RECREATION USES						
					General Recreation						
					Amusement, Commercial - Indoors*		P	P		P	
					Amusement, Commercial - Outdoors		S	S			
					Billiard Parlor or Pool Hall*		P	P		P	
S					Carnival or Circus (Temporary)		S	S		S	S
S	S	S	S	S	Country Club (Private Membership)	S	P	P		P	S
S					Fairground*		P			P	P
P	S	S	S	S	Golf Course (Public or Private)	P	P			P	P
P	S	S	S	P	Golf Driving Range	P	P			P	P
				A	Health Club or Studio	P	P	P	P	P	A
					Ice or Roller Skating Rink*	S	P	P		P	P
					Night Club or Dance Hall*		P	P		P	
S					Race Track		S			P	
S	S	S	S	A	Recreation Club or Area (Private)*		P	P		P	
S	S	S	S	A	Recreation Facility (Public)	P	P	P	P	P	
					Teen Club*	S	P	P			
				A	Tennis Court (Lighted)	S	P	P		P	
A	A	A	A	P	Tennis Court (No Lights)	P	P	P		P	
					Theater - Movie or Live (Enclosed)	S	P	P		P	
S					Zoo, Zoological Park, Animal Park, or Aviary		S				
					Adult Recreation						
					Adult Arcade*						P
					Adult Book Store or Video Store*						P
					Adult Cabaret*						P
					Adult Motel*						P
					Adult Motion Picture Theater*						P
					Adult Theater*						P

					Escort Agency*						P
					Nude Model Studio*						P
					Sexual Encounter Center*						P
					INTITUTIONAL, UTILITY and GOVERNMENTAL USES						
					Government / Utility						
P	P	P	P	P	Government Facility	P	P	P	P	P	P
P				P	Library, Art Gallery or Museum (Public)	P	P	P	P	P	
					Post Office	S	P	P	P	P	
					Postal Distribution Facility		P			P	P
S					Radio or TV Trans. Station (Commercial)	S	P	P	P	P	P
S	S	S	S	S	Radio Tower (Non-Commercial)*	P	P	P	P	P	P
S	S	S	S	S	Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	P	P	P	P	P	P
A	A	A	A	A	Satellite Dish*	P	P	P	P	P	P
P	S	S	S	S	Utility Facilities (Major)	S	P	P	P	P	P
P	P	P	P	P	Utility Lines and Transmission	P	P	P	P	P	P
					Schools / Organizations						
P	S	S	S	S	College or University	S	P	P	P	S	S
P	P	P	P	P	Daycare - 3 or less Attendees	P	P	P	P	P	
S	S	S	P	P	Daycare - 4-6 Attendees	P	P	P	P	P	
S			S	S	Daycare Center - 7 or more Attendees	S	P	P	P	P	
S					School - Vocational	S	P	P	P		
P	P	P	P	P	School, K-12 (Public or Private)	P	P	P	P	S	
P	P	P	P	P	Church or Place of Worship	P	P	P	P	P	
S					Club, Private	P	P	P	P	P	S
	S	S	S	P	Community Center - Private	P	P	P	P	P	
P	S	S	P	P	Community Center - Public	P	P	P	P	P	
				S	Fraternity / Sorority House	S	S				
					Lodge or Fraternal Organization	S	P	P	S	P	P
					OFFICE AND PROFESSIONAL						
					Office - General						
					Advertising Agency		P	P	P		
					Architectural / Engineering Services	P	P	P	P	P	
					Banks and Financial Institutions	P	P	P	P	P	
					Banks with Drive In Facilities	S	P	P	P	P	
					Legal Services	P	P	P	P		
					Offices - General or Professional	P	P	P	P	P	P

					Medical/Healthcare						
S					Animal Hospital or Clinic		P	P		P	P
S					Animal Hospital or Clinic w/Outside Pens					S	P
					Animal Pound (Public or Private)					S	P
					Emergency Ambulance Service		P	P	P	P	
				S	Hospice	P	P	P	P	S	
					Hospital - Acute Care	S	P	P	P	P	
					Hospital - Chronic Care	S	P	P	P		
					Medical or Dental Office or Clinic	P	P	P	P	P	
				P	Nursing/Convalescent Home	S	P	P	P		
					Psychiatric Hospital or Institution		S		P		
S					Veterinary Office (No Hosp. or Clinic)	P	P	P	P	P	P
					Business or Personal Services						
S					Auction - Goods & Equipment (Indoors)		P	P		P	P
					Beauty Parlor/Barbershop	P	P	P	P	P	
					Cabinet and Woodwork Shop (Custom)	S	P	P		P	
P				P	Caretaker/Security Quarters	P	P	P	P	A	A
S	S	S	S	S	Cemetery or Mausoleum	P	P	P	P	P	P
					Communications/Electronics Equipment - Installation and Repair	S	P	P		P	
					Conventions, Trade Shows or Exhibits	S	P	P	S	S	
					Exterminator Service	S	P			P	P
					Exterminator Service Storage					P	P
					Household Appliance and Equipment Repair	S	P	P		P	P
					Information Processing		P	P	P	P	
					Laundry/Dry Cleaning - <3,000 s.f. w/ Customer Service		P	P	P	P	
					Laundry/Dry Cleaning - >3,000 s.f.				A	P	P
					Laundry/Dry Cleaning - Drop Off/Pick Up	P	P	P	P	P	
				A	Laundry/Dry Cleaning -Self Service	P	P	P	P	P	
					Locksmith	P	P	P		P	P
					Mailing Service (Private)	P	P	P	P	P	
					Mortuary or Funeral Home		P	P	P	P	P
					Photocopying or Duplicating Services	S	P	P	P	P	P
					Photographic Studio	P	P	P		P	
					Sewing and Millinery (Custom)	P	P	P		P	
					Shoe Repair	P	P	P		P	
					Studio - Art, Drama, Dance, Music - Performing Arts	P	P	P		P	
					Tailor Shop	P	P	P	S	P	

					Tattoo Salon/Piercing Studio	S	S	S	S	P	
					Taxidermist		S	S		P	P
P	P	P	P	P	Temporary Field or Construction Office	P	P	P	P	P	P
					Temporary Retail Use	S	S	S	S	S	
					Travel Agency	P	P	P	P		
					Upholstery Shop or Furniture Repair (non-Auto)		P	P		P	P
					Food and Beverage Services						
					Club (Private)*	S	P	P	S	S	P
					Catering Service	S	P	P	P	P	P
					Eating Place w/ Drive-thru	S	P	S		P	P
					Eating Place w/o Drive-thru	P	P	P	P	P	P
					Food Preparation or Food Service	P	P	P	P	P	P
					Liquor By the Drink*	S	P	P	S	S	P
					Retail						
					Alcohol Sales - Off Premise Consumption	P	P	P		P	P
					Antique Shop	P	P	P		P	
					Art Dealer	P	P	P			
					Art Gallery	P	P	P			
					Bait or Tackle Shop	S	P	P		P	
					Bakery Shop	P	P	P	P	P	
					Bicycle Sales or Repair	P	P	P		P	
					Book or Stationery Shop	P	P	P	P		
					Building Material Sales (Outside Storage)		P			P	P
					Camera or Photographic Supply Shop	P	P	P	P	P	
					Cloth or Fabric Store	S	P	P			
					Clothing Store	P	P	P	P		
					Confectionery Shop	P	P	P	P		
					Consignment Shop	P	P	P		P	
					Convenience Store	P	P	P			
					Department Store		P	P			
					Drapery Shop	S	P	P			
					Drug Store or Pharmacy	P	P	P	P		
					Farmers Market - Outdoor	S	P	P		P	P
					Flea Market - Outdoor	S	P	P		P	P
					Florist Shop	P	P	P	P		
					Furniture Sales - New (Indoor Only)	S	P	P		P	

P					Garden Shop & Plant Sales - Display or Greenhouse	S	P	P		P	P
					Grocery	P	P	P			
					Hardware Store	S	P	P		P	
					Hobby, Handicraft or Art Supplies	P	P	P	P		
					Lawnmower Sales or Repair	S	P	P		P	
					Major Appliance Sales (Indoor)	S	P	P		P	
					Mobile/Manufactured Home Dealer (Sales Only)		S			P	P
					Monument Sales Yard		P	P		P	P
					Optical Shop	P	P	P	P		
					Paint and Wallpaper Store	P	P	P	S	P	
					Pawn Shop*		P			P	
					Pet Shop	S	P	P		P	
					Plumbing Shop (Retail & Wholesale)		P	P		P	P
					Retail or Convenience Store with Gasoline	P	P	P	P	P	P
					<u>Retail tobacco/vapor/smoke store*</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>P</u>	<u>P</u>
					Sporting Goods		P	P			
					Swimming Pool Sales & Supply		P	P		P	P
					Used Merchandise - Furniture, Rummage, Second Hand Store (Inside)	S	P	P		P	
					TRANSPORTATION, AUTOMOBILE and MARINE USES & SERVICES						
					Automobile Related						
					Auto Brake, Muffler, Glass, Seat Covers or Tire Sales & Service		P			P	P
					Auto Dealer - Primarily New/Used Autos		P			P	
					Auto Dealer - Primarily Used Autos		P			P	
					Auto Interior Shop		P			P	
					Auto Paint/Body Repair		S			P	P
					Auto Rental		P	P		P	
					Auto Repair - General		P			P	P
					Auto Storage or Auction					P	P
					Auto Supply - Used Parts Store with no On-Site Salvage		P	S		P	P
					Auto Supply Store for New and Rebuilt Parts		P	P		P	

					Auto Wrecker Service		A	A		P	
					Auto/Truck Parts and Accessories		P	P		P	
					Car Wash		P			P	P
					Drag Strip or Commercial Racing						P
					Parking - Accessory to Another Use		A	A	A	A	A
					Parking - Commercial Lot or Garage		P	P	P	P	
					Lube/Oil Change		P			P	P
					Service Station	S	P		P	P	P
					State Vehicle Inspection		P			P	P
					Bus or Truck Related						
					Bus or Truck Parking or Storage		S	S		P	P
					Bus Station and Terminal		S	S		S	
					Truck Stop, Including Gas Sales		P			P	P
					Truck/Heavy Equipment Driving School		S			P	P
					Truck/Recreational Vehicle Sales		S			P	P
					Truck/Trailer Rental		P			P	P
					Trucking Company		S			P	P
					Railroad or Airport Related						
					Airport or Landing Field		S			S	S
					Railroad Freight Depot		S			P	P
					Railroad Passenger Station		P			P	
					Railroad Yard & Shops					P	P
					Vehicle - General						
					Boat Dealer - Sales Only		P			P	
					Boat Repair or Storage		P			P	
					Go Cart Track					S	P
					Motorcycle Sales or Service		P			P	
					Transfer/Storage Terminal		S			P	P
					Vehicle Maintenance - Private		A	A		P	P
					Vehicle Wash - Private		A	A		P	P
					WHOLESALE TRADE and STORAGE USES						
					Wholesale Trade						
					Apparel, Piece Goods, Notions - Wholesale		P	P		P	
					Groceries/Related Products - Wholesale		P	P		P	
					Heavy Machinery Sales					P	P
					Lumber Sales - Wholesale					P	P
					Paper or Paper Products - Wholesale		P	P		P	P

				Petroleum Products Storage & Wholesale					P	P
				Tool or Equipment Rental - Indoor		P	P		P	P
				Tool or Equipment Rental - Outdoor		P	S		P	P
				Storage						
				Contractor or Maintenance Yard		P			P	P
				Hazardous Gases/Chemicals Storage					S	P
				Mini Warehouse	S	S			P	P
				Open Storage (No Enclosure)					P	P
				Open Storage (Screened)		P	S		P	P
				Petroleum Products Storage and Warehouse		S			P	P
				Warehouse/Storage (Inside)		P	P	P	P	P
				Wrecking, Junk, Salvage or Reclamation Yard					S	S
				MANUFACTURING and MINING USES						
				Food-Related Products						
				Animal or Poultry Slaughtering						P
				Bakery Products; Manufacturing					P	P
				Beverage Manufacturing						P
				Bottling or Canning of Soft Drinks & Carbonated Water					P	P
				Bottling Works					P	P
				Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods						P
				Dairy Products - Processing or Manufacturing					P	P
				Fats and Oils Manufacturing or Processing					S	P
				Grain Mill Products; Processing and Manufacturing						P
				Ice Manufacturing					P	P
				Meat Products; Processing or Manufacturing - Not Including Slaughtering					P	P
				Microbrewery		S	S		P	P
				Sugar and Confectionery Products, Manufacturing					P	P
				Sugar Manufacturing						P
				Articles and Equipment						
				Apparel Manufacturing					P	P
				Broom & Brush Manufacturing					P	P

					Cabinet & Woodworking Manufacturing		P			P	P
					Chemical and Allied Products Manuf.						P
S					Concrete or Asphalt Batch Plant - Temp.	S	S			S	P
					Costume Jewelry, Novelties, Buttons & Misc. Notions Mfg.					P	P
					Fabricated Metal Products Manufacturing					S	P
					Fur Dressing & Dying						P
					Jewelry, Silverware & Plateware Mfg.					P	P
					Laboratory - Medical or Dental		P	P	P	P	P
					Laboratory - Scientific Testing		P	P	P	P	P
S					Land Fill (Private or Municipal)						S
					Light Manufacturing/Assembly		S	S		P	P
					Linoleum, Asphalt - Felt Base & Other Hard Surfaced Floor Covering Mfg.						P
					Machine Shop					P	P
					Match Manufacturing						P
					Musical Instruments & Parts Mfg.					P	P
					Paper and Allied Products Manufacturing						P
					Pens, Pencils & Other Office & Artists' Materials Mfg.					P	P
					Printing Publishing and Allied Industries		P	P		P	P
					Professional, Scientific & Controlling Instruments; Photographic & Optical Goods; Watches & Clocks Mfg.					P	P
					Rubber and Misc. Plastics Manufacturing						P
					Salvage and Reclamation (Enclosed)					P	P
					Sign & Advertising Display Manufacturing					P	P
					Textile Mill Product Manufacturing						P
					Tobacco Products Mfg.						P
					Toys, Amusement, Sporting & Athletic Goods Mfg.						P
					Welding Shop					P	P

					Natural Resources						
					Lumber and Wood Products Manufacturing						P
S	S	S	S	S	Oil & Gas Extraction	S	S		S	S	P
S	S	S	S	S	Oil & Gas Field Services	S	S		S	S	P
					Petroleum Refining and Related Industries						P
					Primary Metal Products Manufacturing						P
					Stone, Clay, Glass & Concrete Products Manufacturing						P
S	S	S	S	S	Stone, Sand, Gravel & Mineral Extraction	S	S		S	S	S
					Stone, Sand, Gravel or Earth Sales and Storage					S	P

Sec. 118-326. - Retail tobacco/vapor/smoke store.

- a) A retail tobacco/vapor/smoke store may not be located within 1,000 feet of a church or place of worship; a public or private elementary or secondary school; a public park; a hospital; or another retail tobacco/vape/smoke store.
- b) Measurement of distance as required in section 118-326 shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a retail tobacco/vapor/smoke store is located, to the nearest property line of the premises of a church or place of worship; a public or private elementary or secondary school; a public park; a hospital; or other retail tobacco/vape/smoke store.

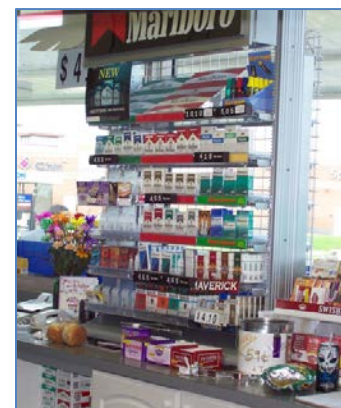


Using Licensing and Zoning to Regulate Tobacco Retailers

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Introduction

Given the tobacco industry's focus on the retail environment and strong evidence that retailer location, density, and compliance with youth access laws significantly impact overall tobacco use and youth initiation, a growing number of states and local communities have turned to licensing and zoning policies as part of comprehensive tobacco control programs. States and many local governments have broad legal authority to regulate the sale and distribution of tobacco products in their jurisdictions. This brief guide offers pointers on how governments can use retail licensing and land use regulations, such as zoning, as effective tobacco control tools.



Licensing and Zoning

Licensing and zoning laws are two long-accepted methods of regulation that governments use to control the location of tobacco retailers, reduce the rates of youth initiation, curb consumption of tobacco products, and monitor and increase tobacco retailer compliance with tobacco control laws.² Many governments already have a history of applying licensing or zoning laws to businesses such as liquor establishments or gun shops. These regulatory systems might provide a tried-and-true framework that could be adapted to the tobacco control context.

Licensing. State and many local governments have the authority to require tobacco retailers to obtain a license from the government. Governments can put conditions on the sale of tobacco and require licensed businesses to comply with tobacco control laws, such as not selling tobacco products to minors or not selling tobacco products within a certain distance of schools. Retailers who fail to comply with those requirements can face fines and other consequences, including having their “privilege” to sell tobacco suspended or revoked.

Most states already require retailers that sell cigarettes and other tobacco products to obtain a license or permit from the state or local government where they do business. Increasingly, states are requiring the same of retailers of electronic cigarettes.³ Unfortunately, some state retailer licensing programs are used more as tools to enforce compliance with tobacco excise taxes than as strong regulatory elements of a comprehensive tobacco control program.

Zoning. Zoning is the primary way in which governments shape a community's land use. Zoning ordinances are used to separate incompatible uses of land, regulating how land can be used – both in terms of the physical nature of the buildings (such as height) and the kind of activities or “uses” that are permitted in different zoning classifications or districts (for example, commercial, industrial, or residential). Generally, in each zoning district certain uses are permitted, prohibited, or “permitted subject to certain conditions,” which requires what is known as a “conditional use permit.” The conditional use permit process gives local decision makers an added level of review regarding uses or activities that might conflict with surrounding uses and creates the opportunity to attach additional conditions that must be agreed to if the conditional use is permitted. Zoning laws can prohibit the sale or distribution of tobacco products within certain zoning districts, as well as establish density or proximity restrictions between tobacco retailers.

Differences. A key difference between zoning and licensing is that zoning grants rights that are attached to the land, while licensing grants rights to the person holding the license. A license is a limited, non-transferable grant of authority from the government to engage in the licensed activity. If licensing laws are changed, existing license holders are required to follow the new rules. The license is also tied to the business itself. If a business closes, relocates, is sold, or otherwise terminates, its license ends as well. If a new business seeks to conduct the same activity, it must apply for a new license, even if it occupies the same location as the previously licensed business. Unlike licensing, zoning laws run with the land, not the business.⁴ This means that zoning requirements continue to apply when business ownership changes. At the same time, legal “nonconformities” (uses that were legal before the zoning laws were amended or adopted) generally have a right to continue. As such, it can take time to see the impact of changes to zoning laws.

Policy Benefits

Ordinances that control access to tobacco products can benefit the public in several ways. For example, both licensing and zoning ordinances can enable governments to place conditions on tobacco retailers, such as requiring compliance with tobacco control laws, restricting the use of coupons, regulating the placement of products or advertising, and other options that advance public health. These laws can also facilitate the creation of comprehensive lists of tobacco retailers, which government inspectors can then use to monitor retailer compliance with tobacco laws. Licensing provides governments with a direct and effective enforcement mechanism by which non-compliant retailers can face consequences for their conduct, including being prohibited from selling tobacco products altogether.

Licensing and zoning laws can also control the location, density or number of retailers, which in turn can benefit public health by lowering the rate of youth initiation.⁵ For example, a licensing ordinance can be structured to prohibit a license from being issued for retailers seeking to be

located within 1,000 feet of youth-oriented facilities. Similarly, a zoning ordinance could prohibit tobacco retailers in residential zones or near facilities frequented by youth. The same licensing and zoning laws could also lower the density and quantity of tobacco retailers. For instance, a law could require tobacco retailers to be located a certain distance from one another, could limit or cap the total number of retailers allowed in an area, and could prohibit the transfer or expansion of existing tobacco retailer buildings.

Policy Elements

Effective licensing and zoning ordinances generally contain several common components.

- **Clear definitions and concise language:** As with any law, tobacco control laws must be worded clearly and concisely. Carefully avoid vague or ambiguous language.
- **Well-crafted implementation process:** Licensing and zoning laws should also specify the means by which a retailer applies for, receives, and maintains permission to sell tobacco products. These provisions can include the type of forms to be filed, deadlines and fees for filing, an annual renewal process, and the ramifications of any failure to meet such requirements.
- **Appropriate fees:** The fees assessed to a tobacco retailer should be set at an amount that takes into account the government's cost of administering and enforcing the law. For example, annual licensing fees can be used to offset employee salaries, the cost of performing compliance checks and related inspections, and other overhead and logistical aspects of properly administering, implementing, and enforcing the law.
- **Robust enforcement options:** The law should clearly describe the type of conduct it prohibits. Laws can be broad and require compliance with any and all federal, state and local requirements that apply to the retail sale of tobacco and related devices and products, or they can be much narrower and address specific conduct, such as sales to minors, taxation, promotional restrictions, and the like.
- **Fines, penalties and appeals process:** Licensing or zoning laws should explain the penalties for violations. For instance, a licensing law could include a graduated system of warnings and fines. Further penalties for certain violations could result in the suspension or revocation of the ability to sell tobacco products. Additional provisions could explain how violations and penalties can be challenged or appealed.

Note: Governments must generally satisfy certain procedural requirements when licensing or zoning laws are adopted or amended. Occasionally, the government must notify affected parties (e.g., licensees and adjoining property owners) and/or the general public a certain number of days before the governmental body meets to consider a proposed law.⁶ Because notice and other procedural requirements vary by jurisdiction, it is important to be aware of their existence and to comply with their specifications.

Challenges

Tobacco licensing and zoning laws can face several legal challenges, including issues involving:

- **Authority:** The governmental unit needs to have the power to carry out a licensing or zoning scheme. Preemption occurs when a “higher” level of government eliminates or limits the authority of a “lower” level of government to regulate a certain issue.⁷ While states generally have licensing and zoning power, a local government’s authority depends largely upon the authority a state has preserved for itself and granted to communities through special legislation, home rule charters, or similar laws. That a governmental unit is not currently using licensing or zoning to regulate tobacco businesses does not mean the power does not exist. The power may exist, but simply may not have been put to use.
- **Political and Administrative Realities:** If a government has the authority to license or adopt land use restrictions, policymakers then need to determine which policy options are the best fit. Some options may be more politically viable than others. Also, if the government has an existing licensing or zoning framework, it might be helpful to consider whether tobacco control efforts can be effectively incorporated into those administrative and enforcement programs.
- **Existing Businesses:** Regardless of the option chosen, the process should include a comprehensive analysis of how the proposed requirements would treat those existing businesses whose location or activity would be out of compliance. Drafters should fully understand the legal ramifications of placing these conditions on such businesses.
- **Constitutional Challenges:** Local governments need to anticipate potential constitutional challenges and design regulations accordingly. For example, tobacco retailers may allege violations of the Equal Protection Clause, the Due Process Clause, the Takings Clause, and the First Amendment right to free speech.⁸

Examples and Select Policies

Below are a few examples of zoning and licensing policies for tobacco retailers. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how various jurisdictions have approached similar issues.

Policy Type	Location	Name
Licensing	City Ordinance Boston, MA (2015)	A regulation limiting tobacco and nicotine access by youth ⁹
Licensing	City Ordinance San Francisco, CA (2015)	Permits for the sale of tobacco ¹⁰

Licensing	City Ordinance Homer Glen, IL (2005)	An ordinance licensing retailers of tobacco and tobacco products in the village of Homer Glen ¹¹
Zoning	City Ordinance Mountain View, CA (2016)	Regulating significant tobacco retailers ¹²
Zoning	City Ordinance Henderson, NV (2016)	Requiring zoning of tobacco retailers in relation to youth dancehalls ¹³

Other Helpful Resources

The Tobacco Control Legal Consortium and [Public Health Law Center](#)'s website includes several publications that discuss tobacco licensing and zoning laws in detail, including a factsheet on [retail license fees](#).¹⁴ ChangeLab Solutions has a [Tobacco Retailer Licensing Playbook](#) on its website and the [Center for Tobacco Policy & Organizing](#) maintains a webpage that contains resources related to strong local licensing ordinances in California.

Contact Us

Please feel free to contact the [Tobacco Control Legal Consortium](#) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

Last updated: September 2016

Notes

¹ The information contained in this document is not intended to constitute or replace legal advice.

² Janine Paynter et al., *Point of Sale Tobacco Displays and Smoking Across 14-15 Year Olds in New Zealand: A Cross Sectional Study*, 18 TOBACCO CONTROL 268, 272 (2009). The article discusses, in part, how youth exposure to tobacco marketing “at the point-of-sale is significantly associated with being susceptible to smoking, experimenting with smoking and current smoking.”

³ See Tobacco Control Legal Consortium, *U.S. E-Cigarette Regulations – 50-State Review* (2016) (including state license requirements for e-cigarette retailers), <http://publichealthlawcenter.org/sites/default/files/tclc-50state-The-Legal-Landscape-for-Electronic-Cigarettes-2016.pdf>.

⁴ Heather Wooten et al., *Zoning and Licensing to Regulate the Retail Environment and Achieve Public Health Goals*, 5 DUKE FORUM FOR LAW & SOCIAL CHANGE 65-96 (2013).

⁵ Scott P. Novak et al., *Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity-Modeling Approach*, 96 AM. J. PUB. HEALTH 670, 673 (2006).

⁶ See, e.g., MINN. STAT. § 461.19 (30-day notice to retailers of proposed changes to local licensing regulations), <https://www.revisor.mn.gov/statutes/?id=461.19>.

⁷ For more information regarding the impact of preemption and governmental authority, see the Consortium's [Preemption: The Biggest Challenge to Tobacco Control](#).

⁸ See generally Amy Ackerman et al., [Reducing the Density and Number of Tobacco Retailers: Policy Solutions and Legal Issues](#), NICOTINE & TOBACCO RESEARCH doi:10.1093/ntr/ntw124 (2016).

⁹ BOSTON PUBLIC HEALTH COMMISSION AUTHORITY, A REGULATION LIMITING TOBACCO AND NICOTINE ACCESS BY YOUTH (December 17, 2015). The Boston Public Health Commission Authority has to authority to impose these regulations from the Boston Code. [BOS., MASS., CODE 16-40.5](#).

¹⁰ S.F., CAL., CODE ART. 19H (2015).

¹¹ HOMER GLEN, ILL., ORD. NO. 05-063 (Dec. 20, 2005).

¹² MOUNTAIN VIEW, CAL. CODE § 36.30.20 (2016).

¹³ HENDERSON, NEV. CODE § 19.5 (2016).

¹⁴ Publications on the Public Health Law Center's website that discuss tobacco retail licensing and zoning include: [Regulating Tobacco Retailers: Options for State and Local Governments](#); [Location, Location, Location: Regulating Tobacco Retailer Locations for Public Health](#); [Licensed to Kill: Tobacco Retailer Licensing as an Effective Tobacco Control Tool](#); and [Local Land Use Regulation for the Location and Operation of Tobacco Retailers](#).

City Planner Initiated Text Changes

Subject:

Parking stipulations for specific uses need clarity to help both applicants and staff alike to navigate the want and intent of the ordinances. These proposed changes hope to bridge that gap. Staff is in the process of assessing city ordinances to ensure they meet current developmental needs, and to recommend innovative, economical, and modern ways to promote smart growth and compatibility in development within the city limits and beyond. Reviewing development in older areas needs the opportunity for flexibility.

Why:

Staff has reviewed the current off-street parking requirements and identified a way to create greater administrative flexibility in responding to small and unique challenges on individual sites, and streamline the permitting process. The recommended changes to the off-street parking requirements include:

1. Defining parking for duplexes and dwelling units per platted lot. Anything over 3 dwelling units as stated in the multifamily definition will be considered multi-family
2. Minimum allotment for parking in front yard of not more than 50% (reasonable)
3. Add a definition for “shopping center” to include all commercial multi-tenant buildings or unified developments, with required parking spaces calculated at 1:250 sq. ft. of gross building area, regardless of the composing uses, unless otherwise determined by the City Planner.
4. Allow for “Alternative Parking Plans” where developers can propose a parking plan other than the ratios outlined in the zoning ordinance, with approval by the City Planner.
5. Allow for “Demand-Based Parking” for commercial and multi-family development to include a parking study prepared by a PE or transportation planner, with approval by the City Planner.

Research - What Staff found:

In reviewing other cities that have similar growing pains, constraints of older areas not having additional room or area for a car-centric society had to be innovative and flexible to accept issues but to still allow for redevelopment.

In looking at San Marcos and other older Texas towns we have proposed a form-based approach to allow for flexibility and allow for staff to approve internally when reasonable solutions are asked.

DIVISION 2. - OFF-STREET PARKING STANDARDS^[7]

Footnotes:

--- (7) ---

Cross reference— Stopping, standing and parking, § 102-151 et seq.

Sec. 118-461. - Purpose.

A. The purpose of required parking spaces is to provide enough on-site parking to accommodate the majority of traffic generated by the range of uses which might locate at the site over time. Parking requirements should be balanced with an active pedestrian network to minimize pedestrian, bicycle and vehicle conflicts as much as possible. Construction of bicycle parking may be substituted for some required parking on a site to encourage alternative forms of transportation. Additionally, the off street requirements allow for flexibility and parking alternatives for developing and redeveloping properties to increase their viability.

(Ord. No. 1130, art. V, § 1, 11-3-1998; Ord. No. [1720-9-16](#), § 2, 9-20-2016)

Sec. 118-462. - Applicability.

- (a) *Construction or creation of use.* Any building, improvement, or use of land approved or erected shall include the necessary off-street parking spaces, and require off-street/on-site loading facilities subject to the standards established in this division.
- (b) *Change of use.* Whenever any building, improvement, or use of land is proposed to be changed to a new use, the provision of off-street parking and loading shall be required for the new use in accordance with this division.
- (c) *Expansion of existing use.* If any building, improvement, or use of land is expanded, the provisions for parking and loading shall be provided for the portion of land use and/or building that has been added.
- (d) *Renovation or redevelopment.* Notwithstanding subsection (b) of this section, if any building, improvement, or use of land is repaired, renovated, altered, expanded or redeveloped, and the cost of such changes exceed 50 percent of the fair market value of the building improvement prior to the subject improvements, the parking and loading facilities set forth in this division shall be made conforming.

(Ord. No. 1130, art. V, § 2, 11-3-1998)

Sec. 118-463. - Calculation of parking spaces.

- (a) *Fractional number of spaces.* In determining the required number of parking spaces, fractional spaces shall be counted to the nearest whole space. Parking spaces located in buildings used for repair garages or auto laundries shall not be counted as meeting the required minimum parking.
- (b) *Parking structures excluded.* Floor area of structures devoted to off-street parking of vehicles shall be excluded in computing the floor area for off-street parking requirements.

- (c) *Requirements for uses not listed.* The off-street parking requirements for a use not specifically listed in the parking requirement schedule shall be the same as required for a use of a similar nature as determined by the city planner.

(Ord. No. 1130, art. V, § 3.1, 11-3-1998)

Sec. 118-464. - Location of parking and loading spaces.

The required off-street parking and loading spaces shall be located on the same lot as the building or use served, except off-street parking may also be located as follows:

- (1) *Off-site location.* When an increase in the number of off-street parking spaces is required by a change or enlargement of use, or where off-street parking spaces are provided collectively or used jointly by two or more buildings or establishments, the required off-street parking spaces may be located at a distance not to exceed 300 feet from an institutional building served or 500 feet from any other nonresidential building served; provided, however, that a written agreement thereto is properly executed and filed as provided in this section. The distance from the land use requiring parking to the off-site parking site shall be measured along the shortest legal pedestrian path between one site and the other.

- (2) *Joint use of parking.* Parking adjustments may be allowed according to the following percentages by time of day:

FIGURE 1 PARKING ADJUSTMENT PERCENTAGES BY TIME OF DAY

Time of Day	Office	Retail	Restaurant	Theater	Hotel
6:00 a.m.—12:00 noon	1.00	0.97	0.50	0.30	1.00
12:00 noon—1:00 p.m.	0.90	1.00	0.70	0.70	0.30
1:00 p.m.—4:00 p.m.	0.97	0.97	0.60	0.70	0.45
4:00 p.m.—6:00 p.m.	0.47	0.82	0.90	0.80	0.70
6:00 p.m.—8:00 p.m.	0.07	0.89	1.00	1.00	1.00
8:00 p.m.—12:00 midnight	0.03	0.61	1.00	1.00	1.00

FIGURE 2 JOINT USE PARKING EXAMPLE:

1.	A sample mixed use Development comprised of	Office at 50,000 sf
		Retail at 20,000 sf
		Restaurant at 8,000 sf

2.	Individual Parking Requirements =	
	Office at 1 space per 300 = 50,000 / 300 =	167
	Retail at 1 space per 200 = 20,000 / 200 =	100
	Restaurant at 1 space per 45 = 8,000 / 45 =	<u>178</u>
		445
3.	Shared Parking Requirement =	

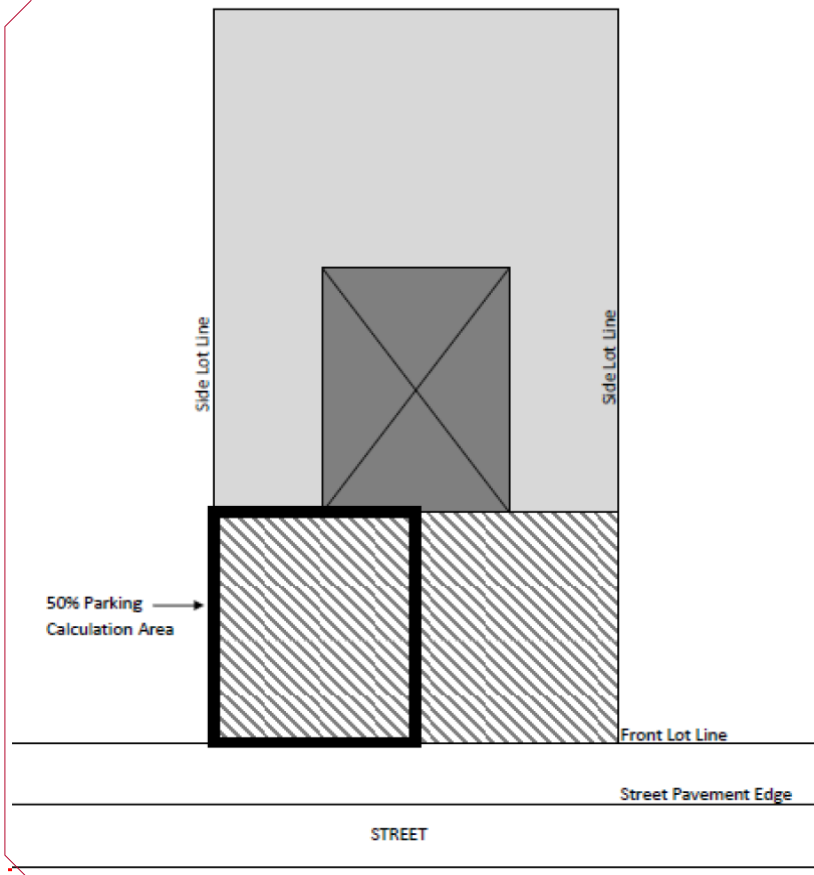
Time of Day	Office	Retail	Restaurant	TOTAL
6 AM - 12 Noon	1.00 X 167= 167	0.97 X 100= 97	0.50 X 178= 89	353
12 Noon - 1 PM	0.90 X 167= 150	1.00 X 100= 100	0.70 X 178= 125	375
1 PM - 4 PM	0.97 X 167= 162	0.97 X 100= 97	0.60 X 178= 107	366
4 PM - 6 PM	0.47 X 167= 78	0.82 X 100= 82	0.90 X 178= 160	320
6 PM - 8 PM	0.07 X 167= 12	0.89 X 100= 89	1.00 X 178= 178	279
8 PM - 12 Midnight	0.03 X 167= 5	0.61 X 100= 61	1.00 X 178= 178	344
4. Parking Required = 375 spaces. (Highest total for any time period.) This is a reduction of 70 spaces (15.7%) over the individual parking requirements.				

(3) *Off-site parking agreement.* When the required off-street parking spaces are not located on the same lot with the building or use served or when the required off-street parking spaces are provided collectively or used jointly by two or more establishments, a written agreement which ensures the retention of such spaces for this purpose, and for a period of not less than two years, shall be drawn and executed by the parties concerned, approved as to form by the city attorney, and filed with the application for a building permit or certificate of occupancy if a change in use is involved. If the off-site parking is terminated for any reason, alternative parking meeting the standards of this division shall be acquired, or the property shall lose its certificate of occupancy.

(4) *Parking in front yards of residential and agriculture districts.* ~~The~~No required off-street parking space may~~shall~~ be located in any area located in front of the primary structure not to exceed a size

Commented [1]: yes

equivalent to fifty (50) percent of the front area. The front area is defined as the area of the lot within the side lot lines, the front plane of the primary structure and the public right-of-way (see graphic below). The driveway area shall be included in this calculation.



a) When existing residential parking is expanded in front of the structure, it shall not exceed a size equivalent to fifty (50) percent of the front area as described above.

(5) *Parking in front yards of nonresidential districts.* In any nonresidential district, the required off-street parking space may be located in the required front yard. However, off-street parking spaces shall be located one foot behind the property line or 12 feet behind the back of curb of the adjacent street, whichever is greater.

Commented [2]: agreed

(Ord. No. 1130, art. V, § 3.2, 11-3-1998)

Sec. 118-465. - Lighting of parking and loading areas.

(a) *Spillover lighting.* All lighting facilities for off-street parking shall be so arranged as to reflect the illumination away from any adjacent property. Such lighting facilities shall provide illumination within

parking areas not to exceed a maintained average of one footcandle at ground level, and shall distribute not more than two-tenths of one footcandle of light upon any adjacent residential property.

- (b) *Nuisance or safety hazard.* All lighting facilities shall be placed, masked or otherwise arranged such that illumination or glare shall not intrude on residential property or create a hazard to motorists on any street, alley or other public way.

(Ord. No. 1130, art. V, § 3.3, 11-3-1998)

Sec. 118-466. - Off-street parking requirements.

- (a) *Schedule of off-street parking.* The schedule of off-street parking requirements in this section establishes parking requirements for all zoning districts except the B-3 central business district.
- (b) *CBD parking requirements.* In the B-3 central business district, off-street parking space for all buildings shall be provided at the ratio of one space for each 2,000 square feet of floor area; provided, however, if the computed number of required off-street parking spaces is less than ten spaces, no off-street parking spaces need be provided.
- (c) *Urban core parking requirements.* In the urban core overlay, off street parking requirements as described in section 118-467 shall be decreased by ten percent in total.

FIGURE 3 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

Permitted Use	Parking Requirement
AGRICULTURAL USES	
Farm, Ranch, Garden or Orchard	No Requirement
Farm or Ranch for live stock and Animal Specialties	No Requirement
Feed Store and Tack for live Stock - No Mill	1 for each 1,000 sf
Livestock Auction Pens or Sheds	1 for each 1,000 sf of auction area
Poultry Hatchery	1 for each 300 sf of office space
Stables (Commercial)	1 per each 2 stalls
RESIDENTIAL USES	
Household Units	
Home Occupation	N/A
Multifamily - Apartments	1 for each bedroom + 5% additional for visitors
Single Family Attached	2 for each dwelling unit**

	**Multi-family parking required for lots zoned R-4 irrespective of the type or number of dwelling units
Single Family Detached	2 for each dwelling unit** **Multi-family parking required for lots zoned R-4 irrespective of the type or number of dwelling units
Single Family Zero Lot Line	2 for each dwelling unit** **Multi-family parking required for lots zoned R-4 irrespective of the type or number of dwelling units
<u>Duplex</u> , Two Family Dwelling	2 for each dwelling unit** **Multi-family parking required for lots zoned R-4 irrespective of the type or number of dwelling units
Special Unit Types	
Industrialized Housing*	2 for each dwelling unit
Manufactured Home	2 for each dwelling unit
Mobile Home (House Trailer, Camp)	N/A
Manufactured Home Park	2 for each lot, plot, or stand
Mobile Home Park	N/A
Travel Trailer/RV Park	1 for each lot, plot, or stand
Lodging/Group Quarters	
Bed and Breakfast* - 4 or Less Patrons	1 for each guest room or residence unit
Bed and Breakfast* - 5—8 Patrons	1 for each guest room or residence unit
Boarding or Rooming House	1 for each guest room or residence unit
Accessory Apartment*	1 for each bedroom

Convent or Monastery	1 for each 3 residents, minimum 2
Family Group Home	2 spaces, and 0.3 for each client
Family Home	2 for each dwelling unit
Foster Home	2 for each dwelling unit
Guest House (Detached)	1 for each bedroom
Half-way House - Criminal	1 for each bedroom
Hotel or Motel	1 for each guest room + 5% additional for visitors
Orphanage	1 for each employee on largest shift
Retirement Home	1 for each bedroom
Pool House	N/A
AMUSEMENT/RECREATION USES	
General Recreation	
Amusement, Commercial - Indoors*	1 for each 100 sf
Amusement, Commercial - Outdoors	1 for each 1,000 sf of site area
Billiard Parlor or Pool Hall*	1 for each 100 sf
Carnival or Circus (Temporary)	1 for each 1,000 sf of site area
Country Club (Private Membership)	3 for each game court, 5 for each golf green, and 1 for each 250 sf of assembly area, 25% of required parking may be on a pervious surface
Fairground*	1 for each 1,000 sf of site area, parking surface may be pervious
Golf Course (Public or Private)	5 for each golf green

Golf Driving Range	1 for each tee box + 1 for each employee on largest shift
Health Club or Studio	3 for each Game Court, and 1 for each 200 sf of remaining area
Ice or Roller Skating Rink*	1 for each 100 sf of skating area
Night Club or Dance Hall*	1 for each 100 sf
Race Track	1 for each 4 seats and 1 for each employee on largest shift
Recreation Club or Area (Private)*	3 for each game court and 1 for each 200 sf of remaining area
Recreation Facility (Public)	3 for each game court and 1 for each 200 sf of remaining area
Teen Club*	1 for each 100 sf
Tennis Court (Lighted)	4 per court and 1 for each 4 fixed seats
Tennis Court (No Lights)	4 per court and 1 for each 4 fixed seats
Theater - Movie or Live (Enclosed)	1 for each 2 fixed seats
Zoo, Zoological Park, Animal Park, or Aviary	1 for each 1,000 square feet of site area
Adult Recreation	
Adult Arcade*	1 for each 100 sf
Adult Book Store or Video Store*	1 for each 250 sf
Adult Cabaret*	1 for each 100 sf
Adult Motel*	2 for each guest room
Adult Motion Picture Theater*	1 for each 2 fixed seats

Adult Theater*	1 for each 2 fixed seats
Escort Agency*	1 for each 300 sf
Nude Model Studio*	1 for each 300 sf
Sexual Encounter Center*	1 for each 100 sf
INSTITUTIONAL, UTILITY and GOVERNMENT USES	
Government/Utility	
Government Facility	As determined by the city planner
Library, Art Gallery or Museum (Public)	1 for each 500 sf, 5 minimum
Post Office	1 for each 300 sf of office and customer service area, 5 minimum
Postal Distribution Facility	1 for each 1,000 sf
Radio or TV Trans. Station (Commercial)	1 for each 1,000 sf
Radio Tower (Non-Commercial)*	No requirement
Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	No requirement
Satellite Dish*	No requirement
Utility Facilities (Major)	As determined by the city planner
Utility Lines and Transmission	As determined by the city planner
Schools/Organizations	
College or University	1 for each 2 students and staff
Daycare - 3 or less Attendees	As determined by the city planner
Daycare - 4—6 Attendees	1 for each 10 pupils

Daycare Center - 7 or more Attendees	1 for each 10 pupils
School - Vocational	1 for each student + 1 for each staff
School, K-12 (Public or Private)	1/25 elementary students, 1/18 junior high students, 1/5 high school students
Church or Place of Worship	1 for each 2.5 seats in sanctuary
Club, Private	1 for each 200 sf
Community Center - Private	1 for each 250 sf of assembly area
Community Center - Public	1 for each 250 sf of assembly area
Fraternity/Sorority House	1 for each resident, and 6 for each 100 sf of assembly area
Lodge or Fraternal Organization	1 for each 100 sf
OFFICE AND PROFESSIONAL	
Office - General	
Advertising Agency	1 for each 300 sf
Architectural/Engineering Services	1 for each 300 sf
Banks and Financial Institutions	1 for each 300 sf
Banks with Drive In Facilities	1 for each 300 sf
Legal Services	1 for each 300 sf
Offices - General or Professional	1 for each 300 sf
Medical/Healthcare	
Animal Hospital or Clinic	1 for each 300 sf
Animal Hospital or Clinic w/Outside Pens	1 for each 300 sf

Animal Pound (Public or Private)	1 for each 300 sf
Emergency Ambulance Service	2 for each ambulance
Hospice	1 for each 6 beds and 1 for each employee on the largest shift
Hospital - Acute Care	In accordance with statutory regulations of Texas Department of Health
Hospital - Chronic Care	In accordance with statutory regulations of Texas Department of Health
Medical or Dental Office or Clinic	1 for each 200 sf
Medical or Dental Office or Clinic with In-House Lab	1 for each 150 sf
Nursing/Convalescent Home	1 for each 6 beds and 1 for each employee on largest shift
Psychiatric Hospital or Institution	1 for each 6 beds and 1 for each employee on largest shift
Veterinary Office (No Hosp. or Clinic)	1 for each 300 sf
Business or Personal Services	
Auction - Goods & Equipment (Indoors)	1 for each 250 sf
Beauty Parlor/Barbershop	1 for each 250 sf
Cabinet and Woodwork Shop (Custom)	1 for each 300 sf
Caretaker/Security Quarters	1 per bedroom
Cemetery or Mausoleum	2 spaces
Communications/Electronics Equipment - Installation and Repair	1 for each 250 sf
Conventions, Trade Shows or Exhibits	1 for each 1,000 sf of public area

Exterminator Service	1 for each 300 sf
Exterminator Service Storage	1 for each 1,000 sf
Household Appliance and Equipment Repair	1 for each 250 sf
Information Processing	1 for each 300 sf
Laundry/Dry Cleaning - <4,000 s.f. w/Customer Service	1 for each 300 sf
Laundry/Dry Cleaning - >4,000 s.f.	1 for each 300 sf
Laundry/Dry Cleaning - Drop Off/Pick Up	1 for each 250 sf
Laundry/Dry Cleaning -Self Service	1 for each 250 sf
Locksmith	1 for each 300 sf
Mailing Service (Private)	1 for each 300 sf
Mortuary or Funeral Home	1 for each 100 sf of assembly area
Photocopying or Duplicating Services	1 for each 250 sf
Photographic Studio	1 for each 300 sf
Sewing and Millinery (Custom)	1 for each 250 sf
Shoe Repair	1 for each 250 sf
Studio - Art, Drama, Dance, Music - Performing Arts	1 for each 200 sf
Tailor Shop	1 for each 250 sf
Tattoo Salon/Piercing Studio	1 for each 250 sf
Taxidermist	1 for each 250 sf
Temporary Field or Construction Office	N/A

Temporary Retail Use	1 for each 250 sf of site area
Travel Agency	1 for each 300 sf
Upholstery Shop or Furniture Repair (non-auto)	1 for each 250 sf
Food and Beverage Services	
Club (Private)	1 for each 100 sf
Catering Service	1 for each 300 sf
Eating Place	1 for each 100 sf
Eating Place - Drive-thru only	1 for each employee on largest shift (min. 4 spaces)
Food Preparation or Food Service	1 for each 100 sf
Liquor By the Drink*	1 for each 100 sf
Retail	
Alcohol Sales - Off Premise Consumption	1 for each 250 sf
Antique Shop	1 for each 250 sf
Art Dealer	1 for each 250 sf
Art Gallery	1 for each 500 sf
Bait or Tackle Shop	1 for each 250 sf
Bakery Shop	1 for each 250 sf
Bicycle Sales or Repair	1 for each 250 sf
Book or Stationery Shop	1 for each 250 sf
Building Material Sales (Outside Storage)	1 for each 250 sf

Camera or Photographic Supply Shop	1 for each 250 sf
Cloth or Fabric Store	1 for each 250 sf
Clothing Store	1 for each 250 sf
Confectionery Shop	1 for each 250 sf
Consignment Shop	1 for each 250 sf
Convenience Store	1 for each 250 sf
Department Store	1 for each 250 sf
Drapery Shop	1 for each 250 sf
Drug Store or Pharmacy	1 for each 250 sf
Farmers Market - Outdoor	2 for each vendor stall
Flea Market - Outdoor	1 for each 1,000 sf of site area
Florist Shop	1 for each 250 sf
Furniture Sales - New (Indoor Only)	1 for each 1,000 sf
Garden Shop and Plant Sales - Display or Greenhouse	1 for each 1,000 sf of site area
Grocery	1 for each 250 sf
Hardware Store	1 for each 250 sf
Hobby, Handicraft or Art Supplies	1 for each 250 sf
Lawnmower Sales or Repair	1 for each 250 sf
Major Appliance Sales (Indoor)	1 for each 1,000 sf
Mobile/Manufactured Home Dealer (Sales Only)	1 space for each 5,000 sf of site area

Monument Sales Yard	1 for each 250 sf
Optical Shop	1 for each 250 sf
Paint and Wallpaper Store	1 for each 250 sf
Pawn Shop*	1 for each 250 sf
Pet Shop	1 for each 250 sf
Plumbing Shop (Retail and Wholesale)	1 for each 250 sf
Retail or Convenience Store with Gasoline	1 for each 250 sf
Retail Tobacco/Vapor/Smoke Store	1 for each 250 sf
Sporting Goods	1 for each 250 sf
Swimming Pool Sales and Supply	1 for each 250 sf
Used Merchandise - Furniture, Rummage, Secondhand Store (Inside)	1 for each 250 sf
Shopping Center*	1 for each 250 sf
TRANSPORTATION	
Automobile Related	
Auto Brake, Muffler, Glass, Seat Covers or Tire Sales and Service	1 for each 200 sf of retail area plus 1 for each bay
Auto Dealer - Primarily New/Used Autos	1 for each 200 sf of retail area plus 1 for each bay
Auto Dealer - Primarily Used Autos	1 for each 250 sf
Auto Interior Shop	1 for each 250 sf of retail area plus 1 for each bay
Auto Paint/Body Repair	1 for each 250 sf of retail area plus 1 for each bay
Auto Rental	1 for each 250 sf

Auto Repair - General	1 for each 250 sf of retail area plus 1 for each bay
Auto Storage or Auction	Auction - 1 for each 5,000 sf of site area storage - N/A
Auto Supply - Used Parts Store with No On-Site Salvage	1 for each 250 sf
Auto Supply Store for New and Rebuilt Parts	1 for each 250 sf
Auto Wrecker Service	1 for each 250 sf office area
Auto/Truck Parts and Accessories	1 for each 250 sf
Car Wash	Self-service - 1 per wash bay
Drag Strip or Commercial Racing	1 for each 4 fixed seats
Parking - Accessory to Another Use	N/A
Parking - Commercial Lot or Garage	N/A
Lube/Oil Change	2 for each oil change bay, and 1 for each employee on largest shift
Service Station	2 for each repair bay, and 1 for each employee on largest shift
State Vehicle Inspection	1 for each 300 sf of office and customer service area
Bus or Truck Related	
Bus or Truck Parking or Storage	N/A
Bus Station and Terminal	As determined by the city planner
Truck Stop, Including Gas Sales	1 for each 250 sf
Truck/Heavy Equipment Driving School	2 for each student during peak hour

Truck/Recreation Vehicle Sales	1 for each 300 sf
Truck/Trailer Rental	1 for each 300 sf
Trucking Company	1 for each 300 sf
Railroad or Airport Related	
Airport or Landing Field	As determined by the city planner
Railroad Freight Depot	1 for each 1,000 sf
Railroad Passenger Station	As determined by the city planner
Railroad Yard and Shops	1 for each 1,000 sf or 1 for each employee, whichever is greater
Vehicle - General	
Boat Dealer - Sales Only	1 for each 300 sf
Boat Repair or Storage	1 for each 250 sf customer service area plus 1 per bay
Go Cart Track	1 for each 2,000 sf site area
Motorcycle Sales or Service	1 for each 250 sf office area plus 1 per each 1,000 sf service area
Transfer/Storage Terminal	1 for each 1,000 sf
Vehicle Maintenance - Private	N/A
Vehicle Wash - Private	N/A
WHOLESALE TRADE and STORAGE	
Wholesale Trade	
Apparel, Piece Goods, Notions - Wholesale	1 for each 1,000 sf

Groceries/Related Products - Wholesale	1 for each 1,000 sf
Heavy Machinery Sales	1 for each 1,000 sf
Lumber Sales - Wholesale	1 for each 1,000 sf
Paper or Paper Products - Wholesale	1 for each 1,000 sf
Petroleum Products Storage and Wholesale	1 for each 1,000 sf
Tool or Equipment Rental - Indoor	1 for each 300 sf
Tool or Equipment Rental - Outdoor	1 for each 5,000 sf of site area
Storage	
Contractor or Maintenance Yard	As determined by the city planner
Hazardous Gases/Chemicals Storage	As determined by the city planner
Mini Warehouse	1 for each 300 sf of office area. Units must have ample space for temporary parking in drive area
Open Storage (No Enclosure)	As determined by the city planner
Open Storage (Screened)	As determined by the city planner
Warehouse/Storage (Inside)	1 for each 1,000 sf
Wrecking, Junk, Salvage or Reclamation Yard	1 for each 300 sf office area
MANUFACTURING and MINING USES	
Food-Related Products	
Animal or Poultry Slaughtering	1 for each 1,000 sf
Bakery Products; Manufacturing	1 for each 1,000 sf
Beverage Manufacturing	1 for each 1,000 sf

Bottling or Canning of Soft Drinks and Carbonated Water	1 for each 1,000 sf
Bottling Works	1 for each 1,000 sf
Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods	1 for each 1,000 sf
Dairy Products - Processing or Manufacturing	1 for each 1,000 sf
Fats and Oils Manufacturing or Processing	1 for each 1,000 sf
Grain Mill Products; Processing and Manufacturing	1 for each 1,000 sf
Ice Manufacturing	1 for each 1,000 sf
Meat Products; Processing or Manufacturing - Not Including Slaughtering	1 for each 1,000 sf
Sugar and Confectionery Products, Manufacturing	1 for each 1,000 sf
Sugar Manufacturing	1 for each 1,000 sf
Articles and Equipment	
Apparel Manufacturing	1 for each 1,000 sf
Broom and Brush Manufacturing	1 for each 1,000 sf
Cabinet and Woodworking Manufacturing	1 for each 1,000 sf
Chemical and Allied Products Manuf.	1 for each 1,000 sf
Concrete or Asphalt Batch Plant - Temp.	N/A
Costume Jewelry, Novelties, Buttons and Misc. Notions Mfg.	1 for each 1,000 sf
Fabricated Metal Products Manufacturing	1 for each 1,000 sf
Fur Dressing and Dying	1 for each 1,000 sf

Jewelry, Silverware and Plateware Mfg.	1 for each 1,000 sf
Laboratory - Medical or Dental	1 for each 200 sf
Laboratory - Scientific Testing	1 for each 300 sf
Land Fill (Private or Municipal)	1 for each 200 sf of building area
Light Manufacturing/Assembly	1 for each 1,000 sf
Linoleum, Asphalt - Felt Base and Other Hard Surfaced Floor Covering Mfg.	1 for each 1,000 sf
Machine Shop	1 for each 1,000 sf
Match Manufacturing	1 for each 1,000 sf
Musical Instruments and Parts Mfg.	1 for each 1,000 sf
Paper and Allied Products Manufacturing	1 for each 1,000 sf
Pens, Pencils and Other Office and Artists' Materials Mfg.	1 for each 1,000 sf
Printing Publishing and Allied Industries	1 for each 1,000 sf
Professional, Scientific and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks Mfg.	1 for each 1,000 sf
Rubber and Misc. Plastics Manufacturing	1 for each 1,000 sf
Salvage and Reclamation (Enclosed)	1 for each 1,000 sf
Sign and Advertising Display Manufacturing	1 for each 1,000 sf
Textile Mill Product Manufacturing	1 for each 1,000 sf
Tobacco Products Mfg.	1 for each 1,000 sf
Toys, Amusement, Sporting and Athletic Goods Mfg.	1 for each 1,000 sf

Welding Shop	1 for each 1,000 sf
Natural Resources	
Lumber and Wood Products Manufacturing	1 for each 1,000 sf
Oil and Gas Extraction	N/A
Oil and Gas Field Services	1 for each 200 sf of building
Petroleum Refining and Related Industries	1 for each 1,000 sf
Primary Metal Products Manufacturing	1 for each 1,000 sf
Petroleum Products Storage and Warehouse	1 for each 1,000 sf
Stone, Clay, Glass and Concrete Products Manufacturing	1 for each 1,000 sf
Stone, Sand, Gravel and Mineral Extraction	N/A
Stone, Sand, Gravel or Earth Sales and Storage	1 for each 5,000 sf of site area

* A shopping center is a building or unified development with two (2) or more stores, shops, or commercial enterprises, and which has shared parking facilities or access. ~~The minimum number of parking spaces for a shopping center shall be calculated at a rate of 1:250 regardless of the composing uses unless otherwise determined by the City Planner that such composing uses require a modification to the applicable requirements.~~

(Ord. No. 1130, art. V, § 4.1, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1588-2-12, 2-7-2012; Ord. No. 1626-5-13, 5-7-2013; Ord. No. [1720-9-16](#), § 2, 9-20-2016)

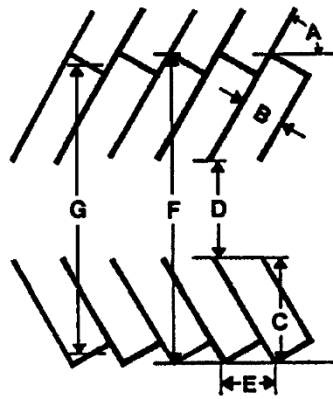
Sec. 118-467. - Off-street parking standards.

- (a) *Head-in parking.* An off-street parking space shall not be located on a public street or alley. Head-in parking adjacent to a public street wherein the maneuvering of the vehicle in parking or leaving a parking space is done directly onto a public street shall not be allowed in nonresidential zoning districts nor shall it be allowed in conjunction with multifamily residential land uses.
- (b) *Parking spaces and aisle surfaces.* All parking spaces, aisles and maneuvering areas shall have an all-weather surface, whether enclosed or unenclosed, and shall be connected by an all-weather surfaced driveway to a street or alley.
- (c) *Parking space and aisle dimensions.* All parking spaces and aisle dimensions shall conform to Figure 5, Off-Street Parking Standard Diagram, unless specifically approved by the building official.
- (d) *Site access for vehicles.* Access to a lot or tract shall conform to the access control guidelines in the city's comprehensive plan. A driveway conforming to city driveway standards shall be constructed for

each approved access point. A permit must be obtained from the city to construct a driveway within the city.

FIGURE 5 OFF-STREET PARKING STANDARDS DIAGRAM

A	B	C	D	E	F	G
0°	9'0"	9.0	12.0	23.0	30.0	-
	9'6"	9.5	12.0	23.0	32.0	-
	10'0"	10.0	12.0	23.0	32.0	-
20°	9'0"	15.0	11.0	26.3	41.0	32.5
	9'6"	15.5	11.0	27.8	42.0	33.1
	10'0"	15.9	11.0	29.2	42.8	33.4
30°	9'0"	17.3	11.0	18.0	45.6	37.8
	9'6"	17.8	11.0	19.0	46.6	38.4
	10'0"	18.2	11.0	20.0	47.4	38.7
45°	9'0"	19.8	13.0	12.7	52.5	46.5
	9'6"	20.1	13.0	13.4	53.3	46.5
	10'0"	20.5	13.0	14.1	54.0	46.9
60°	9'0"	21.0	18.0	10.4	60.0	55.5
	9'6"	21.2	18.0	11.0	60.4	55.6
	10'0"	21.5	18.0	11.5	61.0	56.0
70°	9'0"	21.0	19.0	9.6	61.0	57.9
	9'6"	21.2	18.5	10.1	60.9	57.7
	10'0"	21.2	18.0	10.6	60.4	57.0
80°	9'0"	20.3	24.0	9.1	64.3	62.7
	9'6"	20.4	24.0	9.6	64.4	62.7
	10'0"	20.5	24.0	10.2	65.0	63.3
90°	9'0"	19.0	24.0	9.0	62.0	-
	9'6"	19.0	24.0	9.5	62.0	-
	10'0"	19.0	24.0	10.0	62.0	-



- A. Stall Angle
- B. Stall Width
- C. Vehicle Projection for 19' Stall Length
- D. Aisle Width
- E. Curb Length Per Car
- F. Wall to Wall Width for Double Aisle
- G. Overlap Center to Overlap Center Width for Double Aisle

(Ord. No. 1130, art. V, § 4.2, 11-3-1998)

Sec 118-468. - Parking lot accessibility.

All parking lots shall conform to Texas accessibility standards.

(Ord. No. [1720-9-16](#), § 2, 9-20-2016)

Editor's note— Ord. No. [1720-9-16](#), § 2, adopted Sept. 20, 2016, amended § 118-468 in its entirety to read as set out herein. Former § 118-468 pertained to handicapped parking and derived from Ord. No. 1130, art. V, § 4.3, adopted Nov. 3, 1998.

Sec. 118-469. - Reductions in required parking.

(a) *Landscaping credit for off-street parking.*

- (1) The minimum off-street parking requirement may be reduced a maximum of ten percent for those parking facilities where a percentage of the total required parking spaces has been retained and/or developed as landscaped open space. The area to be retained and/or developed shall be equal or larger than the area of the number of parking spaces reduced.
- (2) A minimum of one tree shall be retained or planted on the site for each 300 square feet or portion thereof of landscaped open space. Acceptable tree species are indicated in section 118-431. The property owner or agent shall maintain trees in a healthy condition. Removed trees shall be replaced as necessary to maintain the credit.
- (3) If the property owner or the owner's agent does not replace dead or removed trees within 30 days of notification by the city planner or his or her designee, the parking credit shall be lost and the otherwise required parking shall be provided within 90 days.

(b) *Bicycle parking.*

- (1) For every five bicycle parking spaces provided, the vehicle parking space requirement is reduced by one space, up to ten percent of the original required parking.
- (2) Existing vehicle parking may be converted to take advantage of this provision.
- (3) To utilize this exemption, the property must provide bicycle racks and must meet the following requirements:
 - a. The bicycle frame and one wheel can be locked to the rack with a high security, U-shaped shackle lock if both wheels are left on the bicycle.
 - b. A space two feet by six feet must be provided for each bicycle parking space, so a bicycle six feet long can be securely held with its frame supported so the bicycle cannot be pushed or fall in a manner that will damage the wheels or components.

(c) *Motorcycle parking.*

- (1) Motorcycle parking may substitute for up to five percent of required parking.
- (2) For every five motorcycle parking spaces provided, the vehicle parking space requirement is reduced by one space.
- (3) To utilize this exemption, the property must provide motorcycle parking spaces meeting the following standards:
 - a. A space two feet by six feet must be provided for each motorcycle space.
 - b. All motorcycle spaces shall be located on a paved surface.

(c) Alternative Parking Plans.

1. Scope.

An "Alternative Parking Plan" represents a proposal to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the ratios established in Sec. 118-466. - Off-street parking requirements.

2. Applicability.

Applicants who wish to provide fewer or more off-street parking spaces than allowed above shall be required to secure approval of an Alternative Parking Plan, in accordance with the standards of this

Section. The City Planner may require that an Alternative Parking Plan be submitted in cases where the City Planner deems the listed standard to be inappropriate based on the unique nature of the use or in cases where the applicable standard is unclear.

3. Contents.

Alternative Parking Plans shall be submitted in a form established by the City Planner and made available to the public. At a minimum, such plans shall detail the type of alternative proposed and the rationale for such a proposal.

4. Review and Approval Procedure.

The City Planner and City Engineer shall be authorized to approve Alternative Parking Plans. Appeals of the City Planner and City Engineer's decision may be made to the Planning and Zoning Commission.

5. Recording.

An attested copy of an approved Alternative Parking Plan shall be submitted to the County Clerk's office for recordation on forms made available in the Planning & Zoning office. Proof of recordation of the agreement shall be presented to the City Planner prior to issuance of a Building Permit. An approved Alternative Parking Plan may be amended by the City Planner and City Engineer.

6. Eligible Alternatives.

A number of specific parking and access alternatives are described below. The City Planner and City Engineer shall, however, be authorized to consider and approve any alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates that the proposed plan shall result in a better situation with respect to surrounding neighborhoods, City-wide traffic circulation, and urban design ~~than that would with strict compliance with otherwise would not meet~~ applicable off-street parking standards.

a. Demand-Based Parking.

When the developer of a non-residential or multi-family development can demonstrate that such development will require fewer parking spaces than required by the standards of this Section, the City Planner and City Engineer may permit a reduction in the number of required parking spaces for the development. Such a reduction in parking spaces shall be justified by the applicant through the development of a parking study prepared by a professional engineer or transportation planner ~~siting shared parking per land uses and highest time usage per that use~~ and submitted to the City Planner. ~~Duplex, townhomes and single family attached and detached~~ developments are not eligible for the demand-based parking option.

(Ord. No. [1720-9-16](#), § 2, 9-20-2016)

Editor's note— Ord. No. [1720-9-16](#), § 2, adopted Sept. 20, 2016, amended § 118-469 to read as set out herein. Former § 118-469 pertained to landscaping credit for off-street parking and derived from Ord. No. 1130, art. V, § 4.4, adopted Nov. 3, 1998.

Sec. 118-470. - Off-street loading requirements.

Any use that receives or distributes material, supplies or merchandise by motor vehicle shall provide off-street loading space in accordance with the following requirements:

(1) *Retail, commercial and industrial uses.*

FIGURE 6 COMMERCIAL OFF-STREET LOADING REQUIREMENTS

Gross Floor Area (s.f.)	Minimum Required Loading Spaces
0 to 10,000	None
10,001 to 50,000	1
50,001 to 100,000	2
100,001 to 200,000	3
Each additional 100,000	1 additional

(2) *Auditoriums, exhibitions halls, hotels, restaurants and sports arenas.*

FIGURE 7 RESTAURANTS AND PUBLIC FACILITIES LOADING REQUIREMENTS

Gross Floor Area (s.f.)	Minimum Required Loading Spaces
0 to 10,000	None
10,000 to 150,000	2
150,001 to 300,000	4
300,001 to 600,000	5
Each additional 100,000	1 additional

(Ord. No. 1130, art. V, § 5.1, 11-3-1998)

Sec. 118-471. - Off-street loading standards.

Loading spaces shall be a minimum of 12 feet in width, 65 feet in length, and 14 feet in height except as required for kindergartens, day care centers or similar child training and care establishments.

(Ord. No. 1130, art. V, § 5.2, 11-3-1998)

Sec. 118-472. - Dumpster screening requirements.

- (a) *Screening required.* Dumpster enclosures shall be screened from view from a public right-of-way. The dumpster area shall be in a location accessible to city sanitation vehicles and constructed according to the standards shown in figures 8 and 9.

FIGURE 8 DUMPSTER PAD DIAGRAM

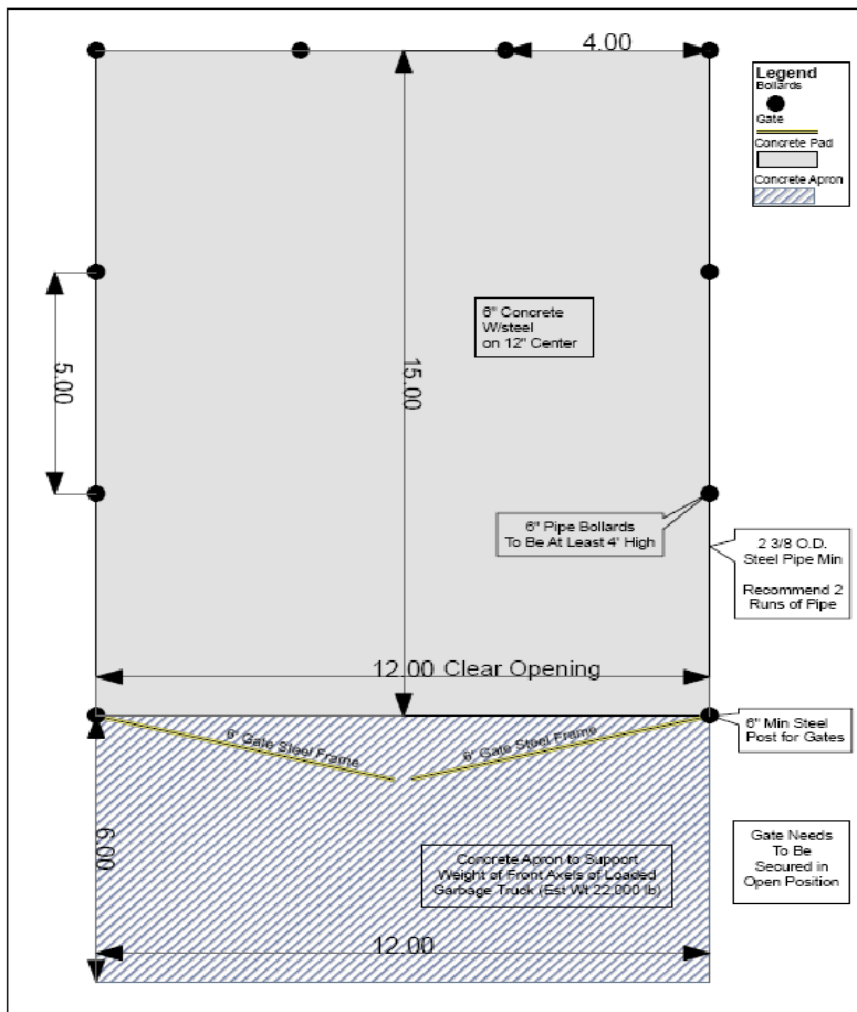
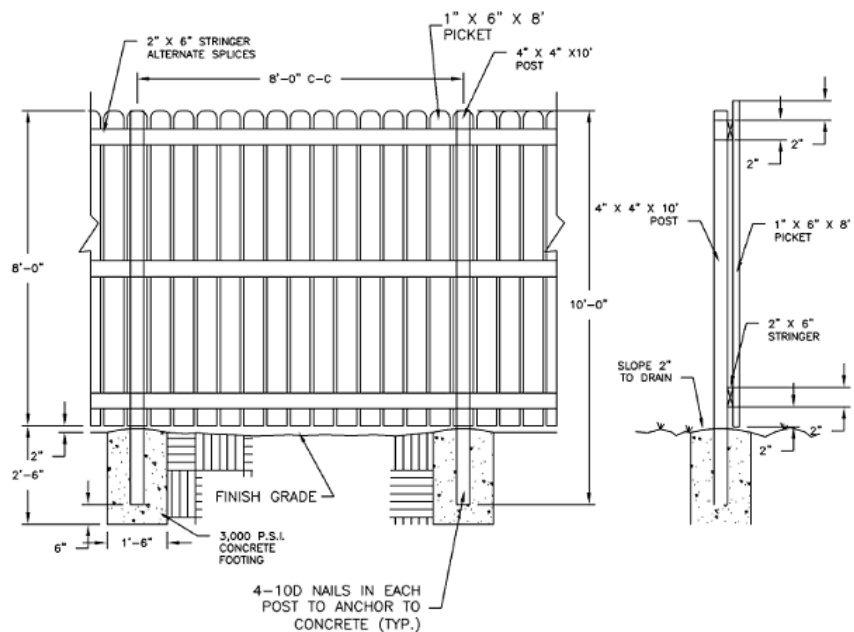


FIGURE 9 DUMPSTER SCREENING DIAGRAM



- (b) *Maintenance of screening.* It shall be the responsibility of the property owner to maintain the screening wall in a good condition at all times.
- (c) *Alternative methods and construction of screening.* The city manager or his designee may grant approval of screening materials and construction methods provided in this section.
- (d) *Variances to screening requirements.* The board of adjustment may grant variances to this section upon finding that:
- (1) Such variance is in harmony with the intent and purpose of the comprehensive plan and this chapter;
 - (2) Such variance will not adversely affect the health, safety or general welfare of the public;
 - (3) The variance sought is due to unique circumstances affecting the property or the owner's use of the property. Financial consideration alone shall not be grounds for a variance; and
 - (4) The owner has made provisions for alternative screening reasonably equivalent in value and utility to the requirement sought to be varied.

(Ord. No. 1478-2-08, 2-5-2008)

Secs. 118-473—118-500. - Reserved.

City Planner Initiated Text Changes

Subject:

118-141 (b)Change the word "commission" to "city council"

Why:

This is just a minor clean-up of terminology in the ordinance. Changing the word from Commission to City Council is the only change needed in this amendment. State law directs the steps in this process but the decision maker, City Council is the deciding body in this process.

Research - What Staff found:

No research needed.

Recommendation:

Amend the one word to City Council and make it not necessary to take the protest to the Commission any longer.

PART II - CODE OF ORDINANCES Chapter 118 - ZONING ARTICLE II. -
ADMINISTRATION DIVISION 4. - AMENDMENT PROCEDURE Subdivision I. In General

Sec. 118-141. Protest of proposed change in zoning.

- (a) Property owners adjacent to and within a distance of 200 feet of a property for which a change in zoning is being considered have the right to file a written protest against the request. The land area of this 200-foot distance includes streets, alleys and other public rights-of-way.
- (b) Whenever such written protest is signed by the owners of 20 percent or more of the area of the lots or land included in such zoning change or of the lots or land immediately adjoining such and within the 200-foot distance, such change in zoning shall not become effective except by a favorable vote of three-fourths of all the members of the ~~commission~~City Council.
- (c) For purposes of determining representation on such written protest, the written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all owners.

(Ord. No. 1130, art. VII, § 9, 11-3-1998)

City Planner Initiated Text Changes

Subject:

Text changes to the Chapter 118 ordinance Article II Administration and Article III Administration following the updates to the Board of Adjustment policies and procedures manual and updates to our ordinance for common best practices.

Why:

Per the policies and procedures, the adopted manual needed to be reviewed and adopted. After reviewing the previous manual there were many inaccuracies and we needed the manual, ordinance, and TLGC all to be consistent plus we found best practices that could be followed to help applicants understand the process better.

Research – What Staff found:

In comparing the current policies and procedures for the Zoning Board of Adjustment we found some inaccuracies both procedurally and from the administration side of the document. These changes will allow us to be consistent with the ordinance and the steps and processes directed by the policy document.

The changes we are proposing to the current code correct our current process, show a distinction between a variance and a special exception, ensure state law and our ordinance are consistent, and remove redundancy.

Best practices for many other cities are similar to our current and proposed text.

The amendments will add the vice chair to the board makeup (which the procedures manual is silent on), update the process and correct the number of days used for notification for the board of adjustment to 15 days the same as the Council.

When comparing differences between a variance and a special exception a **variance grants a property owner the ability to use his or her property in a manner that is completely against local regulations (except for the use), while a special exception is a circumstance that local governments specifically recognize before drafting a law and will make provisions that recognize exceptions in the regulation itself.** We will be proposing the adjustment to allow for this distinction. This will impact the ZBA process by creating two options. Variance and special exception, the main difference is that the types of items that can be requested for special exception will need to be called out in the development standards that we can see that could vary depending on the issue but would not need a hardship as a reason.

Finally, we removed a lot of duplicative steps in the process. Most of all the submittal types follow similar processes, so instead of citing the same steps 4 times we combined and removed the redundancy.

DIVISION 3. BOARD OF ADJUSTMENT¹

Sec. 118-96. Organization.

The board of adjustment shall be composed of five members and ~~may have a maximum of four~~ alternate members ~~to ensure a quorum if a member is not available for the meeting~~. Appointments to the board of adjustment shall be for staggered terms of two years. Alternate members shall serve in the absence of one or more regular board members when required to do so by the mayor or city manager. The city council may remove a member or alternate member of the board for cause, as found by the city council on a written charge, after a public hearing. Vacancies shall be filled for the unexpired term of any member, or alternate member, whose term becomes vacant for any cause.

(Ord. No. 1130, art. X, § 1, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-97 Preapplication conference.

- a) It is required that the applicant for any zoning-related Special Exceptions or variance have a pre-application conference with the city planner prior to incurring substantial expense in preparing plans, surveys and other data.
- b) At the pre-application conference, the applicant should present a draft concept with as much detail as possible.
- c) Based on the information presented, the city planner will provide initial comments concerning the merits of the proposed development and inform the applicant of any additional requirements for preparation of the formal planned development application.

Sec. 118-98. Notice of public hearings.

(b) *Publication of notice for city council or Board of Adjustment public hearing.* Before the 15th day before the date of the city council hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the city.

Sec. 118-97. Officers and compensation.

The board of adjustment shall meet and organize as soon as practicable, shall elect one of its members as chair, ~~and vice-chair~~ and shall have a ~~board~~ secretary. The members of the board ~~and the secretary~~ shall receive such compensation as may be determined and fixed by the city council.

(Ord. No. 1130, art. X, § 2.1, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-98. Procedures.

- (a) *Adopting procedural rules.* The board of adjustment, by majority vote, shall adopt such procedural rules as are necessary to execute its duties.

¹Cross reference(s)—Boards, committees and commissions, § 2-201 et seq.

State law reference(s)—Board of adjustment, V.T.C.A., Local Government Code §§ 211.008—211.011.

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- (b) *Quorum.* All cases before the board of adjustment must be heard by at least four members.
 - (c) *Calling meetings.* Meetings of the board shall be held at the call of the chair or vice-chair, and at such other times as the board may determine. Such chair, or in the chair absence the vice-chair or acting chair, shall administer oaths and compel attendance of witnesses.
 - (d) *Meetings open to the public.* All meetings of the board shall be open to the public.
 - (e) *Keeping of minutes.* The board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its other official actions, all of which shall be filed in the office of the board and shall be a public record.

(Ord. No. 1130, art. X, § 2.2, 11-3-1998)

Sec. 118-99. Powers.

The board of adjustment shall have the following powers:

- (1) *Decide appeals of city planner's decisions.* The board of adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the city planner in the enforcement of this chapter and city rules and regulations.
- (2) *Variances to chapter.*
 - a. *Findings.* The board of adjustment, pursuant to the powers conferred upon it by state law, the city ordinances, and this article, may grant variances ~~and exceptions~~ to the sections of this chapter upon finding that:
 - 1. Such variance is in harmony with the intent and purpose of the comprehensive plan and this chapter;
 - 2. Such variance will not substantially or permanently injure the appropriate use of adjacent property in the same district;
 - 3. Such variance will not adversely affect the health, safety or general welfare of the public;
 - 4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located;
 - 5. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that the unique circumstances were not created by the owner of the property, and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located; and
 - 6. The variance is not a self-created hardship.
 - b. *Variances.* The board of adjustment may permit in any district such modification of the requirements of the district regulations as the board may deem necessary to secure an appropriate development of a lot where adjoining such lot on two or more sides there are lots occupied by buildings which do not conform to this chapter.
 - c. *Decision.* The concurring vote of at least four members of the board of adjustment shall be necessary to authorize a variance.
 - d. *Application for variance.* Variances to be considered by the board of adjustment may be initiated by the owner of the affected property or the owner's authorized representative or any aggrieved

party who files the required application and pays the appropriate fee, or by any person aggrieved by a decision of an administrative officer with authority over any matter appealable to the city council, or by an officer or appropriate board of the city.

(3) Special Exceptions to chapter.

(a) Scope. Special exceptions are deviations from otherwise applicable operational performance standards and compatibility standards where development is proposed that would be:

(b) Permit criteria. To approve an application for a special exception permit, the board of adjustment shall make an affirmative finding that granting the special exception will:

1. Such Exception is in harmony with the intent and purpose of the comprehensive plan and this chapter;
 2. Not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use;
 3. Such exception will not adversely affect the health, safety or general welfare of the public or property values in any material way;
 4. Such exception will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the exception is sought is located;
 5. The plight of the owner of the property for which the exception is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that the unique circumstances were not created by the owner of the property, and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located; and
- b. Exception. The board of adjustment may permit in any district such modification of the requirements of the district regulations as the board may deem necessary to secure an appropriate development of a lot where adjoining such lot on two or more sides there are lots occupied by buildings which do not conform to this chapter.
- c. Decision. The concurring vote of at least four members of the board of adjustment shall be necessary to authorize an exception.
- d. Application for Exception. Exceptions to be considered by the board of adjustment may be initiated by the owner of the affected property or the owner's authorized representative or any aggrieved party who files the required application and pays the appropriate fee, or by any person aggrieved by a decision of an administrative officer with authority over any matter appealable to the city council, or by an officer or appropriate board of the city.

(Ord. No. 1130, art. X, § 3, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-100. Appeal of decisions made by city officers.

- (a) *Appeal of city planner's decision.* Appeals to the board of adjustment may be taken by any person aggrieved, or by any officer, department or board of the city affected by any decision of the city planner. Such appeal shall be taken within a reasonable time, not to exceed ~~90-20~~ days, by filing with the city planner and with the board of adjustment a notice of appeal, which shall specify the grounds thereof. The city planner shall

forthwith transmit to the board all of the papers constituting the record upon which the action appealed was taken.

- (b) *Appeal stays city planner and building official action.* An appeal from the action of the city planner shall stay all proceedings in furtherance of such action unless the city planner certifies to the board that a stay would, in his opinion, cause imminent peril to life or property. If the city planner shall make and file such certificate, that action shall not be stayed unless by a restraining order which may be granted by the board, or by a court of record, upon application of the party aggrieved by the action of the city planner, and after notice to the city planner.
- (c) *Hearing.* The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize city staff to do such. The board of adjustment shall decide such appeal at the next meeting for which notice can be provide following the hearing and not later than the 60th day after the date the appeal is filed.~~within a reasonable time.~~ Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.
- (d) *Powers.* In exercising the powers set out in this section, the board of adjustment may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the city planner from whose action the appeal is taken.
- (e) *Decision.* Decisions of the board of adjustment shall be as follows:
 - (1) *Required vote.* A reversal by the board of any order, requirement, decision, or determination of the city planner against the applicant, and a finding in favor of the applicant by the board, shall require the concurring vote of four members of the board of adjustment.
 - (2) *Lapse of order.* Any reversal by the board of adjustment shall lapse after the expiration of 90 days where action by the appellant is not taken pursuant thereto within such period. This subsection shall not apply when the applicant has presented to the board of adjustment a development plan which requires a length of time greater than 90 days, in which event the board of adjustment may grant a greater length of time. In no event, however, shall such time granted exceed two years.

(Ord. No. 1130, art. X, § 4, 11-3-1998)

Sec. 118-101. Appeal to courts.

Any person jointly or severally aggrieved by any decision of the board of adjustment, any taxpayer or any city officer, department or board may present any such matter to a court of record for review, after the final action of the board thereon, and in the manner and upon the terms provided by state law in V.T.C.A., Local Government Code § 211.0011.

(Ord. No. 1130, art. X, § 5, 11-3-1998)

Secs. 118-102—118-130. Reserved.

DIVISION 4. AMENDMENT PROCEDURES

Subdivision I. In General

Sec. 118-131. Applicability.

This division applies to all changes to visioning documents, and zoning. For historic designations and certificates of appropriateness, see article II of chapter 50 pertaining to historic preservation.

(Ord. No. 1130, art. VII, § 1, 11-3-1998)

Sec. 118-132 Preapplication conference.

- a) It is required that the applicant for any zoning-related change (rezoning, planned development, SUP), have a pre-application conference with the city planner before incurring substantial expense in preparing plans, surveys and other data.
- b) At the pre-application conference, the applicant should present a draft concept with as much detail as possible.
- c) Based on the information presented, the city planner will provide initial comments concerning the merits of the proposed development and inform the applicant of any additional requirements for preparation of the formal planned development application.

(Ord. No. 1130, art. VIII, § 1.1, 11-3-1998)

Sec. 118-13~~32~~. Notice of public hearings.

- (a) Publication of ~~A~~notice for planning and zoning commission public hearing. Before the tenth day before the date of the planning and zoning commission hearing, written notice of each public hearing before the planning and zoning commission on a proposed change in a zoning classification shall be sent to each owner indicated by the most recently approved municipal tax role, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the United States mail.
- (b) Publication of notice for city council public hearing. Before the 15th day before the date of the city council hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the city.

(Ord. No. 1130, art. VII, § 2.1, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-13~~43~~. Joint public hearings.

The planning and zoning commission and the city council may, from time to time, hold joint public hearings to consider a zoning or planning-related matter. However, the city council shall not take action until it has received the recommendation of the planning and zoning commission. The notice for such hearings shall meet-follow the minimum-minimum requirements for City councila public hearing established in section 118-132 in order to meet their notification timeline.

(Ord. No. 1130, art. VII, § 2.2, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-1354. Computation of time.

Unless otherwise specifically provided, the time within which an act is to be done pursuant to this chapter shall be computed by excluding the first and including the last day. If the last day is a Saturday, a Sunday or a legal holiday as observed by the city, that day shall be excluded. Whenever a person has the right or is required to perform some act within the prescribed period, after the service of a notice or other paper upon him and the notice or paper is served by mail, three calendar days shall be added to the prescribed time, unless otherwise specifically provided.

(Ord. No. 1130, art. VII, § 2.3, 11-3-1998)

Sec. 118-1365. Zoning upon annexation.

- (a) *Newly annexed territory.* ~~Shall automatically be zoned to AG (agricultural). However, if the owner wants to zone the property immediately the~~The planning and zoning commission shall, as soon as practicable, either during or after annexation of any territory, recommend to the city council a plan for zoning the newly annexed area.~~The~~ procedure to be followed for adoption shall be the same as is established in this division for a change in zoning and should follow the direction of the Comprehensive plan (Future Land Use Plan).
- (b) *Issuance of permits in newly annexed areas.* No permits for the construction of a building or a use of land other than types of buildings or land use allowed in an AG agriculture district under this chapter shall be issued by the building official until such land has been zoned to a district which permits such a use.

(Ord. No. 1130, art. VII, § 3, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-136. Review of specific use permit applications.

- (a) *Planning and zoning commission action.* The planning and zoning commission shall conduct a public hearing and make a recommendation to the city council on any application for a specific use permit.
- (b) *City council action.* The city council shall conduct a public hearing and make a determination on the application for a specific use permit.
- (c) *City council approval or denial.* Following the closure of the public hearing, the city council may take the following actions on any specific use permit applications:
 - (1) *Approval.* The city council may approve the request as presented, or make it subject to such appropriate conditions as are allowed by law. Such approval of any request for a specific use permit shall be granted only if the city council determines that the request is consistent with the comprehensive plan and the purposes of this chapter.
 - (2) *Approval with conditions.* In authorizing a specific use permit, the city council may impose additional reasonable conditions necessary to protect the public interest and welfare of the community.
 - (3) *Denial.* The city council may deny the request. If a request is denied, a new application may be submitted for the same lot or tract of land, or any portion thereof, within one year only if the new request is for a more restrictive or less intense use or development. Unless the new proposal is more restrictive or less intense than the previously denied proposal, no other application pertaining to a specific use permit may be submitted on the same lot or tract of land or any portion thereof for a period of one year from the date of its denial by the city council.

(Ord. No. 1130, art. VII, § 4, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-13~~87~~7. Initiation of administrative procedures.

- (a) *Application required.* All zoning and site plan requests to be considered by the planning and zoning commission and/or the city council, shall be initiated by filing an application with the city. The applications required by this section shall be on forms supplied by the ~~city, and~~city and shall be available in the offices of the city.
- (b) *Submittal and acceptance.* No application shall be processed until such application is complete and the fee established by the city council for processing the application has been paid.
- (c) *Authority to initiate request.* The following shall have authority to initiate a request:
 - (1) *Zoning map amendments.* All zoning-map amendment applications may be initiated by the owner of the affected property or his/her authorized representative who files the required application and pays the appropriate fee for the request, or by action of the city council, planning and zoning commission or the city planner.
 - (2) *Zoning ordinance text amendments.* Amendments to the text of this chapter shall be initiated only by action of the city council, the planning and zoning commission or the city planner.
- (d) *Application withdrawal.* Procedures for withdrawal of an application are as follow:
 - (1) *Submittal of application for withdrawal.* Any request for withdrawal of an application must be submitted in writing to the city planner.
 - (2) *Timing for application for withdrawal.* Once an application for a zoning-related item to be considered by the planning and zoning commission and/or city council ~~or board of adjustment or a variance, special exception or appeal going before the city council~~ has been published in a newspaper or notifications of public hearing, if any, have been mailed, such request for withdrawal must be placed on the public hearing agenda and acted upon by the applicable body.
 - (3) *Refund of fees.* Application fees are not refundable except when the city planner determines that an application was accepted in error, or the fee paid exceeded the amount due under city council policy or city ordinance, in which case the amount of the overpayment may be refunded to the applicant.

(Ord. No. 1130, art. VII, § 5, 11-3-1998; Ord. No. 1408-3-06, 3-21-2006; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-13~~98~~98. Review of Comprehensive Plan, Major Thoroughfare, Planned Developments, Specific Use, Rezoning/ zoning-related items.

- (a) *Planning and zoning commission actions.* Actions of the planning and zoning commission on zoning-related items are as follow:
 - (1) *Recommendations.* The planning and zoning commission shall conduct a public hearing and make recommendations to the city council on the following matters:
 - a. Text amendments to this chapter.
 - b. Zoning changes and map amendments, including reclassification of the zoning designations on land, planned developments (PD), and overlay districts.
 - c. Amendments to the comprehensive plan.
 - d. Amendments to the thoroughfare plan.
 - e. Specific use permit applications.
 - (2) *Final determinations.* The planning and zoning commission shall conduct a public hearing and make final ~~determinations~~ recommendations on detailed site plans for planned development districts.

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(Supp. No. 44)

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- (b) *City council actions.* The city council shall conduct a public hearing and make determinations on the following matters:
- (1) Text amendments to this chapter.
 - (2) Zoning changes and map amendments, including reclassification of the zoning designations on land, and planned developments (PD).
 - (3) Amendments to the comprehensive plan.
 - (4) Amendments to the thoroughfare plan.
 - (5) Specific use permit applications.
- (c) *City council approval or denial.* Following the closure of the public hearing, the city council may take the following actions on any zoning-related applications:
- (1) *Approval.* The city council may approve the request or amendment either as requested, or in the form of a more restrictive district, and subject to such appropriate conditions as are allowed by law in order to implement the policies of the city's comprehensive plan and in order to safeguard the public safety and welfare of the citizens and to protect properties from adverse impact and incompatibilities. Approval of any request for a text amendment to this chapter or a zoning change and map amendment shall be granted only if the city council determines that the request or amendment is consistent with the comprehensive plan and the purposes of this chapter. If the request or amendment concerns a text amendment to this chapter or a zoning change and map amendment, the city council shall enact an ordinance amending this chapter or amending the official zoning map, whichever is applicable.
 - (2) *Approval with conditions.* ~~The City Council may impose additional reasonable conditions necessary to protect the public interest and welfare of the community when ONLY approving . In approving a planned development districts and specific use permits, the city council may impose additional reasonable conditions necessary to protect the public interest and welfare of the community.~~
 - (3) *Denial with prejudice.* The city council may deny the request or amendment with prejudice. If a request or amendment is denied with prejudice, a new application may be submitted for the same lot or tract of land, or any portion thereof, within one year only if the new request is for a more restrictive or less intense use or development. Unless the new proposal is more restrictive or less intense than the previously denied proposal, no other application pertaining to a change of zoning and map amendment may be submitted on the same lot or tract of land or any portion thereof for a period of one year from the date of its denial by the city council. If a request or amendment is denied by the city council without an indication of "with" or "without" prejudice, the action shall be considered to be "denied with prejudice."
 - (4) *Denial without prejudice.* The city council may deny the request or amendment without prejudice, in which case an application for a change in zoning and map amendment other than that which was requested on the original application may be filed at the applicant's discretion.
 - (5) *Submission of subsequent rezoning request.* A proposal to rezone a tract or parcel of land which has been previously rejected by the city council only may be resubmitted within one year only if there is an actual change in conditions relating to zoning principles of the tract or parcel of land or the property surrounding it. In that event, the applicant must submit to the city planner, in writing, a description of such changed conditions. The city planner shall investigate the property or cause such an investigation to be made and shall report to the planning and zoning commission whether or not such changed conditions exist. Upon hearing such report, the planning and zoning commission shall either grant or deny the request to refile the proposal for rezoning.

~~Joint public hearings. The planning and zoning commission and the city council may, from time to time, hold joint public hearings to consider a specific use permit application. However, the city council shall not take action~~

~~until it has received the recommendation of the planning and zoning commission. The notice for such hearings shall meet the minimum requirements for a public hearing established in subsection (c) of this section.~~

- ~~(e) *Computation of time.* Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, a Sunday or a legal holiday as observed by the city, that day shall be excluded. Whenever a person has the right or is required to perform some act within the prescribed period, after the service of a notice or other paper upon him and the notice or paper is served by mail, three calendar days shall be added to the prescribed time, unless otherwise specifically provided.~~
- ~~(f) *Time limit.* A specific use permit issued under this section shall be valid for a period of 180 days from the date of issuance and shall become null and void unless construction or use is substantially underway during such 180-day period, or unless an extension of time is approved by the city council. A specific use permit issued by the city council shall become null and void if the land use for which it was issued has been closed, vacated, abandoned, or changed to a different use for a period of 180 or more days.~~
- ~~(g) *Revocation.* A specific use permit may be revoked or modified by the city council, after notice to the property owner and a hearing, for any of the following reasons:~~
- ~~(1) The existence of any material error or misrepresentation in the application required in this section;~~
- ~~(2) The specific use permit was obtained or extended through misrepresentation or deception; or~~
- ~~(3) One or more of the conditions imposed by the permit has not been met or has been violated.~~
- ~~(h) *Amendments.* No building, premises, or land use under a specific use permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amendment to the original specific use permit has been obtained. The procedure for amendment of a specific use permit shall be the same as for a new application.~~

~~(Ord. No. 1130, art. VIII, § 2, 11-3-1998; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1535-11-09, § 3, 11-17-2009)~~

~~(Ord. No. 1130, art. VII, § 6, 11-3-1998; Ord. No. 1373-8-05, 8-2-2005; Ord. No. 1535-11-09, § 3, 11-17-2009)~~

Sec. 118-14039. Conditions for approval.

The following conditions shall be considered when reviewing an application for any zoning related change.

- (1) *Compatibility.* The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;
- (2) *Orderly growth and development.* The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;
- (3) *Supporting facilities.* Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;
- (4) *Drives and parking.* The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;
- (5) *Nuisances.* Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

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- (6) *Lighting.* Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;
 - (7) *Landscaping.* Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided; and
 - (8) *Comprehensive plan.* The proposed use is in accordance with the comprehensive plan.

(Ord. No. 1130, art. VII, § 7, 11-3-1998; Ord. No. 1432-8-06, 8-1-2006)

Sec. 118-14~~10~~¹⁹. New matters of evidence in zoning-related hearings.

- (a) New matters of evidence not presented to the planning and zoning commission in zoning-related hearings may or may not, in the discretion of the city council, be heard or considered by the city council in its public hearings related to amendments to this chapter and maps to the city.
- (b) If new evidence develops between the date of the hearing by the planning and zoning commission and the hearing of the city council on any zoning change, or if for any other valid reason a person wishes to present evidence to the city council which had not been presented to the planning and zoning commission, the city council may hear and consider the evidence or refer the case back to the planning and zoning commission for further hearings to consider the new evidence.
- (c) Nothing contained in this section shall be construed to prohibit anyone from speaking in the public hearing related to changes in zoning.

(Ord. No. 1130, art. VII, § 8, 11-3-1998; Ord. No. 1481-2-08, 2-5-2008; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-14~~21~~²¹. Protest of proposed change in zoning.

- (a) Property owners adjacent to and within a distance of 200 feet of a property for which a change in zoning is being considered have the right to file a written protest against the request. The land area of this 200-foot distance includes streets, alleys and other public rights-of-way.
- (b) Whenever such written protest is signed by the owners of 20 percent or more of the area of the lots or land included in such zoning change or of the lots or land immediately adjoining such and within the 200-foot distance, such change in zoning shall not become effective except by a favorable vote of three-fourths of all the members of the ~~commission~~City Council.
- (c) For purposes of determining representation on such written protest, the written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all owners.

(Ord. No. 1130, art. VII, § 9, 11-3-1998)

Sec. 118-14~~32~~³². Building permits and certificates of occupancy.

No building permit or certificate of occupancy may be issued for a property unless it is legally zoned for that use and structure or it is a legally nonconforming use or structure as defined in this chapter.

(Ord. No. 1130, art. VII, § 10, 11-3-1998)

Secs. 118-14~~43~~⁴³—118-170. Reserved.

~~Subdivision II. Application for Rezoning or Special Use Permit~~

~~Sec. 118-171. Preapplication conference.~~

- ~~(a) — It is recommended that the applicant for a zoning-related change have a preapplication conference with the city planner prior to incurring substantial expense in preparing plans, surveys and other data.~~
- ~~(b) — An applicant for a zoning change is encouraged to request a preapplication conference with the city planner prior to formal application.~~
- ~~(c) — At the preapplication conference, the applicant should present a draft concept with as much detail as possible.~~
- ~~(d) — Based on the information presented, the city planner will provide initial comments concerning the merits of the proposed development and inform the applicant of any additional requirements for preparation of the formal planned development application.~~

~~(Ord. No. 1130, art. VIII, § 1.1, 11-3-1998)~~

~~Sec. 118-172. Reserved.~~

~~Editor's note(s) — Ord. No. 1408-3-06, adopted Mar. 21, 2006, deleted § 118-172, which pertained to applicant and derived from Ord. No. 1130, art. VIII, § 1.2, adopted Nov. 3, 1998.~~

~~Sec. 118-173. Conditions for approval.~~

~~A zoning change or specific use permit may be approved if all of the following conditions have been found:~~

- ~~(1) — *Compatibility.* The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;~~
- ~~(2) — *Orderly growth and development.* The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;~~
- ~~(3) — *Supporting facilities.* Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;~~
- ~~(4) — *Drives and parking.* The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;~~
- ~~(5) — *Nuisances.* Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;~~
- ~~(6) — *Lighting.* Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;~~
- ~~(7) — *Landscaping.* Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided; and~~
- ~~(8) — *Comprehensive plan.* The proposed use is in accordance with the comprehensive plan.~~

~~(Ord. No. 1130, art. VIII, § 1.3, 11-3-1998)~~

Sec. 118-174. Specific use permit (SUP).

- (a) ~~(a)~~ — *Application procedures.* An application for a specific use permit shall follow the procedure for general zoning applications except as set out in this section.

(b) *Time limit.* A specific use permit issued under this section shall be valid for a period of 180 days from the date of issuance and shall become null and void unless construction or use is substantially underway during such 180-day period, or unless an extension of time is approved by the city council. A specific use permit issued by the city council shall become null and void if the land use for which it was issued has been closed, vacated, abandoned, or changed to a different use for a period of 180 or more days.

(b) *Specific use permit site plan.* The completed application shall be accompanied by a site plan which, along with the application, will become a part of the specific use permit, if approved. The accompanying site plan shall provide the following information:

(1) Data describing all the processes and activities involved with the proposed use;

(2) Boundaries of the area covered by the site plan;

(3) The location of each existing and proposed building and structure in the area covered by the site plan; and

(4) The location and dimensions of all curb cuts, public and private streets, and parking and loading areas.

(c) *Notice of public hearings.* Refer to 118-332 same as rezoning.

(d) *Revocation.* A specific use permit may be revoked or modified by the city council, after notice to the property owner and a hearing, for any of the following reasons:

(1) The existence of any material error or misrepresentation in the application required in this section;

(2) The specific use permit was obtained or extended through misrepresentation or deception; or

(3) One or more of the conditions imposed by the permit has not been met or has been violated.

(e) *Amendments.* No building, premises, or land use under a specific use permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amendment to the original specific use permit has been obtained. The procedure for amendment of a specific use permit shall be the same as for a new application.

(Ord. No. 1130, art. VIII, § 2, 11-3-1998; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1535-11-09, § 3, 11-17 2009)

~~e, hold joint public hearings to consider a specific use permit application. However, the city council shall not take action until it has received the recommendation of the planning and zoning commission. The notice for such hearings shall meet the minimum requirements for a public hearing established in subsection (c) of this section.~~

~~(e) *Computation of time.* Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, a Sunday or a legal holiday as observed by the city, that day shall be excluded. Whenever a person has the right or is required to perform some act within the prescribed period, after the service of a notice or other paper upon him and the notice or paper is served by mail, three calendar days shall be added to the prescribed time, unless otherwise specifically provided.~~

~~(f) *Time limit.* A specific use permit issued under this section shall be valid for a period of 180 days from the date of issuance and shall become null and void unless construction or use is substantially underway during such 180-day period, or unless an extension of time is approved by the city council. A specific use permit issued by the city council shall become null and void if the land use for which it was issued has been closed, vacated, abandoned, or changed to a different use for a period of 180 or more days.~~

(g) ~~Revocation.~~ A specific use permit may be revoked or modified by the city council, after notice to the property owner and a hearing, for any of the following reasons:

(1) ~~The existence of any material error or misrepresentation in the application required in this section;~~

(2) ~~The specific use permit was obtained or extended through misrepresentation or deception; or~~

(3) ~~One or more of the conditions imposed by the permit has not been met or has been violated.~~

(h) ~~Amendments.~~ No building, premises, or land use under a specific use permit may be enlarged, modified, structurally altered, or otherwise significantly changed unless an amendment to the original specific use permit has been obtained. The procedure for amendment of a specific use permit shall be the same as for a new application.

(Ord. No. 1130, art. VIII, § 2, 11-3-1998; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1535-11-09, § 3, 11-17-2009)

City Planner Initiated Text Changes

Subject:

Update to the Planned Development section of the ordinance.

Why:

This is a response from the development community expressing that the Planned Development Zoning process is onerous and needs updating, and simplification.

Research – What Staff found

The purpose defined in the ordinance for a planned development (PD) district is to:

- “a. Provide greater flexibility in land use, density, and other regulations, and more closely reflect special conditions of development sites in a manner which is consistent with the comprehensive plan and community objectives;*
- b. Preserve the natural amenities and environmental assets of the land, and character of the community;*
- c. Provide an appropriate balance between intensity of development and the ability to provide adequate supporting facilities and services; and*
- d. Facilitate a more effective arrangement of buildings, land uses and utilities, and protect contiguous land uses.*

Any use or combination of uses listed in the land use schedule may be permitted within a planned development (PD) district. The uses to be permitted in any specific planned development (PD) district shall be enumerated in the ordinance which creates such a district.

Each planned development (PD) district shall constitute an amendment to this chapter. Certain maximum and minimum standards will be specified for various use categories, and certain provisions such as yards, coverage, and building spacing are to be determined by the particular design.”

Staff believes that when this zoning district was created, they wanted to demand oversight of the district since a Planned Development allowed deviating from the regulations of the underlying zoning district. Unfortunately, this created an ordinance that is long, complicated, and repetitive. After discussing this with staff it seems PD's have been used as a “loophole” in trying not to meet the requirements of the district being able to develop anything anywhere.. A Planned Development is a tool within the code and should be reviewed with that in mind.

Staff believes that oversight and flexibility can still happen with less “red tape” and still achieve a development that will be in line with the vision of the City. In research, staff found that other cities' best practices were very similar to our current requirements. However, one requirement stood out that we should consider is having a minimum acreage. Staff believes that not having this requirement leaves the opportunity for using this planning tool to create a development that will benefit the City..

The main changes you will see in this redline are:

- the addition of a minimum acreage requirement,
- the removal of a whole step in this current three-pronged onerous and lengthy process, and
- additional removal of redundant sections.

ARTICLE V. PLANNED DEVELOPMENTS

Sec. 118-386. Purpose.

The purpose of this article is to provide for the creation of planned development zoning districts. These districts are intended to provide for the development of land as an integral unit for single or mixed use in accordance with a plan that may vary from the established regulations of other zoning districts. The planned development (PD) district is intended to implement the goals and objectives of the city's comprehensive plan or with sound planning practice. It is also meant to encourage flexible and creative planning to ensure the compatibility of land uses, to allow for the adjustment of changing demands to meet the current needs of the community, and to provide for a development that is superior to what could be accomplished in other zoning districts by meeting one or more of the more than one of the following purposes:

- (1) Provides for a superior design of lots or buildings.
- (2) Provides for increased recreation and/or open space opportunities for public use.
- (3) Provides amenities or features that would be of special benefit to the property users or community.
- (4) Protects or preserves natural amenities and environmental assets such as trees, creeks, ponds, floodplains, and slopes or hills.
- (5) Protects or preserves existing historical buildings, structures, features or places.
- (6) Provides an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services.
- (7) Implements the goals and objectives of the comprehensive plan better than would standard zoning districts.

The more of these purposes that the plan meets, the more superior the development will be and the greater chance your application will be approved by the Commission and Council.

(Ord. No. 1130, art. VIII, § 3.1.A, 11-3-1998)

Sec. 118-387. Nature of district and plans required.

There are three-two types of plans that may be used in the planned development process. The general purpose and use of each plan is described as follows:

- (1) Concept plan. This plan is intended to be used as the first step in the planned development process. It establishes the most general guidelines for the district by identifying the land uses and intensities, thoroughfare locations, open space and project boundaries and illustrates the integration of these elements into a master plan for the whole district.
- (2) Development plan. This plan is intended to be used most often as the second step of the planned development process. The development plan contains all the information of a concept plan, but includes more detailed information as to the specific land uses and their boundaries. The purposes of a development plan are to ensure that the development project proceeds in orderly fashion, consistent with the approved concept plan and to ensure that the standards applicable within the district are reviewed to ensure that they meet for each phase of the project (if phased) and the planned

~~development cannot be less than 3 acres in size. A development plan may also be used to establish the district.~~

- (3) ~~Planned development site plan.~~ The planned development site plan is the final step of the planned development process. The purposes of a planned development site plan are to ensure that the development of individual building lots, parcels or tracts within a project are consistent with the approved development plans and to ensure that the standards applicable within the district are met for each individual building site ~~and parcel~~.

(Ord. No. 1130, art. VIII, § 3.1.B, 11-3-1998)

Sec. 118-388. Notice, hearing, and written protests.

Approval of ~~concept plans and~~ development plans are considered amendments to this chapter. The provisions of V.T.C.A., Local Government Code ch. 211 relating to notices, public hearings, and written protests for changes in zoning districts or regulations shall apply to requests for approval or amendment of ~~concept plans and~~ development plans.

(Ord. No. 1130, art. VIII, § 3.1.C, 11-3-1998)

Sec. 118-389. Compliance with approved plan.

No development shall begin and no building permit shall be issued for any land within a planned development district until a ~~planned development site plan that is consistent with the concept plan and the~~ development plan for the tract has been approved. All districts shall be developed, used and maintained in compliance with the ~~approved planned development generally approved site development~~ plan for the district. Compliance with standards and conditions set forth in the ordinance establishing the district, the ordinance approving the development plan and attached to the planned development site plan shall be construed as conditions precedent to granting of a certificate of occupancy.

(Ord. No. 1130, art. VIII, § 3.1.D, 11-3-1998)

Sec. 118-390. Permitted uses.

Any use or combination of uses approved by the city council may be permitted within a planned development district. However, no land use may be authorized which is not generally consistent with the land use element of the city's comprehensive plan ~~unless demonstrated differently~~. The uses to be permitted in any specific planned development district shall be enumerated in the ordinance that establishes the district.

(Ord. No. 1130, art. VIII, § 3.1.E, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-391. Variances or Special Exceptions.

Amendment of planned development district standards and plans shall be in accordance with subsection 118-392(d). The board of adjustment may not grant a variance or special exception within a planned development district.

(Ord. No. 1130, art. VIII, § 3.1.F, 11-3-1998)

Sec. 118-392. Procedures.

- (a) *Establishment of district.* Procedures for establishment of a planned development district are as follows:

Commented [1]: Need to discuss if the Planned development will have an underlying zoning district that it shall meet those requirements and the planned development shall just discuss the areas that it would deviate in the ordinance. This just allows for the areas it would like to deviate show as the changes instead of having a whole new ordinance written including all development standards.

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- (1) *Zoning amendment.* An application for the establishment of a planned development district shall be made to the planning and zoning commission and shall be considered an application for a zoning amendment pursuant to subdivision II of division 4 of article II of this chapter.
- (2) *Development Plan*~~*Concept plan.*~~ An application for ~~the~~ establishment of a planned development district shall be accompanied by a ~~Development Plan~~~~concept plan~~ ~~nor, at the applicant's option, a development plan, which shall be processed simultaneously with the zoning amendment application.~~ If the zoning amendment application is approved, the ~~concept plan or~~ development plan shall be incorporated within such amendment. Where ~~the~~ establishment of the district is to be based on a development plan, in addition to the considerations for ~~the~~ establishment of the district in this subsection, the development plan must meet the criteria specified in subsection (a)(5) of this section and must include the elements ~~outlined inset forth in~~ subsection (b) of this section.
- a. *Concept plan graphics.* The concept plan shall graphically depict the following elements at a scale of 1"=100':
1. ~~Site boundaries and dimensions, lot lines, site acreage and square footage, and approximate distance to the nearest cross streets.~~
 2. ~~Location map, north arrow, title block and site data summary table.~~
 3. ~~The boundaries of the different land uses and the boundary dimensions. Proposed density by type of residential and nonresidential uses, including maximum numbers of dwelling units for the project.~~
 4. ~~Preliminary building locations and footprints.~~
 5. ~~Preliminary elevations and perspectives to show the relationship of building heights to surrounding topography.~~
 6. ~~Drainageways, creeks, and limits of the 100-year floodplain and floodway as shown on current Federal Emergency Management Agency mapping or the city's adopted master drainage plan,~~
 7. ~~Proposed and existing land uses and zoning classifications on adjacent properties and proposed open space.~~
 8. ~~Proposed parking areas and structures for multifamily and nonresidential uses, including areas for off-site parking.~~
 9. ~~Proposed buffers from existing uses.~~
 10. ~~A general plan for circulation of traffic and pedestrians within and external to the development, including designated points of access.~~
 11. ~~Any amenities proposed for purposes of achieving density or intensity bonuses.~~

The configuration of proposed and existing land uses by category for each tract or subarea to be developed.

2. ~~Proposed density by type of residential uses, including maximum numbers of dwelling units for the project.~~
3. ~~Proposed total floor area or floor area ratios by category of nonresidential land uses.~~
4. ~~Proposed open space.~~
5. ~~Proposed and existing thoroughfares, boulevards and large streets.~~
6. ~~Land uses by zoning district, together with existing and planned thoroughfare extensions, for adjoining land.~~

- b. ~~Informational statement. The development concept plan shall be accompanied by an informational statement and shall be considered as part of the ordinance establishing the district. The property owner shall update the phasing plan from time to time, but in any event concurrent with any change to the development plan submitted.~~

containing the following:

1. A general statement setting forth how the proposed district will relate to the adopted comprehensive plan elements and the degree to which it is or is not consistent with that plan.
2. The total acreage within the proposed district.
3. If the project is to be developed in phases, a proposed phasing plan that identifies the general sequence of development and a time schedule including the general sequence for installation of major capital improvements to serve the development.
4. A metes and bounds description shown on the boundaries of the plan map.

~~The informational statement shall not be considered part of the concept plan or the ordinance establishing the district. The property owner shall update the phasing plan from time to time, but in any event concurrent with any change to the concept plan and with each development plan submitted.~~

c. *Complete application.* No application for ~~the~~ establishment of a planned development district shall be deemed to be filed with the city until the ~~concept plan or~~ development plan has been determined to be complete by the city planner. Graphic elements. The development plan shall include the following information:

Informational statement. The development plan shall be accompanied by an informational statement and shall be considered as part of the ordinance establishing the district. The property owner shall update the phasing plan from time to time, but in any event concurrent with any change to the development plan submitted.

1. Name and address of the landowner and date of preparation of the plan.
 2. Name and address of architect, landscape architect, planner, engineer, surveyor, or other person involved in the preparation of the plan.
 3. A detailed description of how open space requirements will be satisfied for the phase of development represented by the development plan, including any proposed dedications of open space to the public or a private maintenance organization.
 6. If the development plan is a phase of the project authorized by the concept plan, a depiction of the area subject to the development concerning subsequent phases of the development of the current phasing plan, together with any proposed changes to updates of the current phasing plan that was submitted with the concept plan as part of the applicant's original informational statement.
- (3) *Planning and zoning commission recommendation.* The planning and zoning commission, after the required notice and public hearing procedures, shall formulate its recommendation with respect to establishment of the district, including any conditions to be applied. The recommendation of the commission shall be forwarded to the city council for decision.

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- (4) *City council decision.* Following receipt of the planning and zoning commission's recommendation, the city council shall conduct a public hearing and shall approve, approve with conditions, or deny the application for establishment of the planned development district.
- (5) *Approval criteria for planned development district.* Based upon ~~the concept plan or~~ development plan, the planning and zoning commission in making its recommendations to the city council, and the city council, in determining whether the planned development district should be established, shall consider whether the following criteria have been met:
- The plan of development is generally consistent with the future land use policies and map in the adopted comprehensive plan.
 - Proposed uses and the configuration of uses are compatible with existing and planned adjoining uses.
 - The general arrangement of streets conforms to the adopted thoroughfare plan.
 - Proposed uses and development densities and intensities are consistent with the purposes and standards of the planned development district regulations.
 - The proposed plan for development furthers the public health, safety and general welfare of the community.
- (6) *Conditions.* The planning and zoning commission may recommend and the city council may require such conditions and modifications of the concept plan or development plan, where applicable, such as are reasonably necessary to ensure that the approval criteria are met, including but not limited to conditions related to the extent of the property for which the concept plan is proposed, the size of the project, and the timing of development within the district.
- (7) *Adopting ordinance.* The ordinance establishing a planned development district shall incorporate a ~~concept plan or~~ development plan, which shall be attached as an exhibit to the ordinance, and shall set forth the following:
- A statement as to the purpose and intent of the district.
 - The uses authorized for each tract or subarea in the district, by use category, the location of such uses, and the residential densities and nonresidential intensities associated with phases of the project, in conformance with the approved concept plan or development plan.
 - The conditions applicable to development within the district, as established by the city council.
- The graphic depiction of these features on the incorporated concept plan or development plan shall be considered regulatory standards applicable within the district. Change or modification to such features shall follow the procedures in subsection (d) of this section.
- (b) *Development plans.* Procedures for development plans are as follows:
- Following the establishment of a planned development district.* ~~If a district is established based upon a concept plan,~~ the city council ~~will may thereafter approve by ordinance a approve~~ approve a development plan for all or part of the district, a copy of which shall also be attached to the ordinance creating the district. Approval of the development plan shall be by procedures for amending this chapter and shall be considered as an amendment to the planned development district that supplies additional standards and conditions that must be met prior to the approval of a detailed planned development site plan and prior to the approval of any building permit or certificate of occupancy within that part of the district subject to the development plan.
 - ~~*Substitution for concept plan.* The developer may submit a development plan in substitution for a concept plan in conjunction with an application for establishment of the planned development district.~~

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In such a case, approval of the development plan shall be in accordance with the criteria set forth in subsection (a)(5) of this section for establishment of the planned development district, subject to the additional standards in this article. A development plan may be prepared and submitted for the entire development at one time or for individual phases of development.

- a. *Graphic elements.* The development plan shall include the following information:
1. Site boundaries and dimensions, lot lines, site acreage and square footage, and approximate distance to the nearest cross streets.
 2. Location map, north arrow, title block and site data summary table.
 3. The boundaries of the different land uses and the boundary dimensions.
 4. Preliminary building locations and footprints.
 5. Preliminary elevations and perspectives to show the relationship of building heights to surrounding topography.
 6. Drainageways, creeks, and limits of the 100-year floodplain and floodway as shown on current Federal Emergency Management Agency mapping or the city's adopted master drainage plan, including location and acreage, together with a general plan for accommodating floodwaters and drainage.
 7. Proposed and existing land uses and zoning classifications on adjacent properties.
 8. Proposed parking areas and structures for multifamily and nonresidential uses, including areas for off-site parking.
 9. Proposed buffers from existing uses.
 10. A general plan for circulation of traffic and pedestrians within and external to the development, including designated points of access.
 11. Any amenities proposed for purposes of achieving density or intensity bonuses.
- b. *Informational statement.* The development plan shall be accompanied by an informational statement containing the following:
1. Name and address of the landowner and date of preparation of the plan.
 2. Name and address of architect, landscape architect, planner, engineer, surveyor, or other person involved in the preparation of the plan.
 3. A table listing the specific permitted uses proposed for the property, or specific areas of the property, as appropriate.
 4. Development standards for each proposed land use, as follows:
 - i. Minimum lot area.
 - ii. Minimum lot width and depth.
 - iii. Minimum front, side, and rear yard areas.
 - iv. Maximum height of buildings.
 - v. Minimum parking standards for each general multifamily and nonresidential land use if they vary from the provisions of division 2 of article VI of this chapter.

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5. ~~A detailed description of how open space requirements will be satisfied for the phase of development represented by the development plan, including any proposed dedications of open space to the public or a private maintenance organization.~~
6. ~~If the development plan is a phase of the project authorized by the concept plan, depiction of the area subject to the development in relation to subsequent phases of the development the current phasing plan, together with any proposed changes to updates of the current phasing plan that was submitted with the concept plan as part of the applicant's original informational statement.~~
- (4) *Planning and zoning commission recommendation.* Upon determination by the city planner that the application for the development plan is complete, the planning and zoning commission shall determine whether the development plan is in accordance with the ~~approved concept plan,~~ the standards set forth in the ordinance establishing the planned development district, and with the standards generally applicable to development plans. The commission, following notice and a public hearing, shall make its recommendations to the city council for approval, approval with modifications, or disapproval of the development plan.
- (5) *City council decision.* Upon receipt of the planning and zoning commission's recommendation, and following a public hearing thereon, the city council shall approve, approve with modifications or disapprove the development plan.
- (6) *Approval standards.* The planning and zoning commission, in making its recommendations to the city council, and the city council, in acting upon the development plan, shall determine whether the plan meets the following general standards for the phase of the project to which the development plan is applicable:
- a. ~~The development plan generally is consistent with the approved concept plan and the standards and conditions set forth in the adopting ordinance.~~
- a) ~~b.~~ The plan provides for a compatible arrangement of buildings and land uses within the project.
- b) ~~c.~~ The general plan for traffic circulation and pedestrians provides for adequate and safe circulation inside and external to the development, consistent with the adopted thoroughfare plan.
- c) ~~d.~~ The general plan for accommodation of floodwaters and drainage is adequate.
- d) ~~e.~~ The plan does not adversely affect adjoining neighborhoods or properties outside the plan, taking into consideration proposed buffers.
- e) ~~f.~~ The amenities proposed in the development plan application, ~~if any,~~ are sufficient to justify increased densities or intensities on the site.
- f) ~~g.~~ The sequence of development and timing of the phases are consistent with the overall phasing of capital facilities intended to serve the site and with the city's overall growth.
- (7) *Conditions.* The planning and zoning commission may recommend and the city council may require such conditions and modifications of the development plan as are reasonably necessary to ensure that the approval criteria are met.
- (8) *Approving ordinance.* The ordinance approving the development plan shall set forth the following standards. The ~~concept plan or~~ development plan shall be incorporated as an exhibit to the ordinance ~~as described in (b)(3):~~

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- a. ~~A table of the specific land uses permitted in the area subject to the development plan, together with a description of the tracts or subareas to which such uses are restricted;~~
 - b. ~~The residential densities and nonresidential intensities of each permitted land use;~~
 - c. ~~A table showing the dimensions of each permitted land use, including the following information:~~
 1. ~~Minimum lot area;~~
 2. ~~Minimum lot width and depth;~~
 3. ~~Minimum front, side, and rear yard areas;~~
 4. ~~Maximum height of buildings;~~
 5. ~~Minimum parking standards for each general multifamily and nonresidential land use;~~
 - d. ~~A description of the elements of the general circulation plan to serve the development;~~
 - e. ~~Provisions governing amenities, if any, to serve the area subject to the development plan; and~~
 - f. ~~Such additional conditions as are applicable to development within the area subject to the development plan, as established by the city council.~~
- (c) *Planned development site plans.* Procedures for planned development site plans are as follows:
- (1) *Delegation to planning and zoning commission and city planner.* The planning and zoning commission is delegated the authority to approve or deny a planned development site plan or the amendment of a planned development site plan for property for which a development plan has been approved by the city council, except for landscaping matters under subsection (Be)(32)f of this section which are delegated to the city planner.
 - (2) *Submittal requirements.* The following information shall be submitted with the application for planned development site plan approval: Create a submittal Application to be filled out
 - a. *Size.* Required site plans shall be prepared on a standard sheet size of 30" x 42" or 24" x 36", and at an engineering scale of 1" = 50' or larger. Required site plans shall be prepared by registered engineer, architect or landscape architect. The required site plan may be submitted on one or more sheets.
 - b. *General information required.*
 1. North arrow;
 2. Total site acreage;
 3. Submission date;
 4. Scale (written and graphic);
 5. Vicinity map;
 6. Names, addresses and telephone numbers of designer, engineer, developer and owner;
 7. Accurate survey of the boundaries of the site with the location of proposed land uses;
 8. Adjacent subdivision names and property lines; and
 9. Adjacent land uses and structures.
 - c. *Structures.*
 1. Location, dimensions and use of all existing facilities and proposed building sites.

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2. Setback and separation distances between building sites.
 3. Proposed construction type and facade materials for all nonresidential buildings. The commission may require elevations and perspective drawings.
 4. Proposed density of each use.
 5. Proposed location of screening along the collector roadways shown on the thoroughfare plan.
 - d. Streets and sidewalks.
 1. Location and width of all rights-of-way and easements;
 2. Location and dimensions of all pavement and curbing;
 3. Location and width of all sidewalks;
 4. Location and width of all ingress/egress points;
 5. Location and width of all medians and median breaks; and
 6. Location of any special traffic regulation facilities.
 - e. Off-street parking and loading areas.
 1. Number, location and dimension of spaces;
 2. Type of surface material of parking facility;
 3. Dimension of aisles, driveways, maneuvering areas and curb return radii;
 4. Distance between spaces and adjacent rights-of-way;
 5. Location of all existing and proposed fire lanes and hydrants;
 6. Proposed lighting diagram is required if not in accordance with division 2 of article VI pertaining to parking and loading standards; and
 7. Location and type of trash receptacle screening.
 - f. Landscaping.
 1. Location and size of proposed plant materials to be used for street tree planting or screening against adjacent single-family residential property.
 2. Number and type of each landscape element.
 3. Height and type of all fencing or buffering.
 4. Location of visibility triangles where required.
 - g. All items submitted as part of the development plan approval, but in final form and meeting all applicable city ordinances or developmental plan deviations as expressed as part of the district.
 - h. The acreage in the plan and metes and bounds description shown on the plan, as certified by a registered surveyor.
 - i. Accurate outlines of proposed dedications and reservations of land for public or common use, including but not limited to rights-of-way, easements, parkland, open space, drainageways, floodplains, and facility sites.
 - j. Any other features necessary to satisfy conditions stated in the ordinance approving the development plan.

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- k. All proposed signage within the development including ground, wall, temporary and directional signage.
- (3) ~~Decision by City Planner by planning and zoning commission.~~ The city planner shall review the planned development site plan application for completeness. ~~Thereafter and, the planning and zoning commission~~ shall approve, approve subject to modification or deny the planned development site plan.
- (4) *Approval criteria.* The ~~planning and zoning commission~~ the city planner in will ~~approveing~~, conditionally ~~approveing~~ or ~~denying~~ a planned development site plan shall considered based off offer the following criteria:
- a. The plan complies with the development plan approved for that portion of the planned development district;
 - b. The plan complies with all standards and conditions set forth in the ordinance approving the development plan;
 - c. Unless modified by the ordinance approving the development plan, the plan complies with the following additional standards generally applicable to development within the city, as set forth in this chapter:
 - 1. Performance standards as set forth in article VII of this chapter pertaining to performance standards; and
 - 2. Setback, landscaping and off-street parking and loading standards;
 - d. The plan provides for appropriate ingress and egress points for access, parking and loading, including existing and proposed ingress/egress/access easements, queuing and internal circulation;
 - e. The plan provides for fire safety and adequate measures for fire control and dealing with fire or explosive hazard; and
 - f. The plan provides for adequate utilities, roads, drainage, and other infrastructure, as required by the city's subdivision regulations.
- (5) ~~Conditions. The planning and zoning commission, or the city council on appeal, may establish such conditions and may require such modifications to ensure that the planned development site plan is consistent with the approved development plan and the approval criteria set forth in this section.~~
- (6) ~~Appeal from planning and zoning commission action. If the planning and zoning commission disapproves a planned development site plan, or imposes conditions, the applicant may appeal the decision to the city council by filing a written request with the city secretary within ten days of the decision.~~
- (7) ~~Appeal from planning director. If the city planner disapproves landscaping in a PD site plan, or imposes conditions, the applicant may appeal the decision to the zoning board of adjustment by filing a written request with the city secretary within ten days of the decision.~~
- (d) *Amendment of plans.* Procedures for amendment of plans shall be as follows:
- (1) ~~Concept and d~~ *Development plans.* Any changes to the standards or conditions in this ordinance establishing the planned development district ~~or the regulatory standards depicted on the concept plan, and any changes to the standards or conditions in the ordinance approving the development plan~~ or the regulatory standards depicted on the development plan, require enactment of an amendatory ordinance pursuant to the procedure for changing zoning districts.
 - (2) *Planned development site plans.* Upon request of the applicant, the city planner may authorize minor amendments, correct errors, or correct omissions to a planned development site plan so long as such

minor amendments do not necessitate a change to the ordinance establishing the planned development district or the regulatory standards depicted on the ~~concept development~~ plan, or a change to the standards or conditions in the ordinance approving the development plan or the regulatory standards depicted on the development plan.

(Ord. No. 1130, art. VIII, § 3.2, 11-3-1998; Ord. No. 1490-5-08, 5-6-2008; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-393. Expiration of plans and rezoning.

- (a) ~~Failure to submit development plan.~~ A development plan shall be submitted for approval within three years from establishment of the planned development district for a portion or all of the area within the district, unless otherwise provided by the ordinance establishing the district. If a development plan for all or a portion of the project is not submitted within such period, the authority to submit such development plan shall lapse pending action by the city council, and the planning and zoning commission or the city council may institute proceedings to determine whether the land should be rezoned. In such event, the planning and zoning commission shall deliver its recommendation, with a copy to the owner of the affected land, to the city council, who shall conduct a public hearing on such recommendation and shall determine what action is to be taken with respect to the planned development district and whether to revoke or reinstate the developer's authorization to submit development plans.
- (b) ~~Failure to submit planned development site plan.~~ A planned development site plan shall be submitted for approval within four years from approval of the applicable development plan. If a planned development site plan is not submitted within such period, the authorization to submit such planned development site plan shall lapse pending action by the city council, and the planning and zoning commission or the city council may institute proceedings to determine whether the development plan for the property should be modified or the property subject to the development plan should be rezoned, and whether to revoke or reinstate the developer's authorization to submit a site plan.
- (c) ~~Expiration of planned development site plan.~~ For any planned development site plan approved in accordance with this article, if any building permit has not been obtained within two years following such approval for a use authorized thereunder, the site plan shall automatically expire and no longer be valid and revert back to the original zoning district prior to the PD approval. ~~This request shall be brought before City Council in order to memorialize the action and approve the reversion of the Planned Development to the original zoning district.~~
- (d) *Extension of planned development site plan.* The planning and zoning commission may, prior to expiration of a planned development site plan, for good cause shown and upon written application submitted prior to expiration of the planned development site plan, extend the time for which the planned development site plan is valid. The request for extension shall be considered by the planning and zoning commission in the same manner as for approval of the planned development site plan, and the planning and zoning commission may attach additional conditions to the extension of the plan. If no extension is granted, the planning and zoning commission or city council may institute proceedings in order to determine what actions should be taken with respect to the development plan in the manner provided in subsection (b) of this section.
- (e) *Project review.* If the city council finds that conditions imposed on the development of the project have not been timely fulfilled, or for any other reasons related to the reasonable exercise of the powers conferred by V.T.C.A., Local Government Code ch. 211 or successor statute that zoning for the planned development district should be reexamined, the city council may initiate review of the district in order to determine whether the authorized uses, standards and conditions applicable to development within the district should be changed for part or all of the undeveloped land within the district. If the city council makes such determination, it shall refer the matter to the planning and zoning commission for its recommendation and thereafter shall take appropriate action to modify the uses, standards or conditions applicable to development within the district in accordance with procedures applicable to zoning amendments.

Commented [2]: We need to discuss the matter in which the extension is completed, less involvement the better. I would recommend just staff and possibly the P&Z.

Commented [3]: Do we also want the opportunity

(Ord. No. 1130, art. VIII, § 3.3, 11-3-1998; Ord. No. 1535-11-09, § 3, 11-17-2009)

Sec. 118-394. Effect on existing planned developments.

- (a) *Site plans.* For any planned development district established under prior planned development regulations, for which at least one site plan has been approved pursuant to such regulations, the sections of this article and subdivision II of division 4 of article II of this chapter shall not apply, except that procedures related to approval of site plans pursuant to subsection 118-392(c)(4) and provisions relating to expiration and extension of site plans pursuant to subsections 118-393(c) and (d) shall apply to any complete application for site plan approval filed more than 30 days after the effective date of the amended planned development regulations in this article and subdivision II of division 4 of article II of this chapter.
- (b) *District amendments.* Developments can change from time to time, and minor amendments to the design layout and materials used may occur. In order to provide flexibility to development and reasonable changes and that are still within the overall general intent of the planned development can occur at the staff level allowing the Planning Development Director approval authority for these changes as long as they are not more than a 10% deviation of the original plan. Any amendments to greater than this 10% deviation a concept or development plan, or to the ordinance establishing the planned development district, approved under prior planned development regulations which are proposed after the effective date of the amended will need to follow the regular amendment procedures. Planned development regulations in this article and subdivision II of division 4 of article II of this chapter shall be subject to the procedures for approval stated in this article and subdivision II of division 4 of article II of this chapter.

(Ord. No. 1130, art. VIII, § 3.4, 11-3-1998)

Secs. 118-395—118-420. Reserved.

City Planner Initiated Text Changes

Subject:

Allow single-family residential uses within the City the opportunity to reasonably use their property regardless of being a nonconforming use.

Why:

Reasonable and flexible responses to existing non-conforming residential uses in existing zoning districts. Single-family homeowners are not penalized for living in a zoning-adopted area that made them a non-conforming use. Residential occupiers/owners are given reasonable allowances for continued use even though they are a non-conforming use. Reasonable uses of SFR property are a deck, swimming pool, outdoor storage, covered patio, and hardscape shall be considered reasonable and can be approved by the City. Staff is proposing that there be no expansion of the primary structure or air-conditioned space. No expansion of the s would be allowed.

Research - What Staff found:

Zoning refers to municipal or local laws or regulations that govern how real property can and cannot be used in certain geographic areas. For example, zoning laws can limit commercial or industrial use of land to prevent oil, manufacturing, or other types of businesses from building in residential neighborhoods. The way the ordinance was interpreted, Nacogdoches did not allow any expansion. Staff do not consider this reasonable. The ultimate goal of zoning is to separate less intense uses from more intense uses. It is not to punish its citizens. Ultimately, this will help protect the residential folks living in a non-complying district.

DIVISION 5. NONCONFORMING STRUCTURES AND USES

Sec. 118-201. Applicability.

- (a) *Nonconformity.* If the city or other governmental agency takes an act or action which transforms a previously conforming structure or lot of record in terms of the city's previous ordinance, or the minimum requirements in this division or in division 1 of article VI of this chapter, such structure or lot shall be deemed to be in conformance with this division and article VI of this chapter.
- (b) *Creation of nonconformity.* No lot or structure existing on the effective date of the ordinance from which this chapter derives shall be reduced below the minimum requirements set forth in this chapter, except as otherwise provided.
- (c) *Change in district boundaries.* Whenever a nonconformity is created by changing the boundaries of a zoning district and transferring an area from one district to another district, or when the boundaries of districts are changed as the result of annexation of new territory, or changes in the regulations or restrictions of this chapter, this division shall apply.

(Ord. No. 1130, art. IV, § 2.1, 11-3-1998)

Sec. 118-202. Continuing nonconforming use or structure. (There is a mixing of use and structure throughout this section. I would like to separate these two completely separate things. Non-conforming use and structure how these are viewed really is separate.

The lawful use of any building, structure or land existing on the effective date of the ordinance from which this chapter derives may be continued, even though such use does not conform to the sections of this chapter; provided, however, the right to continue such nonconforming use or structure shall be subject to the following:

- (1) *Nonconforming structures/ buildings.* A nonconforming structure or building ~~or structure~~ may be occupied as follows:
 - a. *Repairs and alterations.* Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance, or those necessary for installing or enclosing required sanitary facilities, such as toilets and bathrooms and/or the footprint of habitable structure with air conditioned or enclosed walls.-
 - b. *Enlargement.* Unless otherwise provided, a nonconforming building or structure shall not be added to or enlarged in any manner unless such additions and enlargements are made to conform to all of the requirements of the district in which such building structure is located. This expansion consideration would be similar to a porch (covered or not), deck, pool, storage structure or carport.
 - c. *Relocating a nonconforming structure.* A nonconforming building or structure shall not be moved in whole or in part, unless every portion of such building or structure is made to conform to all regulations of the district in which it is to be located.

- d. *Reconstruction of damaged building.* If a nonconforming building or structure is damaged or destroyed to an extent less than 60 percent of its fair market value by fire, explosion, act of God, or the public enemy, restoration or new construction shall be permitted. If destruction is greater than 60 percent of its fair market value, such building or structure and its use, if repaired or replaced, shall conform to all regulations of the district in which it is located, and it shall be treated as a new building.
- e. *Unoccupied nonconforming structures.* A nonconforming building or structure lawfully constructed may be occupied by a use for which the building or structure was designed or intended, if so occupied within a period 180 days after the effective date of the ordinance from which this chapter derives. The use of a nonconforming building or structure lawfully constructed, which becomes unoccupied after the effective date of the ordinance from which this chapter derives, may also be occupied by the use for which the building or structure was designed or intended, if so occupied within a period of 180 days after the building or structure becomes vacant.
- f. *Manufactured home.* A manufactured home on an existing lot lawfully in place at the time of the adoption of this section may remain in use, provided that it does not remain vacant for more than 180 days. Once a manufactured home is removed from a lot, another manufactured home may be placed on the lot, if placed no more than 180 days from the date of the removal of the original manufactured home, provided it meets the applicable requirements of the underlying zoning district.

(2) *Nonconforming use of building.* The nonconforming use of a building or structure may be continued as follows:

- a. *Changing use of nonconforming structure.* The nonconforming use of a building or structure may be changed to a use of the same or more restrictive classification. Where the nonconforming use of a building or structure is changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of less restrictive classification.
- b. *Changing or expanding nonconforming use of a conforming building.* A nonconforming use of a conforming building or structure shall not be extended or expanded into any other portion of such conforming building or structure (or as stated in 118-202(4)), nor changed except to a conforming use. If such nonconforming use or portion thereof is voluntarily discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the regulations of the district in which such building or structure is located.

(3) *Nonconforming use of lands.* The nonconforming use of land existing at the time of the effective date of the ordinance from which this chapter derives may continue as follows:

- a. *Expansion of nonconforming use of land.* A nonconforming use of land shall not be expanded or extended except for single family usage and that would meet the requirements of 118-202 (4).
- b. *Discontinuance of nonconforming use of land.* If a nonconforming use of land, or any portion thereof, is voluntarily discontinued for a period of 180 days, any future use of such land or portion thereof shall be in conformity with the regulations of the district in which such land or portion thereof is located.

Commented [1]: Need to check this with the occupational code of the TGLC

(4) Single Family residential Use and structure. Any legal non-conforming single-family use or residential structure may continue to be used for single-family single-family usage that was created by the adoption of the zoning map changes from 1970. These single-family uses may allow for additions or expansions of improvements that would involve the creation of non-air-conditioned space improvements. These improvements could be similar but not limited to a porch (covered or not), deck, pool, storage structure, carport or the like.

(5) *Single-family residential.* Any legal nonconforming single-family residential structure damaged or destroyed by fire, explosion, act of God, or the public enemy, or is the subject of a city-approved housing rehabilitation or reconstruction program may be reconstructed or repaired, with the following conditions:

- a. A building permit is issued for the reconstruction or repair within 180 days of the occurrence of the damage or destruction.
- b. The repairs or replacement structure shall not increase the extent of the nonconformity or the nature of the nonconforming activity.
- c. The replacement structure shall meet the minimum required building setbacks of the zoning district.

(Ord. No. 1130, art. IV, § 2.2, 11-3-1998; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1547-7-10, 7-20-2010)

Sec. 118-203. Abandonment of nonconforming use.

A nonconforming use of a building, structure or land which has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned when:

- (1) The intent of the owner to discontinue the use is apparent;
- (2) The characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within 180 days;
- (3) A nonconforming building, structure, or land, or portion thereof which is or becomes vacant and remains unoccupied for a period of 180 days; or
- (4) A nonconforming use has been replaced by a conforming use.

(Ord. No. 1130, art. IV, § 2.3, 11-3-1998)

Secs. 118-204—118-230. Reserved.

City Planner Initiated Text Changes

Subject:

Lot size exception in the City that do not meet current lot dimensioning requirements but meet all other property development standards and defining density inside the title block in the property development standards table.

Why:

The reason for this is the age of the lots. Current zoning lot size dimensions were not created in the same shape and dimensioning like it was done back in early 1800's leaving a whole host of lots needing variances or special exceptions.

Research - What Staff found:

Staff worked with GIS and found approximately 3000 lots that were not meeting the standard lots sizes for their respective zoning districts. We are attempting to press the easy button when it comes to minor dimensioning requirements. We are looking to allow if the parcel was in the same configuration with or without structures on the parcel that the lot is accepted in that shape and configuration.

Staff also wanted to define density in the property development standards table by adding some verbiage in the land use type that the represented sq footage is per dwelling unit.

Sec. 118-427. District development standards.

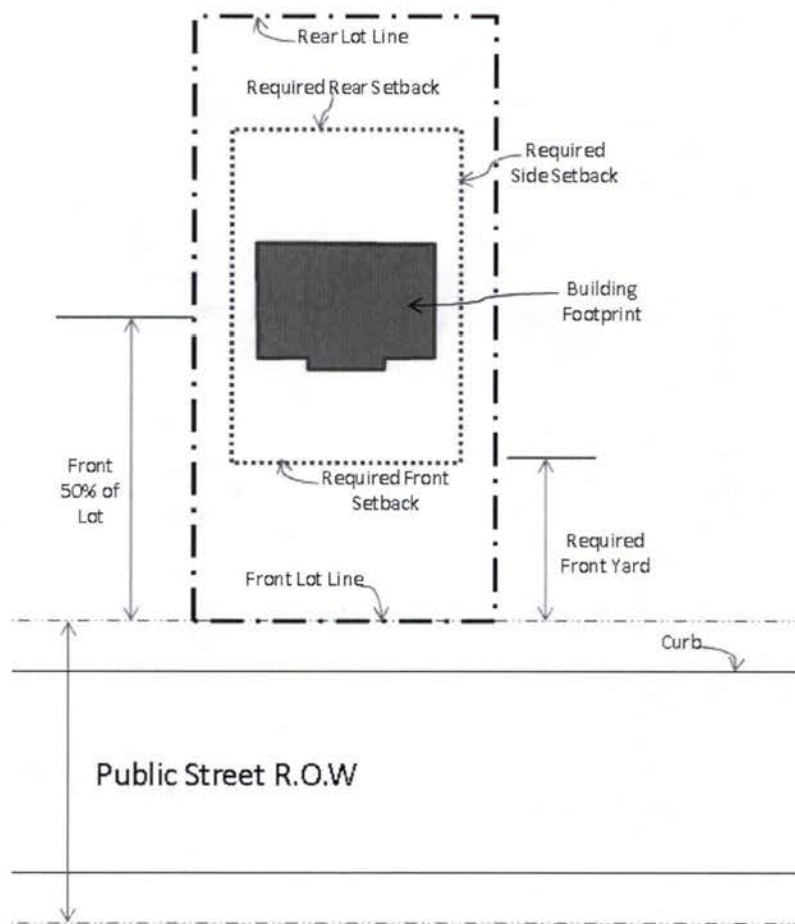
(a) District development chart.

Figure 3 District Development Standards Chart

Zoning District		Density		Lot Width *	Lot Depth *	Minimum Setbacks		
		Residential Min. Lot Size (ft. ² /du)	Non- Residential Max (FAR)			Front	Rear	Side
A	Agricultural (per dwelling unit)	2 ac		75	110	25	20	6
R-1	Single Family (per dwelling unit)	8,250		75	110	25	20	6
R-2	Single Family (per dwelling unit)	6,000		60	100	20	15	6
R-3	Two Family (per dwelling unit)				100	20	10	6
	—Single Family Detached	5,000		50				
	—Single Family Attached	2,500		25				
	—Duplex	3,000		50				
R-4	Multi-Family (per dwelling unit)				100	20	10	6
	—Single Family Detached	5,000		50				
	—Single Family Attached	2,000		20				
	—Duplex	2,500		50				
	—Multi-Family	1,500		50				
B-1	Local Business	1,500		50	100	10	10	6
B-2	General Business	1,500		50	100	20	10	0, 10
B-3	Central Business	1,500	10:01	50	100	0	10	0
MD	Medical	1,500		50	100	20	10	6
I-1	Light Industrial		2:01	50	100	20	20	20
I-2	Heavy Industrial		4:01	50	100	20	20	20

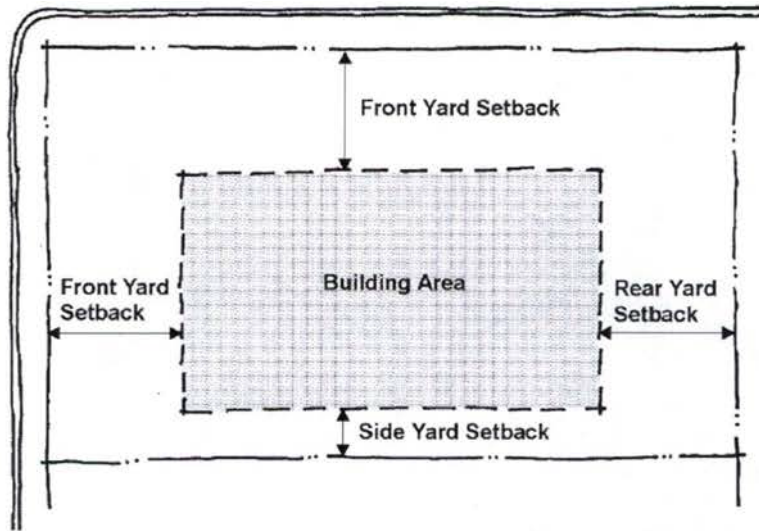
* + Exception for lot width and lot depth when it comes to lots that have been in existence prior to the adoption of the ordinance (1970). Exceptions for both lot depth and width can be approved by the City Planner when either

lot depth or width is within 5% of that lot approval dimension. Additionally, the lot must meet all other minimum development standards (ie lot size, setbacks etc) ****Provide illustrations****



(b) *Front yard setbacks.*

- (1) *Building lines established by ordinance.* Where a building line has been established by ordinance and such line requires a greater or lesser front yard setback than is prescribed by this chapter for the district in which the building is located, the minimum required front yard shall comply with the building line so established by such ordinance.
- (2) *Platted building line.* Where a building line is shown on a subdivision plat recorded with the county clerk prior to the effective date of the ordinance from which this chapter derives and such building line requires a greater or lesser front yard setback than is prescribed by this chapter for the district in which the subdivision is located, the building lines as so shown on the plat shall be interpreted as establishing the minimum front yard requirement for lots in the subdivision.
- (3) *Double frontage lots.* Where lots have double frontage, running through from one street to another, a required front yard shall be provided on both streets.



- (4) *Service station canopy.* An unenclosed canopy for a gasoline service station may extend into the required front yard, provided such extension shall not be closer than ten feet to the front lot line.
- (5) *Fences.* No fence shall be constructed closer than 12 feet from the back of a curb where a curb exists, or 12 feet from the central flow line of a ditch paralleling such uncurbed streets, or behind the property line, whichever is greater.
- (c) *Side yard setbacks.*
 - (1) *Side yard abutting a street.* Single-family attached dwellings need not provide a side yard, except that where such side yard abuts a street, a minimum side yard of 20 feet shall be provided.
 - (2) *Duplex and multi-family dwelling units.* For the purpose of applying side yard requirements, two-family and multi-family dwelling units covered by a continuous roof shall be considered as one building occupying a lot.
- (d) *Maximum density; parking structures excluded.* The floor area of structures used for the off-street parking of vehicles shall be excluded in computing the floor area ratio of a structure.
- (e) *Accessory uses and structures in residential districts.*
 - (1) *Accessory uses in main building.* Accessory uses located in the main building or in structures attached to the main building shall observe the same front, side, and rear yard requirements as the main building.
 - (2) *Accessory buildings in front half of lot.* Detached accessory buildings within the front 50 percent of the lot shall observe the same front and side yard requirements as the main building.
 - (3) *Accessory buildings near residential.* Detached accessory buildings shall not be located nearer than ten feet to a residential structure.
 - (4) *Accessory buildings near rear lot line.* Detached accessory buildings shall not be located nearer than ten feet to any rear lot line.
 - (5) *Accessory buildings on corner lot.* Detached accessory buildings on a corner lot shall not be located nearer the side lot line along the side street than the main building.
 - (6) *Accessory buildings near interior side lot line.* Detached accessory buildings shall not be located nearer than five feet to any interior side lot line.

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- (7) *Emergency access.* No off-street parking areas shall be so located or arranged so as to obstruct direct fire protection and emergency access to any multiple-family dwelling.

(Ord. No. 1708-6-16 , § 2, 6-21-2016)