

Appendix: Zoning Code

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ARTICLE 1
GENERAL PROVISIONS

- 1.1. Definitions
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- 1.12. Outdoor billboard signs and off-premise signs

§ 1.1. DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING. A subordinate use or building customarily incident to and located on the same lot with the main use or building, provided the floor area shall not exceed 1,000 square feet and the height shall not exceed one story when the subordinate building is incidental to a residential use.

ACCESSORY DWELLING UNIT. Subordinate, detached structure, which has facilities for preparation, sanitation, and sleeping quarters, located on the rear or side of same lots as the main structure. Intended use for habitat for persons (limit two) or employed or non-paying guest. Not for rent, nor to be used as a separate domicile for non-family members. Structure cannot be used for any retail or commercial purpose.

ADDRESS SIGN. General identification sign per building entrance such as a nameplate, street number or occupant identification sign.

ADULT DAY CARE. A facility authorized by the State to provide care or supervision for five or more persons 18 years of age or older who are not related by blood, marriage, or adoption to the owner or operator of the facility, whether or not the facility is operated for profit or charges for the services it offers.

ALLEY. A public right-of-way 20 feet or less wide which has been dedicated or deeded for public use and affords only a secondary means of access to abutting property.

ANIMAL CARE SERVICES. An establishment that provides services related to animals, with all care conducted within a completely enclosed building, provided that noise or odors created by activities within the building are not perceptible beyond the property line, and that no animals are kept outside the building at any time. Overnight boarding of animals is permitted unless expressly prohibited by the zoning ordinance. Such services may include but are not limited to veterinarian clinic and services, grooming, cleaning and similar. This may include the retail sale of pets or pet food and supplies.

ANIMAL CARE SERVICES, WITH OUTDOOR RUNS. An animal care services use which provides outdoor services or activities that may be perceptible (such as by either sight or smell or noise) beyond the property line, such as dog runs or outdoor yards for small animals.

ANTENNA. Telecommunications transmitting and/or receiving device.

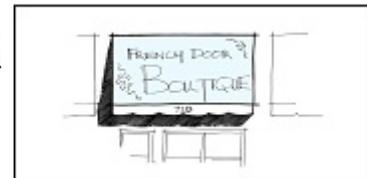
ANTENNA TOWERS. Any structure, mast, pole, tripod, or tower used for supporting an antenna or antennas. An antenna support structure includes any monopole antenna structure or lattice antenna structure.

ANTIQUESHOP. A store that sells works of art, pieces of furniture, or decorative objects all of which were made at an earlier period and according to various customs and laws.

ASSISTED LIVING FACILITY. A residential setting that provides either routine general protective oversight or assistance with activities necessary for independent living to mentally or physically limited persons. Assisted living facilities may be equipped with a full kitchen in each living unit and may or may not also offer communal dining.

ASSISTED LIVING - SKILLED NURSING FACILITY. An institution (or a distinct part of an institution) which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases. Nursing facilities offer the highest intensity level of long term care and are characterized primarily by the need for twenty-four-hour nursing care. Skilled nursing facilities do not contain full kitchens in the living units and residents are served meals in their rooms or a communal dining facility.

AWNING SIGN. A permanent sign applied to the surface of an awning, which is affixed to a building structure, and an internal part of approved architectural features and design. The face area of the text/logos/drawings will contribute to the overall allowable wall signage area.



BANNER. A sign made from lightweight fabric or plastic, which is not permanently supported.

BAR - INDOOR (also **TAVERN**). **** No outdoor sound systems of live music allowed without a special use permit.** Any indoor use (less than 2,000 square-feet in size) in which 75% or more of its gross revenue is derived from the on-premises sale and consumption of alcoholic beverages. Brewpubs are included in this use. A tavern use may include, in addition to the provision of alcohol, food services and/or live entertainment as an accessory use. Outdoor or patio seating is permitted.

BAR - NIGHTCLUB. A bar with more than 2,000 square feet of building area excluding kitchen, restrooms and storage areas. A nightclub use may include, in addition to the provision of alcohol, a dance hall, food services, and/or live entertainment as an accessory use.

BAR - OUTDOOR. ****Outdoor sound systems of live music allowed without a special use permit.** Any outdoor use (less than 2,000 square-feet in size) in which 75% or more of its gross revenue is derived from the on-premises sale and consumption of alcoholic beverages. A bar use may include, in addition to the provision of alcohol, food services and/or live entertainment as an accessory use. Some limited indoor areas or interior seating is permitted.

BENCH SIGN. The face area of a bus bench. Considered a permanent sign.

BERM. A mound or bank of earth, used especially as a barrier or to provide insulation.

BILLBOARD SIGN. A sign having face area for rent or lease.

BUFFER (also **FENCE**). A method of visually shielding and/or obscuring one abutting or nearby structure or use from another by a barrier or device constructed of metal, wood, brick, stone, block, or suitable material, singly or in combination.

BUILDING. A structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property. For the purpose of this definition, "roof" shall include an awning or other similar coverings, whether or not permanent in nature.

BUILDING MARKER. Memorial sign, tablet or cornerstone, manes or building and date of erection, when consisting of a cut masonry surface or when constructed of bronze or other noncombustible material, and included as an internal part of the building construction.

CHANGEABLE COPY SIGN. On-site bulletin board or identification sign for public, charitable, educational or religious use.

CHILD CARE - DAYCARE CENTER. A person or organization legally permitted by the State of Texas to provide child care for 13 or more children (ages 0-13 years) for a fee.

CHILD CARE - LICENSED DAY CARE HOME. A person or organization legally permitted by the State of Texas to provide child care for up to 12 children (ages 0-13 years) for a fee.

CHILD CARE - REGISTERED CHILD CARE. A person or organization legally permitted by the State of Texas to provide child care for up to six children (ages 0-13 years) for a fee.

CHURCH, TEMPLE or MOSQUE (facilities that are for worship or study of religion). Any place of worship including any church, synagogue, temple, mosque, or other building or facility primarily engaged in religious worship. The term **CHURCH** does not include uses such as schools, recreational facilities, day care or child care facilities, kindergartens, dormitories or other facilities for temporary or permanent residences which are connected or related to the church, the principal buildings on the site, or located on the same site, even if the curriculum or services offered as part of such use includes religious services and/or training.

COMMUNITY, SOCIAL USES - INDOOR. Indoor uses found to provide focal points for community interaction and foster participation in community or social activities. Such uses may include banquet halls, conference or convention facilities, libraries, museums, senior centers, fraternal organizations and other institutional users. Instruction, training, and /or food service (catered) may occur as an incidental use. This use does not include uses by institutions that are appropriately classified by another use (e.g., blood bank, which is a clinic use).

COMMUNITY, SOCIAL USES - OUTDOOR. A community use that, in part or in whole, occurs outdoors. Such uses may include, but are not limited to parks and public spaces.

COMMUNITY HOME. An entity which complies with Tex. Human Resources Code §§ 123.005 through 123.008, and which is:

(1) A community-based residential home operated by: (a) the Texas Department of Mental Health and Mental Retardation; (b) a community center organized under Tex. Health and Safety Code Ch. 534, Subch. A, that provides services to persons with disabilities; (C) an entity subject to the Texas Non-Profit Corporation Act (Tex. Rev. Civ. Stat. Ann. art. 1396-1.01 *et seq.*); or (D) an entity certified by the Texas Department of Human Services as a provider under the medical assistance program serving persons in intermediate care facilities for persons with mental retardation; or

(2) A personal care facility licensed under Tex. Health and Safety Code Ch. 247, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

COMPLEX SIGN. Freestanding sign in addition to other allowable freestanding signs, bearing only the name and/or logo, and address of a multi-development complex.

CONSIGNMENT SHOPS. A store containing items that are being sold for other individuals (not donations).

CONSTRUCTION SIGN. Sign located on property where construction is actually in progress under a current building permit.

DEPTH OF LOT. The mean horizontal distance between the front and rear lot lines.

DEPTH OF REAR YARD. The mean horizontal distance between the rear line of a building (excluding accessory buildings) and the rear lot line.

DIRECTIONAL SIGN. Freestanding sign identifying multiple activities or establishment.

DISTRICT. A section of the city for which the regulations governing building area, height and usage are uniform.

DUPLEX RESIDENCE. A detached dwelling designed for and occupied exclusively as the residence of not more than two families, each living as an independent housekeeping unit.

DWELLING. (See **RESIDENCE**).

DWELLING UNIT. A building occupied exclusively for residential purposes providing complete independent living facilities for one or more persons including permanent provisions or equipment for cooking, eating, living, sleeping and sanitation.

ENTERTAINMENT AND RECREATION VENUE. Any indoor facility or establishment for which the primary use is the production or provision of entertainment or recreational opportunities for paying customers. Accessory to this use are the sale of personal services, as well as, on-site child care, the preparation and on-site sale of food and drink products for consumption of patrons. These include, but are not limited to, arenas, auditoriums, movie theaters, performance theaters, bowling alleys, gymnasium, and athletic clubs. (These do not include nightclubs or bars.)

ENTERTAINMENT AND RECREATION VENUE, OUTDOOR FACILITIES. Any entertainment venue that includes outdoor facilities or the occurrence of entertainment or recreation outdoors. These include, but are not limited to amphitheaters, outdoor music venues, miniature golf course, outdoor batting cages, athletic fields, and swimming facilities (such as those affiliated with a gymnasium and athletic clubs).

FACADE. The front or main face of a building.

FACE OR MESSAGE AREA. All parts of a sign that are not a support. Supports shall not be considered when calculating the sign **FACE AREA**, unless the support itself is part of a logo, or serves in some function in addition to being a support.

FAMILY. Any number of individuals, related to one another by blood, marriage or adoption, living together as a single housekeeping unit.

FENCE (also **BUFFER**). A barrier or screening device constructed of wood, metal, stone, block, brick or other materials, singly or in combination.

FINANCIAL SERVICES - BANKS. A federal or state chartered bank, savings and loan, credit union, or other financial institution that provides retail banking services to individuals and businesses. These uses do not include check cashing, pay-day loan agents or similar service not regulated by federal or state charter.

FINANCIAL SERVICES - CHECK CASHING FACILITIES. A person or business that for compensation engages in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. The term **CHECK CASHING FACILITY** does not include a state or federally chartered bank, savings and loan association, credit union, or industrial loan company.

FINANCIAL SERVICES - PAY-DAY LOAN. An establishment providing loans to individuals in exchange for personal checks as collateral.

FINANCIAL SERVICES - PERSONAL LOAN. A business or establishment that lends money to persons or businesses, which is not considered federal or state-chartered banks, savings and loans, credit union or similar regulated Banks. Such establishments may provide signature loans or other collateral-back loans to customers. Pawn shops are not considered under this use.

FLASHING SIGN. A sign having flashing lights, but not including traffic or warning signs.

FOOD SERVICE ESTABLISHMENT. Shall include every restaurant, café, cafeteria, coffee shop, sandwich shop, snack bar, supper club, soda fountain, soft drink or ice cream parlor, luncheonette, or other similar establishment, which offers food or beverages for purchase and consumption on or off the premises. Permits catering of food products off premises. Outdoor amplified sound system or live music not permitted.

FOOD SERVICE ESTABLISHMENT (WITH OUTDOOR AMPLIFIED SOUND SYSTEM or LIVE BAND). Shall include every restaurant, café, cafeteria, coffee shop, sandwich shop, snack bar, supper club, soda fountain, soft drink or ice cream parlor, luncheonette, or other similar establishment, which offers food or beverages for purchase and consumption on or off the premises. Permits catering of food products off premises.

FOOD SERVICE ESTABLISHMENT - FOOD PREPARATION (CATERING FACILITY). A facility used for the carrying on of any trade or business where the primary purpose is the preparation of food for sale by distribution or catering and the food is for consumption away from the premises.

FREESTANDING SIGN. A sign that is not supported by a building, such as a pole, monument or ground sign.

FRONT YARD. An open, unoccupied space between the building and the street line of the lot.

GLAZING. Glasswork; glass set or made to be set in frames.

GROSS FLOOR AREA. The area calculated by taking the outside dimensions of a building at each floor level, excluding basements and attics.

HEIGHT, BUILDING. The measurement of a building taken from the average natural ground level or the street grade, whichever is higher, to the highest point of the roof's surface, if a flat surface. If the roof is not a flat surface, to the deck line of mansard roofs, or to the mean height level between eaves and ridge for hip or gable roofs. Chimneys, cooling towers, broadcasting or receiving towers, ornamental cupolas, domes or spires, elevator bulkheads, penthouses, tanks, water towers and parapet walls not exceeding four feet in height, shall not be used in height calculations.

HEIGHT, SIGN. For pole signs, the distance from the ground to the highest point of the surface area of the sign and its support.

HIGH-RISE OFFICE. An office building having a minimum of four stories or 45 feet tall.

HOME OCCUPATION. An occupation, which is secondary to the primary use of a dwelling as a residence, conducted on residential premises by the occupant of the residence. Home occupations shall be subject to the conditions set forth in § 5.2.2 of the Zoning Ordinance.

INCIDENTAL FREESTANDING SIGN. A sign that directs patrons and citizens into or out of a site. **INCIDENTAL SIGNS** are intended merely to enhance the safe ingress and egress of pedestrians or vehicles. (e.g. entrance, exit, caution, slow, no trespassing.)



INCIDENTAL WALL SIGN. A sign attached to a building wall or structure restricted to trading stamps, credit cards accepted, notice of services restrictions, trade affiliations, or public interest messages.

INDOOR RECREATION FACILITY. A business engaged in the provision of indoors sports, entertainment, or similar recreation opportunities for participants or spectators. Examples of uses include roller skating rinks, ice/hockey rink, dance studio, movie theaters, or fitness clubs.

JUNK YARD (also **SALVAGE YARD**). A structure or lot where discarded or salvaged materials are bought, sold, exchanged, baled, packed, stored, accumulated, disassembled, or handled. This definition shall not include properly licensed establishments for the sale, purchase, or storage, of usable second-hand goods. Nor shall it apply to the processing of used, discarded, or salvaged materials as part of heavy manufacturing operations.

LODGING - BED AND BREAKFAST. A private residence, several rooms of which are set aside for overnight guests whose paid accommodations include breakfast.

LODGING - DORMITORY. A business (other than a bed and breakfast) where lodging and/or meals are provided, where no cooking or dining facilities are provided in individual rooms, and where an owner or manager resides on the premises.

LODGING - FULL SERVICE HOTEL. A building or group of buildings designed for and occupied as a temporary dwelling place. Access to guest rooms shall be restricted exclusively to interior corridors, that shall be accessed via the main lobby of the building or entryways individually equipped with some form of security controlled access system. Customary hotel services such as linen, maid service, telephone, and other guest amenities are provided and may also contain various personal service shops.

LODGING - LIMITED SERVICE HOTEL (or **MOTEL**). A building or group of buildings designed for and occupied as a temporary dwelling place, each of which has a separate outside entrance leading directly to rooms from the outside of the building, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of automobile transients. A **LIMITED SERVICE HOTEL** is not classified as a full service hotel.

LOT. An undivided tract or parcel of land identified by a tract or lot number in a duly approved subdivision plat, which has been properly filed of record, and having frontage on a public street.

LOT LINES. The lines bounding a lot as defined above.

MANUFACTURING - LIGHT. A facility or area for producing goods without the use of chemical processing of materials. Light manufacturing activities include but are not limited to the following activities:

- (1) Assembly, finishing, and/or packaging of small items from component parts made at another location. Examples include but are not limited to cabinetmaking or the assembly of clocks, electrical appliances, or medical equipment.
- (2) Production of items made from materials derived from plants or animals, including but not limited to leather, pre-milled wood, rubber, paper, wool, or cork; or from textiles or plastics.
- (3) Electrical component manufacturing.
- (4) Reproduction, cutting, printing or binding of written materials, drawings, or newspapers on a bulk basis using lithography, offset printing, blue printing and other similar methods.
- (5) Machine or welding shop - a facility where material is processed by machining, cutting, grinding, welding or similar processes.
- (6) Spray painting or motor vehicle conversion.

MANUFACTURING - HEAVY. A facility or area for generally mass producing goods usually for sale to wholesalers or other industrial or manufacturing uses. A heavy manufacturing use is one which employs the following or similar types of processes:

- (1) The milling of grain as retail sales and service.
- (2) Producing animal food, and tanning animal hides.
- (3) Production of large durable goods such as but not limited to motorcycles, cars, manufactured homes, or airplanes.
- (4) Canning or bottling of food or beverages for human consumption using a mechanized assembly line.
- (5) Manufacturing of paint, oils, pharmaceuticals, cosmetics, solvents, and other chemical products; and use of a foundry for metals.
- (6) Production of items made from stone, clay, metal or concrete.
- (7) Tire recapping or retreading.

MANUFACTURING - HIGH IMPACT. A facility or area for activities or products which have the potential to be dangerous, extremely obnoxious, or cause substantial environmental impacts on or beyond the boundaries of the property on which the activity or use is conducted. High impact uses include but are not limited to the following activities:

- (1) Manufacture and/or bulk storage and testing of explosives, fireworks, or munitions.
- (2) Refining petroleum and the storage and distribution of natural and liquid gas or other petroleum derivatives in bulk including terminals, tank farms or other similar facilities.
- (3) Manufacture, storage, compounding or handling radioactive materials or wastes.
- (4) Manufacture, blending or mixture of pesticides, certain acids, and fertilizer.

(5) Stockyards, feed pens, livestock sales with barns and/or shipping facilities, rendering of animal fats, slaughtering or processing of animals and industrial manufacturing processes using the following raw materials: bones, garbage, offal and dead animals.

(6) Refining of raw materials, such as, but not limited to chemicals, rubber, wood or wood pulp, into other products.

(7) The extraction of raw materials, such as sand or gravel mining.

(8) Forging, casting, melting, refining, extruding, rolling, drawing and/or alloying metals.

(9) Jet engine or other engine testing.

(10) Refuse disposal services not listed elsewhere in this appendix, including but not limited to landfills, incinerators, and other locations which receive garbage and refuse generated offsite for storage, treatment or disposal.

(11) Asphalt or concrete batch plant.

(12) Boiler works.

MEDICAL - CLINIC (WITH SERVICES LESS THAN 12 CONSECUTIVE HOURS PER DAY). A building or group of buildings designed for the use of and occupied and used by physicians and dentists and others engaged professionally in such healing arts for humans as are recognized by the laws of the state, and including the installation and use of therapeutic equipment, x-ray equipment or laboratories, chemical, biochemical, and biological laboratories used as direct accessories to the medical-dental profession; dental laboratories, including facilities for the making of dentures on prescription; pharmacies, limited to the retail dispensing of pharmaceutical and sick-room supplies (but not room or orthopedic equipment).

MEDICAL - CLINIC (WITH LATE NIGHT SERVICES). A Clinic that operates or serves patients in excess of 12 consecutive hours per day at least three days per week.

MEDICAL - HOSPITALS. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities. But not including those specializing in treatment of nervous or mental disorders or drug or alcohol abuse.

MERCHANDISE. Tangible products for sale or rent.

MONUMENT SIGN. A permanent sign mounted on the ground and designed with a continuous structural element of approximately the same dimension from the ground to the top of the sign. This sign may feature decorative architectural elements and landscaping around the base. The monument sign shall reflect the architectural characteristics of the building(s) on the property.



MORTUARY (also FUNERAL HOME). An establishment used for the preparation of deceased humans and ceremonies prior to burial or cremation.

MOTOR VEHICLE - COMMERCIAL PARKING LOT. An off-street, ground-level open area for motor vehicle parking that is operated as a business enterprise by charging the public a fee and is not reserved or required to accommodate occupants, clients, customers, or employees of a particular establishment or premises. A "parking lot" does not include an area used exclusively for the display of motor vehicles for sale as part of an automobile dealership.

MOTOR VEHICLE - COMMERCIAL PARKING STRUCTURE. A structure, two stories or greater, for motor vehicle parking that is operated as a business enterprise by charging the public a fee and is not reserved or required to accommodate occupants, clients, customers, or employees of a particular establishment or premises. A “parking lot” does not include an area used exclusively for the display of motor vehicles for sale as part of an automobile dealership.

MOTOR VEHICLE - SERVICE AND REPAIR. The provision of a service within a building enclosure for any type of motorized vehicle, including but not limited to maintenance, repair, rebuilding or inspection of motor vehicles or parts thereof, oil and lubrication services, tire repair and/or installation, cleaning or detailing, or installation of any component such as stereos or car alarms. This category also includes all types of car washes, including self-cleaning and drive-through. This category also includes gas stations with service and/or car washes. Retail gasoline and/or convenience stores (without car wash or repair services), body repair and painting are not included in this category.

MOVING SIGN. A sign moved by mechanical, electrical or natural means, such as wind.

MULTI-COMPLEX DEVELOPMENT. A development that includes multiple separate buildings on one legally platted lot.

MULTIFAMILY RESIDENCE (3 or 4 UNITS). Any building or portion thereof used for the purpose of providing up to four separate dwelling units which may share means of egress and other essential facilities.

MULTIFAMILY RESIDENCE (5 or MORE UNITS). Any building or portion thereof used for the purpose of providing five or more separate dwelling units which may share means of egress and other essential facilities.

NONCONFORMING BUILDING. A building which was lawful prior to the adoption, revision or amendment to the zoning ordinance but which now fails by reason of the adoption, revision or amendment.

NONCONFORMING LOT. A lot which was lawful prior to the adoption, revision or amendment to the zoning ordinance but which now fails by reason of the adoption, revision or amendment.

NONCONFORMING SIGN. A sign which was lawful prior to the adoption, revision or amendment to the zoning ordinance but which now fails by reason of the adoption, revision or amendment.

NONCONFORMING USE. A use which was lawful prior to the adoption, revision or amendment to the zoning ordinance but which now fails by reason of the adoption, revision or amendment.

OFFICE - GENERAL. A structure or portion of a structure used primarily for conducting the affairs of a business, profession, service, industry, or government, or like activity, including such activities as providing day-to-day office administrative services, financial management, billing, record keeping, personnel administration and logistics and which that may include ancillary services for office workers such as a day care center, dry cleaner, salon, restaurant, coffee shop, newspaper or candy stand.

OFFICE - PROFESSIONAL. A building occupied by a profession and offering professional services to clients, customers, or patrons which may involve occasional on-site contact with clients, customers or patrons. Examples include architect, accountant, real estate, engineer, lawyer, or other similar professions.

ORNAMENTAL METAL FENCING. Wrought iron fencing, made from tube steel.

PEDESTRIAN SIGN. Sign located on an awning, directly above business entrance, or projected/hanging adjacent to entrances.

PERMANENT SIGN. A sign set on its own foundation, or with supports sunk into the ground, or painted on a permanent structure.

PERSONAL SERVICES. Establishments primarily engaged in providing services involving the care of a person or his or her apparel, including but not limited to: tailors, clothing rental, photographic studios, beauty shops, barber shops, shoe repair, salons, spas, permanent cosmetics, dance studios, and tanning parlors.

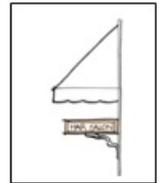
PERSONAL SERVICES - TATTOO PARLOR. An establishment that produces an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term does not include the application of permanent cosmetics.

POLE SIGN. A permanent sign, mounted on the ground, where the structural element is significantly narrower than the sign.

PRIMARY SIGN. A building's or business's primary identification.

PROCESSING - CLOTHES CLEANING. A business which provides large-scale cleaning of clothes and fabrics for one or more off-site retail dry cleaners or other private establishment.

PROJECTING (OR HANGING) SIGN. A permanent sign mounted on or otherwise affixed to the side of a building and projecting generally perpendicular to the surface on which it is mounted. Examples of typical applications include under a canopy or beside a door.



PUBLIC NUISANCE. Shall have the meanings as described in Tex. Health and Safety Code § 343.011, as amended, and those nuisances described in the code of ordinances for the city.

PUBLIC RIGHT-OF-WAY. A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and used or intended to be used, wholly or in part; a public street, alley, walkway, drain or public utility line.

REAL ESTATE SIGN. Non-illuminated, double-faced, temporary sign, depicting a property or tenant space is for sale, lease, or rent.

QUADRAPLEX RESIDENCE. A detached house with common walls between the units, designed for and occupied exclusively as the residence of not more than four (4) families, and each living as an independent housekeeping unit.

REAR YARD. An open, unoccupied space, extending the full width of the lot, between the back façade of a main building to the rear lot line. In this instance, accessory buildings shall not be considered.

REPAIR SHOPS (no outdoor storage or work areas). Establishments primarily engaged in providing services involving the care of a person's personal property, including but not limited to: furniture repair, upholstery, lawnmower repair, appliance repair and electronics repair.



RESIDENCE. A building occupied exclusively for dwelling purposes providing complete independent living facilities for one or more persons including permanent provisions or equipment for cooking, eating, living, sleeping and sanitation.

RETAIL TRADE. Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Characteristics of retail trade establishments are:

- (1) The establishment is usually a place of business and is engaged in activity to attract the general public to buy;
- (2) The establishment buys and receives as well as sells new merchandise;
- (3) The establishment may process some of the products, but such processing is incidental or subordinate to the selling activities; and
- (4) Retail establishments sell to customers for their own personal or household use.

RETAIL TRADE, WITH OUTDOOR DISPLAY AND SALES. Retail trade establishment which regularly displays some or its entire products outdoors (with or without screening) for public viewing and sales. Examples include vehicle sales lots, home improvement centers, landscaping material stores and nurseries.

RETAIL - CONVENIENCE STORE. A retail outlet supplying groceries and travel products (convenience stores may also provide gasoline, diesel sales and a car wash).

RETAIL - CLOTHES CLEANERS, DRY CLEANER. A business engaged in cleaning clothes, fabrics, or upholstery on-site either by drop-off and pick-up by customers or through delivery services. May be an accessory use in offices or multi-family buildings.

RETAIL - CLOTHES CLEANERS, LAUNDROMAT. An establishment to the general public providing self-service machines on the premises for the purpose of washing or drying laundry.

RETAIL - CRAFT STORE. Shops for custom work or the making of articles to be sold at retail on the premises when the making is conducted inside the building.

RETAIL - FLEA MARKET. Any location where an operator rents stalls, units, sections, spaces, booths or other operator designated areas which are utilized by tenants for the purpose of selling, buying, bartering or trading new, used or secondhand articles or tangible personal property.

RETAIL - FLEA MARKET OPERATOR. Any person, partnership or corporation engaged in the business of managing or owning a flea market.

RETAIL - GROCERY STORE. A business engaged primarily in the retail sale of food and food products for home consumption, but may also include the accessory sales of household products, health clinic services, plants, pharmacy products, photographic processing, gasoline sales and car wash.

RETAIL - HEAD SHOP. Any retail establishment having a substantial or significant portion of its stock in trade in or which has as its main purpose the offering for sale paraphernalia or items designed or marketed for use with tobacco products.

RETAIL - PAWN SHOP. A "pawnshop," as defined by Tex. Rev. Civ. Stat. art. 5069-51.02, which has been licensed to transact business by the Consumer Credit Commissioner under the Texas Pawnshop Act (Tex. Rev. Civ. Stat. art. 5069-51.01 *et seq.*).

SCHOOL - BUSINESS OR COMMERCIAL TRADE. A profit or not for profit entity providing instruction and training in a office, clerical, managerial, sales, information technology, administrative skills or similar trades.

SCHOOL - PRIVATE K-12. An institution or place for instruction or education, such as kindergarten, elementary, middle or junior high school, high school that is not directly and primarily funded by taxes.

SCHOOL - PRIVATE UNIVERSITY. An institution or place for instruction or education, serving as a degree-granting university or college.

SCHOOL - PUBLIC K-12 AND COLLEGE. A tax-supported institution or place for instruction or education, such as kindergarten, elementary, middle or junior high school, high school or college.

SCHOOL - VOCATIONAL (TECHNICAL, CONSTRUCTION OR INDUSTRIAL TRADES). A profit or not for profit entity providing instruction and training in a skilled trade such as mechanics, carpentry, plumbing, service, construction, industrial or other skill related to assembling, processing, manufacturing, repair, as well as beauty schools, barber college, beautician school.

SECONDARY SIGN. Complements primary sign and provides more detailed information.

SIDE YARD. The open, unoccupied space between a building and the side lot line, the space extending from the front lot line to the rear lot line, and on both sides of the building. In this instance, accessory buildings shall not be considered. Any lot line not deemed a front or rear line shall be deemed a side lot line.

SIGN. A name, identification, description, display, or illustration or the like which is affixed to, or represented directly or indirectly upon a building, structure or piece of land and which direct attention to or serve to advertise an object, product, place, activity, institution or business.

SINGLE FAMILY RESIDENCE. A detached dwelling designed for and occupied by one family.

SPECIAL EXCEPTION. [Reference 2.2.1(4)]

STORAGE, OUTDOOR. The keeping, in an unroofed area of any goods, materials, or merchandise in the same place for more than 24 hours.

STORAGE - PERSONAL (MINI STORAGE). A facility or area which enclosed storage space, divided into separate compartments, is provided for use by individuals to store personal items or by businesses to store materials for operation of a business establishment at another location.

STORY. That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between the floor and the ceiling next above it.

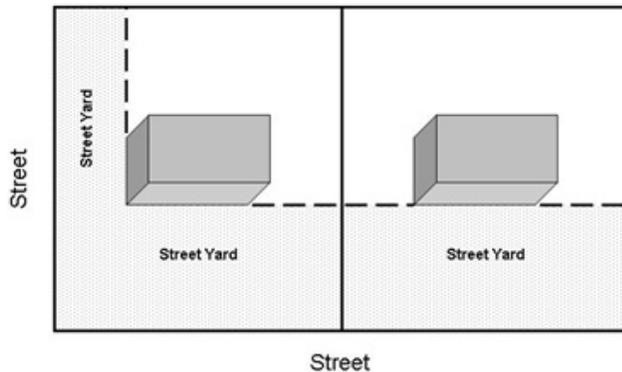
STORY, HALF (also ½). A story having a maximum height of not more than eight feet, covering a floor area of not more than 35% of the floor on the first story below.

STREET. A public thoroughfare 20 feet wide or greater.

STREET YARD. An area of a lot which lies between the street right-of-way line and the actual front wall line of the building, as such building wall line extends from the outward corners of the building, parallel to the street, until such imaginary extensions of such front building wall lines intersect the side

property lines. In determining the actual building wall of the building for the purposes of this definition, steps and unenclosed porches shall be excluded, but such building wall line shall follow and include the irregular indentations of the building.

Illustration of Street Yard



STRUCTURAL ALTERATION. Any change in the supporting member of a building, such as load bearing walls, columns, beams or girders.

STRUCTURE. Anything constructed or erected which requires location on the ground. Utility poles, signs, fences and walls used as fences shall not be considered as **STRUCTURES**.

SURFACE AREA. The area of a sign including all architectural materials and features, excluding structural pole support of pole signs.

TELECOMMUNICATIONS FACILITY. Antennae, supporting structure, related equipment and buildings.

TEMPORARY SIGN. See § 130.05, City of Balcones Heights, Code of Ordinances.

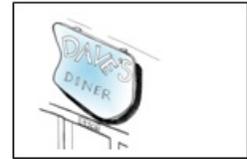
TOWNHOUSE COMPLEX. A group of attached dwelling units meeting the townhouse residence definition, except that they are on a single lot.

TOWNHOUSE RESIDENCE. A dwelling unit attached to a series of other dwelling units by not more than two vertical party walls, and where each unit maintains an individual entrance from the exterior of the building and is on its own lot.

TRANSIT TRANSFER CENTER (PUBLIC OPERATED SYSTEM). A fixed location where passengers interchange from on route or vehicle to another. The amenities at this facility would include but not be limited to shelters, seating, lighting and posted route/schedule information.

TRIPLEX RESIDENCE. A detached house with common walls between the units, designed for and occupied exclusively as the residence of not more than three families, and each living as an independent housekeeping unit.

WALL (OR FAÇADE) SIGN. A permanent sign mounted onto or otherwise affixed to the side of a building and projecting a limited distance from the surface on which it is mounted.



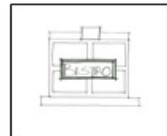
WAREHOUSE. A business where a major portion of the floor area is used for storage of goods, products, or parts for distribution at bulk retail or wholesale, or where the storage is a service provided for a fee.

WHOLESALE TRADE. Establishments primarily engaged in selling merchandise to other businesses, wholesalers and/or contractors; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. These establishments sale, display and/or store all of its products for sale or rent in an enclosed structure.

WHOLESALE TRADE, WITH OUTDOOR SALES AND DISPLAY. Wholesale trade establishment that displays some or all of its products for sale or rent (with or without screening) outdoors. Examples include businesses that sell materials to building or trade contractors, such as lumber yards or equipment rental facilities.

WIDTH OF SIDE YARD. The mean horizontal distance between a sidewall of a building and the sideline of the lot.

WINDOW SIGN. A permanent sign applied to a window of a building, but intended to be viewed and read from the exterior of the building.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12; Am. Ord. 2012-07, passed 6-11-12; Am. Ord. 2012-17, passed 12-10-12; Am. Ord. 2013-04, passed 3-11-13)



§ 1.2. PURPOSE.

(1) Establishment of zoning regulations and ordinance. The zoning regulations and districts herein established have been made in accordance with a comprehensive (master) plan for the purpose of promoting health, safety, morals and the general welfare of the community. They have been designed to:

- (a) Promote and protect the health, safety, comfort, morals, welfare, convenience and necessity of the public;
- (b) Lessen street congestion;
- (c) Secure safety from fire, flooding, panic and other dangers;
- (d) Provide adequate light and air;
- (e) Prevent overcrowding of the land;
- (f) Facilitate adequate provisions for transportation, water, sewer, schools, parks and other public requirements;
- (g) Protect the character and maintain the stability of residential, business and industrial areas within the City of Balcones Heights.

(2) *Zoning district suitability.* They have been made with reasonable consideration for each zoning district and their suitability for:

- (a) Purposes of particular uses;
- (b) Protection of the character and stability of each district;
- (c) Preservation of land and building values; and

(d) Encouraging the most appropriate use of buildings and land throughout the community.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.3. TITLE.

The ordinance codified herein shall be known and may be cited as the “Zoning Ordinance” for the City of Balcones Heights, Texas.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.4. SCOPE.

The provisions of this code shall not apply to property belonging to the city, or to property used to provide utilities serving the general public. However, the city and utility companies shall demonstrate a good faith attempt to conform in architectural design and other considerations as nearly as possible to the buildings permitted in the district in which they are being erected.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.5. REPEALED ORDINANCE.

Chapter 153, Zoning Code, City of Balcones Heights, Texas, Code of Ordinances is hereby repealed and all ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.6. ADOPTION OF LEGISLATIVE GRANT OF POWER.

This appendix is adopted in pursuant to authority set forth in Tex. Local Government Code Ch. 211, and shall be applicable to all property within the corporate limits of City of Balcones Heights, Texas, herein referred to as “the city.”

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.7. SEVERABILITY AND VALIDITY.

Each phrase, sentence, paragraph, section or other provision of this appendix is severable from all other such phrases, sentences, paragraphs, sections and provisions. Should any phrase, sentence, paragraph, section or provision of this appendix be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other portion or provision of this appendix.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.8. RULE OF ORDINANCE CONSTRUCTION.

(1) *Defined meaning.* Words, phrases and terms defined herein shall be given the defined meaning, unless the context clearly indicates a different meaning.

(2) *Customary meaning.* Words, phrases and terms not defined herein shall be given their usual and customary meanings.

(3) *Text governs meaning.* The text of the appendix shall control or govern captions, titles maps, figures, charts, and graphics.

(4) *Mandatory and non-mandatory meaning.* The word “shall” is mandatory and not permissive. The words “may,” “can,” or “should” are suggestive and not mandatory.

(5) *Singular and plural words.* Words used in the singular include the plural and words used in the plural include the singular. Words used in the present tense include the future tense and words used in the future tense include the present tense.

(6) *Calendar days.* Any reference to “days” shall mean calendar days, unless a different interpretation is specifically stated. The first full day after the event triggering the time period to run shall begin the time period.

(7) *Lists.* Lists of examples prefaced by “including,” “such as,” or other similar preface shall not be construed as exclusive and shall not preclude an interpretation of the list including other similar and non-mentioned examples.

(8) *Administrative official’s designee.* Reference to an administrative official shall refer to that official and his or her designee.

(9) *Purpose and intent statements.* Purpose statements and intent statements, (where applicable) shall guide the interpretation of these standards, and direct the application of any flexibility specifically permitted under the regulations.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.9. COMPLIANCE.

Except as provided in this appendix:

(1) *Permitted uses.* No building shall be erected, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than is permitted in the district in which the building or land is located;

(2) *Height and bulk limits.* No building shall be erected, reconstructed or structurally altered to exceed the height or bulk limit herein established for the district in which the building is located;

(3) *Lot and yard areas.* No lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this chapter; and

(4) *Yard and open space provisions.* No yard or open spaces provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building.

(5) *Plat.* A recorded plat shall be required for each new commercial and residential structure, and new accessory building as a condition for obtaining a building permit.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 1.10. NUISANCES.

(1) *Effect of existing ordinances.* Nothing in this Article shall be construed as repealing any ordinance of the city regulating nuisances or permitting uses which are now prohibited.

(2) *Declaration of public nuisance.* The erection and maintenance of any building or the uses of any premises in violation of this chapter or other zoning ordinances of the city relating to the area and district in which the buildings or premises are located, shall be and is hereby declared to be a public nuisance when the building or use of the premises constitutes a fire or health nuisance or interferes with the health, quiet, safe and peaceable enjoyment of their homes by citizens living in the vicinity of the building or premises.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 1.11. RECONSTRUCTION OF DESTROYED OR DAMAGED BUILDINGS.

Nothing in this chapter shall be construed to prevent the restoration of any structure that has been damaged less than 50% of its assessed value as shown on the tax records of Bexar County. Any structure that has been damaged 50% or more of its assessed value as shown on the tax records may be inspected for compliance with the Unsafe Building Code, § 150. In either case, the repaired structure must comply with the Safe Building Code, § 150.

§ 1.12. OUTDOOR BILLBOARD SIGNS AND OFF-PREMISE AREAS.

Ordinance 2002-02, dealing with outdoor billboard signs on off-premise areas, is hereby adopted by reference as if set out in full herein.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 2
ADMINISTRATION AND PROCEDURES

- 2.1. Administrative Review Bodies
- 2.2. Administrative Procedures

§ 2.1. ADMINISTRATIVE REVIEW BODIES.

§ 2.1.1. CITY COUNCIL.

The City Council shall exercise all final legislative authority over zoning matters as authorized by Tex. Local Government Code Ch. 211.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 2.1.2. PLANNING AND ZONING COMMISSION.

(1) *Purpose.* The Planning and Zoning Commission has been created in order to accomplish the following purposes:

(a) To identify community needs and to advise the City Council of the short-range and long-range implications for the total development of the city;

(b) To recommend achievable community goals as a basis for long-range planning and development programs:

(1) Recommend plans, programs, and policies that will aid the entire community in achieving its defined goals;

(2) To interpret the adopted plans and programs to concerned citizens so that private activities and desires may be accomplished in harmony with public need and policies;

(c) To advise the City Council on implementation of the Comprehensive (Master) Plan:

(1) To review and make recommendations on zoning amendments for compliance with the Comprehensive (Master) Plan;

(2) Review and make recommendations on the platting or re-platting of property;

(3) Review and approve site plans consistent with the standards in this appendix and the existing zoning for the property;

(4) Propose zoning amendments to the City Council;

(5) Advise the City Council on amendments and implementation of the Comprehensive (Master) Plan;

(d) Undertake other duties as authorized by the City Council, the city code, and the laws of the State of Texas.

(2) *Membership and appointment.* The Planning and Zoning Commission shall be composed of five qualified electors of the city appointed by the City Council. Two alternate members may also be appointed by the City Council to serve when one or more regular members are absent. Alternate members will have all rights and privileges when serving in the place of a regular member who is absent. The City Council will consider for appointment to the Commission persons who have demonstrated their civic interest, general knowledge of the community, independent judgment, interest in planning and zoning, and availability to prepare for and attend meetings. It is the intent of the City Council that members shall, by reason of diversity of their individual occupations, constitute a commission which is broadly representative of the community.

(3) *Terms of office.* The members of the Planning and Zoning Commission shall be identified by place numbers one through five. The odd numbered places shall expire on June 30 in odd-numbered years; the even-numbered places shall expire on June 30 in the even-numbered years. Commission members may be appointed to succeed themselves. Vacancies shall be filled for unexpired terms, but no member shall be appointed for a term in excess of two years. Newly appointed members shall be installed at the first regular Commission meeting after their appointment.

(4) *Organization.* The Planning and Zoning Commission shall hold an organizational meeting in July of each year and shall:

(a) Elect a Chairperson and Vice-Chairperson from among its members before proceeding to any other matters of business;

(b) Elect a secretary and such other officers as it deems necessary, either from its membership or from city staff representatives assigned by the City Administrator to work with the Commission;

(c) Meet regularly in accordance with the published schedule of meetings. All meetings shall comply with the requirements of the Texas Open Meetings Act;

(d) Adopt its own rules of procedure and keep a record of its proceedings consistent with the provisions of this subchapter and the requirements of Texas Open Meetings Act; and

(e) The City Administrator or designee shall provide administrative support to the Commission and have such other authority and duties as the Commission may establish.

(5) *Duties and powers.* The Planning and Zoning Commission is charged with the duty and invested with the authority to:

(a) Formulate and recommend to the City Council for its adoption a comprehensive (master) plan for the orderly growth and development of the city and from time-to-time recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety, and general welfare of the citizens of the city;

(b) Formulate and recommend to the City Council a zoning ordinance and map as may be deemed best to carry out the goals of the comprehensive (master) plan; hold public hearings and make recommendations to the City Council relating to the creation, amendment and implementation of zoning regulations and districts, as provided in Tex. Local Government Code Ch. 211, as amended, authorizing cities to pass regulations; all powers granted under the act are specifically adopted and made a part hereof;

(c) Review and make recommendations regarding site plans, when required, for consistency with the standards in this appendix and the existing zoning for the property;

(d) Review and approve recommend building and site designs for consistency with the standards in this appendix;

(e) Study and recommend on the location, extension and planning of public rights-of-way, parks or other public places, and on the vacating or closing of same;

(f) Study and make recommendations concerning the capital improvements program, including the construction of public buildings, bridges, viaducts, street fixtures and other structures and appurtenances. Study and recommend on the design or alteration and on the location or relocation of works of art which are, or may become, the property of the city;

(g) Initiate, in the name of the city, for consideration at public hearings all proposals for the opening, vacating or closing of public rights-of-way, parks or other public places; for the original zoning of annexed areas; and for the change of zoning district boundaries on an area-wide basis. No fee shall be required for the filing of any such proposal in the name of the city;

(h) Formulate and recommend to the City Council for its adoption policies and regulations consistent with the adopted comprehensive plan governing the location and/or operation of utilities, public facilities and services owned or under the control of the city or serving the city;

(i) Review and make recommendations concerning annexation or de-annexation of land into the city;

(j) Keep informed with references to the progress of city planning in the United States and other countries and recommend improvements in the adopted plans of the city;

(k) Submit each quarter a written progress report to the City Council summarizing its activities major accomplishments for the past year, and a proposed work program for the coming year. The report shall contain for the year the attendance record of all members and the identity of Commission officers; and

(l) The City Planning and Zoning Commission shall exercise all the powers as a Commission as to approval or disapproval of plats and re-plats as set out in Tex. Local Government Code Ch. 211.

(6) *Quorum.* A quorum shall consist of three or more voting members of the Commission.

(7) *Rules of order.*

(a) A motion may be made by any member other than the presiding officer.

(b) A motion to approve or deny any matter before the Commission or to recommend approval or disapproval of any request requiring City Council action shall require a favorable vote from a simple majority of the Commission members present at such meeting.

(c) When more than three members are present at any meeting, all members may vote on any motion or action of the Commission.

(d) The Commission shall conduct meetings in accordance with Robert's Rules of Order.

(8) *Disqualification from voting.* A member shall disqualify himself or herself from voting whenever he or she finds that he or she has a substantial interest as defined in Tex. Local Government Code Ch. 171 in the property under consideration, or that he or she may be affected by the decision of the Commission. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 2.1.3. BOARD OF ADJUSTMENT.(1) *Creation of Board of Adjustment.*

(a) There is hereby created a Board of Adjustment of six members who are members of the governing body of the City of Balcones Heights.

(b) Each of six members of the Board shall be entitled to one vote in all deliberations of the Board.

(2) *Terms.* Each member of the Board shall serve a two-year term, to run concurrently with his or her term of office as members of the governing body of the city.

(3) *Organization.*

(a) The Board shall elect a Chairperson and Vice Chairperson from the Board's membership. The Board Secretary shall be the City Secretary.

(b) The chairperson shall serve a term of two years concurrent with the term as Mayor of the city.

(c) Notice of each application considered by the Board shall be made by the applicant in the manner approved by the Board.

(4) *Meetings.*

(a) Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine.

(b) All meetings of the Board shall be open to the public and shall be subject to the Texas Open Meeting Act. The Board shall conduct meetings in accordance with Robert's Rules of Order.

(5) *Rules and regulations.*

(a) All orders and other enactments adopted by the Board shall be in accordance with this appendix and its rules and regulations.

(b) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, of if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions.

(c) Each case shall be heard by at least five Board members. When five members hear a case, the concurring vote of four members of the Board shall be necessary to: (1) reverse any order, requirement, decision or determination of an administrative official, or (2) to decide in favor of the applicant on any matter upon which the Board is authorized to act. When six members hear a case, the concurring vote of five members of the Board shall be necessary to: (1) reverse any order, requirement, decision or determination of an administrative official, or (2) to decide in favor of the applicant on any matter upon which the Board is authorized to act.

(d) A motion may be made by any member other than the presiding officer.

(6) *Appeals to the Board of Adjustment.*

(a) The Board shall have the following duties:

(i) Shall hear and decide appeals when error is alleged in any order, requirement, decision or determination made by an administrative official in enforcement of the act or zoning ordinance;

(ii) Shall make special exceptions as allowed or required by the zoning ordinances, in appropriate cases and subject to appropriate conditions and safeguards, in harmony with the general purpose and intent, and in accordance with general or specific rules contained in the various city ordinances; and

(iii) Shall authorize, on appeal, variances from the terms of the ordinances that will not be contrary to the public interest, when, because of special conditions a literal enforcement of the ordinance will result in unnecessary hardship, so the spirit of the ordinance will be observed and substantial justice done. Prior to granting a variance, the Board shall find that at least one of the following shall be found:

a. There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape, or topography;

b. The application of this appendix to the particular property would create an unnecessary hardship;

c. Such conditions are peculiar to the particular piece of property involved;

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this appendix; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this appendix;

e. Uses not provided for in Article 3: Whenever, in any district established under this appendix, a use is neither specifically permitted nor denied, and an application is made by a property for such use, the application shall be referred to the Board of Adjustment, which shall have the authority to permit the use or deny the use. The use may be permitted if it is similar to and compatible with permitted uses in the district and in no way is in conflict with the general purpose and intent of this appendix;

(iv) Before the tenth day before the hearing date, written notice of each public hearing before the Board of Adjustments on a request for variance shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the request for variance is made. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. Responses to such notices shall be duly noted and entered into the minutes of the Board of Adjustment hearing.

(7) *Conditions required for variance.* No variance application shall be granted unless the following conditions are fulfilled:

(a) The applicant established by competent evidence that:

(i) The strict or literal enforcement of the terms of this appendix, because of specific conditions, will result in unnecessary hardship to the applicant.

(ii) There is no reasonable alternative to the requisite variance that will alleviate the difficulty or hardship complained of.

(8) *Procedure for appeals to the Board.*

(a) *Appeal to Board.*

(i) The appellant must file with the City Secretary and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal and pay a filing fee as may be prescribed by the City Council. An appeal by a person aggrieved by an action of an administrative or building official in the enforcement of this appendix shall be filed with the City Secretary within 30 days after the action complained of was committed. On receiving the notice, the City Secretary and administrative or building official shall transmit to the Board all the papers constituting the record of the action that is appealed.

(ii) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board, facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by a court of record.

(iii) The Board shall set a reasonable time for the appeal; hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The Board shall decide the appeal within a 60-day period from the filing of the appeal.

(b) The Board's final decision shall be immediately filed with the City Secretary. The time and date that the Board's final decision is filed with the Board's office shall be stamped on the face of the decision.

(9) *Variance may lapse after one year.* Any rights authorized by a variance which are not exercised within one year from the date of granting such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this section. The Board may waive the requirement for the payment of fees for such variance renewal application if there has been no material change of conditions pertaining to the property since the granting of the first variance.

(10) *Limitations.*

(a) No appeal under this article may be filed by the same applicant within 365 days of the date upon which the Board denied such appeal, request or application, unless other property in the immediate vicinity has, within the 365-day period, been changed or acted on by the Board so as to alter the facts and conditions upon which the previous Board action was based. Such change of circumstances shall permit the rehearing of an appeal, request or application by the Board prior to the expiration of the 365-day period, but such conditions shall in no way have any force in law to compel the Board to reconsider the appeal, request or application. Such subsequent rehearing shall be considered entirely on its merits and the peculiar and specific conditions related to the property with reference to which such proceeding is brought.

(b) Any appeal, request or application approved by the Board, either under the provision of this appendix or under the authority granted to the Board under the statutes of the State of Texas, shall authorize the issuance of a Building permit or a certificate of occupancy, as the case may be, for a period of ninety days from the date of the favorable action on the party of the Board unless the Board in its minutes shall, at the same time, approve a longer period. If an application for such building permit or certificate of occupancy is not filed within the 90-day period or such extended period as the Board may specifically approve, then the approval of the appeal or variance shall be deemed waived and all rights there under terminated. Such termination and waiver shall be without prejudice to a subsequent appeal, request or application to the Board in accordance with the rules and regulations herein contained.

(11) *Appeals from the Board of Adjustment.* Any person or persons, jointly or severally, aggrieved by any decision of the Board or any taxpayer, or any officer, department, or board of the city may present any such matter to a court of competent jurisdiction for review after the final action of the Board thereon and in the manner and upon the terms provided by the laws of the state.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-21, passed 10-10-11; Am. Ord. 2011-22, passed 11-14-11)

§ 2.1.4. CITY STAFF.

The City Administrator or designee shall direct planning and zoning activities as follows:

(1) *City Administrator.* The City Administrator or designee is authorized and empowered on behalf of the City Council to administer and enforce the provisions of this appendix including:

(a) Receive applications for matters pertaining to this appendix;

(b) Inspect premises, and issue certificates of zoning compliance, building permits and certificates of occupancy for uses and structures which are in conformance with the provisions of this appendix;

(c) Interpret the meaning of the ordinance in the course of enforcement;

(d) Propose zoning amendments as provided in this appendix;

(e) Advise the Planning and Zoning Commission and City Council on implementation of the Comprehensive (Master) Plan and Zoning Ordinance.

(2) *Responsibilities.* The City Administrator or designee shall:

(a) Keep records of all permits, and certificates of occupancy issued, maps, plats and other documents with notations of all special conditions involved;

(b) Keep and maintain sketches and plans submitted as part of the permit application pursuant to statutory requirements.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 2.2. ADMINISTRATIVE PROCEDURES.**§ 2.2.1. APPLICATIONS.**

All applications submitted under this appendix shall be made on forms provided by the City. All applications shall be made according the published Planning and Zoning Commission schedule.

(1) *Summary of review procedures.* A summary of review processes and procedures is illustrated in Figure 2.1:

[Figure 2.1 begins on next page]

Figure 2.1 Review Procedures

Review Body	Application Type									
	Map Amendment	Zoning Text Amendment	Site Plan Approval	Special Use Permit	Special Exemption	Administrative Review	Variance	Building Permit	Tree Permit	CofO/Zoning Compliance
City Administrator/ Designee	A RR	A RR	A RR	A RR	A RR	A RR D	A RR	A RR D	A RR D	A RR D
Planning/Zoning Commission	H RR	H RR	RR	H RR					H RR	
City Council	H D	H D	D	H D					H D	
Board of Adjustment					H D	H D	H D			

Key:

- A: Application submission received and determination of complete application
- RR: Review and/or recommendation
- H: Public Hearing subject to notice and procedure requirements of this appendix
- D: Final decision

(2) Zoning amendment applications.

(a) *Zoning text amendment.* An amendment to the text of the zoning ordinance shall only be initiated by the City Administrator or the City Council acting through official act to initiate such matter. Other individuals requesting an amendment to the text of the zoning ordinance must request one of these authorized parties to sponsor the proposed amendment.

(b) *Zoning map amendment.* All petitions, applications, recommendations or proposals for changes in the zoning district of property (referred to as a “rezoning”) or for changes in the textual provisions of this chapter shall be filed with the City Administrator or designee, and a pre-application conference is required for all applications prior to submittal of the applications. This conference must take place between the applicant and the City Administrator or designee. A proposed rezoning may be initiated by:

(i) An official act of City Council;

(ii) An application properly signed and filed by the owner or, with the owner’s specific written consent, a contract purchaser or owner’s agent of a property included within the boundaries of a proposed rezoning, unless otherwise provided for by this chapter. When an amendment is initiated, an application for such amendment shall be submitted to the City Administrator or designee; or

(iii) The City Administrator pursuant to an annexation service plan or to correct an administrative error in the rezoning of a tract of land pursuant to this chapter.

(c) *Application.* An application for a zoning map amendment shall be submitted in person by the property owner, an agent of the property owner, or authorized individual acting on behalf of the effected property owner on the application form provided by the City Administrator. The application shall include all information requested on the application form. The City Administrator shall determine if the application is complete within five business days following submission thereof. If the application is not complete, the City Administrator shall notify the applicant in writing indicating necessary steps to cure the incomplete application.

(d) *Fees to accompany application.* When an application is filed for change of zoning district boundaries or for any change of this chapter or classification, such application shall be accompanied by a fee in the amount stipulated by the City Council. The fee shall be paid (in cash, certified check, or cashier's check) to the city immediately upon filing such application. No notice of any such application shall issue and no hearing shall be had before either the Planning and Zoning Commission or the City Council until such prescribed fees are paid. The City Administrator or designee shall keep and preserve an itemized record of all fees received and disposition thereof.

(e) *Published notice and hearings.* Hearings required. No zoning map or text amendment shall become effective until after public hearing(s) are held in accordance with state law, at which times parties in interest and citizens shall have an opportunity to be heard.

(i) *Planning and Zoning Commission.* The Planning and Zoning Commission, after written public notice in accordance with Tex. Local Government Code § 211.007(c), shall hold at least one public hearing on such application and as a result thereof shall transmit its final report to the City Council. All applications for a change in zoning which have been considered by the Planning and Zoning Commission shall be presented by the applicant to the City Council within six months from the date of the Commission's final consideration. In the event the applicant fails to present the application for rezoning to the City Council within the prescribed period, a new original application and fees shall be required. A new application shall not be submitted to the Planning and Zoning Commission for consideration prior to the expiration of the six-month time period specified in subsection (g), below.

(ii) *City Council.* After the final written report of the Planning and Zoning Commission is submitted to the City Council as provided in subsection (2) above the City Council shall consider a zoning change after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Before the fifteenth day prior to the date of the hearing, notice of the time and place of the hearing shall be published in an official newspaper or a newspaper of general circulation in the city. After the receipt of the final report of the Planning and Zoning Commission, the City Council shall approve or deny the rezoning or text amendment in accordance with Tex. Local Government Code § 211.007.

a. *Notice.* Notice of the time and place of such hearings shall be published in accordance with state law.

b. *Review.* A copy of the proposed amendment or completed application shall be made available by the City Administrator for public review upon request.

c. In the case of a zoning map amendment, a legal description or metes and bounds description of the subject property, as well as a general description of any property shall be provided, including any common name by which the property is known.

d. *Posted notice.* The applicant shall post on any specific property, which is the subject of the application, on a sign facing each adjacent public street. The sign shall be furnished to the applicant by the City Administrator at the time of application giving notice of the hearing. The sign shall be posted no later than ten days prior to the hearing before the Planning Commission, and shall remain posted until

final action of the City Council. It is the sole responsibility of the applicant to post and maintain the sign in accordance with these regulations. Failure to post this sign may result in postponement or withdrawal of the zoning change application.

e. *Mailed notice.* Before the tenth day before the hearing date, written notice of each public hearing before the Planning and Zoning Commission on an application for zoning amendment shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the request for zoning amendment is made. The notice may be served by its deposit in the municipality by the applicant, properly addressed with postage paid, in the United States mail.

f. *Compliance with law.* The foregoing requirements are intended to comply with applicable laws relating to notice. To the extent that such requirements do not so comply with applicable law or in the event any applicable law is hereafter altered, amended or otherwise modified, this section shall be construed so as to comply with such altered, amended or modified law.

(f) *Review process.* The proposed zoning amendment shall be reviewed according to the following:

(i) A complete application shall be reviewed by the City Administrator or designee.

(ii) The completed application shall be submitted to the Planning and Zoning Commission. The Commission shall consider the application and take one of the following actions:

a. Recommend approval of the application to the City Council;

b. Recommend approval of the application to the City Council, conditioned on specific provisions as permitted with the applicant's consent;

c. Recommend denial of the application to the City Council; or

d. Continue discussion of the application for further study. An application shall only be continued one time without the applicant's consent before the Commission shall pass it to the City Council for action. Any continuance shall be for a time reasonably necessary to completely and adequately address the issue of further study. An applicant may agree to more continuances.

(iii) The application shall be submitted to the City Council, with the recommendation of the Commission, unless the Commission has failed to act. The City Council shall consider the application at a public hearing and take one of the following actions:

a. Approve the application;

b. Approve the application, conditioned on specific provisions;

c. Deny the application;

d. Continue discussion of the application for further study. An application shall only be continued one time without the applicant's consent before the City Council shall take one of the above actions. Any continuance shall be for a specified time reasonably necessary to completely and adequately address the issue of further study. An applicant may agree to more continuances; or

e. Refer the proposed amendment to the City Administrator or to the Planning and Zoning Commission for further study and discussion. An application may be referred only once without the applicant's consent before the City Council shall take one of the above actions. An applicant may agree to more such referrals.

(iv) *Passage when protested.* If a proposed change to a zoning regulation or zoning district boundary is protested in writing and signed by the owners of at least 20 percent of either: (1) the area of the lots or land covered by the proposed change; or (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area, then in accordance with state law, the proposed change must receive the affirmative vote of at least three-fourths of all members of the City Council in order to take effect. In computing the percentage of land area under protest, the area of streets and alleys shall be included.

(g) *Review criteria.* The zoning amendment application shall be reviewed based on the following criteria:

- (i) Compliance with the Comprehensive (Master) Plan;
- (ii) Compliance with the standards, goals, and intent of this appendix;
- (iii) The character of the surrounding property, including any pending development activity;
- (iv) Adequacy of public infrastructure to support the proposed development;
- (v) Impacts on natural resources, including existing conditions and ongoing post-development conditions;
- (vi) Compliance with other laws and regulations of the city;
- (vii) Compliance with other applicable laws and regulations of other jurisdictions;
- (viii) Impacts on adjacent property and surrounding neighbors including noise, traffic, visible intrusions, and potential physical impacts.

(h) *Postponement of a case by applicant.*

(i) Prior to the city publishing the zoning case in the newspaper, an applicant may request in writing that the case not be scheduled for a public hearing date. In such cases, the applicant shall have six months from the date of the written request to schedule the case. After expiration of the six-month period, the applicant will have to submit a new application with new fees for further consideration of a zoning change on the subject property.

(ii) If a written request for postponement is submitted by the applicant after the city has published the case in the newspaper, the fees paid shall be non-refundable and the case will not be rescheduled for a public hearing date until the new fee has been paid by the applicant. In such cases, the applicant shall have six months from the date of the written request for postponement to reactivate the case. After expiration of the six-month period, the applicant will have to submit a new application with new fees for further consideration of a zoning change on the subject property.

(iii) If a request for postponement is not received by 4:30 p.m. on the seventh day prior to the public hearing date, the case shall remain on the public hearing agenda and will require the applicant to personally request such a postponement in front of the Planning and Zoning commission or City Council.

(i) *Withdrawal of application.*

(i) *Applicability.* The provisions of this subsection shall not apply to any application for a rezoning which is initiated by the City Council.

(ii) *Withdrawal without time penalty.* An applicant may withdraw a zoning application up to the time that it is called forward and the city staff begins presentation of the application during a duly advertised public meeting without a time penalty on resubmission of another rezoning application for the property whether by the original applicant or a new applicant.

(iii) *Withdrawal with time penalty.* An applicant may withdraw a zoning application after it has been called forward for discussion and staff has begun presentation however such withdrawal shall be penalized by imposing an automatic six-month time period following the date of withdrawal before the same or another application for the same property can be submitted for processing.

(iv) *Waiver of time penalty in subsection 3. above for resubmission.* At the time of withdrawal of an application for rezoning the Planning and Zoning commission may consider a request by the applicant to bring the application or a modification of the application back prior to the expiration of six months subject to all notifications and postings of the case being observed. If the Planning and Zoning Commission fails to approve such resubmission prior to continuing with the next agenda item the six-month submission limitation shall stand.

(v) *Request of relief of time penalty.* If new relevant and substantial evidence which could not have been secured at the time set for the original hearing shall be produced by applicant, under a sworn affidavit to that effect, then in that event, the Planning and Zoning commission may elect to hear and consider such application prior to the expiration of the time penalty.

(j) *Denial of rezoning.* No application for the rezoning of any lot, lots or block of land situated in the city shall be received or filed with the zoning commission of the city and no hearing had thereon, if within one year prior thereto the City Council, after consideration and hearing, has denied an application for rezoning of the same property.

(3) *Site plan review applications.*

(a) *Initiation.* Preliminary site plans accompanying a zoning map amendment shall be reviewed according to the zoning amendment procedures. Final site plans shall be submitted only after a zoning map amendment has been approved. This submission does not require a public hearing or public notification. The final site plan approval shall occur in accordance with this section. Site plan approval is required when any commercial or industrial building(s) is (are) located in a commercial (C zone), industrial (M zone), O-2 zone, or MXD zone, and:

(i) Has a gross floor area of 10,000 square feet or greater; or a building of any use and any gross floor area in a MXD zone;

(ii) More than 30% of the lot (excluding the building) is impervious; or

(iii) Other special use designation.

(b) *Application.* An application for site plan review shall be submitted on the application form provided by the City Administrator or designee. The application shall include all information requested on the application form. Preliminary review with the City Administrator or designee, prior to a formal application is encouraged. If the application is not complete, the City Administrator shall notify the applicant in writing indicating necessary steps to cure the incomplete application. The application shall be submitted with drawings showing the location of the site and all existing and proposed buildings with sufficient information to evaluate impacts on adjacent properties. Sheet size shall be large enough to document all physical features and shall be suitable for public record.

(c) *Review.* Site plan review shall occur according to the following:

(i) A complete application shall be reviewed by the City Administrator or designee;

(ii) Applications, when complete, shall be submitted to the Planning and Zoning Commission at the next scheduled meeting. The Commission shall consider the application and take one of the following actions;

a. Approve the final site plan;

b. Approve the final site plan, conditioned on specific revisions;

c. Deny the final site plan; or

d. Continue discussion of the application for further study. An application shall only be continued one time without the applicant's consent before the Commission shall take one of the above actions. An applicant may agree to more continuances;

(iii) The City Council shall consider the site plan only after review and recommendation from the Commission. The City Council shall have the final authority on site plan approval.

(d) *Effect and limitation on approval.* Site plan approval stands for 365 days from the approval date. If a building permit has not been issued within this period of time, the site plan approval shall be null and void. The Council may consider a request for extension of this time up to 180 additional days for good cause. The site plan may be amended, but amendments shall be subject to the same procedures as a new site plan approval.

(e) Modifications in substantial conformance with an approved site plan may be approved by the City Administrator or designee provided that the plan meets the following conditions:

(i) The modification addresses actual site conditions that were not anticipated in the reviewed site plan;

(ii) The modification meets the intent of the site plan standards in an equivalent or improved manner than the original site plan; and

(iii) The modification results in no greater impact on adjacent property than the approved site plan.

(f) *Nullification for misrepresentation.* Any site plan decision that is based in any part on testimony, plans, studies or other support that is later found to have been a material misrepresentation may be summarily nullified by subsequent City Council action, pursuant to state law. Summary nullification shall require evidence of the misrepresentation at a formal Council meeting and the concurring vote of a majority of members of the City Council. Such review shall not require a formal site plan review process because the initial Council action will be determined null and void due to the material misrepresentation.

(4) *Applications to the Board of Adjustment.*

(a) *Initiation.* Following the official denial of plans by the city, applications to the Board of Adjustment may be made by:

(i) Any person requesting a variance from the standards of this appendix, following the official denial of plans by the city;

(ii) Any person requesting a variance as provided under this appendix; or

(iii) *Administrative review.* Any of the following persons may appeal to the Board of Adjustment a decision made by an administrative official:

- a. A person aggrieved by the decision; or
- b. Any officer, department, board, or bureau of the City affected by the decision.

(b) *Application.* An application for a Board of Adjustment review may be submitted on the application form provided by the city following the official denial of the plans by the city. The application shall include all information requested on the application form, including grounds for the request for relief. Applications shall be made according to the Board of Adjustment schedule. If the application is not complete, the City Administrator shall notify the applicant in writing indicating necessary steps to cure the incomplete application.

(c) *Notice.*

(i) *Hearings required.* No variance, exception or decision shall become effective until after a public hearing is held in accordance with state law, at which times parties in interest and citizens shall have an opportunity to be heard.

(ii) *Notice.* Notice of the time and place of such hearings shall be published in a newspaper of general circulation in accordance with state law.

(iii) *Review.* A copy of the completed application shall be made available by the City Administrator for public review upon request.

(iv) *Posted notice.* The applicant shall post on any specific property, which is the subject of the application, on a sign facing each adjacent public street. The sign shall be furnished to the applicant by the City Administrator at the time of application giving notice of the hearing. The sign shall be posted no later than ten days prior to the hearing before Board of Adjustment. It is the sole responsibility of the applicant to post and maintain the sign in accordance with these regulations. Failure to post this sign may result in postponement or withdrawal of the application.

(v) *Mailed notice.* Before the tenth day before the hearing date, written notice of each public hearing before the Board of Adjustments on a request for variance shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the request for variance is made. The notice may be served by its deposit in the municipality by the applicant, properly addressed with postage paid, in the United States mail.

(vi) *Compliance with law.* The foregoing requirements are intended to comply with applicable laws relating to notice. To the extent that such requirements do not so comply with applicable law or in the event any applicable law is hereafter altered, amended or otherwise modified, this section shall be construed so as to comply with such altered, amended or modified law.

(d) *Review.* Application review shall occur according to the following:

(i) A complete application shall be reviewed by the City Administrator or designee. The City Administrator or designee shall offer a written report on the merits of the application to the Board of Adjustment.

(ii) The completed application shall be referred to the Board at the scheduled public hearing, with the City Administrator's or designee's report. The Board shall consider the application and take one of the following actions:

- a. Approval;
- b. Approval with specific conditions;
- c. Denial; or

d. Continue discussion of the application for further study. An application shall only be continued one time without the applicant's consent before the Board of Adjustment shall take one of the above actions. An applicant may agree to more continuances.

e. *Criteria.* An application for a variance shall be granted only on the concurring vote of four Board members finding that:

(iii) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;

(iv) The application of the ordinance to this particular property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance;

(v) Such conditions are peculiar to the property involved;

(vi) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this appendix; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this appendix.

(vii) *Effect of variance.* Any variance granted according to this section and which is not challenged on appeal shall run with the land.

(viii) *Appeal.* Any party aggrieved by any final judgment or decision of the Board may appeal to the district court, county court, or county court at law in accordance with Tex. Local Government Code Ch. 211.

(5) *Permit and certificate applications.* Permits and certificates shall be issued in accordance with the following provisions:

(a) *Commencement of construction.* It shall be unlawful to commence the construction of any building or other structure, including accessory structures, or to store building materials or erect temporary field offices, or to commence the moving, alterations, or repair of any structure, including accessory structures, parking lot, flag pole, fence, monument, cell tower, mail boxes in the right of way and any other erection or construction requirement permit until the city has issued for such work a building permit including a statement that the plans, specifications and intended use of such structure in all respects conforms with the provisions of city ordinances. Application for the building permit shall be made to the City Administrator or designee on forms provided for that purpose and shall be accompanied by payment of the required fee.

(b) *Approval of plans and issuance of building permit.* Prior to the city issuing a building permit or approving any plans for excavation or construction, the City Administrator or designee shall inspect such plans in detail and find them in conformity with city ordinances. If the proposed excavation, construction, moving, or alteration, as set forth in the application, is in conformity with the provisions of this appendix or other city ordinances, the city shall issue a building permit accordingly. If an application for a building permit is not approved, the city shall state in writing on the application the cause for such disapproval. Issuance of a building permit shall, in no case, be construed as waiving any provision of this appendix. The city shall require that every application for a building permit for excavation, construction,

use of land, moving or alteration be accompanied by a dimensioned plan in duplicate showing sufficient detail to enable the City Administrator or designee to ascertain whether the proposed excavation, construction, use of land, moving or alteration is in conformance with this appendix. A record of such applications and plans shall be kept by the city. At a minimum the plan shall show:

- (i) The actual shape, proportion and dimensions of the property to be built upon;
 - (ii) The shape, size and location of all buildings or other structures to be erected, altered or moved and any building or other structures already located on the property;
 - (iii) The existing and intended use of all such buildings or other structures;
 - (iv) Information regarding compliance with the building and site design criteria contained in this appendix; and
 - (v) The adequacy of provisions for control of surface drainage.
- (c) *Permits requiring City Council review.* Any applicant for a building permit requiring site plan approval in accordance with this article shall secure such approval prior to issuance of the permit.
- (d) *Expiration of building permit.*
- (i) A building permit shall not be transferable and shall be issued only to the applicant. It shall expire if work is not begun within 180 days from the date of issuance and the work for the entire project has not been completed within 365 days after issuance of the building permit.
 - (ii) For projects requiring an extended expiration period, due to size or complexity of the project, the City Administrator or designee may grant an extended expiration date when the permit is issued.
 - (iii) Request for a 90-day extension may be considered upon the applicant's request made prior to the permit expiration.
- (e) *Modification.* It shall be unlawful for the owner, after he/she has obtained approval of design plans, to change or substantially modify plans, either during construction or after completion without specific written approval of the city.
- (f) *Certificate of zoning compliance and occupancy.*
- (i) No building hereafter erected or structurally altered shall be used, occupied or changed in use until a certificate of occupancy and zoning compliance shall have been issued by the City Administrator and inspections, stating that the building or proposed use of a building or premises complies with the building laws and the provisions of this zoning code.
 - (ii) The City Administrator or designee shall perform the final inspection within reasonable time after receiving a request, and issue either a certificate of zoning compliance or a denial in writing. A denial shall state the reasons for denial. Any person or firm who occupies or causes to be occupied any premises without a certificate of occupancy and/or a certificate of zoning compliance shall be subject to citation for violation of this appendix and shall be subject to the all remedies and penalties hereof. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.2.1

§ 2.2.2. SPECIAL USE PERMITS.

(1) *Purpose and use.* The special use permit (SUP) is required to be used when a special use identified in the use matrix (Table 3.5.-1) listed under the zoning district is desired for development and a more intensive zoning district which contains that use as a use by right would not be appropriate for the property.

(2) *Applicable zoning districts.* The City Council may authorize the issuance of an SUP only for those uses that are enumerated as special uses in a zoning district, as set forth in the use matrix (Table 3.5.-1). An SUP is an amendment to the zoning map that authorizes the establishment of one or specified uses of particular property without changing the zoning and permitted uses of the property. An SUP may be issued when the City Council determines that the SUP:

- (a) Shall not adversely affect the character of the area or neighborhood in which it is located.
- (b) Shall not substantially reduce the value of the adjacent and nearby property.
- (c) Shall be in keeping with the spirit and intent of the zoning code
- (d) Shall not adversely affect traffic, public health, public utilities, public safety or the general welfare of the city.

(3) *SUP application.* SUP application shall be submitted to the city with the proposed site plan and the same fees required for zoning changes.

(a) *Format.* A site plan, with detail as required in subsection (b) below, must be submitted upon application for a rezoning for an SUP. The site plan shall be prepared to scale. The site plan scale must be drawn numerically and a graphic scale must be provided. The scale must be sufficient to illustrate all required detail and labels in a legible fashion. The applicant shall provide a site plan in the following formats:

- (i) Printed eight and one-half by 11 inch;
- (ii) A larger printed version if necessary for readability; and
- (iii) Digital.

(b) *Contents.* The following minimum information shall be shown on the site plan:

- (i) Tabulation of the number of acres in the proposed development, showing the total number of lots, and area of open space for the site.
- (ii) Dimensions and square footage of all buildings and structures.
- (iii) All setbacks as required by the proposed and surrounding zoning districts/uses.
- (iv) All off-street parking and loading areas/structures, including the number of spaces, dimensions of spaces and aisles, ADA required spaces and loading areas, and landscaping for parking areas.
- (v) The location, dimensions and type of all existing and proposed walls, fences (other than fences on private residential lots) and landscaping.

(vi) All existing and proposed driveways, sidewalks, showing the existing and proposed physical layout, dimensions, and other relevant characteristics of the subject property.

(vii) The intended use of the property to which the current and proposed improvements relate.

(viii) The following statement: "I, _____, the property owner, acknowledge that this site plan submitted for the purpose of rezoning this property is in accordance with all applicable provisions of the Balcones Heights Zoning Ordinance. Additionally, I understand that City Council approval of a site plan in conjunction with a rezoning case does not relieve me from adherence to any/all city-adopted codes at the time of plan submittal for building permits.

(4) *Procedures.* Granting of an SUP is considered zoning and as such, all the procedures for changing a zoning district apply to an application for an SUP and shall be processed in the same manner.

(a) In addition to the zoning amendment review criteria, the city staff, Planning and Zoning Commission and the City Council shall consider, among other matters, the following:

(i) Consistency with the goals, policies, objectives, specific elements and future land use map of the Balcones Heights Master Plan, and any adopted specific plan applicable to the site where the proposed special use is located;

(ii) The proposed use is in compliance with all applicable city codes, standards and guidelines governing such use;

(iii) The proposed special use is adequately served by essential public services, such as street, drainage facilities, fire protection, police protection and public water and sewer;

(iv) The proposed special use is designed and landscaped to preserve the character of the neighborhood and that it will not discourage appropriate development or use of surrounding properties;

(v) The proposed special use will not generate adverse impacts on adjoining properties and land uses;

(vi) The proposed special use will not be injurious to the public health, safety and welfare of the community;

(vii) Approval of an SUP by the City Council shall be evidenced by an ordinance which shall include all special requirements to be included in the SUP, and all agreements or other documents between the city and the applicant shall be incorporated in the ordinance by reference;

(viii) If an application is approved and an SUP is granted, all conditions which may have been attached to the approval are binding on the property and shall be complied with before a certificate of occupancy may be issued. All subsequent development and use, as shown and described in the approved SUP, of the property, shall be in accordance with the approved plan and conditions. These conditions shall apply to the use identified in the SUP, and are not applicable on uses permitted by right in accordance with the underlying zoning district. These may include, but are not limited to the following:

- a. Site coverage, structure height and setback requirement;
- b. Screening;
- c. On-site and off-site street and drainage improvements;

- d. Traffic circulation to include point of vehicular ingress and egress;
- e. Landscaping buffers;
- f. Control of noise, vibration, odor, emissions, hazardous materials and other potential dangerous or objectionable elements;
- g. Storm runoffs and water conservation measures;
- h. Hazardous materials handling.

(5) *Amendment of permit.* An amendment is a request for any enlargement, expansion, increase in intensity, relocation, or modification of any condition of a previously approved and currently valid SUP. Amendments shall be processed as follows:

(a) *Non-material and insignificant (minor) amendments.* Shifts in on-site location and changes in size, shape, intensity, or configuration of less than 5%, or a 5% or less increase in either impervious surface or floor area over what was originally approved, may be authorized by the City Administrator or designee, provided that such minor changes comply with the following criteria:

- (i) No previous minor modification has been granted pursuant to this subsection;
- (ii) There will be no detrimental impact on any adjacent property caused by significant change in the appearance or the use of the property or any other contributing factor;
- (iii) Nothing in the currently valid SUP precludes or otherwise limits such expansion or enlargement;
- (iv) The proposal conforms to the provisions of this chapter and is in keeping with the spirit and intent of any adopted Master plan.

(b) *Major amendments.* Any proposed amendment other than those provided for in subsection (1) above shall be considered a major amendment of a previously approved and currently valid SUP. Authorization shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original permit.

(6) *Revocation of permit.*

- (a) The SUP may be considered for revocation for, but not limited to, the following reasons:
 - (i) A use other than the use approved in the SUP or in the underlying zoning district is developed.
 - (ii) Construction is not begun within two years of the date of approval of the permit.
 - (iii) Failure to satisfy the conditions of the SUP or follow the site plan made part of the SUP. The City Administrator or designee shall have the right to periodically examine the operation of the special use to determine compliance with the requirements and any conditions. If the City Administrator or designee determines that the requirements have not been met, or the conditions are being violated, a written notice shall be issued to the owner of the property outlining the nature of the violation and giving the owner of the property a maximum of 30 days to come into compliance. If after 30 days the violations continue to exist, then the City Administrator or designee shall forward a report to the City Council through the Planning and Zoning Commission which may recommend that action be taken to revoke the SUP.

(b) The revocation process shall be the same as for a zoning district change, with notice to property owners within 200 feet, public hearing and recommendation by the Planning and Zoning Commission, and public hearing and ordinance consideration by the City Council.

(c) The City Council may deny the SUP revocation, approve the revocation, deny the revocation and add additional restrictions to the SUP, suspend the SUP for a period the council determines, or amend the SUP with probationary requirements and terms the Council determines.

(d) Upon revocation of an SUP the property subject to the SUP may be used for any permitted use within the applicable base zoning district.

(T) Subsequent applications.

(a) An application for an SUP may be withdrawn at any time, but if the application has been advertised in compliance with state law, an application requesting substantially the same use on all or part of the same described land shall not be reconsidered within one year of withdrawal.

(b) No application for an SUP pertaining to any lot, parcel or portion thereof which requests the same use and same conditions shall be considered within one year of a final decision denying the application.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 3
ZONING DISTRICTS AND USE REGULATIONS

- 3.1. Zoning district classifications
- 3.2. Zoning district boundaries; official map
- 3.3. Interpretation of zoning district boundaries
- 3.4. Building height and setback regulations
- 3.5. Use regulations

STATEMENT OF PURPOSE

The purpose of this article is to implement the land use policies of the Master Plan. Pursuant to Tex. Local Government Code § 211.004, all zoning ordinances and regulations adopted pursuant to this code shall be consistent with the comprehensive plan and any specific plans of the city council. Each subsection describes the relationship between the various zoning districts and prescribes the regulations for each district.

§ 3.1. ZONING DISTRICT CLASSIFICATIONS.

R-1. Single-family residence (formerly District A)

R-2. Dual-family residence (formerly District B)

R-3. Quadraplex residence (formerly District C)

R-4. Multifamily Low-rise residence

R-5. Townhouse residence

R-6. Multifamily mid-rise residence

O-1. Low-rise office

O-2. High-rise office

C-1. Local retail

C-2. General Retail

MXD. Mixed-use

M-1. Light industry/manufacturing

M-2. Commercial or Industrial service

M-3. Accessory buildings or antennae

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.1. R-1. SINGLE-FAMILY RESIDENCE.

(1) *Purpose.* The R-1 District is intended to provide single-family residential dwellings in a setting of moderate urban density.

(2) *Accessory buildings.* Accessory buildings shall be permitted, including a private garage and excluding servants' quarters when located at least:

- (a) Sixty feet from the front lot line;
- (b) Ten feet from any other street line;
- (c) Ten feet from any side lot line;
- (d) Five feet from any rear lot line;

(e) Accessory buildings shall not be located closer to the front lot line than the front line of the main structure.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.2. R-2. DUAL-FAMILY RESIDENCE.

(1) *Purpose.* The R-2 District is intended to provide a greater density of residential use by permitting the placement of two-family dwelling units without the more intense uses of general multi-family districts.

(2) *Accessory buildings.* Accessory buildings shall be permitted, including a private garage and excluding servants' quarters when located at least:

- (a) Sixty feet from the front lot line;
- (b) Ten feet from any other street line;
- (c) Ten feet from any side lot line;
- (d) five feet from any rear lot line;

(e) Accessory buildings shall not be located closer to the front lot line than the front line of the main structure.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.3. R-3. QUADRAPLEX RESIDENCE.

Purpose. The R-3 District is intended to provide a greater density of residential uses by permitting the placement of three to four-family dwelling units without the more intense uses of multi-family districts.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.4. R-4. MULTIFAMILY LOW-RISE RESIDENCE.

Purpose. The R-4 District is intended to provide medium to high density residential development in an urbanized location where it may serve as a transitional district between less intense commercial or industrial environments and single family neighborhoods.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.5. R-5. TOWNHOUSE RESIDENCE.

(1) *Purpose.* The intent for townhouse residences is to:

- (a) Provide a residential format as an alternative to detached single-family homes;
- (b) Allow townhouses to be appropriately intermingled with other types of housing and allow residents of townhouses quality residential neighborhoods;
- (c) Ensure location and design standards compatible with surrounding property;
- (d) Prevent long, unbroken lines of row housing;
- (e) Make efficient, economical, comfortable, and convenient use of scarce land and open space resources; and
- (f) Serve the public purposes of increasing density by providing an alternative to conventional arrangements of yards and building areas.

(2) *Height and area requirements.*

- (a) Front yard setbacks and side yard setbacks for corner lots shall be a minimum of ten feet and a maximum of 20 feet. Unenclosed porch, entries and porticos may extend five feet into front yard setback, but no closer than ten feet from the property line.
- (b) Side yard setbacks within a single project shall be zero feet for townhomes. End unit townhomes shall be set back a minimum 6 feet from the side property line.
- (c) Uninterrupted groupings of attached townhouse units should not exceed six units in width with a minimum separation of 12 feet between groupings. This includes a minimum of six feet at the end of each grouping and the property line.
- (d) Not more than three contiguous townhouse units shall be built in a row with the same front line.
- (e) Townhouses, including the roof, shall not exceed 60 feet in height.
- (f) A garage footprint shall not exceed 625 square feet per unit. Garages in rear yards may have a second floor. A one-story garage shall be no taller than one and one-half stories or 20 feet in height. A two-story garage shall be no taller than 30 feet in height if it is a separate structure.

(2) *Site requirements.*

- (a) Townhouses shall have a minimum lot area of 3,500 square feet for each unit. This area may be on the same platted lot as the unit, may come from common open space, or may come from publicly accessed or commonly owned open space, which is within 300 feet of the unit, to be publicly dedicated within an overall project site plan. No more than one unit may claim the same public or common open space area towards meeting the requirement of 3,500 square feet for each unit.
- (b) Each townhouse shall have on its own lot one rear yard containing not less than 400 square feet, reasonably secluded from view from right-of ways or from neighboring property.

(c) All parking lots, stalls or garage entrances for townhouse units shall be accessed from the rear of the property, by alleys or an internal drive aisle accessing the rear of the unit. Insofar as practicable, exterior off-street parking facilities shall be grouped in bays at the interior of blocks. No off street parking space shall be more than 100 feet by the most direct pedestrian route from a door of the dwelling unit it is intended to serve.

(d) In townhouse developments with a total area greater than five acres at least 15% of the total area shall be devoted to public or common open space, exclusive of parking areas or accessory buildings. Common open areas may include recreational facilities. Provisions shall be made to assure that common open areas for the use and enjoyment of occupants of townhouses are maintained in a satisfactory manner without expense to the general taxpayer. In addition, the owner of a townhouse development or homeowners association created by the developer by recorded covenants and restrictions, shall preserve for the owners and occupants of the development lands set aside for open areas, parks, or recreational use, and the common off-street parking spaces established for the development.

(e) *Design requirements.*

(i) *Front yard setback for townhouses.* For townhouses, front yard setbacks and side yard setbacks for corner lots shall be a minimum of ten feet and a maximum of 20 feet. Unenclosed porch, entries and porticos may extend five feet into front yard setback, but no closer than ten feet from the property line.

(ii) *Side yard setback for townhouses.* Side yard setbacks shall be zero feet for townhouses. However, end unit townhomes shall be set back a minimum six feet from the side property line.

(iii) *Setbacks for mid-rise housing.* Front and side yard setbacks for mid-rise housing shall be 20 feet. Balconies and patios shall not extend into the setback.

(iv) *Street “presence” for townhouses.* The site plan configuration for a development parcel shall create a strongly defined street presence. All residential structures shall front the street. Townhouses shall incorporate front porches and similar architectural elements.



(v) *Slight variations permitted.* Residential structures shall engage the street, providing the massing and building form that helps define the block, but variations on setbacks shall be allowed among the townhouses units. These slight variations help to reduce the scale of multiple unit development, provide visual interest, provide a sense of entry and transition from the street and allow landscaping.

(vi) *No blank walls.* For townhouses, site plan configurations and building designs shall not create walls that are predominantly blank and unadorned along public streets.

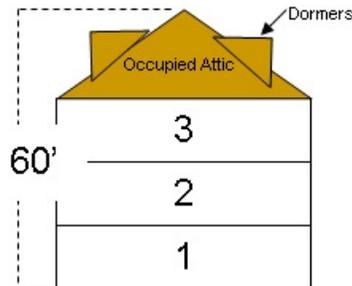
(vii) *Porch at entry.* The front entry of townhouses shall incorporate an unenclosed porch, covered stoop, portico or awning of not less than four feet by four feet. A “useable” front porch, four feet by eight feet or greater, is preferred.

(viii) *De-emphasize in front yard.* Garages and parking areas shall not be emphasized along street frontage. Attached or detached garages in the rear yard with access to mid-block streets or private shared driveways along the rear of the property are preferred.

(ix) *Rear parking for multifamily dwellings.* For multifamily dwellings, parking areas shall be behind the dwellings. Such garages and parking areas may only be accessed via drives located in the rear yard leading from mid-block streets or private shared driveways along the rear of the property.

(x) *Dormer windows.* Dormer windows are allowed on roofs.

(xi) *Sloped roofs.* Townhouses shall have a sloped roof. The total structure height shall not exceed 60 feet in height.



(xii) *Garage floor area.* For townhouses, a garage footprint or floor area shall not exceed 625 square feet per unit. Garages in rear yards may have an occupied second floor when allowed by the city's zoning ordinance. A one-story garage shall be no taller than one and one-half stories or 20 feet in height. A two-story garage shall be no taller than 30 feet in height.

(xiii) *Accessory structures.* Any other accessory structure is subject to the requirements of applicable zoning and site development regulations.

(xiv) *Dominant exterior materials.* Preferred dominant materials for residential structures shall be brick, stone, cementous lap siding or stucco. Concrete masonry units shall not be used as an exterior material on residential buildings.

(xv) *Garage and accessory building materials.* All garages and permanent accessory structures shall be constructed of the same materials as the residential structure. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.6. R-6. MULTIFAMILY MID-RISE RESIDENCE.

(1) *Purpose.* The intent for mid-rise, multifamily residences is to:

- (a) Provide high density residential living;
- (b) Ensure location and design standards compatible with surrounding property;
- (c) Make efficient, economical, comfortable, and convenient use of land and open space; and
- (d) Serve the public purposes of increasing density.

(2) *Site requirements.*

(a) All parking lots, stalls, carports or garage entrances for mid-rise, multifamily units shall be accessed from the rear of the property, by alleys or an internal drive aisle. Insofar as practicable, exterior off-street parking facilities shall be grouped in bays at the interior of blocks. No off-street parking space shall be more than 200 feet by the most direct pedestrian route from a door of the dwelling unit it is intended to serve.

(b) In mid-rise, multifamily developments with a total area greater than five acres at least 15% of the total area shall be devoted to public or common open space, exclusive of parking areas or accessory buildings. Common open areas may include recreational facilities. Provisions shall be made to assure that common open areas for the use and enjoyment of occupants are maintained in a satisfactory manner without expense to the general taxpayer. In addition, the developer or homeowners association created by the developer by recorded covenants and restrictions, shall preserve for the owners and occupants of the development lands set aside for open areas, parks, or recreational use, and the common off-street parking spaces established for the development.

(c) Not more than 40% of the site area may be occupied by buildings or structures including accessory buildings.

(d) *Design requirements.*

(i) *Street “presence” for townhouses and mid-rise housing.* The site plan configuration for a development parcel shall create a strongly defined street presence. All residential structures shall front the street. Mid-rise units shall have an entrance canopy and other architectural elements that engage the pedestrian environment.

(ii) *Slight variations permitted.* Residential structures shall engage the street, providing the massing and building form that helps define the block, but variations on setbacks shall be allowed among the townhouses and mid-rise residential units. These slight variations help to reduce the scale of multiple unit development, provide visual interest, provide a sense of entry and transition from the street and allow landscaping.

(iii) *No blank walls.* For mid-rise residential, site plan configurations and building designs shall not create walls that are predominantly blank and unadorned along public streets.

(iv) *De-emphasize in front yard.* Garages and parking areas shall not be emphasized along street frontage. Attached or detached garages in the rear yard with access to mid-block streets or private shared driveways along the rear of the property are preferred.

(v) *Rear parking for multifamily dwellings.* For multifamily dwellings, parking areas shall be behind the dwellings. Such garages and parking areas may only be accessed via drives located in the rear yard leading from mid-block streets or private shared driveways along the rear of the property.

(vi) *Dormer windows.* Dormer windows are allowed on roofs.

(vii) *Dominant exterior materials.* Preferred dominant materials for residential structures shall be brick, stone, cementous lap siding or stucco. Concrete masonry units shall not be used as an exterior material on residential buildings.

(viii) *Garage and accessory building materials.* All garages and permanent accessory structures shall be constructed of the same materials as the residential structure.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.7. O-1. LOW-RISE OFFICE.

Purpose. The O-1 district is intended to provide office or compatible uses in a low-rise environment. Where retail or office businesses exist that provide services to the general public, any display or sale of merchandise on the premises must be incidental to the services being provided.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.8. O-2. HIGH-RISE OFFICE.

Purpose. The O-2 district is intended to provide office or compatible uses in a high-rise configuration. Where retail or office businesses exist that provide services to the general public, any display or sale of merchandise on the premises must be incidental to the services being provided.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.9. C-1. LOCAL RETAIL.

Purpose. The C-1 district is intended to provide office, business and professional services, and light retail and commercial uses to serve adjacent neighborhoods. The uses found in the local retail district are generally clustered at major intersections of collector streets near the perimeters of residential neighborhoods.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.10. C-2. GENERAL RETAIL.

Purpose. The C-2 district is intended to provide areas for a broad range of office and retail uses. This district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate high traffic volumes generated by general retail uses.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.11. MXD. MIXED-USE DISTRICT.

Purpose. The MXD district is intended to create a streetscape and development character that exhibits distinctive pedestrian-oriented development and uses.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.12. M-1. LIGHT INDUSTRY/MANUFACTURING.

Purpose. The M-1 district is intended to provide light industrial or manufacturing uses in a low-rise configuration.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.13. M-2. COMMERCIAL OR INDUSTRIAL SERVICES.

Purpose. The M-2 district is intended to provide commercial or light industrial uses in a low-rise configuration that are “service-oriented.”

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.1.14. M-3. ACCESSORY BUILDINGS OR ANTENNAE.

(1) *Purpose.* The M-3 district is intended to provide towers, antennae, or industrial accessory buildings necessary to serve the community. It is intended that the impact on the surrounding community by these uses have minimal visual, aesthetic, or environmental.

(2) *Height and area requirements.*

(a) Accessory buildings shall be a maximum of twenty feet in height, unless otherwise permitted by the City Council.

(b) Accessory building setbacks shall be a minimum of 25 feet from all property lines.

(c) Towers or antennae shall be a maximum of 75 feet in height as measured from natural grade to the top of the facility.

(d) Towers or antennae shall be separated from the nearest residential district by a minimum of three feet per one foot of facility height. No such facility shall be located closer than 750 feet to another telecommunications facility. These separation distances are applicable irrespective of city boundaries.

(3) *Building and site signage.*

(a) No portable, temporary or moving signs shall be permitted.

(b) Address numerals shall be affixed to a fence or on the main entrance door to the accessory building and shall be clearly visible from the street.

(c) All signs shall:

(i) Be wall signs;

(ii) Not be internally illuminated; no flashing, blinking, or moving signs are allowed;

(iii) Conform to the standards prescribed in Article 8, Design Standard, as applicable;

(iv) Not exceed 20 square feet of face area when viewed from any direction.

(d) Bench signs shall not be permitted.

(e) Pole signs shall not be permitted.

(f) Each freestanding address, as determined by certificate of occupancy, shall be entitled to one sign.

(g) No sign shall be permitted that is used to advertise or identify a business located on a different property from the sign.

(h) Temporary signs are exempt from this article, and they are defined and regulated by § 130.05, City of Balcones Heights, Code of Ordinances.

(i) Real estate signs relating to the sale, lease or rent of property shall be allowed, provided that they are properly secured.

(4) *Performance standards and operational requirements.*

(a) No smoke, radiation, vibration or concussion, heat or glare shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or injurious to humans or property shall be produced.

(b) Towers shall be painted a neutral color to reduce visual obtrusiveness or shall possess architectural characteristics and building materials that are compatible with surrounding buildings.

(c) The design of the entire facility shall incorporate materials, colors, textures, screening and landscape necessary to blend the facility with the surrounding buildings.

(d) *Lighting.* No exterior lighting shall be allowed, except as required by the FAA.

(e) *Maintenance.* The owner of the facility shall be responsible to maintain the facility for function, safety and aesthetics.

(f) *Permits.* No commercial telecommunications facility shall be constructed, refurbished, repaired or installed without a permit from the city.

(g) *Removal.* If the facility has not been in continuous operation for a period of twelve consecutive months, or if a code violation exists which has not been corrected within 30 days after notice by the city, the owner of the facility shall remove the facility within 90 days of receipt of notice from the city notifying the owner of the non-operation or code violation. Failure by the owner to remove the facility within the 90 days shall be grounds for removal by the city. In either case, the owner shall be liable for all costs associated with removal.

(5) *Site requirements.*

(a) *Walls.*

(i) *Materials.* A six-foot high, solid masonry wall shall be constructed around the facility.

(ii) *Permit required.* No wall shall be erected within the city unless the person erecting the fence first obtains a permit following approval by the City Council. The permit shall specify the approved height, length, material or materials, style and location of the fence. Property pins and boundary lines shall be located to avoid encroachment.

(iii) *Dimensions.* Except as required by the city, no fence hereafter erected within the city shall exceed six feet in height along a side or rear property line without approval by the City Council. Maintenance of fences shall be the responsibility of the property owner. Failure to maintain shall constitute a public nuisance. No residential fence may be constructed closer to the front property line than the front line of the main building on the lot, or the front line of the main building on the abutting lot.

(b) *Buffer.* Installation and maintenance of a suitable buffer shall be required where an M-3 zone or use abuts any residential zone or use. The installation and maintenance of the buffer shall be the responsibility of the owner of the M-3 zoned property, or his or her lessee, agent or representative. See Article 7, Buffering, Landscaping, and Tree Preservation Regulations.

(6) *Landscaping.* See Article 7, Buffering, Landscaping, and Tree Preservation Regulations, for general requirements. Specific zone requirements are as follows:

(a) Tall trees, shrubs, and other landscape materials must be incorporated to screen or obscure undesirable views to towers, antennae or accessory buildings from the surrounding community.

(b) The city may require trees to be planted in adjacent public property or rights-of-way for the purposes of visual screening.

(7) *Off-street parking.* Off-street parking shall be defined by the vehicles required to staff or service the facility at the maximum occupancy shift and the maximum number of vehicles required for service during a maximum service occurrence. The applicant shall submit a mandatory site plan at the time of application, showing the location of required parking, as well as documentation from a registered engineer in the State of Texas, showing the parking demand rationale.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.2. ZONING DISTRICT BOUNDARIES; OFFICIAL MAP.

The boundaries of the zoning districts provided in this Article 3 are shown on official zoning maps filed in the City Secretary's office. The zoning maps and all notations and references are incorporated herein by reference as part of this article as if they were fully copied and set forth at length. It shall be the duty of the City Administrator to update the official map by entering on such map any changes which the City Council may from time to time order by amendment to the zoning chapter and map. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.3. INTERPRETATION OF ZONING DISTRICT BOUNDARIES.**§ 3.3.1. DISTRICT BOUNDARY MEASUREMENTS.**

When definite measurements in feet are not shown on the zoning map, the district boundaries of the zoning area are intended to be along (or an extension of or from) the existing street or property lines. When the location of a district boundary line is not otherwise designated, it shall be determined by the scale of the maps measured from a given line or by the property lines defined in the plat, as applicable. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.3.2. STREET LAYOUT DISCREPANCIES.

Where the actual street layout varies from the zoning map, the Planning and Zoning Commission may apply the designations shown on the mapped streets in such a manner so as to implement the intended zoning plan for the area in question. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.4. BUILDING HEIGHT AND SETBACK REGULATIONS.**§ 3.4.1. GENERALLY.**

No building permit shall be issued unless the proposed development conforms to the building height and setback regulations prescribed within the applicable zoning district. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.4.2. TABULAR FORM.

The design regulations for each district are included in Table 3.4 -1 below.

[Table 3.4-1 begins on next page]

Table 3.4-1

Lot and Building Dimensions Table								
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Zoning District	Height/Stories (max)	Height (min)	Front Setback (min)	Front Setback (max)	Side Setback (min)	Rear Setback (min)	Lot Size (min)	Building Size (min)
R-1	35/2.5	-	30	-	10	25	10,000	1,200
R-2	35/2.5	-	30	-	10	25	13,000	-
R-3	35/2.5	-	30	-	10	25	17,000	-
R-4	45	-	30	-	10	25	17,000	-
R-6	120	-	20	-	20	-	1,000 per unit	-
O-1	35	-	20	-	20	25	-	-
O-2	300	-	20	-	20	30	-	-
C-1	35	-	20	-	10	25	-	-
C-2	35	-	20	-	10 ¹	25	-	-
M-1	35	-	20	-	10 ¹	25	-	-
M-2	35	-	20	-	10 ¹	25	-	-
Rules for Interpretation of Table 3.4.-1								
Generally. The requirements for the parameters set forth in columns (B) through (I), above, relate to the zoning district specified in the row under column (A), above. A dash (-) indicates that the requirement does not apply within the particular zoning district. Except for columns (H) and (I) or otherwise notated, the dimensions specified in columns (B) through (I) are expressed in linear feet. The dimensions specified in columns (H) and (I) are expressed in square feet unless otherwise provided.								
See section 3.1 of this article for standards applicable to the "R-5" Townhouse Residences District, MXD Mixed-Use District, and M-3 Accessory Buildings or Antennae District.								
Note (1) - Where a light industrial/manufacturing or retail use in a "C-2", "M-1" or "M-2" district abuts a residential use, the side yard shall be 20 feet from the side property line.								

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.5. USE REGULATIONS.

§ 3.5.1. GENERALLY.

No use shall be permitted pursuant to this chapter, and no development permit authorizing a use may be authorized, issued, or approved by any officer, official, or agency, unless said use is listed as a

permitted or specific use permit (SUP) in this section and all applicable permits and approvals have been issued by the agency or official with final decision making authority. Those uses permitted as primary uses or buildings within each zoning district shall be those uses listed in the Use Matrix (Table 3.5.-1 herein). (Permitted accessory uses are set forth in this chapter.) Only one primary use may be located on any residential lot, property and/or premises. Only one primary use may be located on any non-residential lot, property and/or premises unless the improvements on the lots are classed as multi-use tenants including strip centers, shopping malls, and multi-storied office buildings. A primary or principal use must be established on a property prior to an accessory use being established on the subject property.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.5.2. USES NOT PERMITTED UNLESS SPECIFICALLY ENUMERATED.

No building permit shall be issued for a use not specifically mentioned or described by category in the Use Matrix. It is the intent of this article to group similar or compatible land uses into specific zoning districts, either as permitted uses or as uses authorized by a specific use permit. Uses not listed as a permitted or specific use permit shall be presumed to be prohibited from the applicable zoning district.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.5.3. USES PREEMPTED BY STATE STATUTE.

Notwithstanding any provision of this section to the contrary, uses which are required to be permitted in any zoning district by state statute may be permitted in accordance with state law whether or not the use is included in the Use Matrix.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.5.4. USES NOT MENTIONED.

(1) In the event that a particular use is not listed in the Use Matrix, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the City Administrator shall determine whether a materially similar use exists in this section.

(2) *Interpretation - materially similar uses.* The City Administrator shall make a determination if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described.

(a) The City Administrator shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts and determine the zoning district or districts within which such use is most similar and should be permitted. The City Administrator may consider the following to determine compatibility:

(i) The nature of the use and whether the use involves dwelling activity, sales, services, or processing;

(ii) The type of product sold or produced under the use;

(iii) Whether the use has enclosed or open storage and the amount and nature of the storage;

(iv) Anticipated employment for the use;

(v) Transportation requirements, including approximate mileage, turning radius, or driving time of the expected client or patron base;

- (vi) The nature and time of occupancy and operation of the premises;
- (vii) The off-street parking and loading requirements;
- (viii) The amount of noise, odor, fumes, dust, toxic materials and vibration likely to be generated;
- (ix) The requirements for public utilities such as sanitary sewer and water and any special public services that may be required;
- (x) Impervious surface coverage or anticipated size of building.

(b) The nature of the use and Interpretations may be ratified by the City Council upon recommendation by the Planning and Zoning Commission at a regularly scheduled meeting. Should the City Administrator determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed and the City Administrator's decision shall be recorded in writing. Should the City Administrator determine that a materially similar use does not exist, the matter may be referred to the Planning and Zoning Commission for consideration for amendment to this chapter to establish a specific listing for the use in question. Unless an appeal is timely filed pursuant to § 2.2.1.(4) of this chapter, a decision of the City Administrator pursuant to this section is deemed to be valid. If, when seeking periodic ratification of interpretations, the City Administrator's interpretation is reversed, then decisions made in reliance on the City Administrator's interpretation shall be deemed to be nonconforming uses.

(3) *Other regulations.* Applicants for development permits must comply with this article as well as all other code requirements, including without limitation, the following articles of this code:

- (a) Article 4: Design and Form Standards.
- (b) Article 5: Special Districts, Uses and Conditions.
- (c) Article 6: Vehicle Parking and Loading Requirements.
- (d) Article 7: Buffering, Landscaping and Tree Preservation.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 3.5.5. PERMITTED USES.

(1) *Generally.* No use shall be permitted pursuant to this chapter, and no development permit authorizing a use may be authorized, issued, or approved by any officer, official, or agency, unless said use is listed as a permitted or specific use permit (SUP) in this section and all applicable permits and approvals have been issued by the agency or official with final decision making authority.

(2) *Use categories and specific uses.* The use categories listed in the first column of Table 3.5.-1 are defined in this Code.

P Indicates that the listed use is permitted by right within the zoning district. Permitted uses are subject to all other applicable standards of this code. Additional development standards may be applicable (see supplemental use regulations, herein).

S Indicates that the listed use is permitted within the respective zoning district only after review and approval of a special use permit, in accordance with this code. Specific use permits are subject to all other applicable standards of this code and those requirements that may reasonably be imposed by the city.



Indicates that the listed use is not allowed within the respective zoning district, unless it is otherwise expressly authorized by other regulations of this code.

Table 3.5.-1 Use Matrix

Permitted Uses	R-1	R-2	R-3	R-4	R-5	R-6	O-1	O-2	C-1	C-2	MXD	M-1	M-2	M-3
Residential														
Single Family Residence	P	P			P		S		S		P			
Townhouse Residence				P	P		S				P			
Duplex Residence		P			P		S		S		P			
Multifamily Residence (3 or 4 units)			P	P		S					P			
Multifamily Residence (5 or more units)				P		P					P			
Assisted Living Facility				P		P					P			
Assisted Living - Skilled Nursing Facility				P		P					P			
Community Home	P	P	P	P	P	P								
Non-Residential														
Adult Day Care	S				S						P			
Animal Care Services									P	P	P	P		
Animal Care Services, with outdoor runs.										S		P	P	
Antennae Towers														P
Antique Shop									S	S	S			S
Bar - Indoor (Tavern)														
**No outdoor sound systems or live music allowed without a special use permit.									S	P	P		P	
Bar - Outdoor														
**Outdoor sound systems or live music allowed.									S	S	S		S	
Bar - Night Club										S	S			
Child Care-Daycare Center									P	P	S			
Child Care-Licensed Day Care Home	S				S									
Child Care-Registered Child Care	S				S									
Church, Temple or Mosque (facilities that are for worship or study of religion)							P		P	P	P			
Community, Social Uses - Indoor							S		P	P	P			

Permitted Uses	R-1	R-2	R-3	R-4	R-5	R-6	O-1	O-2	C-1	C-2	MXD	M-1	M-2	M-3
Non-Residential (Cont'd)														
Community, Social Uses - Outdoor	S					S					P			
Consignment Shops									S	S	S			
Entertainment and Recreation Venue									S	P	P		P	
Entertainment and Recreation Venue, Outdoor Facilities									S	S	S	P	P	
Financial Services - Banks							P	P	P	P	P			
Financial Services - Check Cashing Facility									S	S	S			
Financial Services - Pay-Day Loan									S	S				
Financial Services - Personal Loan									S	S	S			
Food Service Establishment									P	P	P	P	P	
Food Service Establishment, with outdoor amplified sound system or live music									S	S	S	S	S	
Food Service Establishment - Food Preparation (Catering Facility)									S	S	S		P	
Junk Yard (also Salvage Yard)												S		
Lodging - Bed and Breakfast	S	S			S		S		S		S			
Lodging - Dormitory							S	S	S	S	S	S	S	
Lodging - Full Service Hotel										P	P		P	
Lodging - Limited Service Hotel (Motel)							S	S	S	S	S	S	S	
Manufacturing - Light												P	P	
Manufacturing - Heavy												S	S	
Manufacturing - High Impact												S		
Medical - Clinic, with services less than 12 consecutive hours per day							P	P	P	P	P			
Medical - Clinic, with late night services							S	S	S	P	P			
Medical - Hospitals							S	S	S	S	S	S	S	
Mortuary or Funeral Homes										S	S	P	P	
Motor Vehicle - Commercial Parking Lot							S	S	S	S	S	S	S	
Motor Vehicle - Commercial Parking Structure						S	P	P			P			
Motor Vehicle - Service and Repair									S	P	S	P	P	
Office-General							P	P	P	P	P			

Permitted Uses	R-1	R-2	R-3	R-4	R-5	R-6	O-1	O-2	C-1	C-2	MXD	M-1	M-2	M-3
Non-Residential (Cont'd)														
Personal Services							S	S	P	P	P			
Personal Services - Tattoo Parlor									P	P	S			
Personal Services - Repair Shops							S	S	P	P		P	P	
Processing - Clothes Cleaning												P	P	
Repair Shops									P	P		P	P	
Retail Trade, with no outdoor display or sales							S	S	P	P	P			
Retail Trade, with outdoor display or sales									S	P				
Retail - Convenience Store									P	P	P	P	P	
Retail - Clothes Cleaners, Dry Cleaner									P	P	P			
Retail - Clothes Cleaners, Laundromat									P	P	P	P	P	
Retail - Craft Store									S	P	S			
Retail - Flea Market										S			S	
Retail - Grocery Store									S	P	P			
Retail - Head Shop									S	S	S			
Retail - Pawn Shop									S	S				
School - Business or commercial trade							P	P	P	P	S			
School - Private K-12				S		S	P	P			S			
School - Private University							P	P			S			
School - Public K-12 and college	P	P	P	P	P	P	P	P	P	P	P	P	P	
School - Vocational (technical, construction or industrial trades)												P	P	
Storage - Outdoor												S	S	
Storage - Personal (Mini Storage)													P	
Transit transfer center (public operated system)								S			P			
Warehouse												P	P	
Wholesale Trade, with no outdoor sales or display							S	S				P	P	
Wholesale Trade, with outdoor sales or display												P	P	

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

ARTICLE 4
DESIGN AND FORM STANDARDS

- 4.1. Open space standards and regulations
- 4.2. Mixed-use district (MXD) development standards and regulations
- 4.3. Commercial renovation standards and regulations
- 4.4. Reserved
- 4.5. Signage standards and regulations
- 4.6. Nonconforming signage
- Table 4a: Wall (or Facade) Signs
- Table 4b: Freestanding Signs

§ 4.1. OPEN SPACE STANDARDS AND REGULATIONS.

(1) *Purpose.* This section provides site design standards for key elements that are part of most development sites: open space; screening, lighting; streetscape; site access and internal circulation; and stormwater management. The standards are intended to contribute to the ability of development sites to integrate into the city's overall plan. The standards and guidelines in this article shall be applied in every zoning district and to every site design to the extent that the component is required by any development regulation or is otherwise proposed as part of the site plan or development. These design standards should be applied in addition to any specific area or design standards contained in other sections for a particular zoning district.

(2) *Application.* The requirements of this article are applicable in zone R-4, R-5, R-6, O-1, O-2, C-1, C-2, and MXD. In zoning districts where specific setbacks are specified, any applicable frontage type within that range shall be used. The requirements of § 4.5 are also applicable to zones R-1, R-2, and R-3. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

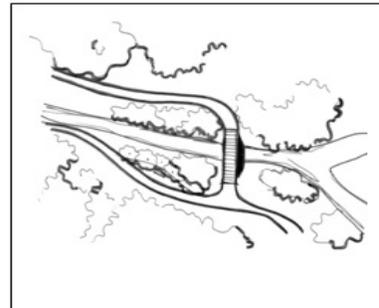
§ 4.1.1. INTENT.

The open space design standards are intended to provide design solutions that ensure each area of open space in the city serves a specific function and is not merely "left over" or under-utilized space. The design standards are also intended to provide greater access to a wider variety of open spaces. These design standards are to be applied to any area used to meet specific area requirements of the zoning districts and subdivision regulations for open space or green space. They are design and form-oriented; as such, they support Article 7, Buffering, Landscaping, and Tree Preservation of this code. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

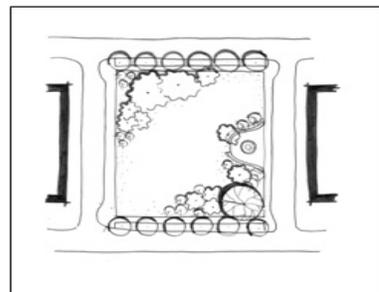
§ 4.1.2. TYPES OF OPEN SPACE.

The following indicates the categories, types, and general sizes of open space that can be used to meet the city requirements for open space and green space. Generally there are two kinds - natural and civic. Natural open space, because the city is already built out, is most appropriate along streams in Balcones Heights. It can also be used at any location where significant natural features warrant preservation. Civic open space is most appropriate in more easily accessed locations. Typically this will be at the center of a residential neighborhood or in a commercial center.

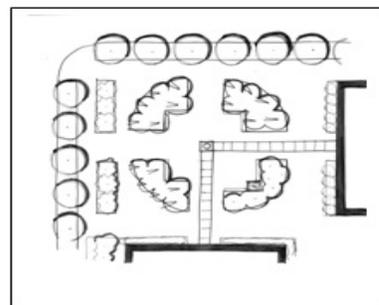
(1) *Trail/greenway (natural open space)*. An undeveloped area of continuous linear natural features, often following a stream or floodplain. A trail or greenway should be usable for recreation and non-motorized transportation. It includes few constructed improvements except for those to enhance travel or recreational use. A trail should be sized and located based on providing significant continuity throughout the City, connecting to individual developments and to the broader region. All trails shall be accessible for pedestrians and bicycles and shall utilize AASHTO design standards.



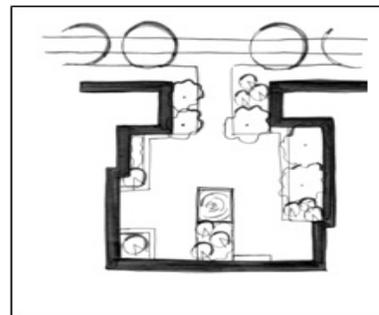
(2) *Public green (civic open space)*. An open space for unstructured recreation or aesthetic landscaping. A “green” is bordered by a public right-of-way, often fronting building façades, and containing formal landscaped elements to define its boundaries. Generally, there are few constructed elements, except for a formal entry to or a focal point for the green, such as a fountain or pavilion. Greens may be relatively small in size, such as a “village green” in a development project.



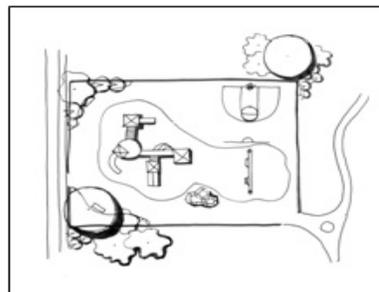
(3) *Plaza (civic open space)*. An open space for civic purposes and commercial activities. A plaza may be bordered by public rights-of-way or may be centered within a development project. A plaza’s edges are defined by building façades and streets. It is largely constructed of materials that withstand heavy pedestrian traffic, but may contain intermittent lawns, landscape beds, or trees in a formal pattern. The size of plazas is ideally influenced by the height of surrounding buildings, maintaining between a 1:3 and 1:6 ratio of building height to plaza. Plazas generally range between 1/8 to two acres.



(4) *Courtyard (civic open space)*. A small open space accessible to the public, but generally serving one or a few surrounding buildings. Courtyards are primarily bordered by building façades, but may have one side fully or partially boarded by a public right-of-way. Courtyards are often constructed of materials to withstand heavy pedestrian traffic, but contain intermittent formal landscape elements. The size of courtyards is ideally influenced by the height of surrounding buildings, maintaining a between a 2:1 and 1:3 ratio of building height to courtyard width. Courtyards generally range between 1,000 square feet to 1/8 acre.



(5) *Playground (civic open space)*. Open space designed and equipped for structured recreation. Playgrounds are often boarded by a fence or other private boundary (as in the case of a playground internal to a block), but are accessible by common pedestrian path or sidewalk. Alternatively, playgrounds are included as part of a larger civic or natural open space and do not necessarily have borders. Playgrounds may occupy as little as 500 square feet up to an acre or more.



(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.1.3. SCREENING, LIGHTING AND LANDSCAPE MATERIAL.

(1) *Intent.* The screening, lighting, and landscape material sections are intended to create a quality community image, minimize the impact of development on adjacent sites, allow property owners to create comfortable and appropriate private environments, and integrate all development into the overall community plan.

(2) *Screening.*

(a) When required by this article, all mechanical or operating equipment, materials, or activities not contained within a building, such as drive-through equipment, outdoor storage of materials, stationary machinery, and outdoor servicing activities located in a street yard, shall be enclosed or screened by a wall or fence of solid appearance in sufficient height for this purpose. Such walls or fences may be enhanced with the planting of shrubs.

(b) When required by this article or other ordinances screening of a specified operations (e.g., operating equipment) shall be a wall or fence of solid appearance or tight hedge, with greenery year around, not less than six feet in height at maturity.

(3) *Lighting.*

(a) Parking lots with 50 or fewer spaces and open areas requiring lighting for general purposes shall have light poles that do not exceed 20 feet overall height. Parking lots having more than 50 spaces shall have light poles that do not exceed 40 feet overall height. Luminaries of a sharp cut-off design are required to shield light source above 72 degrees from vertical and providing 1.0 average maintained foot-candles with the following uniformity ratios:

(i) 3:1 average/minimum * (.33 FC minimum);

(ii) 12:1 maximum/minimum * (4.0 FC maximum) are required in all cases.

* maximum or minimum foot-candle level at any point lighted area.

(b) Facilities for community, social uses-outdoor, such as lighted ball fields are excluded.

(c) A photometric grid shall be furnished by developer at time of building permit application.

(4) *Landscape materials.* All undeveloped yards and open spaces required by this appendix, and all natural screening material, shall be planted according to the specifications in Article 7, Buffering, Landscaping, and Tree Preservation.

(5) *Fencing.* Fences are permitted in all zoning districts. A building permit shall be obtained prior to construction of any fence. Fences shall be subject to the standards established in Article 7, Buffering, Landscaping, and Tree Preservation.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.1.4. STREETSCAPE.

(1) *Intent.* Streetscape refers to the area between building façades on opposite sides of the street. It consists of public rights-of-way and private but publicly visible outdoor spaces. The streetscape site design standards are intended to create a smooth transition from the public realm to the private realm, provide a pleasant pedestrian experience, improve the appearance and function of the public rights-of-way, and reinforce and enhance the perception of the City as a unique and livable community.

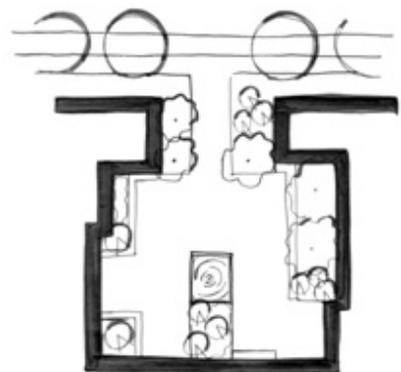
(2) *Frontage types.* The following indicates frontage types that make up the private portion of the streetscape.

(a) *Yard.* *Setbacks vary according to zoning district.* A yard frontage is located within the building set back depth as measured from the right-of-way line. The yard area is most appropriately used for landscape materials, natural vegetation, or focal points such as art or sculptures. The yard frontage is most appropriate in mixed-use or residential neighborhoods, for residential uses along arterial streets, where a buffer is desired, and for civic land uses in any setting. Civic/public uses with a yard frontage shall have no maximum depth for the front building line.

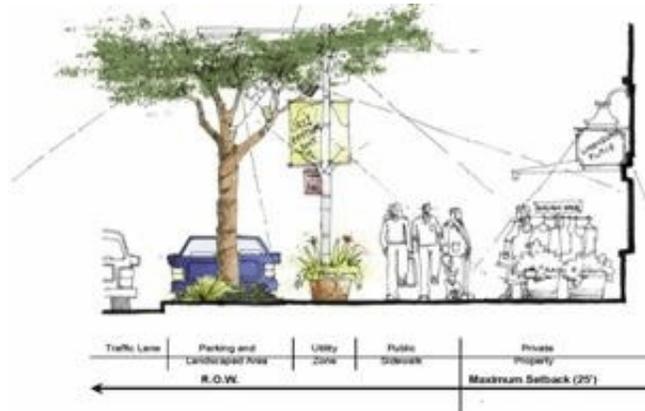


(b) *Stoop.* A stoop frontage is within the building setback close to the right-of-way line, but with the first floor slightly elevated (typically three to five feet) to ensure privacy to occupants of the building. Typically, the closer the building line is to the right-of-way, the higher the elevation of the first floor. The setback area is most appropriately used with an ornamental stair and entranceway to the buildings, potentially with a small usable space or porch at the top. The remaining portion of the setback area can include a small area of landscape material. The stoop frontage is most appropriate for townhomes, higher-density residential blocks, or residential buildings mixed on blocks with non-residential buildings.

(c) *Courtyard.* Buildings on front yards shall conform to each zoning district's front yard setback. A frontage with a portion of the building close to the right-of-way line, while the remaining portion is setback from the right-of-way line, providing a pocket of open area in the courtyard. The courtyard area is most appropriately used for landscape material or constructed patios for pedestrian traffic. The courtyard frontage is most appropriate on higher-density residential blocks or for businesses that can utilize formal outdoor space. A portion of a courtyard building, typically more than 50% of the front façade, should be built at or near the right-of-way line.



(d) *Street-front.* A street frontage is limited to the set back from the right-of-way line. The ground level of the building predominantly has transparent glass and is appropriate to uses serving the public, thus providing varied and interesting environment to pedestrians. Any setback area is typically designed seamlessly with the right-of-way, with expanded sidewalks, with landscape beds, with street-front seating, or with a covered walkway (awning or canopy). The street-front is most appropriate for non-residential uses in pedestrian-oriented areas.



(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.1.5. SITE ACCESS AND INTERNAL CIRCULATION.

(1) *Intent.* Site access and internal circulation standards are intended to balance the need for site-access by vehicles with pedestrian movements. Design elements are intended to create a smooth transition from the public rights-of-way to the private property, and to improve the appearance and function of the public rights-of-way for all users, including pedestrians, bicycles, and automobiles.

(2) *Curb cuts.* Curb cuts for property not being subdivided shall be allowed according to the same Lot Access standards established in the Balcones Heights' Subdivision Regulations. When the development process requires access standards different from those standards, either from § 4.2 of this article, requirements specified in a traffic study or by variance, the varying standards shall be applied.

(3) *Internal driveways, aisles, and driveway lanes.* All driveways shall be set back a minimum distance of three feet from the side lot line, except where shared access driveways are permitted. To the extent practical, all internal driveway aisles should be designed and dimensioned as closely as possible to the public street standards specified in city ordinances, including sidewalks, planting strips, and parking lanes.

(4) *Clear sight lines.* Clear sight lines shall be maintained for all lot access points and internal circulation intersections in accordance with the standards for public street intersections specified in the city ordinances.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.1.6 STORMWATER MANAGEMENT.

(1) *Intent.* The intent of this section is to provide for stormwater management in site design. The primary management strategy should be infiltration of all runoff created by development through natural systems and constructed natural systems, to the extent practical. Should infiltration not address stormwater management for the site adequately, retention and/or detention of run-off will be required. This section also seeks to incorporate any stormwater management system into the design of the site as a natural or aesthetic amenity.

(2) *General requirements.* All site plans shall be designed with surface drainage provisions in accordance with state law, the Balcones Heights subdivision regulations, construction, building, or grading permits, and any other city ordinance regarding the effects of stormwater.

(3) *Design standards.* Storm water detention ponds/areas shall be screened from direct view from all abutting properties by installation and maintenance of living plants at least 36 inches in height at time of planting, and achieve a height of not less than six feet in three years after planting. Outer slopes of detention ponds shall not be steeper than four feet horizontal to one foot vertical. Where water depth and time of detention is sufficient to require safety fencing, such fencing shall be installed behind required screening, on the pond side.

(4) *Alternative designs.*

(a) *Waiver conditions.* Standards of this appendix and any standard of this appendix that relates to the City of Balcones Heights' subdivision regulations may be waived to accommodate an alternative stormwater design system provided that:

(i) The alternative stormwater design provides for an infiltration system that incorporates at least 80% of the runoff from impervious surfaces into the groundwater on the site and results in an overall reduction in impacts on streams in the watershed;

(ii) The alternative stormwater design addresses stormwater on an area-wide or watershed basis, making stormwater management on individual lots or within the site unnecessary;

(iii) Natural elements on the site are incorporated into a natural storm drainage infrastructure, minimizing or eliminating the need for detention ponds and other constructed storm drainage. Constructed elements of the natural drainage system shall be limited to artificial wetlands, bio-filters, and dry swales. To the extent that it does not damage the function of the natural drainage system, natural elements should serve additional community purposes such as trails or greenways, parks or aesthetic screens;

(iv) Any waiver of standard to accommodate the alternative stormwater design proposes an equal or better alternative for meeting the intent of the waived standard;

(v) The alternative stormwater design is accompanied by a plan, produced by a registered engineer, testifying to its accuracy and sustainability;

(vi) The alternative stormwater design plan include provisions for long-term maintenance and operation of the alternative design, including easements, covenants, restrictions and an acceptable legal entity to oversee long-term maintenance; and

(vii) The alternative stormwater design plan shall accompany a site plan for the entire development.

(b) *Waiver approval procedures.* The plan and any waivers to the standards of this appendix shall be approved according to the procedures and standards for the site plan.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2. MIXED-USE DISTRICT (MXD) DEVELOPMENT STANDARDS AND REGULATIONS.

Intent. The mixed-use district (MXD) development guidelines are intended to create a character that exhibits a distinctive pedestrian-oriented development, with pedestrian-oriented uses, such as retail or similar uses on the ground floor, and supportive uses, such as office or residential uses on upper floors.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2.1. APPLICABILITY.

The requirements under this section shall apply to all development located within the MXD zoning district, subject to this article.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2.2. BUILDING PLACEMENT IN MXD DISTRICTS.

(1) *New buildings.* Within the MXD District, new buildings and the renovation of buildings under chapter 4.3 of this article shall be constructed to a specified setback (or “build-to” line) from all public streets or sidewalks as defined in this appendix. Slight variations in the setback may be allowed at building or business entrances.

(a) *Required setbacks.*

(i) *Intersection areas within MXD District.* Subject to fire access requirements prescribed by other city ordinances, buildings located on property within the MXD district and within 400 linear feet of the center of a signalized intersection within the city limits, shall be constructed to a maximum 25 feet setback (or “build-to” line) from the front property line. There shall be no maximum setback from side property lines, but a minimum rear property setback of 25 feet shall be required.

(ii) *Non-intersection areas within MXD District.* Buildings located on property not located within an intersection area above shall have a maximum setback of 62 feet (“build-to line”) from the front property line. There shall be no maximum setback from side property lines, but a minimum rear property setback of 25 feet shall be required.

(b) *Enclosing walls at courtyards.* In the case of outdoor public spaces, cafes or courtyards in front of, or on the side of buildings, the “build to” requirement may be met by including an appropriate wall or fence at the lot line.

(i) Subject to the requirements of § 4.1.5 regarding clear site lines, the wall or fence shall be continuous, except for the pedestrian entrance, which shall not be less than five feet in width. In no case shall the pedestrian entrance exceed more than 20% of the linear footage of the front lot line.

(ii) The wall or fence may be transparent, such as metal ornamental fencing, a masonry wall, or a combination of a masonry wall topped with metal fencing.

(iii) The wall or fence shall not be over four feet high.

(iv) A wall or fence used to meet the “build to” requirement shall include architectural features in the design that reflect the architectural theme of the building.

(v) Wood, concrete masonry units and chain link fences are not permitted.

(vi) An optional landscape element may be incorporated into the design of the wall or fence for aesthetic purposes.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

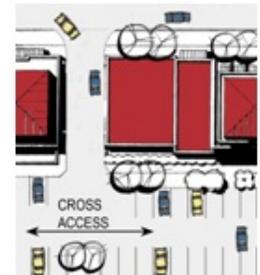
§ 4.2.3. PARKING AND SERVICES IN MXD DISTRICTS.

(1) *Parking behind building.* Off-street parking areas subject to this section shall be behind the building if technically feasible.

(2) *Rear services.* Services and deliveries shall utilize secondary or rear entrances to the building whenever possible.

(3) *Cross-access.* To the extent commercially reasonable and in the case of common ownership, rear parking areas shall have shared cross-access lanes or alleys between adjacent properties.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)



§ 4.2.4. SITE ACCESS IN MXD DISTRICTS.

(1) *Pedestrian sidewalks.* Public pedestrian sidewalks on or adjacent to property subject to this section shall have a minimum width of seven feet. At all times a minimum of seven feet of unobstructed pedestrian access shall be maintained for all pedestrian walks in MXD Districts. Americans with Disabilities Act standards shall be met at all times.

(2) *Additional setback.* An eight-foot wide zone shall be provided from the inside edge of the public sidewalk (and/or property line) as the setback or “build-to” line in intersection areas, under § 4.2.2(1) (A). This zone may be used at the property owner’s discretion, subject to city ordinances, for seasonal or promotional activities and amenities, such as outdoor seating and eating areas, sidewalk sales, bicycle racks, or landscape enhancements. At the property owner’s discretion this zone may also have well-maintained permanent landscape treatment, subject to the requirements of this article and other applicable city ordinances.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2.5. STREETScape AND LANDSCAPE IN MXD DISTRICTS.

In addition to landscape requirements in Article 7, Buffering, Landscaping, and Tree Preservation, this section provides guidelines for private streetscape and landscape design in mixed-use areas.

(1) *Consistency.* Private landscaping elements shall be consistent with public streetscape plants and materials required for MXD Districts.

(2) *Portable planters.* Seasonal amenities such as portable planters, street trees or other landscaping are permitted and encouraged as long as pedestrian movement is not hindered.

(3) *Perimeter parking landscape.* Any off-street parking area that directly abuts a pedestrian walkway shall incorporate landscape features along the perimeter of the parking lot. A minimum five-foot landscape area shall be maintained between the public right-of-way and the off-street parking area. Landscaping shall include combinations of ground cover, seasonal color, trees, and ornamental fencing.

(4) *Parking lots along sidewalks.* Parking lots, when adjacent to pedestrian walk and sidewalks in the MXD district shall preserve the presence of the required setback or “build to” line by means of a wall, fencing and/or landscape element, subject to the requirements of § 4.1.5 regarding clear site lines.

(a) Subject to other code requirements, the wall, fence and/or landscape element shall be continuous, except for the pedestrian and vehicle entrance. The pedestrian and vehicle entrance shall not exceed more than 20% of the linear footage of the wall or fence line, except that a minimum five-foot pedestrian entrance and 12-foot vehicle entrance is required.

(b) The wall or fencing shall be transparent, such as wrought iron ornamental fencing with masonry pylons terminating the fencing at each end or corner of the parking area or a combination of masonry wall topped with wrought iron fencing. Landscape elements shall be of a sufficient density that prevents access by pedestrians.

(c) The wall or fencing shall include architectural features in the design that reflect the architectural theme of the adjacent building.

(d) The wall or fence shall not be over four feet high.

(e) Wood and chain link fences are not permitted.

(f) All off-street parking areas shall be required to provide internal landscaped islands according to the requirements of Article 7, Buffering, Landscaping, and Tree Preservation and city ordinances.



(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2.6. SCREENING IN MXD DISTRICTS.

(1) *Provide screening.* For buildings and property subject to this section, waste receptacles, dumpsters, and ground level mechanical equipment shall be screened from public view by walls, with an operable door or gate permitted for access.



(2) *Architectural compatibility.* Whether on-site or incorporated into the building, the required screening treatment is a solid wall enclosure compatible with the materials, colors and architectural style of the building. No wood fencing shall be allowed.

(3) *Landscaping.* Additional landscape screening around the enclosure is permitted when feasible. The required landscape buffer shall be irrigated and maintained to help plantings survive.



(4) *Rear location.* Screened areas shall be located to the rear or secondary side of the building in order to minimize visual impacts.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.2.7. BUILDINGS IN MXD DISTRICTS.

Intention.

(1) *Building scale.* The relative size or mass of a building in relation to adjacent buildings is one of the primary ways to achieve design continuity along the mixed-use corridors in Balcones Heights. Buildings of different scale should transition smoothly along a block whenever possible.



(2) *Building uses in MXD District.* In order to promote street level pedestrian activity in mixed-use areas:

(a) Ground floor areas along the street corridors shall be used only for retail, restaurants or offices and establishments that promote pedestrian traffic. Buildings that are 100% residential (e.g., multi-family) shall have visible lobby oriented to the street, subject to the requirements of this section;

(b) Upper floors of buildings may be used for (i) offices or residences; or (ii) as an upper level of retail or restaurants or offices that are related directly to the ground floor use.



(3) *Building materials.* A variety of building materials are appropriate for new development along the mixed-use corridors. The design of a new building shall have a dominant material on its façades, with secondary materials providing architectural accents.

(a) A single, dominant building wall material shall cover greater than 70% of all exterior building faces, exclusive of glazing.

(b) Secondary materials may be used only to accent the architectural character of the building.

(c) Wood, vinyl siding, unfinished concrete block are not permitted as the primary material on any exterior building face.

(4) *Architectural detailing.* Architectural detailing may be used to embellish a single dominant building material:

(a) Architectural detailing in the form of soldier or sailor courses, corbels, other decorative applications or materials, such as terra cotta, wood, or metal may be used to contribute scale and texture to a building façade.



Corbel

(b) A tower or a pediment at a building's cornice line may also be used to enhance the character or massing of a façade, providing its design contributes to a consistent architectural style for the building.



Pediment

(5) *Roofs.* Building roof provide protection from weather, but also can enhance or detract from the design image of the building and its surrounding area:

(a) Flat, arched, sloped or slightly sloped roofs (for drainage) may be used for primary building roofs along the mixed-use corridors.



(b) Parapets may be incorporated on any façade to provide screening for mechanical equipment or for aesthetic reasons.



(c) A variety of roof forms may be used in secondary conditions, such as a roof over an outdoor eating area or a building entrance canopy.

(6) *Awnings/canopies.* Canopies or awnings are prominent elements in an active street environment. They provide sun control, protect the store window, add color, and, in some instances, may be used for signage:

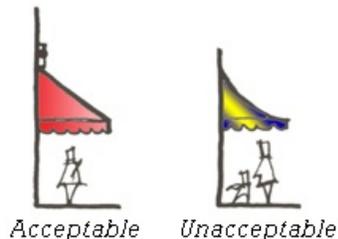
(a) Awnings, fixed or retractable, of opaque fabric, or solid metal material shall be on a securely mounted metal frame.

(b) Awnings shall be mounted above the pedestrian walk with their lowest point ranging from seven feet and six inches minimum to nine feet and zero inches maximum. Exceptions may be made for awnings above sloped sites or sidewalks.

(c) Awnings shall be the same color, pattern, and have the same mounting characteristics for a single business. Awnings on a single building shall have a consistent horizontal alignment across the front of the entire building, unless the slope of the pedestrian walk or ground requires a horizontal stagger.

(d) Permanent canopies or marquees may be used at the primary building entry, particularly at places of assembly or restaurants. To be approved, the design of canopies or marquees shall be consistent with the design theme of the building and the block.

(e) Awnings shall receive routine and proper maintenance so that they remain free of rips, holes, stains or fading at all times.



(7) *Enhanced entrances.* A front entrance shall be emphasized as a special and unique place on the building's front facade in order to draw pedestrian traffic into the buildings.

(a) Entrances may be recessed, slightly projected or enhanced through color, materials, or special paving treatment.



(b) Rear or secondary public entrances may be provided from rear parking areas and public access alleys.

(c) There shall be a secondary building or business sign at all rear entrances.

(d) Glazing, at or near the door, may be incorporated at rear entrances.

(8) **The Building Front.** Building front fenestration, the arrangement of doors and windows, helps communicate the nature of a building's use and character. All buildings subject to this Section shall comply with the following requirements:

(a) All buildings or businesses shall have a primary public entrance that faces a public street.

(b) The ground level of a storefront shall be "transparent" with a 50% clear glass minimum.

(c) Storefront displays shall be uncluttered and artistic. Storefront displays shall incorporate decorative accent lighting for nighttime use.

(d) Upper floors shall not have greater than 40% windows glazing.

(e) Glass on upper floors shall be transparent, not mirrored or colored, except for solar protective tinting.

(f) Building lighting should be incorporated on all building façades facing a public street, alley or on-site parking to enhance the building's architectural detailing and/or to light the pedestrian walk, alley or parking area.

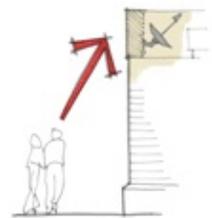
(g) Building lighting shall be compatible with the building's architectural theme.

(h) Standard "wall pack" lighting systems, non-white color lighting and lighting systems that emit glare are prohibited.

(9) *Specialty equipment and functions.* Specialty equipment that is necessary to support the uses in the building may be designed and used inside the building as an integral part of the building (e.g., baking oven or printing press or safe). Keeping specialty equipment out of the public view can minimize the negative visual impact caused by the accumulation of a large number of equipment facilities that are necessary to support the activities areas the MXD district. Property or buildings shall comply with the following requirements:

(a) Equipment such as satellite dishes, antennas and other specialty equipment shall not be mounted on any building façade.

(b) Any roof mounted specialty or mechanical equipment shall be screened from public view. The screening treatment shall be integrated with the overall building design with the use of complementary materials, colors and architectural style of the building.



(c) Drive-thru windows shall not occur on a primary building façade or building front. Drive-thru windows shall be located to the rear or side of the building.

(d) Window air-conditioning units shall not be allowed on any façade.

(e) Pipes, conduit, and cables are limited to the back façade of buildings if conditions do not allow for them to be enclosed within the building itself. They shall be located as far away from public view as practical.

(f) Notwithstanding requirements of building or fire code requirements to the contrary, exterior stairs (if any) shall be located to a rear or secondary side of a building to minimize the visibility of the stairs.

(10) *Building signs in MXD districts; supplemental standards.* In addition to the general signage regulations contained in Section 4.5, the following represents specific signage criteria for buildings located in mixed-use zones.

(a) *Allowed signage: location and purpose.* Primary signs are a building's or business's primary identification for people traversing the corridor. They are generally viewable by on-street traffic. Secondary signs complement the primary sign and provide more detailed information or give directions. Pedestrian-oriented signs are the primary identification for pedestrian traffic and are designed and located to reflect this human scale. This hierarchy of signs breaks down the information provided for buildings along the mixed-use corridors, so that messages are clearly communicated.



Primary Sign

(b) *Primary sign.* One wall sign shall be allowed as the primary sign on each building façade for each ground level business or commercial establishment.

(c) In the case of a ground-level business or commercial office building with four building façades, no more than three façades shall have a primary sign.

(i) The primary sign size shall not exceed 10% of the total area of any façade on which it is placed;

(ii) The sign shall not extend above the height of the wall on which it is mounted;

(iii) In lieu of one wall sign, one projecting sign or awning sign shall be allowed for each ground level business or commercial establishment;

(iv) Projecting signs shall be no greater than ten square feet.

(d) *Secondary signs.* The following Secondary Signs shall be allowed on buildings in the MXD district:

(i) One secondary or rear entrance sign at each such exterior entrance, stating the name of the business or primary commercial establishment, and not exceeding ten square feet;

(ii) One directory sign at each common entrance to a building serving multiple businesses and commercial establishments, stating the name and suite number of each business or commercial establishment. The total sign area shall not exceed six square feet;

(iii) Restaurants and cafes (not providing drive-thru service) shall be permitted one wall-mounted display, not exceeding four square feet, featuring the actual menu used at the dining table, to be contained within a shallow wood or metal case. The display case shall be attached to the building wall and may be lighted.

(e) Each ground level business or commercial office building shall be allowed one pedestrian sign. Pedestrian-oriented signs should be located on entry awnings, directly above business entrances, or projecting/hanging adjacent to entrances.

(i) Pedestrian signs are limited to five square feet; shall be a minimum of seven feet at its lowest point above the ground or sidewalk.

(ii) In lieu of the pedestrian sign, one wall mounted, non-illuminated sign, not larger than three square feet may be placed at the primary entrance of each ground level business or commercial establishment. The tallest point of this sign shall not exceed seven feet from the ground or sidewalk.



Pedestrian Sign

(iii) Each primary business entrance or major building entrance for a multi-tenant building may have an address displayed on or above the door.

(f) The following signs are exempt from the requirements of this subchapter:

(i) Cornerstones stating the name and date of a building and incorporated into the building design as an architectural feature;

(ii) Miscellaneous window signs directly related to the business or commercial establishment provided the total sign area does not exceed 10% of the window area of the business or commercial establishment;



(iii) Temporary signs in association with a special event permit.

(g) Sign placement and building architectural design for mixed-use buildings. Signs shall not obscure architectural features. Their design shall be integrated with the design of the building:

(i) Signs shall fit within the existing façade features, shall be confined to “signable areas,” and shall not interfere with door and window openings, conceal architectural details, or obscure the composition of the façade;

(ii) Signs shall be mounted in locations that respect the design of a building, including the arrangement of bays and openings;

(iii) Wall-mounted signs on friezes, lintels, spandrels, and fascias over storefront windows should be sized to fit within these surfaces and not extend above, below or beyond them. Typically, a wall-mounted sign should be centered on a horizontal surface (e.g., over a storefront opening).

(h) Signage size and proportion. Subject to the requirements of this article, sign size shall be scaled to be appropriate with the size of the building on which it is placed and the area on which it is located. The size and shape of a sign shall be proportional with the scale of the structure. Legibility is critical to sign effectiveness and to the overall effect on the surrounding uses and the district.

(11) Only one message shall be used on a primary sign, either the name of the business or building. Address, phone numbers, products or other information shall not be included on a primary sign.



Logo Incorporated

(12) Corporate logos or registered trademarks may be used in a primary sign in addition to the business or building name. The logo or trademark shall be included in the maximum sign area.

(a) *Innovative or artistic signs.* Signs can make a positive contribution to the surrounding environment, as well as help identify and define a district, area or neighborhood. Imaginative and innovative sign designs are considered a community enhancement.



Creative Sign

(b) Creative, detailed, artistic and unique signage is permitted and will be considered in the context of the building on which the sign will be located, surrounding uses, sign design (color, materials, scale, detailing), and appropriateness in meeting and reinforcing the goals and purposes of the MXD district.

(i) *Materials and mounting.*

a. All signs shall be securely mounted.

- b. The following sign materials are required:
 - 1. Wood (carved, sandblasted, etched, and properly sealed, primed and painted or stained);
 - 2. Metal (formed, etched, cast, engraved and properly primed and painted or factory coated to protect against corrosion);
 - 3. High density pre-formed foam or similar material if properly designed in a manner consistent with these guidelines and painted or otherwise finished;
 - 4. Custom neon tubing in the form of logos or lettering.
- c. The following sign types are also allowed:
 - 1. Individual cut-out letters or graphics mounted directly on a wall or contrasting surface, and projecting no more than 1 foot from the wall or contrasting surface;
 - 2. Letters or graphics mounted, carved, or painted on a contrasting surface that forms the outline of the sign;
 - 3. Non-illuminated letters or graphics painted or mounted directly on an interior window surface. Interior window signs should not exceed the lesser of 10 square feet or 30% of the area of the window in which it is mounted;
 - 4. Architecturally integrated sign boards;
 - 5. Box and cabinet signs shall not be used.
- d. No signs, except flags and pedestrian signs shall be suspended by chains or other devices that would allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on the sign face or supporting members or connections.
- e. All electrical transformer boxes and raceways shall be concealed from public view. If a raceway cannot be mounted internally - behind the finished exterior wall - the exposed metal surfaces of the raceway shall be finished to match the background wall, or integrated into the overall design of the sign.
- f. All exposed conduits shall be concealed from public view.
- g. *Surrounding environment.* Signs shall be designed and located so that they have little or no impact on adjacent residential neighborhoods.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.3. COMMERCIAL RENOVATION STANDARDS AND REGULATIONS.

The intent of these renovation standards and regulations is to provide property owners and the City of Balconies Heights with a policy to implement a consistent and higher quality design character in commercial zones and for multi-family properties.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.3.1. DEFINITION: SUBSTANTIAL CONSTRUCTION OR RENOVATION.

(1) These regulations shall be applicable only in instances of substantial construction or renovation of an existing building or site. Substantial construction or renovation exists in any building or site when either one of the following occurs:

(a) *Fifty percent floor area.* At least 50% of the building's floor plan by area is subjected to renovation or alteration; or

(b) *Fifty percent assessed value.* When the cost of renovation or construction exceeds 50% of the assessed valuation of the structure prior to the construction or renovation. "Cosmetic" improvements, such as painting, acquisition of new furniture, changing light fixtures, maintenance for normal "wear and tear," or similar minor alterations do not typically constitute substantial construction.

(2) If a determination has been made that a state of substantial construction or renovation exists, then the property owner will be subject to the design regulations for both the building's façade and its property or site.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.3.2. PLACEMENT OF NEW OR ADDITIONAL BUILDINGS ON A PROPERTY.

Intent. This regulation establishes a building placement pattern that shall be used regardless of the size, scale, or location of new development within a site. For all new buildings or building additions, the following shall apply:

(1) *New buildings or additions.* New buildings or building additions shall be constructed to a specified setback (or "build-to" line) from all public streets or sidewalks as defined in Article 3 by Table 3.4.1. With city approval, slight variations in the setback may be allowed at building or business entrances.

(2) [Reserved]

(3) *Courtyards.* In the case of outdoor public spaces, cafes or courtyards in front of or on the side of buildings, the "build to" requirement may be met by including an appropriate wall or fence at the lot line.

(a) The wall or fence shall be continuous, except for the pedestrian entrance, which shall not be less than five feet in width. In no case shall the pedestrian entrance exceed more than 20% of the linear footage of the front lot line.

(b) The wall or fence may be transparent, such as metal ornamental fencing, a masonry wall or a combination of a masonry wall topped with metal fencing.

(c) The wall or fence shall not be over four feet high.

(d) A wall or fence used to meet the "build to" requirement shall include architectural features in the design that reflect the architectural theme of the building.

(i) Wood and chain link fences are prohibited.

(ii) An optional landscape element may be incorporated into the design of the wall or fence for aesthetic purposes.

(e) If the need to provide parking or unique site considerations makes it difficult or impossible to meet these building placement guidelines, then the city shall work with the property owner to achieve the “spirit” or “intent” of the guidelines to the extent possible.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.3.3. SITE.

It is the intent of these regulations to support design continuity among sites for all properties in Balcones Heights subject to this article.

(1) *Parking.* For sites in which no new buildings are constructed, and buildings have a front yard setback, the following guidelines shall apply:

(a) Existing parking in front of or on the sides of buildings that is required to comply with the zoning ordinance is allowed to remain. It is the intent of these guidelines to create a single parking area among adjacent sites in a block interior or behind buildings whenever possible;

(b) Cross-access easements and shared parking between parking lots on adjacent properties are desirable. This reduces automobile movement and minimizes curb cuts at the street. The city shall require the creation of cross-access easements when practical, allowing access to adjacent property owners, present or future, as a condition of development approvals;

(c) Pedestrian connections are required between parking lots on adjacent properties, when feasible;

(d) Parking requirements shall be as established by Article 6, Vehicle Parking and Loading Requirements.

(2) *Protection of adjacent residential uses.* Adjacent residential uses and districts shall be protected from intrusion from commercial uses:

(a) All parking, loading, delivery or service facilities behind buildings shall be separated from any residential use on adjacent property by a minimum 15-foot landscaped buffer. The landscaped buffer shall provide a year-round visibility screen from the site for the adjacent residential uses and minimize light and sound impacts from the site;

(b) If permitted by the zoning district, no loudspeaker in such area shall be located within 100 feet of a property line of a residential use and shall be directed away and imperceptible from the residential property;

(c) All light sources in such areas shall be directed away from the residential use by shields, so that no direct light source is viewable from the property line of the residential use.

(3) *Site access.* Sites in Balcones Heights shall be accessible by a variety of methods:

(a) Curb cuts onto a site’s front yard shall be minimized. Access to sites by a single mid-block entrance with cross access easements or by alleys behind buildings is required wherever feasible;

(b) No more than one curb cut per site shall be allowed onto an arterial-type street, unless the front property dimension exceeds 300 feet in length. The city may allow a temporary curb cut for access to an arterial until site access can be achieved through a cross access easement. When such access is obtained, the temporary curb cut shall be removed;

(c) Curb cuts on an arterial-type street may not be located closer than 150 feet, centerline to centerline, unless unique physical site constraints or lot dimensions require a shorter distance and are approved by the city;

(d) No curb cut on an arterial-type street shall be allowed within 150 feet of a street intersection, unless unique physical site constraints or lot dimensions require a shorter distance and are approved by the city;

(e) If another governmental entity has an established standard for curb cuts in the city that differs from Balcones Heights' standard, then the greater of the two dimensions will govern.

(f) A continuous pedestrian walk shall be required along all public streets:

(i) The pedestrian walk may only be interrupted by vehicle access lanes. Accessible curb cuts and designated crosswalks shall be provided at each such location. Pedestrian walk interruptions at such crosswalks shall be limited to no greater than 22 feet wide for each public street frontage;

(ii) Pedestrian walks shall be a minimum of seven feet in width. Properties on streets covered by the streetscape standards in The public realm chapter shall conform to those standards. Americans with Disabilities Act standards shall be met at all times.

(g) In addition to the pedestrian sidewalk along public streets, a "storefront" pedestrian walk shall be provided according to the following regulations:

(i) It shall be at least seven feet in width;

(ii) It shall be continuous across the entire frontage;

(iii) It shall connect to pedestrian walks along the street via a pedestrian sidewalk;

(3) Landscaping. See Article 7.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.4. [RESERVED]

§ 4.5. SIGNAGE STANDARDS AND REGULATIONS.

§ 4.5.1. INTENT.

The intent of this section is to reinforce and enhance the perception of Balcones Heights, and to reflect consistency in architectural resources and features, in accordance with the Comprehensive (Master) Plan. To accomplish this, the standards shall govern the location, size, setback and height of signs for each of the use districts established in this appendix, and for specific uses, in order to insure safe construction, light, air and open space, to reduce hazards and to protect property values of the entire community. Both site and building signs are described and regulations set forth in this section.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.5.2. [RESERVED]**§ 4.5.3. SIGN PERMITS AND EXCEPTIONS.**

(1) *Sign permit required.* It shall be unlawful to erect, alter or relocate any sign without first obtaining a sign permit. When a sign permit has been issued, it shall be unlawful to change, modify, alter or otherwise deviate from the terms of conditions of said permit without prior approval of the building inspector.

(2) *Permit not required.* The following activities and signs shall not require a sign permit:

(a) The changing of advertising copy or message on signs, which are specifically designed for the use of replaceable copy;

(b) Address signs;

(c) On-site changeable copy signs not exceeding 32 square feet;

(d) Symbolic flags or insignias limited to 50 total square feet in area;

(e) Decorative flags, banners and bunting authorized by the City Council for a citywide celebration, conventions or commemorations;

(f) Building markers;

(g) Incidental not exceeding two square feet in area per sign;

(h) *Real estate signs.* All real estate-oriented signs shall only be placed on the property that is the subject of the sign. The signs shall be removed when the property is no longer for sale, rental or lease;

(i) Open house signs shall only be placed on the property that is the subject of the open house and at up to two corner lots, on private property, and with the property owner's permission. The signs may only be placed during the duration of the open house;

(j) *Construction signs.* This sign shall be removed before a certificate of occupancy is issued;

(k) *Temporary signs.* Also see Code of Ordinances § 130.05;

(l) Window signs;

(m) Signs incorporated on machinery or equipment by the manufacturer or distributor, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths and gasoline pumps and do not exceed two square feet per piece of equipment;

(n) Directional and regulatory signs erected by an agency of government or any lawfully constituted utility;

(o) *Political signs.* See Table 4a.

(3) *Professional certification required.* The following signs shall be designed, signed and certified by a Texas registered engineer or other qualified Texas registered professional, who shall submit sufficient data to enable the building inspector to determine whether the sign complies with all applicable codes and ordinances:

- (a) Freestanding monument signs over 50 square feet and any pole sign;
- (b) All signs with unusual structural features as determined by the city.

(4) *Expiration of sign permit.* A sign permit shall become null and void if the sign for which the permit was issued has not been completed within a period of six months after the date of issuance.

(5) *Portable signs.* In zoning districts subject to this chapter, it shall be unlawful to operate and/or park a vehicle or trailer so as to be visible from a public street when said vehicle or trailer contains an advertisement for a specific product or service, or directs people toward a business or activity located on the same property or any other premises.

- (a) For purposes of this subchapter, “portable signs” shall include:

- (i) Any sign mounted or attached to a vehicle or trailer for the purpose of advertising a product or service;

- (ii) Any sign designed and transported by means of wheels, such as signs converted to A-frames or T-frames, with wheels;

- (b) “Portable signs” shall not include a sign or information affixed or applied to a vehicle or trailer to identify the company which actively utilizes the vehicle or trailer as part of the routine work of the company.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Am. Ord. 2013-04, passed 3-11-13)

§ 4.5.4. SIGN STANDARDS.

- (1) *Permitted signs for residential districts and uses.*

- (a) No building signs are allowed in residential districts or for residential uses. Exceptions: churches, parks, recreational facilities, schools, libraries, art, gallery or cultural facilities only.

- (b) Two freestanding signs are permitted for each subdivision, neighborhood or complex entrance subject to the following:

- (i) No sign area shall exceed 32 square feet;

- (ii) No sign and associated structure shall exceed seven feet in height;

- (iii) The total freestanding sign area for the entire subdivision, neighborhood or complex shall not exceed 96 square feet.

- (iv) The sign and associated structure shall not create a physical or visual hazard.

- (v) A legal entity, acceptable to the city, shall be responsible to assure maintenance of the signs.

- (c) *Real estate signs.* One non-illuminated, double-faced, temporary real estate sign per street frontage, not exceeding in face area six square feet where the property being advertised has a front lot line of less than 500 lineal feet, or 16 square feet where the property being advertised has a front lot line of 500 lineal feet or more.

- (d) *Construction signs.* One construction sign per street frontage. This shall be limited to a ground sign not to exceed 16 square feet for residential structures.

(e) *Temporary signs.* See Code of Ordinances § 130.05. Additionally, in residential districts of for residential uses. Temporary signs shall not exceed 18 total square feet at any one time, and shall not exceed 12 square feet for any single sign.

(2) *Permitted signs for non-residential districts and uses.* (See additional requirements for MXD in § 4.5.4(3)).

(a) One wall sign shall be allowed for each facade frontage of each building other than an accessory building up to three facades.

(b) One freestanding sign shall be allowed for each street frontage of each building other than an accessory building. Corner lots and double frontage lots may not transfer allowable sign area from one frontage to another.

(c) Up to four incidental wall signs may be attached to a structure or to a building wall, but may not be attached perpendicular to the wall. Area of each sign may not exceed six square feet; the total area of all such signs may not exceed ten square feet.

(d) Up to four incidental freestanding signs may be provided on the site. Area of each sign may not exceed six square feet; the total area of all such signs may not exceed ten square feet.

(e) *Size.* The aggregate surface area per lot for all permitted signs in all non-residential districts shall be limited to the following:

(i) Wall sign size shall not exceed 10% of the total area of any facade on which it is placed;

(ii) Total freestanding sign size of all signs shall not exceed 10% of the total street front facade area of all of the structures on the lot;

(iii) In Freeway districts one freestanding sign no more 300 square feet of message area shall be permitted for each 150 feet of freeway frontage. On lots with freeway frontage on two sides, the same shall apply for each side. No sign may be closer than 200 feet to the other. Freeway districts are both sides of IH 10 an expressway within city limits, generally between Loop 410 and the area at Balcones Road. Additionally lots fronting Loop 410, an expressway, between Fredericksburg Road and IH 10. These corridors serve as recognized primary entryways to the city.

(iv) In areas of lots beyond 300 feet from the right-of-way, any increase in aggregate sign area for the lot must first be approved by the Planning and Zoning Commission.

(f) *Height and projection.*

(i) Free-standing signs shall not exceed 20 feet above natural ground level at the sign structure base in all districts except freeway districts. In freeway districts maximum height per sign shall not exceed 35 feet for single tenant signs, and 45 feet for dual tenant signs. Multiple tenant signs (more than two) shall not exceed 50 feet. Up to an additional ten feet of overall sign height may be added if the adjacent street grade is elevated. The difference in elevation between the property and the street grade shall be the determining factor in the height allowed.

(ii) Building signs shall not extend higher than the building surface upon which they are mounted.

(iii) Building signs shall not project more than 12 inches from the building surface upon which they are mounted.

(g) *Multiple-occupancy lots or buildings.* Where a single building or lot contains two or more separate activities or establishments, each activity or establishment shall be permitted a wall sign area based on the portion of building occupied. The multiple-occupancy lot or building may be permitted one directional sign per legal curb cut. The total directional sign surface shall not exceed 10% of the total street front facade area square footage of all of the structures on the lot, except in Freeway and MXD districts.

(h) *Complex signs.* For building complexes, such as shopping centers, special activity districts or campuses, an additional free-standing complex sign bearing the name or logo of the center, the district or campus shall be allowed with a maximum height of 20 feet (except Freeway and MXD) and a maximum surface area of 50 square feet. It is permitted to identify the name of the center, district or campus only.

(i) *Gasoline pricing signs.* One sign advertising the price of gasoline is permitted provided it shall not exceed 12 square feet per sign face and an aggregate area of 24 square feet. The sign shall not exceed five feet in height. This sign shall count toward the aggregate size permitted for the property.

(j) *Banner/event signs.* A temporary event sign or banner may be allowed in addition to all permitted signs upon application to the city. Permits are subject to the following limitations:

(i) Permits shall be valid for a period no longer than ten days;

(ii) A permit shall not be issued for the same premises more frequently than four times each calendar year;

(iii) Signs shall not exceed 30 feet in horizontal dimension and the vertical height shall not exceed six feet;

(iv) No off-premises signs shall be permitted.

(v) Permits shall specify the size and location of the signs. Any violation of the terms of the permit shall cause the permit to be immediately revoked.

(vi) See Code of Ordinances § 130.05 for additional requirements.

(k) *Real estate signs.* One non-illuminated, double-faced temporary, real estate sign per street frontage, not exceeding in face area; not exceeding 16 square feet where the property or structure being advertised has a front lot line of less than 200 lineal feet, or 32 square feet where the property or structure being advertised has a front lot line of 200 lineal feet or more.

(l) *Construction signs.* One construction sign per street frontage, limited to 32 square feet for non-residential structures.

(m) *Temporary signs.* See Code of Ordinances, § 130.05. Additional, temporary signs shall not exceed 48 total square feet at any one time, and shall not exceed 20 square feet for any single sign.

(3) *Building signs in MXD districts; supplemental standards.* In addition to the general signage regulations contained in this section, the following represents specific signage criteria for buildings located in mixed-use zones.

(a) *Allowed signage location and purpose.* Primary signs are a building's or business's primary identification for people traversing the corridor. They are generally viewable by on-street traffic. Secondary signs complement the primary sign and provide more detailed information or give directions. Pedestrian-oriented signs are the primary identification for pedestrian traffic and are designed and located to reflect the human scale. This hierarchy of signs breaks down the information provided for buildings along the mixed-use corridors, so that messages are clearly communicated.

(b) *Primary sign.* One wall sign shall be allowed as the primary sign on each building facade for each ground level business or commercial establishment. Monument signs shall be allowed for each lot, and one additional complex sign allowed for multi-complex developments on the same lot.

(c) In the case of a ground-level business or commercial office building with four building facades, no more than three facades shall have a primary sign.

(i) The primary wall sign size shall not exceed 10% of the total area of any facade on which it is placed; the primary monument sign shall not exceed 150 square feet in surface area.

(ii) Wall signs shall not extend above the height of the wall on which it is mounted.

(iii) In lieu of one wall sign, one projecting sign or awning sign shall be allowed for each ground level business for commercial establishment.

(iv) Projecting signs shall be no greater than ten square feet.

(d) *Secondary signs.* The following secondary signs shall be allowed on buildings in the MXD district:

(i) One secondary or rear entrance sign at each such exterior entrance, stating the name of the business or primary commercial establishment, and not exceeding ten square feet.

(ii) One directory sign at each common entrance to a building serving multiple businesses and commercial establishments, stating the name and suite number of each business or commercial establishment. The total sign area shall not exceed six square feet.

(iii) Restaurant and cafes (not providing drive-thru service) shall be permitted one wall-mounted display, not exceeding four square feet, featuring the actual menu used at the dining table, to be contained within a shallow wood or metal case. The display case shall be attached to the building wall and may be lighted.

(e) Each ground level business or commercial office building shall be allowed one pedestrian sign. Pedestrian-oriented signs should be located on entry awnings, directly above business entrances, or projecting/hanging adjacent to entrances.

(i) Pedestrian signs are limited to five square feet, shall be a minimum of seven feet at its lowest point above the ground or sidewalk.

(ii) In lieu of the pedestrian sign, one wall mounted, non-illuminated sign, not larger than three square feet may be placed at the primary entrance of each ground level business or commercial establishment. The tallest point of this sign shall not exceed seven feet from the ground or sidewalk.

(iii) Each primary business entrance or major building entrance for a multi-tenant building may have an address displayed on or above the door.

(f) The following signs are exempt from the requirements of this subchapter:

(i) Cornerstones stating the name and date of a building and incorporated into the building design as an architectural feature;

(ii) Miscellaneous window signs directly related to the business or commercial establishment provided the total sign area does not exceed 10% of the window area of the business or commercial establishment; and

(iii) Temporary signs in association with a special event permit.

(g) Sign placement and building architectural design for mixed-use buildings. Signs shall not obscure architectural features. Their design shall be integrated with the design of the building.

(i) Signs shall fit within the existing facade features, shall be confined to “signable areas,” and shall not interfere with door and window openings, conceal architectural details, or obscure the composition of the facade;

(ii) Signs shall be mounted in locations that respect the design of a building, including the arrangement of bays and openings; and

(iii) Wall-mounted signs on friezes, lintels, spandrels, and fascias over storefront windows should be sized to fit within these surfaces and not extend above, below or beyond them. Typically, a wall-mounted sign should be centered on a horizontal surfaces (e.g. over a storefront opening).

(h) *Signage size and proportion.* Subject to the requirements of this chapter, sign size shall be scaled to be appropriate with the size of the building on which it is placed and the area on which it is located. The size and shape of a sign shall be proportional with the scale fo the structure. Legibility is critical to sign effectiveness and to the overall effect on the surrounding uses and the district.

(4) Only one message shall be used on a primary sign, either the name of the business or building, address, phone number, products or other information shall not be included on a primary sign.

(5) Corporate logos or registered trademarks may be used in a primary sign in addition to the business or building name. The logo or trademark shall be included in the maximum sign area.

(a) *Innovative or artistic signs.* Signs can make a positive contribution to the surrounding environment, as well as help identify and define a district, area or neighborhood. Imaginative and innovative sign designs are considered a community enhancement.

(b) Creative, detailed, artistic unique signage is permitted and will be considered in the context of the building on which the sign will be located, surrounding uses, sign design (color, materials, scale, detailing), and appropriateness in meeting and reinforcing the goals and purposes of the MXD district.

(i) Materials and mounting.

a. All signs shall be securely mounted.

b. The following sign materials are required:

1. Wood (carved, sandblasted, etched, and properly sealed, primed and painted or stained);

2. Metal (formed, etched, cast, engraved and property primed and painted or factory coated to protect against corrosion);

3. High density pre-formed foam or similar material if properly designed in a manner consistent with theses guidelines and painted or otherwise finished; and

4. Custom neon tubing in the form of logos or lettering.

c. The following sign types are also allowed:

1. Individual cut-out letters or graphics mounted directly on a wall or contrasting surface, and projecting no more than one foot from the wall or contrasting surface;
 2. Letters or graphics mounted, carved, or painted on a contrasting surface the forms the outline of the sign;
 3. Non-illuminated letters to graphics painted or mounted directly on an interior window surface. Interior window signs should not exceed the lesser of ten square feet or 30% of the area of the window in which it is mounted.
 4. Architecturally integrated sign boards;
 5. Box and cabinet signs shall not be used.
- d. No signs, except flags and pedestrian signs shall be suspended by chains or other devices that would allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on the sign face or supporting members or connections.
- e. All electrical transformer boxes and raceways shall be concealed from public view. If a raceway cannot be mounted internally, behind the finished exterior wall, the exposed metal surfaces of the raceway shall be finished to match the background wall, or integrated into the overall design of the sign.
- f. All exposed conduits shall be concealed from public view.
- g. *Surrounding environment.* Signs shall be designed and located so that they have little or no impact on adjacent residential neighborhoods.

(6) *Maintenance.* All signs and components thereof shall be maintained in good repair and with the proper structural supports as determined by the City Administrator or designated appointee. All signs and their immediate surrounding area shall be kept free of weeds, trash and other refuse. The display surfaces of all signs shall be kept neatly painted or posted. Illuminated signs must be maintained in good working order.

(7) *Preventing obstructions.*

(a) All signs governed by this section shall be situated in a manner which does not interfere with or obstruct windows, doors, or other means of exit from a building. No sign shall be supported on or attached to any fire escape, door, or window casing.

(b) On any corner lot on which a front yard is required by the zoning ordinance of the city, no structure, including signs, shall be maintained within the triangular area formed by the intersecting street lines and a straight line connecting such street lines, at points 25 feet from the point of intersection measured along such street lines.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12; Am. Ord. 2013-04, passed 3-11-13)

§ 4.5.5. LIMITATIONS.

(1) *Prohibited signs; removal required.* The following signs are expressly prohibited and subject to immediate removal:

(a) Any sign in need of repair as determined by the code enforcement officer or building official shall, upon written notice from the city, have 30 days to remove or repair the sign;

- (b) Any sign erected or painted upon a sloping roof, fence, tree, standpipe, and fire escape or utility pole;
 - (c) Off-premise signs;
Exception: Off-premise signs will be considered in Freeway districts if allowed by a vote of City Council.
 - (d) Any sign which is a copy or imitation of official traffic control signs;
 - (e) Signs, which flash or illuminate intermittently, revolve and animated signs, except time and temperature or public service signs;
 - (f) Signs, which emit visible smoke, vapor, particles or odor;
 - (g) Signs with any lighting or control mechanism, which causes radio or television or other communication interference;
 - (h) Any sign placed on any public right-of-way;
 - (i) Any sign attached or painted onto a vehicle, trailer or portable system parked on or adjacent to public right-of-way for the principle purpose of advertising;
 - (j) Any tethered inflatable signs;
 - (k) "Sandwich board" signs, except those 15 square feet per sign side or smaller, placed in front of a retail store or restaurant in a MXD or C-1 zoning district. Such signs may not intrude into the required seven foot wide, "clear," pedestrian sidewalk and may only be used during the hours of business operations;
 - (l) Any off-site signs; and
 - (m) Any portable signs described in § 4.5.3(5).
- (2) *Other limitations.*

(a) Signs in non-residential zoning districts shall not be located within 15 feet of a residential zoning district boundary.

(b) Illuminated or neon signs shall not produce glare or reflection onto residential property. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 4.6. NONCONFORMING SIGNAGE.

Purpose. A sign or sign structure that legally existed prior to the adoption of this appendix, but which could not be initiated under the terms of this appendix is considered a legal nonconforming sign. A legal nonconforming sign may continue to exist subject to the following. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.6.1. REMOVED OR DAMAGED SIGN.

Any legal nonconforming sign or sign structure that is removed or is destroyed may only be replaced with a conforming sign. Any nonconforming sign structure which is damaged beyond 50% of its replacement's value shall be removed at the operator's expense.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 4.6.2. CHANGE OF USE, OCCUPANCY, TENANCY OR OWNERSHIP.

Where a change in use, occupancy, tenancy or ownership occurs which necessitates the altering of a sign in any manner (not including copy change), the altered or changed sign shall conform to all ordinances.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.6.3. [RESERVED]**§ 4.6.4. EXCESSIVE SIZE OF A SIGN.**

All legal nonconforming signs, which are 15% or more in excess of allowed maximum dimensions, shall be either removed or replaced with a conforming sign within five years of the date it became a legal nonconforming sign. Upon failure to comply with the time specified, the city may require the sign to be removed as provided by law and any expense shall be paid by the owner, agent or lessee of the sign or property on which the sign is located.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 4.6.5. REMOVAL PENDING PERMIT.

All nonconforming signs and sign structures shall be removed from a premise prior to issuance of any other sign permits.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 4.6.6. TEMPORARY SIGNS.

This section does not apply to temporary signs, which are defined and regulated in §130.05, City of Balcones Heights, Code of Ordinances.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 5
SPECIAL DISTRICTS, USES, AND CONDITIONS

- 5.1. Special districts
- 5.2. Special conditions for uses

Purpose. The following special districts and conditions shall apply where the uses are permitted or permitted by special exception. These special districts and conditions are in addition to the generally applicable standards that apply to all uses within a particular zoning district. In the case of a conflict between the generally applicable standard for the zoning district and the specific standard for the use listed in this section, the more specific standards in this section shall apply.

§ 5.1. SPECIAL DISTRICTS.

§ 5.1.1. PLANNED UNIT DEVELOPMENT (PUD).

(1) *Intent.* The special standards listed in this section for the Planned Unit Development (PUD) district are intended to:

(a) Encourage opportunities for development innovation tailored to a particular site, that while clearly furthering the goals of the comprehensive plan, could not explicitly be established by generally applicable standards or guidelines;

(b) Allow mixed-use development, which offers a greater variety in type, design and layout of buildings;

(c) Encourage land conservation and more efficient use of open space; and

(d) Permit modification of certain controls in a manner so as to produce large area development arranged to better serve community needs.

(2) *Size.* A Planned Unit Development shall be a minimum of three acres.

(3) *Uses.* The list of permitted uses shall be described and contained in the site plan accompanying each Planned Unit Development.

(4) *Ordinance and site plan required.* Each Planned Unit Development shall have an ordinance that establishes the development of regulations for the district. In approving a Planned Unit Development, the ordinance shall reference the site plan, which shall prescribe development standards. The site plan after approval shall become part of the ordinance. All development shall be in conformance with the approved site plan and development standards.

(5) *Conditions related to approval.* In addition to the general criteria for zoning map amendments, a map amendment to the PUD district may require the following conditions for compliance with the goals and intent of the comprehensive (master) plan and this appendix:

- (a) Setbacks for building structures;
- (b) Public street access;
- (c) Vehicular traffic, circulation, connections and parking;
- (d) Screening or buffer zones;
- (e) Hours of operation;
- (f) Activities or uses permitted on the property;
- (g) Building or structure heights;
- (h) Landscaping;
- (i) Maximum lot coverage, impervious percentages;
- (j) Pedestrian circulation;
- (k) Signs;
- (l) Mitigation of noise, fumes, odors, vibration or airborne particles;
- (m) Exterior lighting;
- (n) Exterior construction materials;
- (o) Special fire protection;
- (p) Outside storage and display of merchandise;
- (q) Refuse and waste storage;
- (r) Lot size and dimensions;
- (s) Accessory buildings;
- (t) Other information shown on the site plan; and
- (u) Conformance to city ordinances.

(6) *Building permit and certificate of occupancy compliance.* No building permit for any structure shall be issued, nor shall a certificate of occupancy be granted until the development plans, building permit application documents, and/or constructed buildings and site are consistent with the site plan and development regulations of the approved Planned Unit Development at the appropriate phase of the development process.

(7) *Planned Unit Development amendments.* Changes or amendments to a Planned Unit Development shall be processed in the same manner as the original request. Slight changes in the detail of the Planned Unit Development that do not change the intent, meaning or relationship of structures to each other may be approved by the City Administrator or designee.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 5.2. SPECIAL CONDITIONS FOR USES.**§ 5.2.1. “MOTOR VEHICLE-SERVICE AND REPAIR” AND “RETAIL-CONVENIENCE STORE” USES.**

(1) *Intent.* The intent of the special conditions for these uses is to:

(a) Provide access to necessary services offered by vehicle service and repair businesses and retail convenience stores from all areas of the city;

(b) Allow such businesses to be appropriately mingled with other non-residential uses;

(c) Ensure location and design standards compatible with surrounding property, particularly the scale and intensity of surrounding commercial uses;

(d) Minimize the potential negative impact that such businesses may have on surrounding property and neighborhoods; and

(e) Recognize that the design and scale of such businesses can determine how well this use fits in with surrounding uses.

(2) *Location restrictions.* In a MXD district, the property on which a vehicle service or repair business and retail convenience store is located shall not be within 100 feet of any residential district, or any property containing a school, public playground, church, hospital, public library or institution for children or dependents.

(3) *Site requirements.*

(a) An a vehicle service or repair business and retail convenience store shall have a minimum front lot line on the primary right-of-way of 120 feet and a minimum lot area of 12,000 square feet.

(b) All buildings shall be set back 40 feet from all right-of-way lines and all canopies shall be set back 15 feet from all right-of-way lines.

(c) Buffer fence or wall, if required under this article.

(d) Light or glare shall not spill onto adjacent property or rights-of-way. All light fixtures shall be either recessed into a canopy, or if they protrude, shall have a box that shields the bulb from direct view. A light fixture that protrudes from the bottom of a canopy shall have a box completely surrounding the bulb and the lens shall be flush with the box. Protruding bulbs and lenses are prohibited.

(e) All driving, parking, storage and service areas shall be paved and curbed.

(f) All gasoline pump islands or electric charging facilities shall be set back at least 30 feet from right-of-way line.

(g) No more than two pump islands with a maximum of four pumping stations per island shall be located on the site.

(h) No outdoor storage of any kind is permitted on the site.

(i) All a vehicle service or repair business and retail convenience store are subject to special site enhanced screening conditions to appropriately screen adjacent property from parking, pump

islands, or service bays. This site screening shall be specific to the context of the site and may involve landscape treatment, walls, or other elements in accordance with Article 7, Buffering, Landscaping, and Tree Preservation. A site plan showing screening must be submitted and approved as a condition of building permit approval.

(4) *Building design requirements.* In addition to the above site requirements, the following building design requirements shall apply:

(a) All buildings shall have a maximum set back of no more than 40 feet from all right-of-way lines or shall comply with the setback established for the zone in which the use is located, whichever is less. Any area between the building and the right-of-way shall only be used for landscape features and driveways;

(b) All buildings shall have a primary entrance facing the street, directly connected to the public sidewalk;

(c) At least 60% of all street-frontages on the lot shall be occupied by the building. On corner lots, the street frontage on the secondary street may be occupied by the building on as little as 50% of that frontage, provided that the 60% requirement is met when both frontages are combined;

(d) All buildings shall have at least 50% clear glazing on any street facing ground level. Glazing on windows and doors shall count towards this requirement;

(e) No more than two service bays shall be located on the site. Service bays shall not face the primary street frontage of the building;

(f) All vehicles shall be stored in an enclosed area and all vehicle repairs shall occur in an enclosed area.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 5.2.2. HOME OCCUPATIONS.

(1) *Intent.* The intent of the special conditions of home occupations is to:

(a) A home occupation is a business that is customarily carried on in a home by the resident;

(b) Provide opportunities for residents to earn income and operate businesses from their home;

(c) Allow businesses that do not adversely impact the residential character of neighborhoods;

(d) Ensure that the ongoing operations of home occupations are not visible or detrimental to adjacent residents and property owners.

(2) *Location restrictions.*

(a) Home occupations are permitted in all districts where single family residences are permitted and conforming to the special conditions of this section and any applicable laws or ordinances.

(b) Any home occupancy operation, which, whether by requirement of any law or regulation or for any other reason, requires a full and complete separation from the living area of the main building, including working in the front or back yard of the residence, shall not be construed as a home occupation within the meaning of the ordinance and be prohibited.

(3) *Site and building requirements.*

(a) The home occupation shall be an accessory use, incidental to the primary use of the premises for residential purposes.

(b) No signage associated with the home occupation and visible from the outside of the dwelling shall be allowed on the premises.

(c) Only one employee other than the occupants of the residence may be employed on-site at any one time. This shall not include the coordination or supervision of employees who do not regularly visit the house for purposes related to the business.

(d) Hours of operation shall be limited to 8:00 a.m. to 8:00 p.m. for outdoor activities.

(e) Outdoor activities are not allowed, unless, the activities are screened from neighboring property and public rights-of-way.

(f) No exterior storage of material, equipment, vehicles, and/or supplies used in conjunction with the home occupation.

(g) The home occupation shall not produce offensive noises, vibrations, smoke, dust, odors, heat or glare beyond the property lines.

(h) A home occupation shall not serve as an office or storage facility for a vehicle fleet operation in which fleet vehicles visit the site.

(i) No major alterations to the property or exterior of the dwelling unit shall be allowed that changes the residential character of the home.

(j) No repair or servicing of vehicles, internal combustion engines, large equipment or large appliances shall be allowed, unless fully contained in a closed garage out of sight of other residences, and the garage shall comply to the current International Fire Code and International Building Codes as adopted by the city.

(k) No storage of hazardous materials for business purposes shall be allowed on the premises or any dangerous situation as determined by the Fire Chief, or contained as per the International Fire Code as adopted by the city.

(l) Merchandise shall not be offered or displayed for sale on the premises. Sales incidental to a service shall be allowed, and orders previously made by telephone or at a sales party may be filled on the premises.

(m) No traffic shall be generated by a home occupation in greater volumes than normally expected in a residential neighborhood, and any need for parking must be accommodated within the off-street parking, provided for the residence (i.e. the driveway or garage) and along the street frontage of the lot.

(4) Registration specifically prohibiting the operation of an unregistered home business which can be enforced in municipal court.

(a) Any person who shall cause or permit the operation of a home occupation within the city without first having obtained a valid permit, or who violates any part of this section, shall be guilty of a misdemeanor and punished by a fine of not less than \$25 not more than \$500, with each day of continuing violation constituting a separate offense punishable by the imposition of a separate fine. A violation of this section is a strict liability offense which does not require proof of a culpable mental state as a necessary element of the offense.

(b) Upon the trial for an offense under this section, proof that an assumed name certificate was filed with the appropriate authority, and the person charged is operating the business at the residence under the assumed name; or a certificate of formation was filed, or a registration submitted, for a business organization with the Texas Secretary of State, and the person charged is operating the business at the residence; or a sales tax and/or use tax permit from the Texas Comptroller of Public Accounts has been issued, and the person charged is operating the business covered by the permit at the residence; shall give rise to a rebuttable presumption the person charged is operating a home occupation within the meaning of this Code. Nothing contained herein shall ever be construed as prohibiting proof of an offense by direct evidence or other means.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Am. Ord. 2012-07, passed 6-11-12)

§ 5.2.3. ACCESSORY DWELLING UNITS.

(1) *Intent.* The intent of an accessory dwelling unit is to allow flexibility for home occupations, while maintaining the residential character of existing neighborhoods. These standards apply to districts R-1 and R-5.

(2) *Location restrictions.* Accessory dwelling units shall be located on the same lot as the principal structure and are subject to the dimension standards of the applicable zone.

(3) *Site requirements.*

(a) Any accessory structures shall only have a half bath;

(b) Full kitchens are prohibited;

(c) Any accessory structure proposed for home occupation shall not be larger than 625 square feet; and

(d) Any utilities for an accessory structure shall run through the principal structure.

(4) *Exception.* Notwithstanding anything contained in this subsection to the contrary, any “bona-fide” mother-in-law suite with a kitchen, attached to the principle structure, under common roof and with internal access from the principal dwelling unit, shall not be deemed to be an accessory dwelling unit for purpose of this zoning ordinance but, instead, shall be deemed to be a part of the principle dwelling unit. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 5.2.4. STORAGE AND PARKING OF TRAILERS AND COMMERCIAL VEHICLES.

(1) *Intent.* The intent for the special conditions for storage and parking of commercial vehicles is to:

(a) Provide opportunities for residents to own, utilize and store commercial vehicles, trailers and recreational vehicles; and

(b) Ensure that parking and temporary storage of commercial vehicles, trailers, and recreational vehicles is not detrimental to the neighborhood character and adjacent residents or property owners.

(2) *Location requirements.* Except in accordance with the requirements of this section, commercial vehicles and trailers of all types, including travel, boat, camping and hauling, shall not be parked or stored on any lot occupied by a dwelling or any lot in any residential district.

(3) *Site requirements.*

(a) No more than one commercial vehicle per dwelling shall be permitted.

(b) In no case shall a commercial vehicle used for hauling explosives, gasoline or liquefied petroleum products be permitted.

(c) No travel trailer, hauling trailer, utility trailer, boat, boat trailer, motor home or commercial vehicle shall be parked or stored in the street yard of any lot or upon the right-of-way.

(d) A travel trailer or vehicle shall not be occupied either permanently while it is parked or stored in any permitted area. Temporary occupancy shall not exceed 14 days. During a period of temporary occupancy, generators shall not be used.

(e) A junked vehicle (as defined by state law) shall not be permitted to be located on or near lots with dwelling units, or on streets or within rights-of-way.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 5.2.5. STORAGE-PERSONAL (mini-warehouse).

(1) *Intent.* The intent of the special conditions for storage-personal use is to:

(a) Allow for personal storage services to be mixed with other compatible commercial uses;

(b) Ensure that such storage facilities are located appropriately in order to minimize the impact on adjacent property;

(c) Recognize that the design and scale of such storage facilities can determine how well this use fits in with surrounding uses.

(2) *Location requirements.* Storage-personal businesses may only be located in specified zoning districts.

(3) *Site requirements.*

(a) All one-way drive aisles shall provide for one ten-foot wide travel lane. Traffic direction and parking shall be designated by signs or painting.

(b) All two-way drive aisles shall provide for one ten-foot wide parking lane and two 12-foot wide travel lanes.

(c) Two parking spaces, to be located at the project office for use of clients, shall be provided for the manager's quarters plus one additional space for every 25 storage cubicles.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 6
VEHICLE PARKING AND LOADING REQUIREMENTS

- 6.1 Vehicle parking requirements
- 6.2 Loading requirements

§ 6.1. VEHICLE PARKING REQUIREMENTS.

§ 6.1.1. VEHICLE PARKING REGULATIONS: OFF-STREET PARKING REQUIREMENTS.

The following parking schedule represents the required parking spaces for specific land uses. These standards shall apply in any district the use is allowed, or permitted by special use or other permit. Residential requirements are minimum requirements.

Parking requirements in commercial (C) zones, office (O) zones and mixed-use (MXD) zones are minimum and maximum requirements. These requirements, however, shall be reduced by using the parking credits described in this section. The Planning and Zoning Commission and City Council may consider evidence and calculations prepared by a licensed engineer in the State of Texas for altering these parking requirements and parking credits in a zoning application or site plan submittal.

(1) *Residential.*

- | | |
|---|---|
| (a) Single-family detached residence | 1 space per unit. |
| (b) Dual-family residence | 1 space per unit. |
| (c) Tri-plex/quadrplex residence | 1 space per unit. |
| (d) Townhouse | 2 spaces per unit |
| (e) Multifamily low- and mid-rise residence | 1.33 spaces per efficiency unit.
1.5 spaces per 1 bedroom unit.
2 spaces per 2 bedroom unit.
2 spaces per 3-plus bedroom unit. |
| (f) Housing for elderly and/or disabled | 1 space per unit. |
| (g) College fraternities and sororities | 1 space per bed. |
| (h) Residential homes for children or elderly | 1 space per 4 beds. |

(2) *Lodging.*

- | | |
|-----------------------------------|---|
| (a) Hotel and motels, dormitories | 1 space per guest room and 1 space per two employees. |
| (b) Bed and breakfast | 2 spaces per residential unit and 1 space per guest room. |

(3) *Public assembly.*

- | | |
|--|--|
| (a) Community centers and clubs | 1 space per 100 square feet of enclosed building. |
| (b) Indoor recreation, outdoor recreation, entertainment venues, places for worship, stadiums and similar places of assembly | 1 space per 4 seats or 200 square feet of assembly floor area, whichever is greater. |
| (c) Libraries, museums and general civic uses | 1 space per 500 square feet of non-assembly floor area, plus 1 space per 4 seats or 200 square feet, whichever is greater. |

(4) *Schools.*

- | | |
|--|--|
| (a) Day care, pre-school, kindergarten and nursery | 1 space per ten children, plus 1 space per administrative office employee and support service employee, plus 1 space per 4 seats plus 1 space per 4 seats. |
| (b) Elementary, primary | 2 spaces per classroom, plus 1 space per administrative office employee and support service employee, plus 1 space per 4 seats in assembly hall. |
| (c) Middle or Junior | 3 spaces per classroom, plus 1 space per administrative office employee and support service employee, plus 1 space per 4 seats in assembly hall. |
| (d) Senior or secondary | 5 spaces per classroom, plus 1 space administrative office employee and support service employee, plus 1 space per 4 seats in assembly hall. |
| (e) College or trade school | 10 spaces per classroom, plus 1 space per administrative office employee and support service employee, plus 1 space per 4 seats in places of assembly, such as auditoriums or gymnasiums |

(5) *Health facilities.*

- | | |
|---|---|
| (a) Hospitals, convalescent or nursing homes and similar institutional uses | 1 space per 4 beds, plus 1 space per employee during the maximum working shift, including nurses and doctors. |
| (b) Kennels or animal hospitals | Parking surface area equal to 30% of the total enclosed or covered building area. |
| (c) Mortuaries and funeral homes | 5 spaces per parlor chapel or 1 space per 4 seats, whichever is greater. |

- (d) Medical, dental and health 1 space per 200 square feet of offices, clinics net floor area used for offices and similar purposes.
- (6) *Office and commercial.*
- (a) Professional offices and studios 1 space per 300 square feet of floor area used for offices or studios, 4 spaces minimum.
- (b) General business, retail 1 space per 200 square feet of gross and personal service establishments retail sales/service area and 1 space per 800 square feet of gross storage, processing and/or display area.
- (c) Shopping centers (exceeding 200,000 square feet leasable area) 4 spaces per 1,000 square feet of gross leasable area (excluding theatres).
- (d) Restaurants, cafeterias, delicatessens and other food serving establishments 1 space per 100 square feet of gross floor area, except for drive-in eating establishments.
- (e) Bars and taverns 1 space per 4 seats up to 52 seats and 1 space per 6 seats thereafter.
- (f) Drive-in eating establishments, where food or drink is served to customers 2 spaces per 100 square feet floor area, with a minimum of 20 spaces for on-premises consumption.
- (g) Automotive sales and service, lumber, nursery (horticultural) 1 space per 200 square feet of gross and affiliated activities retail sales/service/area/display area, and 1 space per 800 square feet of storage.
- (h) Theatres, clubs, gymnasiums, convention halls, assembly halls, stadiums, funeral homes, churches 1 space per 4 seats, or 1 space per 800 square feet of specified outdoor recreational area and 1 space per 100 square feet of indoor recreational area, whichever is greater.
- (i) Automotive service stations Minimum of 2 off-street parking spaces, plus 1 space per service or wash bay, plus 1 space per employee during maximum shift, exclusive of retail requirements.
- (7) *Industries.*
- (a) Manufacturing and processing establishments with no retail trade 1 space per each 2.5 employees on the maximum working shift, plus 1 space for each vehicle operating from the premises;
- or
- 1 space per 800 square feet of gross floor area, whichever is greater.

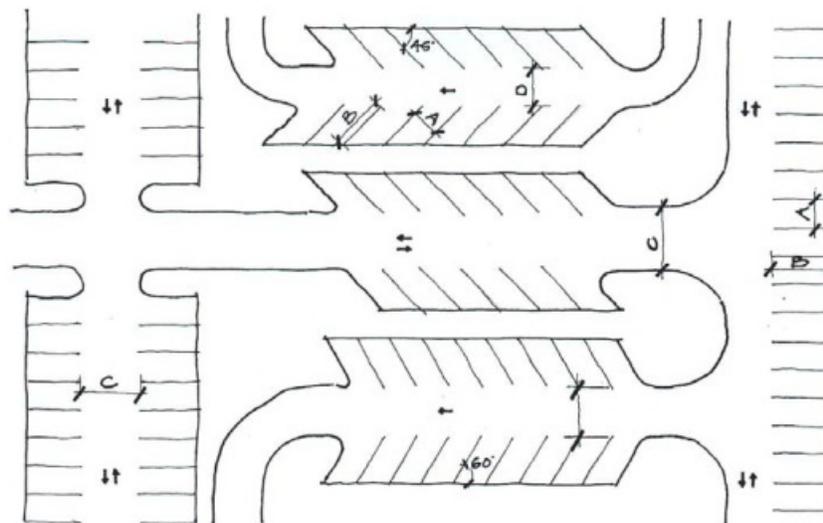
- (b) Warehousing
 - 1 space per each 2.5 employees on the maximum working shift, plus 1 space for each vehicle operating from the premises;
 - or
 - 1 space per 2,000 square feet of gross floor area, whichever is greater.
- (c) Personal storage
 - 3 spaces per office area.
- (d) Wholesale establishments
 - 1 space per each 50 square feet of customer service area, plus 2 spaces per each employee on the maximum working shift, plus 1 space per each vehicle operating from the premises.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 6.1.2. PARKING DIMENSIONS AND SIZE.

(1) *Parking lot dimensions.* Parking lot dimensions shall be as follows:

	90 degree	60 degree	45 degree
(a) Stall width	10 feet	10 feet	10 feet
(b) Stall depth	20 feet	20 feet	20 feet
(c) 2-way aisle width	24 feet	20 feet	20 feet
(d) 1-way aisle width	20 feet	17 feet	13 feet
(e) 1-way single-loaded aisle width	16 feet	14 feet	11 feet



(2) *Parking lot limitation.* No off-street parking lot in any area zoned for residential uses shall exceed 40 spaces.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 6.1.3. SHARED PARKING.

In meeting the parking requirements of § 6.1.1, adjacent uses may share parking under the following conditions and standards.

(1) *Cross easement access agreement.* Adjacent landowners shall execute the necessary cross access easements to facilitate shared parking and record all easement documents with the County Clerk in the property records of Bexar County.

(2) *Joint use agreement.* A written agreement for the joint use of parking facilities shall be executed by the parties and approved by the City Administrator or designee.

(3) *Cumulative requirements and exceptions.* Parking requirements shall be the cumulative requirements of the uses sharing the parking, except where different uses (retail or service, office, civic, or residential) are located on the same or adjacent lot:

(a) When two or more uses located on the same or adjacent lot have distinctly different hours of operation, they may qualify for a reduction of required parking. Up to 100% percent of the required parking may be shared. Required parking shall be based on the use that requires the greatest amount of parking according to the parking schedule.

(b) If two or more uses located on the same or adjacent lot have distinctly different peak hours of operation, they may qualify for a reduction of required parking. Fifty percent of the required parking for each use shall be dedicated to only that use, while the other 50% may come from a pool of parking spaces shared by any use with distinctly different peak hours of operation.

(c) All shared parking shall be located within reasonable proximity of main entrance of the building.

(d) Direct pedestrian access to and from the building and the parking area is required.

(4) *Evidence.* Evidence shall be submitted by a licensed engineer or architect that justifies and documents the calculations and assumptions to support shared parking.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 6.1.4. PARKING CREDITS.

A credit shall be given to the parking requirements of § 6.1.1, under the following conditions.

(1) *On-street parking.* On-street parking within 200 feet of any property line may be credited to the parking requirement at a rate of one credit of one off-street space for every two on-street parking spaces, up to a maximum of 10% of the parking requirement.

(2) *Bicycle parking.* Bicycle parking facilities within reasonable proximity of the main entrance may be credited at a rate of one credit of one off-street space for every five bicycle parking spaces, up to a maximum of 5% of the required vehicle parking.

(3) *Bus transit.* A bus transit stop within 300 feet of any property line may be credited up to a maximum of 5% of the parking requirement.

(4) *Rapid transit.* A bus rapid transit or light rail transit station within 400 feet of any property line may be credited up to a maximum of 10% of the parking requirement. A bus rapid transit or light rail transit station within 400 to 800 feet of any property line may be credited up to a maximum of 5% of the parking requirement.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 6.2. LOADING REQUIREMENTS.

§ 6.2.1. OFF-STREET TRUCK LOADING REQUIREMENTS.

(1) *Loading required.*

(a) Truck loading facilities shall be required in all zones for structures containing uses devoted to businesses, industry, manufacturing, storage, warehousing, processing, offices, professional buildings, hotels, multiple family dwellings, hospitals, airports, railroad terminals, and any buildings of a commercial nature.

(b) No structure shall be designed, erected, altered, used, or occupied unless the off-street truck loading facilities herein required are provided. In the event that structures are enlarged, expanded, or changed, the structures shall not be used, occupied, or operated unless there is provided at least the amount of off-street truck loading facilities that would be required if the increment were a separate structure.

(2) *Permanent reservation.* Areas reserved for off-street loading/unloading in accordance with the requirement of this appendix shall not be reduced in area or changed to any other use unless the permitted use served is discontinued or modified and alternate and equivalent loading/unloading space is provided and approved by the Board of Adjustment.

(3) *Maintenance.* The provision for and maintenance of the off-street truck loading facilities required shall be the joint and several responsibility of the operator and owner of the land upon which the structure requiring facilities is located.

(4) *Loading space sizes.* For the purpose of this section there shall be two sizes of off-street truck loading spaces designated "large" and "small".

(a) *"Large spaces."* Each "large" space shall have an overhead clearance of at least 14 feet, shall be at least 12 feet wide, and shall be at least 55 feet long, exclusive of access or maneuvering area, platform and other appurtenances.

(b) *"Small spaces."* Each "small space" shall have an overhead clearance of at least ten feet, shall be at least nine feet wide, and shall be at least 35 feet long, exclusive of access or maneuvering area, platform and other appurtenances.

(c) Off-street truck loading facilities shall be located on the same lot on which the structure for which they are provided is located: provided, however, that facilities provided under cooperative arrangement as hereinafter permitted may be located on another site not more than 300 feet from the structure for which they are provided.

(5) *Site design requirements.* Off-street truck loading facilities shall be constructed, maintained and operated in accordance with the following specifications;

(a) *Drainage and surfacing.* Areas shall be properly graded for drainage, surfaced with concrete, asphaltic concrete or asphalt, and maintained in good condition, free of weeds, dust, trash and debris;

(b) *Protective screen fencing.* Areas shall be provided with protective fencing such that occupants of adjacent structures are not unreasonably disturbed, during day or night, by the movement of vehicles;

(c) *Lighting.* Lighting facilities shall be so arranged that they neither unreasonably disturb occupants of adjacent residential properties nor interfere with traffic;

(d) *Entrances and exits.* Areas shall be provided with entrances and exits so located as to minimize traffic congestion and hazards; and

(e) *Connection to street.* Each required off-street loading/unloading space shall have direct access to a street or have a driveway which offers satisfactory ingress and egress for trucks.

(6) *Grouping of loading facilities.* Requirements for the provision of off-street truck loading facilities with respect to two or more structures may be satisfied by the permanent allocation of the requisite number of spaces for each use in a common truck loading facility, cooperatively established and operated: provided, however, that the total number of spaces designated is not less than the sum of the individual requirements unless, in the opinion of the building official, a lesser number of spaces will be adequate, taking into account the respective times of usage of the truck loading facilities by the individual users, the character of the merchandise and other similar factors. In order to eliminate a multiplicity of individual facilities, to conserve space where space is at a premium and to promote orderly development generally, the building official is hereby authorized to plan and group off-street truck loading facilities cooperatively for a number of structures requiring such facilities within close proximity to one another in a given area in such manner as to obtain a maximum of efficiency and capacity.

(7) *Loading space requirements.* The following minimum truck loading spaces shall be provided in all districts for structures containing enumerated in this section:

Square Feet of Gross Floor Area in Structure and Required Number of Spaces	
0 square feet up to 12,500 square feet	1 small space
12,501 square feet up to 25,000 square feet	2 small spaces
25,001 square feet up to 40,000 square feet	1 large space
40,001 square feet up to 100,000 square feet	2 large spaces
Each additional 80,000 square feet	1 large space

(8) *Waiver of loading requirements.* At the time of zoning application, the Planning and Zoning Commission is authorized to waive the off-street loading requirements for structures that are required to provide and maintain fewer than five off-street parking spaces or for any other structure if the approved design and the proposed use of the structure clearly demonstrates a lack of public need for off-street loading.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 7
BUFFERING, LANDSCAPING, AND TREE PRESERVATION REGULATIONS

§ 7.1. BUFFERING, LANDSCAPING AND TREE PRESERVATION.

§ 7.1.1. INTENT.

Buffering, landscaping and tree preservation requirements are to provide standards that will protect the public and improve the appearance of the community. These requirements will:

- (1) Buffer uncomplimentary land uses;
- (2) Promote appropriate plant materials for the area and emphasize xeriscape;
- (3) Encourage “walkable” streets and neighborhoods;
- (4) Mitigate adverse environmental impacts of development, such as erosion and “heat island” effects;
- (5) Preserve existing trees and other significant vegetation;
- (6) Improve water conservation efforts through efficient landscape and irrigation design;
- (7) Preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical and aesthetic environment;
- (8) Encourage the preservation of trees for the enjoyment of future generations;
- (9) Encourage the preservation of trees to provide environmental elements by adding value to property, and reduction of energy costs through passive solar design utilizing trees;
- (10) Encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering streams and to provide elements crucial to establishment of the local ecosystem; and
- (11) Promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 7.1.2. BUFFERS.

Buffering provides separation and screening between differing land uses which reduces visual, noise and light impacts to adjacent properties. This section provides standards for the width and the effectiveness of the buffer yard as the land use intensity of the new or expanded development increases.

- (1) *Activities subject to buffer requirements.* This section shall apply to any of the following, except where exempted pursuant to § 7.1.3 (2) below:
 - (a) The construction or erection of any new building or structure for which a permit is required;

(b) Any building addition exceeding 1,000 square feet;

(c) Any building renovation meeting the definition of “substantial construction or renovations” as defined in § 4.3.1, or in which the parking requirement is increased or the parking lot altered;

(d) Any expansion of an existing parking lot or area, which adds greater than 100 linear feet of buffer length; and

(e) Any construction on a single property of a new parking lot or expansion of an existing parking lot within by more than 2,000 square feet or 10% in area, whichever is greater.

(2) *Exemptions.* This section shall not apply to the following:

(a) Residential uses adjoining residential uses within any residential zoning district, except multi-family districts R-4 or R-6;

(b) Non-residential uses adjoining other non-residential uses of the same zoning classification;

(c) The reconstruction of an existing building of which 50% percent or less of the floor area was destroyed or rendered unusable by flooding, fire, windstorm or “act of God.” This exemption shall apply only where reconstruction of that building will not result in an increase in building size or paving area of the parking facilities to be provided;

(d) Interior finish work or remodeling in a portion of a building unless the work results in an increase in the paving area of the parking facilities or in an enlargement of the exterior dimensions of an existing building; and

(e) Any use, building or structure for which only a change of use within the same zoning category is requested, and which use does not increase the existing building square footage or parking requirement.

(3) *Reduction in required buffer yards.* The buffer yard requirements for a property to be developed shall be reduced where:

(a) A buffer yard exists on an abutting property, and the net buffer yard satisfies the minimum buffer yard requirements of this section; and

(b) The adjoining property owners have provided a recorded agreement (in a form satisfactory to the city), restricting the use of an established or proposed buffer yard to the uses provided for in this section.

(4) *Buffer types and requirements.*

(a) Figure 7-1 indicates when a buffer yard shall be required to buffer an adjoining zoning district or major public street. The applicant shall install the type of buffer yard as indicated in the table. Uses in the “adjoining zoning district” are not required to provide the buffer yard.

(b) There are 5 types of buffer yards. Figure 7-2 indicates the minimum width, typical plant types, number of trees and shrubs, and whether a fence/berm/wall is required for each 100 lineal feet for each buffer yard. The applicant may either plant new trees or plants, or preserve existing trees or plants, within the required buffer that meet the requirements of this subsection. The planting configuration for each buffer yard type shall provide a balanced landscape with emphasis on variety, appearance, screening and maintenance.

(c) To the extent permitted by law, utility and telecommunications companies shall provide a plant buffer within the street yard of substations, pumping stations and storage sites. The buffer shall comply with the requirements for a Type “E” buffer, below.

(d) Fence and wall applications and options are identified in § 7.1.3 (8) below. Additionally, a fence or wall a minimum of six feet high and two and one-half inches thick shall be required where the land use abuts a residential district. In this application, the fence, wall or berm is required in addition to the trees and shrubs required by Figure 7-2.

Figure 7-1. Required buffer yards.

Zoning District	Adjoining Zoning District				Adjoining Street Classification		
	R-1, R-2, R-3	R-4, R-5, R-6	O-1, O-2, C-1, C-2, MXD, MXD(PUD)	M-1, M-2, M-3	Major Arterial	Minor Arterial	Collector
R-1, R-2, R-3	NA	NA	NA	NA	NA	NA	NA
R-4, R-5, R-6	NA	NA	NA	F	A	NA	NA
O-1, O-2, C-1, C-2, MXD, MXD (PUD)	C	C	NA	E	B	B	A
M-1, M-2, M-3	E	D	E	NA	C	C	B
Notes: A, B, C, D, and E represent Buffer Yard Types as shown in Figure 7-2;							
NA - Not Applicable							

Figure 7-2. Buffer yard plant characteristics.

Buffer Yard Type	Minimum Width (in feet)	Number of Trees ¹		Number and Type of Shrubs ²			Fence(F), Berm(B) or Wall(W)
		Canopy	Understory ³	Large ⁴	Medium ⁵	Small ⁶	
A	10	2	2	-	-	16	-
B	15	2	2	8	12	-	-
C	15	2	4	9	8	-	F, B or W
D	25	2	4	9	8	-	F, B or W
E	30	2	4	14	4	4	F, B or W

¹ Canopy Trees required for Buffer Yard Types D and E shall be a minimum of medium/large shade trees that reach a mature height of 25 feet minimum. See Figure 7-4. Where existing overhead utility lines conflict with canopies, small/medium trees may be substituted.

² An understory tree is a small/medium deciduous tree with a mature height of 15 to 25 feet.

³ At a minimum, 50% of the shrubs for Buffer Yard Types D and E shall be evergreen.

⁴ A large shrub is no more than 25 feet in height at maturity and may be either deciduous or evergreen.

⁵ A medium shrub is between 5 and 10 feet in height at maturity and may be deciduous or evergreen.

⁶ A small shrub is no more than 5 feet in height at maturity and may be either deciduous or evergreen.

(5) *Location of buffer yard.*

(a) A buffer yard required by this section shall be provided along the side(s) and rear property line of abutting uses.

(b) Buffer yards are not required along the front property line.

(c) At the rear property line of adjoining uses for which a buffer type A, B or C is required in Figure 7-1 and 7-2, the applicant may elect to provide a solid fence at least six feet in height and two and one-half inches thick in lieu of the buffer yard.

(6) *Permitted uses within the buffer yard.* No active recreation area, storage of materials, parking or structures, except for necessary utility boxes and equipment, shall be located within the buffer yard. The buffer yard may be included in the required building setback.

(7) *Landscaping and irrigation requirements within buffer yard.* Planting and irrigation within buffer yards are required as per § 7.1.4.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 7.1.3. FENCES AND WALLS.

(1) (a) No fence or wall shall hereafter be erected within the city unless the person erecting the fence shall first obtain from the city a permit for the construction of the fence. The cost of the permit shall be as established by the City Council. . Permits are required for new construction, repairs taking place in a six month time frame to more than 50% of an entire length of the fence, or movement of one or more fence lines. Repairs to fences not meeting the aforementioned guidelines need no permit. The permit application shall specify:

- wall; and
- (i) The approved height, length, material or materials, style and location of the fence or
 - (ii) Include a recorded plat or survey signed and sealed by a professional registered land surveyor.

(b) Disputes regarding property ownership or fence line placement that cannot be resolved by review of the plat or survey are considered civil matters between property owners, and the city has no authority in resolving such issues. When feasible, the city will maintain a contract with a local surveyor in an attempt to secure affordable surveying services for the residents. As required, residents will be responsible for retaining and paying for any required professional fees.

(2) *Dimensions and design standards.* (Also see Illustration 7.1) Except as required or permitted by the city, no fence or wall hereafter erected with the city shall exceed six feet in height. Maintenance of fences and walls shall be the responsibility of the property owner. Failure to maintain shall constitute a public nuisance.

(3) *Front yard fences.* In R-1, R-2, R-3 and R-5 zoning districts, no fence or wall may be constructed closer to the front property line than the front line of the main building on the lot, unless the fence is:

(a) Open fence constructed of ornamental iron, with wood, stone, brick, or a combination thereof used for supports for the fence. ("Ornamental iron" shall include pillars or supports of other approved materials necessary to support the ornamental iron. Vertical or horizontal pickets must be a minimum distance apart so that a sphere of four inches cannot pass through. Pillars and supports shall be a minimum of eight feet apart and a maximum of 18 inches in diameter or square, and must be of plaster, stone, or brick.);

- (i) The following shall not be used for fencing:
 - a. Cast-off, secondhand, or other items not original intended to be used for constructing or maintaining a fence;
 - b. Plywood, particle board, paper, visqueen plastic, plastic tarp, or similar material;
 - c. Barbed wire, razor wire, and other similar fencing materials capable of inflicting significant physical injury;
 - d. Sheet, roll or corrugated metal; or
 - e. Chain-link or metal mesh.
- (ii) Constructed up to a maximum height of four feet above the natural surface of the ground;
 - a. A footing for the fence may be up to one feet solid.
 - b. Higher than one feet above the natural surface of the ground shall be constructed of ornamental iron only except for necessary pillars or supports of other approved materials necessary to support the ornamental iron above the natural surface of the ground with an overall height limit of four feet.

(b) Front yard fences that meet these criteria may be built at the property line, or within ten inches from the inside of the property line. The entire footing of the fence including underground structure must be completely within the property line. The upper, exposed section of the fence must align with any adjacent front yard fencing.

(4) *Side yard fences.* Side yard fences may be constructed up to six feet in height from the rear property line up to the current regulated front yard building set back line. If the front and side yard fences are of differing heights, an angled or stepped-down approach will be necessary where the two meet in order to transition the heights.

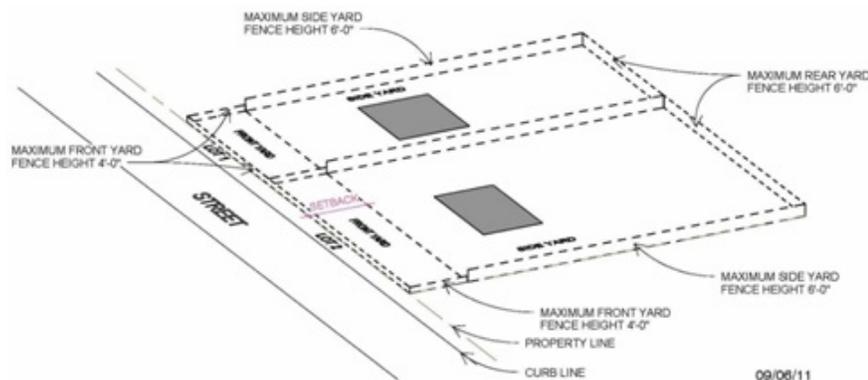
(5) *Entrances/exits.* Areas shall be provided with a throat depth of a minimum of 18 feet from the property line and to ensure that street traffic is not impeded.

(6) For buffer areas required by this code, no fence or wall shall be required if an existing fence or wall on an abutting property meets the requirements of this section.

(7) The fence or wall shall be solid and 100% percent opaque, except as otherwise required herein. Fence material shall be a minimum of one-half inches in thickness and of wood, precast concrete, metal or wrought iron with an adjoining hedge which provides an opaque barrier. Corrugated and galvanized steel or metal sheets shall not be permitted.

(8) Walls may be concrete, concrete block with stucco finish, masonry, stone or a combination of these materials. The support posts shall be placed on and faced toward the inside of the developing property so that the surface of the wall or fence is smooth on the adjoining property side.

Illustration 7.1



(9) *Pool fence.* It shall be unlawful hereafter for any person to construct, use or maintain upon premises in his or her possession or under his or her control any swimming pool unless the pool be enclosed within a permanent fence not less than 4 feet in height and unless the gates or entrances to the enclosure be securely locked at all times other than when being actually used for purposes of ingress or egress. This requirement may be satisfied by a fence 6 feet high that encloses the lot or lots where the pool is located.

(10) *Berms.* Berms shall have a slope not greater than the slope created in three horizontal feet with a one foot vertical rise. The installation of a berm shall not violate laws governing drainage of the property or impacts on adjoining properties or rights of way. The surface of the berm that is not planted with trees and shrubs shall be covered with grass, perennial ground cover, vines, woody and herbaceous perennials, with mulch. Grass or other coverings shall be maintained in conformance with this article. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 7.1.4. LANDSCAPING.

The purpose of this section is to provide regulations to improve the appearance of properties when viewed from the street and screen unattractive aspects of commercial or industrial properties.

(1) *Activities subject to landscaping requirements.* This section shall apply to any of the following, except where exempted pursuant to § 7.1.4 (2) below:

(a) The construction or erection of any new building or structure for which a building permit is required;

(b) Any building addition exceeding 1,000 square feet or 10% in area, whichever is greater, of the exterior dimensions of an existing building;

(c) Any building renovation meeting the definition of “substantial construction or renovations” as defined in § 4.3.1 in which the parking requirement is increased or the parking lot altered; and

(d) Any construction of a new parking lot or expansion of an existing parking lot by more than 2,000 square feet or 10% in area, whichever is greater. Parking lots in residential zoning districts R-4 and R-6 shall be subject to the requirements of § 7.1.4(6).

(2) *Exemptions.* This section shall not apply to the following:

(a) Single family, duplex, triplex, quadraplex or townhome properties located within a residential zoning district;

(b) The reconstruction of an existing building of which 50% or less of the floor area was destroyed or rendered unusable by flooding, fire, windstorm or “act of God.” This exemption shall apply only where reconstruction of that building will not result in an increase in building size or paving area of the parking facilities to be provided;

(c) Interior finish work or remodeling in a portion of a building unless the work results in an increase in the paving area of the parking facilities within the street yard or in an enlargement of the exterior dimensions of an existing building;

(d) Any use, building or structure for which only a change of use is requested, and which requires no structural modifications that would increase its volume or scale; and

(e) Single-family dwellings located on an existing lot of record.

(3) *Landscape plan.* Activities subject to this section which exceed 4,000 square feet of impervious surface shall include landscape materials installed in conformance with an approved landscape plan bearing the seal of a registered landscape architect. The landscaping plan shall be approved by the City Administrator or designee (or authorized agent of the city) as part of the underlying application.

(4) *Xeriscape.* A registered landscape architect, where required by this subsection, shall develop a plan that utilizes xeriscaping and native plants to the extent practicable.

(5) *Mandatory criteria.*

(a) *Screening.* All off-street loading spaces, refuse and outdoor storage areas, antennas, satellite dishes and mechanical equipment within the street yard shall be screened from all public streets. The screening shall be a minimum of six feet in height or a height sufficient to obscure the area or equipment requiring the screening, whichever is less. The screening may be provided by plants, a solid screen fence or wall, or a combination thereof, unless otherwise restricted by city ordinances.

(b) *Size of trees and plantings.* Trees and shrubs, at the time of planting, are to be the size shown in Figure 7-3. Plant materials shall be selected from the plant list in Figure 7-4. Substitutions may be

permitted if based on the recommendation of the qualified landscape professional preparing the plan, subject to the approval of the City Administrator or designee (or authorized agent of the city). In addition, if a listed species is commonly infested by fungi, disease or pests, a substitution may be recommended. In no case shall “monoculture” planting be permitted. Plant materials shall show a variety of texture, color, shape and other characteristics.

(6) *Installation, acceptable materials and planting methods.*

(a) No artificial plant materials shall be used to satisfy the requirements of this section.

(b) Plant materials required by this section shall comply with the minimum size requirements of Figure 7-3 at the time of installation. Plant height shall be measured from the average grade level of the immediate planting area to the top horizontal plane of the shrub at planting. For single trunk trees, the measurement shall be taken at six inches above grade level, and for multi-trunk trees, the tree shall be measured from the average grade level of the immediate planting area.

(c) Planting areas shall consist of permeable surface areas only. The permeable surface areas for shrubs may be included within permeable surface areas required for trees.

(d) In satisfying the requirements of this section, the use of organic mulch material (minimum four inch depth) shall be provided at the time of planting.

(e) Each large tree, small tree or large shrub shall be planted at least 48 inches from the edge of any paved surface.

Figure 7-3. Tree and shrub sizes.

	<i>Minimum Caliper at the Time of Planting</i>	<i>Minimum Height at the Time of Planting</i>	<i>Minimum Planting Area</i>
Trees	1 ½ inches for single trunk	NA unless multi-trunk, in which case min. height shall be 6 feet at the time of planting	100 square feet
Small trees	1 ½ inches for single trunk	6 feet for multi-trunk	25 square feet
Large shrubs	NA	2 feet	9 square feet
Small to medium shrubs	NA	1 feet	8 square feet

(f) *Protection of plant areas.* Plant areas must be protected from vehicular traffic through the use of concrete curbs, wheel stops or other permanent barriers.

(g) *General maintenance.* Required plants shall be maintained in a healthy condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pest prevention, pruning and other maintenance of all plantings as needed. Any plant that dies shall be replaced with another living plant that is comparable to the existing plant materials or plant materials specified in the approved landscape plan within 90 days after notification by the city. The City Administrator, or designee, may extend this time period up to an additional 90 days due to weather considerations. If the plants have not been replaced after appropriate notification and/or extension, the property owner or his or her designee or lessee shall be in violation of this article.

(h) *Utility lines.* Any damage to utility lines resulting from the negligence of the property owner or his agents or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the property owner. If a public utility disturbs plants within a utility easement, it shall make every reasonable effort to preserve the plants and return them to their prior locations after the utility work. However, if some plants die, it shall be the obligation of the property owner to replace them.

(i) *Irrigation.* Landscaped areas shall be irrigated with a system that is suitable for the type of plantings installed. Notwithstanding applicable regulations of San Antonio Water System or other laws, the following is required.

(i) *Design requirements.*

a. *Pressure.* The system shall be designed to the lowest static pressure available in an annual twelve month period. If the static pressure exceeds design pressure by 15 PSI or more in any zone, a flow control device shall be installed. The pressure at any point within a zone shall not vary by more than 10% from the design sprinkler operating pressure.

b. Provide separate zones for: turf; plants with dissimilar water requirements; areas with greater or lesser sun exposures; and slopes from flat/level areas (topographic information is required for zoning for slope and flat/level area design).

c. *Sprinkler head spacing:* head spacing shall not exceed 50% of spray diameter; spacing shall make allowance for local wind conditions; trim perimeters with correct arc and radii selection to eliminate water thrown onto non-landscaped areas; and the radius/diameter and arc of coverage of a representative number of each type of sprinkler head shall be shown.

d. *Landscape water schedule:* produce a water schedule for the landscape at a minimum of 80% ET (evapotranspiration) as determined by the local ET.

(ii) *Equipment.*

a. *Controller requirements:* on/off rain switch or other rain shut off device that does not alter program; multiple programming capacity; controllers capable of a minimum of three cycles per program.

b. *Valves:* flow control devices on all remote control valves (including a master control valve).

c. *Sprinklers:* use of low-angle heads is encouraged; pop-up sprinklers and shrub risers will be at a height to clear turf, trees, shrubs, other planting and objects such as fences allowing no obstruction of spray pattern; pop-up type shrub risers should be used in areas where pedestrians/auto traffic may occur. Drip irrigation should be used in areas between the curb and sidewalk and parking lot areas where over spray onto pavement may occur in accordance with manufacturers recommendations; low head drainage is to be eliminated or minimized through design or by use of check valves; sprinkler heads shall be attached to rigid lateral lines with flexible material, swing joints to reduce potential for breakage; any device on a pressurized line (such as a quick-coupler valve) should be preceded by some sort of isolation valve separate from the primary shut-off valve.

(6) *Parking lot shading.*

(a) *Applicability.* Canopy trees, as defined in Figure 7-2, shall be provided to shade a minimum of 25% of every parking lot and parking area (excluding driveways and garages) subject to this section. A "parking lot" used exclusively for the display of motor vehicles for sale as part of an automobile dealership is exempt from this requirement.

(b) *Design.* Medium or large trees shall be used. Trees shall be retained or planted along the perimeter of a parking area, or within either an island or peninsula not less than nine feet wide by 18 feet deep.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 7.1.5. TREE PRESERVATION.

(1) *Intent.* Balcones Heights contains species of native and non-native trees of significant size and quality that contribute in a positive way to their environment. This section is intended to protect and preserve significant trees and control the re-shaping, removal or relocation of those trees that provide benefits for the community and to protect against the spread of disease while recognizing that there are rights to develop private property.

(2) *Applicability.* Tree preservation is:

(a) Applicable to (i) all types of existing industrial, commercial, office and multifamily development, and (ii) new development or undeveloped properties, including new residential development; and

(b) Not applicable to property developed as a single family, duplex, triplex or quadraplex dwelling.

(3) *Protected trees.* The following trees, when located on properties to which this section applies above, shall be "Protected trees":

(a) Trees having a minimum trunk diameter of eight inches measured 54 inches above the ground. When measuring a multi-trunk tree, the diameters of the largest three trunks shall be added together;

(b) Street trees or other required trees, such as those required as a condition of approval, use permit or other zoning requirement, regardless of size;

(c) All memorial trees dedicated by an entity recognized by the city and all specimen trees that define a neighborhood or community.;

(d) A tree or trees of any size planted as a replacement for a protected tree; and

(e) Trees determined by licensed arborist to be diseased, dying, dead or structurally unsound shall be exempt from protected tree status.

(4) *Preservation of protected trees.* Any person who owns, controls or has custody of any real property within the city shall maintain all protected trees located thereon in a state of good health. This includes parcels designated as permanent open space or for recreational purposes. Failure to maintain said trees in a state of good health will constitute a violation of this section.

(5) *Liability.*

(a) The city shall be exempt from the requirements and application of this appendix. Nothing contained in this section shall be deemed to impose any liability for damages or a duty of care and maintenance upon the city its officers or employees.

(b) The person in possession of any public property (such as through lease or license of public property) or the owner of any private property shall have a duty to keep protected trees upon the property and under their control in a safe and healthy condition. Any person who feels a tree located on property possessed, owned or controlled by them shall have an obligation to secure the around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm.

(6) *Permit required.*

(a) No person shall remove, destroy, perform cutting of branches over one inch in diameter, or disfigure or cause to be removed or destroyed or disfigured any protected tree without having first obtained a permit from the city to do so.

(b) Street trees on a public right-of-way are also protected by this section.

(c) All protected trees shall require a permit for removal, relocation, cutting or reshaping.

(d) All removed or disfigured trees shall also require replacement with like-size, like-kind trees or an equal value tree or trees as determined by the City Administrator or designee. If a replacement tree is unavailable in like size or kind, the value of the original protected tree shall be determined using the latest edition of *Guide for Plant Appraisal* by the International Society of Arboriculture. The valuation shall be used to determine the number and size of replacement trees required. The replacement trees shall be located on site wherever possible. Where there is not sufficient room on site for the replacement trees in the judgment of the City Administrator or designee, another site may be designated that is mutually agreeable.

(e) Routine maintenance of protected trees shall not require a permit. However, no protected tree shall be severely pruned, topped, pollarded or otherwise pruned in a way that disfigures the natural form of the tree. This maintenance shall include only tree pruning practices that are approved by the International Society of Arboriculture. Except in emergency situations where a branch is causing immediate danger to the public in the opinion of a certified arborist, major pruning or trimming of a protected tree, cutting of live branches over one inch in diameter, pollarding, removing of large branches obscuring a sign or other large scale limb removal will require a permit prior to any work being performed.

(f) A one-year pruning permit that is not site-specific may be issued under the following circumstances:

(i) The applicant has a certified arborist on staff who is listed on the city's list of certified arborists;

(ii) The applicant has agreed in writing to perform work in accordance with city-approved International Society of Arboriculture standards;

(iii) The applicant has submitted a written protocol describing the proposed activity. Utilities or their sub-contractor, whose work is performed or supervised by a certified arborist included on the most recently approved list of certified arborists maintained by the city, may receive a yearly permit for all protected trees to be trimmed, but shall demonstrate to the city's satisfaction the use of International Society of Arboriculture best practices for all work. All other permits shall be site-specific. Tenants of any property shall have the express written consent of the owner prior to removing or cutting any protected trees on that property and prior to obtaining any required permits.

(7) *Application for a tree permit.* An application for a protected tree removal or cutting permit shall be filed for all protected trees, along with the inspection fee as established by the City Council.

(a) An application shall be filed and approved prior to any tree removals, relocations or cutting.

(b) An application must be processed prior to the issuance of any grading, trenching, encroachment, demolition or building permit for development that encroaches on a protected tree.

(c) Following receipt of a completed application, the City Administrator or designee (or authorized agent of city) shall inspect the premises and determine which protected trees may be removed or which reshaping or cutting may occur.

(8) *Application evaluation criteria.* The following criteria will be used when evaluating protected tree removal or cutting requests:

(a) The condition of the existing protected tree with respect to disease, danger of falling or deadwood;

(b) Danger to the public or to other protected trees in its present condition or location;

(c) Interference with existing utilities, such as sewer lines or power lines; and

(d) Whether the protected tree is a specimen tree, street tree or memorial tree.

(9) *Conditions of approval.* No person shall cut, move or remove any protected tree in violation of the terms or conditions of any permit granted hereunder. Tree removal or cutting permits may include such conditions of approval as are appropriate to affect the purpose of this Article. Such conditions may include, but are not limited to, the following:

(a) Replacement of protected trees removed or destroyed with a tree or trees equal in size and species;

(b) The retention of certified arborist to supervise all pruning both of branches and roots, re-shaping, trimming or relocation of protected trees;

(c) The branch and root structure of all protected trees to remain in place or protected trees that have been relocated on site shall be protected by the use of a substantial construction fence, such as a non-movable chain link fence, placed around the protected zone (the area around a protected tree in which disturbance may cause harm) of each protected tree. Such protection shall be in place prior to any construction equipment or materials being on site. Fencing shall remain in place until construction equipment, materials and debris have been removed from the site and approval from the City Administrator or designee (or authorized agent of the city) has been given for removal. No mechanical equipment, material, debris, paint or paint products, pallets, chemicals, contaminated water or other foreign material shall be allowed to be placed, poured, piled, pushed or stored within the protected zone of any tree;

(d) Designation of each protected tree to remain in place on the construction site;

(e) Whether removal, relocation, re-shaping or encroaching into the protected zone of the tree is necessary in order to allow reasonable use of the property;

(f) Whether the protected tree is anchoring a slope or the removal or disturbance of the protected zone of the tree would cause erosion, loss of soil, increase the flow of surface runoff, or cause a diversion of water that would affect downstream properties;

(g) The total number of overall or protected trees on the property in comparison to surrounding properties and the effect the tree removal would have on surrounding property values;

(h) Whether an effort has been made to preserve the character of the area and the more valuable specimens have been preserved or relocated on site;

(i) Whether the property will support the number of existing trees, taking into consideration any proposed development and zoning for the property, in a healthy growing condition and whether a different layout might allow for the preservation of the tree(s) in place; and

(j) Whether the protected tree is encroaching on or damaging the existing development and if so, whether it could be trimmed or reshaped in a natural looking form or the roots pruned and redirected with root barriers to protect the existing development.

(10) *Exceptions.* If personal injury or property damage is determined by the City Administrator or designee, including public safety officers, to be imminent due to the hazardous or dangerous condition of a protected tree, or if the protected tree is an immediate impediment to the work of any public safety officers, a protected tree may be cut or removed without a permit.

(11) [RESERVED]

(12) *Civil penalties.*

(a) Should a protected tree be substantially re-shaped, topped, removed, damaged or destroyed without a permit, a civil penalty equal to the value of the protected tree may be charged against the property owner and/or violator (if not the property owner) in addition to the replacement of the protected tree with a like-kind, like-size tree. The value of the original protected tree shall be determined using the latest Edition of *Guide for Plant Appraisal* by the International Society of Arboriculture. If the size of the protected tree cannot be determined due to the unauthorized removal of a protected tree, the size shall be determined by measuring the stump that remains or may be determined by anecdotal evidence or interpolated from photographs or adjacent trees. A missing protected tree shall be assumed to have been in perfect health, unless the property owner can prove otherwise by photo or other verifiable evidence.

(b) The City Administrator or designee shall notify the property owner and alleged violator (if different than the property owner) of the violation and fine in writing. The notice shall include a description of the alleged violation and provide the owner ten business days to request an administrative hearing before the Municipal Judge. The notice shall also indicate that the decision of the Municipal Judge is final unless appealed to the appropriate court. The City Attorney shall represent the city in all appeals.

(c) Fines for violation of this section are payable at the office of the City Administrator or designee. Fines must be paid within 30 business days. The City Administrator or designee is authorized to collect all unpaid civil penalties.

(13) *Imposition of a lien.* Any unpaid costs or penalties imposed pursuant to this section shall constitute a special assessment against the real property upon which a violation of this section has occurred.

(a) All costs and/or fines shall be itemized in a written report of assessment. The City Administrator or designee shall cause a copy of the report and assessment to be served on the owner of the property or violator (if not the property owner) not less than five days prior to the time fixed for confirmation of the assessment. Service may be made by enclosing a copy of the report of assessment in a sealed envelope, postage prepaid, addressed to the owner at his or her last known address as appears on the last equalized assessment rolls of Bexar County and depositing the same in the United States mail. Service shall be deemed complete at the time of mailing.

(b) A copy of the report of assessment shall be posted in the Office of the City Secretary on the bulletin board designated for the posting of agendas, not less than three days prior to the time when the report shall be submitted to the City Council.

(c) The City Council shall hear the report, together with any objections by the property owner. After the assessment is made and approved by the City Council, it shall be a lien on said property. The lien shall be afforded the highest priority permitted by law and may be enforced in any manner authorized thereby.

(14) *Duration of a permit.* Any permit issued shall be valid for a period of one year from issuance, or, if an appeal is taken, one year from a final decision.

(15) *Revocation of a permit.* A permit shall be subject to revocation if the conditions of the permit or the regulations set forth herein are violated.

(a) Before taking any action to revoke the permit, the City Administrator or designee shall give notice to the permittee in writing of the proposed revocation, the reasons for such revocation, and the time and place the permittee will be given an opportunity to show cause to the City Administrator why the permit should not be revoked. The written notice may be personally served upon the permittee or mailed to the permittee at the address shown on the application at least ten days prior to the hearing. Upon conclusion of the hearing, the City Administrator may revoke the permit upon a finding of noncompliance with the conditions of the permit or the regulations herein.

(b) The City Administrator's decision to revoke the permit may be appealed as set forth in this section. Any permittee who has had an annual, non-site specific permit revoked shall not be eligible for a new annual, non-site specific permit for a period of six months from the date of the final decision revoking the permit. During the six-month period, the permittee may apply for only individual, site-specific permits and must meet the requirements of this section.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 7.1.6. VARIANCES.

(1) *Variance request.* A variance to the terms of this article may be granted by the City Council where a literal enforcement of the provisions of this Article will result in unnecessary hardship. A variance request must be submitted to the City Administrator in writing setting out the basis for the request. No variance shall be granted unless:

(a) Such variance will not be contrary to the public interest;

(b) Such variance will be in harmony with the spirit and purposes of this article;

(c) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and

(d) The variance will not substantially weaken the general purposes of this article.

(2) *Review.* The City Council is to:

(a) Approve the variance;

(b) Deny the variance; or

(c) Grant the variance with such conditions as may be necessary for the furtherance of the purposes of municipal tree preservation in keeping with the spirit of the ordinance.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

Figure 7-4. Plant list.

TREES				
Small: Fifteen (15) to twenty-five (25) feet; Medium: Twenty (25) to Forty (40) feet; Large: Forty (40) Feet and Higher (60'+)				
Common Name	Scientific Name	Height	Remarks	Shade Area
Anacacho, Orchid tree*	Bauhania congesta	S-M	Semi-evergreen, tree-shrub, white flower clusters	275
Anaqua*, Sandpaper tree	Ehretia anacua	M-L	Evergreen broad leaf; white flower clusters	875
Arizona Cypress	Cupressus arizonica	M-L	Evergreen conifer; gray green foliage; pyramidal shape	875
Texas Ash*, Green Ash	Fraxinus sp.	M-L	Deciduous: fast growing	875
Ashe Juniper*	Juniperus ashei	S-M	Evergreen conifer; green foliage, rein ales fruit	275
Bald Cypress*	Taxodium distichum	L	Deciduous conifer: fine textured foliage; fall color	1200
Black Willow*	Salix nigra	M-L	Deciduous; riparian species	875
Bur Oak*	Quercus macrocarpa	L	Deciduous; large acorns and leaves, good shade tree	1200
Carolina Buckthorn*	Rhamnus caroliniana	S-M	Semi-evergreen; sunshade, glossy leaves, reddish fruit	275
Cedar Elm*	Ulmus crassifolia	M-L	Deciduous; narrow canopy, good shade tree for R.O.W.s	875
Chinquapin Oak*	Quercus muhlenbergii	M-L	Deciduous; round-topped tree; bold foliage	875
Condalia, Brazil Tree, Bluewood Condalia*	Condalia hookeri, C. viridis	S-M	Evergreen: delicate foliage; very drought tolerant; sun-shade, good shade tree	275
Cottonwood*	Populus deltoides	L+	Deciduous; large leaves, females fluffy seeds	1200
Crabapple, Texas*	Mollis texana	S-M	Deciduous, full to partial sun, spring flowering tree	275

Common Name	Scientific Name	Height	Remarks	Shade Area
Deodar Cedar	<i>Cedrus deodara</i>	L	Evergreen; spreading pyramidal shape	1200
Ebony, Texas*	<i>Pithecellobium flexicaule</i>	S	Evergreen; sun; white flowers	n/a
Escarpment Black Cherry l*'	<i>Prunus serotina</i> var. <i>eximia</i>	M-L	Deciduous; sun to shade; fall foliage	875
Eve's Necklace*	<i>Sophora affinis</i>	M-L	Deciduous; sun-shade; white to pink flowers	875
Goldenball Lead Tree*	<i>Leucaena retusa</i>	S-M	Deciduous; delicate foliage; fragrant yellow flowers	275
Hack berry*	<i>Celtis</i> spp.	M-L	Deciduous; prolific; wildlife favorite	875
Honey Locust	<i>Gleditsia triacanthos</i>	M	Deciduous; thornless varieties available	550
Huisache*	<i>Acacia farnesiana</i>	M	Deciduous; delicate foliage; fragrant yellow flowers	550
Kidneywood*	<i>Eysenhardtia polystachya</i>	S	Deciduous; delicate tree-shrub; fragrant white flowers	n/a
Lacy Oak*	<i>Quercus laceyi</i>	M	Deciduous; sun-partial shade; hill county native, good shade tree	550
Live Oak*	<i>Quercus Virginiana</i>	M-L	Evergreen-like; good shade tree	875
Mesquite*	<i>Prosopis glandulosa</i>	S-M	Deciduous; lacy spreading form	275
Monterrey Oak	<i>Quercus polymorpha</i>	S-M	Evergreen-like; good shade tree	875
Mexican Buckeye*	<i>Ungnadia speciosa</i>	S	Deciduous; pink-red spring flowers	n/a
Pecan*	<i>Carya illinoensis</i>	L+	Deciduous; needs lots of space; sensitive to root impact	1200
Persimmon, Texas*	<i>Diospyros texana</i>	S-M	Deciduous; sun-shade, smooth bark; female has black pulpy fruit	275

Common Name	Scientific Name	Height	Remarks	Shade Area
Poosum Haw*	<i>Ilex decidua</i>	S-M	Deciduous; sun-shade; female has red fruit	275
Retama, Paloverde*	<i>Parkinsonia texana</i>	S-M	Deciduous; fast growing, yellow flowers	275
Red Oak, Shumard*	Shumard <i>Quercus shumardii</i>	L	Deciduous; fall color, good shade tree	1200
Red Oak, Texas*	<i>Quercus texana</i>	M	Deciduous; fall color, good shade tree	550
Redbud, Texas, Oklahoma, Mexican*	<i>Cercis canadensis</i> var <i>texana</i>	S-M	Deciduous; sun-shade, red/pink or white flowers	275
Rusty Blackhaw*	<i>Viburnum rufidulum</i>	S	Deciduous; fall color, white flower clusters	n/a
Silk-tassle*	<i>Garrya ovata</i>	S	Evergreen; sun-shade	n/a
Spiny Hackberry*	<i>Celtis pallida</i>	S	Evergreen; greenish white flowers, yellow orange fruit	n/a
Sycamore, Mexican	<i>Platanus mexicana</i>	L+	Deciduous; large leaves, good shade tree	1200
Sycamore, Texas*	<i>Platanus glabrata</i>	L+	Deciduous; large leaves, good shade tree	1200
Texas Mountain Laurel*	<i>Sophora secundiflora</i>	S	Evergreen, part shade to full sun; fragrant purple flowers	n/a
Texas Pistache*	<i>Pistacia texana</i>	S	Semi-evergreen; full sun to part-shade; red fruit	n/a
Wafer Ash, Hop tree*	<i>Ptelea trifoliata</i>	S	Semi-evergreen; sunshade; light green foliage	n/a
Western Soapberry*	<i>Sapindus drummondii</i>	M-L	Deciduous; full to partial sun; good shade tree, cluster large yellow flowers	875
Wild Olive*	<i>Cordia boissiereri</i>	S-M	Semi-evergreen; large white flowers, hardy to 14°F	275
Yaupon Holly*	<i>Ilex vomitoria</i>	S-M	Evergreen; sun-shade; female has red fruit	275
* = Texas Native				

SHRUBS			
Large (Not Taller than Twenty-Five (25) Feet at Maturity)			
Common Name	Scientific Name	Height	Remarks
Bay	Laurel noblis	6'-12'	Evergreen, sun-part sun, fragrant leaves
Buckeye*	Aesculus pavia	6'-12'	Deciduous (even in dry weather), shade, yellow or red Bowers
Evergreen Sumac*	Rhus virens	4'-15'	Evergreen, sun-shade, red fruit
Flameleaf Sumac*	Rhus lanceolata	5'-15'	Sun-partial shade; deciduous; red berries in fall; fall color
Texas Mountain Laurel*	Sophora secundiflora	10'-25'	Tree-like evergreen shrub; purple spring flowers; sun, part shade
Texas Pistache	Pistacia texana	6'-12'	Semi-evergreen, sun

SHRUBS			
Medium (Five (5) to Ten (10) Feet at Maturity)			
Common Name	Scientific Name	Height	Remarks
Glossy Abelia	Abelia grandiflora	5'-9'	Bronze evergreen foliage; white or pink; sun, part shade
Agarita*	Mahonia trifoliata	5'-9'	Holly-like evergreen foliage; yellow spring; red edible berries; sunshade
Cenizo, Texas Sage*	Leucophyllum sp.	5'-9'	Dusty gray evergreen foliage; sun; blooms throughout summer; purple - pink flowers; several new varieties: including compact
Elbow Rush*	Forestiera pubescens	3'-6'	Deciduous; sun-shade, small white flowers, black fruit
Fragrant Sumac*	Rhus aromatic a	3'-6'	Deciduous; part shade, fall color
Hogplum*	Colubrina texensis	4' -6'	Part shade, full sun; fragrant blooms
Juniper	Juniperus sp.	5'-10'	Tough evergreen; many varieties; sun, part shade
Mutablis Rose, Butterfly Rose, Old Blush	Rosa chinensis x (Mutablis)	3'-5'	Sun, large single petal flowers change color as ages
Pomegranate	Punica granatum	5'-10'	Sun, upright shrub; orange blooms; edible fruit; dwarf variety

Medium Shrubs (Cont'd)			
Common Name	Scientific Name	Height	Remarks
Southern Wax Myrtle	<i>Myrica cerifera</i>	3'-8'	Evergreen, sun-shade, compact variety, available
White Brush*	<i>Aloysia gratissima</i>	4'-8'	Delicate; fragrant white flower; suckers, can be used as a hedge

SHRUBS			
Small (Not Taller than Five (5) feet at Maturity)			
Common Name	Scientific Name	Height	Remarks
American Beautyberry	<i>Callicarpa americana</i>	3' -4'	Deciduous, fruit in fall and winter, purple; part shade
Agave, century plant	<i>Agave americana</i>	3'-5'	Sun, rosette, spine-tipped leaves
Barbados Cherry	<i>Malpighia glabra</i>	2'-4'	Evergreen, pink flowers, red fruit, sun-shade
Barberry	<i>Berberis thunbergii atropurpurea</i>	3'-5'	Evergreen; sun-part shade, color foliage
Grayleaf Cotoneaster	<i>Cotoneaster glaucophylla</i>	3'-5'	Sprawling evergreen shrub; dusty gray foliage; sun, part shade
Juniper	<i>Juniperus sp.</i>	2'-5'	Evergreen shrubs; many varieties available; sun
Mexican Butterfly Weed	<i>Asclepias tuberosa</i>	3'	Broad clusters of orange flowers
Mexican Oregano	<i>Poliomentha longiflora</i>	2'-3'	Evergreen, sun, pink flowers
Ruck rose*	<i>Pavonia lasiopetala</i>	2'-4'	Deciduous; sub-shrub, pink or purple flowers
Rosemary, Upright	<i>Rosmarinus officinalis</i>	3'-5'	Evergreen, sun-part shade; blue flowers
Red Yucca*	<i>Hesperaloe parviflora</i>	3'-4'	Sun, rosette, narrow leaves
Yucca*	<i>Yucca spp.</i>	3'-4'	Sun, rosette, narrow Leaves, white flowers

VINES			
Common Name	Scientific Name	Height	Remarks
Autumn Clematis	Clematis sp.	n/a	Evergreen; fragrant white fall; sun, part shade
Carolina Jessamine*	Gelsemium sempervirens	n/a	Evergreen; yellow spring; sun, part shade
Confederate Jasmine	Trachelospermum jasminoides	n/a	Evergreen; fragrant white spring; sun, part shade
Coral honeysuckle*	Lonicera sempervirens	n/a	Almost evergreen; red blooms; part shade to full sun
Coral vine, Queen's wreath	Antigonon leptopus	n/a	Pink flowers in late summer and fall; sun
Fig Ivy	Ficus pumila (repens)	n/a	Evergreen; clings to walls; sun, part shade
Lady Banksia	Rosa banksia	n/a	Evergreen, flowers in yellow or white; sun-part shade
Scarlet Clematis*	Clematis texana	n/a	Shade to part shade, spring and summer blooms; red, rust, maroon, or rose-pink
Silver lace Vine	Polygonum ambertii	n/a	Fluffy masses of white; sun, part shade
Virginia Creeper*	Parthenocissus quinquefolia	n/a	Deciduous

GROUNDCOVER			
Common Name	Scientific Name	Height	Remarks
Asiatic Jasmine	Trachelospermum asiaticum	n/a	Evergreen; green or variegated foliage; sun, part shade, no flowers
Columbine Hinckley Columbine*	Aquilegia spp. A. hinckleyana	n/a	Evergreen, gray/green foliage, yellow flowers
Confederate Jasmine	Trachelospermum jasminoides	n/a	Evergreen; fragrant, while spring flowers; sun, part shade
Frogfruit*	Phyla incise (nodiflora)	n/a	Semi-evergreen, creeper, sun-part sun, white flowers
Lantana purple, gold	Lantana sp.	n/a	Deciduous, sun, purple, white or yellow flowers
Pigeonberry*	Rivina humilis	1'-2'	Semi-evergreen shrub

GROUNDCOVER (Cont'd)			
Common Name	Scientific Name	Height	Remarks
Trailing Juniper	Juniperus sp.	n/a	Several varieties available; not suitable for wet, humid areas; sun
Verbena*	Verbena spp.	n/a	Evergreen, pink, purple, white, red flowers
Yarrow	Achillea millefolium	n/a	Gray or green gray leaves; many varieties

GRASSES, TURF			
Common Name	Scientific Name	Height	Remarks
Bermuda grass	Cynodon dactylon	n/a	Excellent drought tolerance; poor shade tolerance; sun
Buffalograss*	Buchloe dactyloides	4"--6"	Excellent drought tolerance; poor shade tolerance; sun
Prarie mix	n/a	8" -12"	Mixture of Texas native Bunch, can add wildflowers
JaMur Zoysiagrass	Zoysia japonica Steud 'JaMur'	n/a	Creates a dense turf; tolerates partial shade; slow growth

PERENNIALS			
Common Name	Scientific Name	Height	Remarks
Butterfly Weed	Asclepias spp.	3'	Semi-hardy perennial, orange flowers
Cigar Plant	Cuphea micropetala	3'-4'	Red, yellow; summer to fall flowers; sun
Fall Aster	Aster spp.	2'-3'	Semi-evergreen, sun-part sun, blue or white
Firebush	Hamelia patens	3'-5'	Reddish orange; summer to fall flowers; sun
Hinckley's Columbine*	Aquilegia hinckleyana	18"	Yellow; spring flowers; shade
Indigo Spires	Sage Salvia spp.	2'-3'	Semi-evergreen, sun, dark blue flowers
Lantana	Lantana sp.	1'-2'	Many colors; spring to fall flowers; sun
Mealy Cup Sage*	Salvia farinacea	3'	Sun, part shade; blue, white, purple flowers

PERENNIALS (Cont'd)			
Common Name	Scientific Name	Height	Remarks
Mexican Sage	Salvia leucantha	3'-4'	Semi-evergreen; blue; spring to fall flowers; sun
Mist flower, Boneset	Eupatorium spp. and Ageratum spp.	2'-4'	Hardy perennial, white to blue flowers
Muhly Grass*	Muehlenbergia lindheimeri	3'	Evergreen; hardy perennial; sun
Pigeonberry*	Rivina humilis	1'-2'	Semi-evergreen shrub
Purple Cone Flower*	Echinacea purpurea	2'	Hardy perennial, rosette with pink or white flowers
Perennial verbena*	Glandularia bipinnatifida	6"-1'	Many colors; spring to fall flowers; sun
Rock rose*	Pavonia lasiopetala	2'-4'	Deciduous; sub-shrub, pink or purple flowers
Rosemary	Rosmarinus officinalis	1'-4'	Sun, part shade; blue flowers
Shrimp Plant	Justicia spp.	1'-2'	Hardy perennial, sun-part sun; orange, red flowers
Skullcap*	Scutellaria frutescens	1'	Evergreen sub-shrub; pink or purple flowers
Texas Betony*	Stachys coccinea	1'-2'	Evergreen, gray-green; red tubular flowers
Tropical Sage*	Salvia coccinea	2'-3'	Evergreen, red, pink blooms; part shade to full sun
Turk's Cap*	Malvaviscus drummondii	1'-4'	Shade; red flowers
White Rain Lily*	Zephyranthes Candida	1'	Ephemeral; sun, part shade; white

PALMS			
Common Name	Scientific Name	Height	Remarks
California Fan Palm	Washingtonia filifera	15'-60'	Treelike palm; sun. Hybrids with W. robusta can be taller
Dwarf Palmetto*	Sabal minor	3'-7'	Trunkless, bushy palm; sun, part shade
Texas Palmetto*	Sabal texana	10'-25'	fall, native Texas palm; sun

PALMS (Cont'd)			
Common Name	Scientific Name	Height	Remarks
Butia or Jelly Palm	<i>Butia capitata</i>	10'-15'	Feather palm with blue-green leaves; sun
European Fan Palm	<i>Chamacrops humilis</i>	6'-12'	Tough, clumping fan palm with spiny petioles
Mazari Palm	<i>Nannorrhops ritchiana</i>	6'-25'	Slow growing fan palm with blue-green leaves
Canary Island Date Palm	<i>Phoenix canariensis</i>	40'	Beautiful feather palm; may be damaged in very cold winters
Needle Palm	<i>Rhapidophyllum hystrix</i>	5'-6'	Clumping shrublike palm foliage for sun to part shade
Silver Saw Palmetto	<i>Sorenoa repens</i>	3'-6'	Clumping low palm in both blue and green forms

ORNAMENTAL GRASSES			
Common Name	Scientific Name	Height	Remarks
Big Bluestem*	<i>Andropogon gerardi</i>	1'-2'	Sun, clump grass
Eastern Gamagrass*	<i>Tripsacum dactyloides</i>	2'-3'	Dense, part shade, full sun
Inland Seaoats*	<i>Chasmanthium latifolium</i>	2'-4'	Shade, dappled shade, part shade
Little Bluestem *	<i>Schizachyrium scoparium</i>	1'-2'	Evergreen, part shade, full sun
Maiden Grass	<i>Miscanthus sinensis</i>	3'-5'	Full sun, part shade, specimen or screening
Muhly Grass*	<i>Muehlenbergia lindheimeri</i>	2'-5'	Evergreen, part shade, full sun
Purple Fountain Grass	<i>Pennisetum setaceum 'Rubrum'</i>	2'-3'	Delicate color accent; full sun
Sideoats Grama*	<i>Bouteloua curtipendula</i>	2'-3'	Dappled shade, part shade, full sun
Switchgrass*	<i>Panicum virgatum</i>	3'	Part shade, full sun

RIPARIAN AND AQUATIC			
Common Name	Scientific Name	Height	Remarks
Button Bush*	Cephalanthus occidentalis	6'-10'	Large, deciduous shrub, sun, white ball shape flowers
Indigobush*	Amorpha fruticosa	6'-10'	Large, deciduous shrub, shade-sun, spikes of purple flowers
Roughleaf Dogwood*	Cornus drummondii	6'-15'	Large, deciduous shrub or tree, shade-sun, clusters or white flowers
Crab Apple*	Crataegus texana	8'-15'	Large, deciduous shrub or tree, shade-sun, large clusters of white flowers
Wooly Rosemallow*	Hibiscus lasiocarpus	3'-6'	Large shrub, white to rose flowers
Edwards Plateau Sedge*	Carex microdonta	1"-7"	Rhizomatous perennial, calcareous soils
Bear Grass*	Nolina sp	2'-3'	Large clump, grass-like, shade-sun, good for bank stabilization
Purple Iris	Iris brevicaulis	1'-1.5'	Hardy perennial, purple flowers
Pickereelweed*	Pontoderia cordata.	5'-1'	Aquatic edge, sun, spikes or purple flowers
Horsetail	Equisetum laevigatum	1'-1.5'	Rhizomatous, grass-like, shade-sun, water edge
Blue Water Lily*	Nymphaea	n/a	Floating, semi-sun-sun.
Pond Weed	Potamogeton illinoensis	8"-16"	Rhizomatous, whorls of purple flowers

*Texas Native Plant

**ARTICLE 8
NONCONFORMITIES**

- 8.1. Purpose and intent
- 8.2. Nonconforming structures
- 8.3. Nonconforming uses
- 8.4. Nonconforming lots
- 8.5. Nonconforming signage
- 8.6. Maintenance of nonconformities
- 8.7. Adjacent land

§ 8.1. PURPOSE AND INTENT.

This appendix seeks to protect the public health, safety, and general welfare and avoid any unreasonable invasion of established private property rights. The elimination of existing buildings and structures, uses, or other characteristics that are not in conformance with the provisions of this appendix is as much a subject of health, safety and general welfare as is the prevention of the establishment of new uses that would violate the provisions of this appendix. Lawful nonconformities can adversely affect orderly development, maintenance, and use and taxable values throughout the city. To avoid undue hardship, nonconformities that came into existence lawfully should be allowed to exist subject to conditions in this Article; however, the conditions should seek to ultimately secure compliance with the comprehensive (master) plan and this appendix.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.2. NONCONFORMING STRUCTURES.

Structures that were legally constructed prior to the adoption of this appendix, but which could not be constructed under the terms of this appendix are considered legal nonconforming structures. A legal nonconforming structure may continue to exist subject to the following.

§ 8.2.1. EXTENSION OF NONCONFORMING USE WITHIN A STRUCTURE.

(1) An existing nonconforming use in an existing nonconforming structure may be extended throughout the structure, provided no structural alterations are made therein, except for those required by law or ordinance.

(2) The nonconforming use of a structure may not be changed to a use which does not conform to the requirements of the district in which it is situated.

(3) 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, 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 or structure or portion thereof shall conform to the regulations of the district in which such building or structure is located.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 8.2.2. NON-EXTENSION OF NONCONFORMING STRUCTURE.

(1) The structure shall remain legal in all other regards except for the nonconformance that existed upon adoption of the ordinance that made the structure nonconforming.

(2) Normal repairs and maintenance including tenant interior improvements may be made to a nonconforming building or structure; provided that no expansions shall be made except those required by law or ordinance or those necessary for installing or enclosing required sanitary facilities, such as toilet and bathrooms.

(3) 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.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 8.2.3. STATE OF REPAIR OF NONCONFORMING STRUCTURE.

Except as hereinafter provided, any nonconforming structure may be occupied and operated as long as it is maintained in a state of good and safe repair.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.2.4. RESTORATION OF A NONCONFORMING STRUCTURE.

A nonconforming structure, which is damaged or partially destroyed, may be restored to its previous building characteristics if completed within two years from the date of the event if the costs of restoration do not exceed 50% of the structure's assessed value in the Bexar County tax records at the time the nonconforming structure was damaged. If the structure is not re-constructed within two years, all restorations and improvements shall be in compliance with applicable ordinances and the changes shall be limited to the structure itself. The burden of proof of date of damage or destruction shall be on the person proposing the restoration.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11; Amendment passed 4-9-12)

§ 8.3. NONCONFORMING USES.

Use of land or structure that legally existed prior to the adoption of this appendix, but which could not be initiated under the terms of this appendix is considered a legal nonconforming use. A legal nonconforming use of land or structures may continue to exist subject to the following.

§ 8.3.1. NON-EXTENSION OF NONCONFORMING USE.

The use shall be restricted to the lot and structure occupied by the use as of the effective date of the ordinance creating the nonconformance. A legal nonconforming use shall not be extended to any other structure or lot or part of a lot.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.3.2. NON-REINSTATEMENT OF NONCONFORMING USE.

A lawful nonconforming use that ceases for any reason for a period of more than 180 consecutive days shall not be reinstated. Intent to resume active operation of a nonconforming use shall not be considered

in determining continuity of use. If a legal nonconforming use is replaced by a conforming use, the legal nonconforming use shall not be reinitiated. The burden of proof of date(s) or cessation of activities shall be on the person proposing the reinitiation of the nonconforming use.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.3.3. SITE CHARACTERISTICS IN A NONCONFORMING USE.

Any site characteristic of a use, whether conforming to this appendix or a legal nonconforming use in existence prior to adoption of this appendix (such as parking, landscaping or driveways) shall be considered legal. However, any change in use, expansion of the use or expansion of the structure associated with the use shall require all nonconforming site characteristics to be brought in conformance with this appendix.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.3.4. CHANGE IN A NONCONFORMING USE.

A change of a legal nonconforming use shall only be allowed if the change is to a conforming use or to a use that is considered less nonconforming, as determined by the City Administrator or designee, either in extent of nonconformance or in intensity.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.4. NONCONFORMING LOTS.

§ 8.4.1. EXISTING USE OF A NONCONFORMING LOT.

A “nonconforming lot” means any lot which fails to meet the requirements for area or width, or both, generally applicable in the district because of a change in the applicable zoning district regulations, annexation, condemnation of a portion of the lot, or other governmental action. The provisions of this section do not require the replatting or combination of platted lots under common ownership which are protected by state vested rights law.

(1) *Continuance of use.* The lawful use of any lot existing upon the adoption of this appendix may be continued, even though the lot does not conform to the provisions of this section.

(2) *Discontinuance of use.* If the nonconforming use is discontinued, any future use shall conform to the provisions of this appendix.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.4.2. ALLOWED USE OF A NONCONFORMING LOT.

Where a lot, tract or parcel of land has an area or dimensions that do not conform to the requirements of the zoning district in which it is located, the lot may be used for a detached single-family dwelling, provided that the zoning district allows detached single-family dwellings, has access to a public sewer, and has a minimum area of 4,000 square feet and a minimum lot width at the building line of 40 feet. Use of a nonconforming lot shall be subject to the approval of the Board of Adjustment.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.4.3. YARD REQUIREMENTS FOR A NONCONFORMING LOT.

Yard requirements may be modified subject to Board of Adjustment approval.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.5. [RESERVED]**§ 8.6. MAINTENANCE OF NONCONFORMITIES.**

In the interest of public safety and health, routine maintenance of nonconforming building, structure or lot shall continue as warranted by the property owner or as otherwise required by law, provided that no maintenance may involve expansion, alteration or modification of the nonconformity contrary to this article.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 8.7. ADJACENT LAND.

The presence of a nonconforming use in a zoning district shall not be allowable as grounds for the granting of variances for other surrounding properties by the Board of Adjustment.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

ARTICLE 9
PUBLIC NUDITY AND SEMI-NUDITY; HUMAN DISPLAY ESTABLISHMENTS

- 9.1. Definitions
- 9.2. Zoning matters; remedial and supplemental effect
- 9.3. Nudity and semi-nudity in a public place
- 9.4. Permits required
- 9.5. Exceptions
- 9.6. Permit is a privilege
- 9.7. Use of permit
- 9.8. Amendments
- 9.10. Authority to file suit
- 9.11. Types of permits; calculation of deadlines, time and delivery
- 9.12. Qualifications and specifications
- 9.13. Ratification and time of permit
- 9.14. Inspections and background checks; deadlines
- 9.15. Standing in alternative procedure for administrative hearings; revocation or suspension of permits
- 9.16. Appeal and judicial review
- 9.17. Process for requesting permit
- 9.18. Human display establishments; hours, posting of permit and records
- 9.19. Holder of manager's or on-site manager's permit
- 9.20. Duties of owners, employees, and customers

- 9.21. Penalty

§ 9.1. DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The same as that term is defined in Tex. Penal Code Ann. § 1.07 or as may hereafter be amended therein.

ACTOR. The same as that term is defined in Tex. Penal Code Ann. § 1.07 or as may hereafter be amended therein.

ADULT STORE. Those premises, including those subject to regulation under Tex. Local Government Code Ann. Chs. 54 or 243, as amended, wherein there is conducted the business of furnishing, providing or procuring dancers, entertainers, or models who appear live at the premises in a state of nudity or semi-nudity, or while performing specified sexual activities. This term shall also include adult stores at which dancers, entertainers, or models appear live, if the dancers, entertainers, or models would appear semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

(1) Premises to which the following terms apply shall be considered **ADULT STORES**: gentleman's club, topless club, sex parlor, nude studio, lingerie modeling studio.

(2) The following are exempt from regulation under this definition: bookstores, movie theaters, or video stores.

ADVERSE SECONDARY EFFECTS. Any one of the following conditions caused by the existence or geographic proximity to a human display establishment:

(1) The existence of violations of law, including but not limited to: prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale or distribution or display of material harmful to a minor, sexual performance by a child, employment harmful to children, possession or promotion of child pornography, public lewdness, indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, pandering, loitering, trespass, or any violation of Tex. Health and Safety Code Ann. Ch. 481, criminal attempt to conduct a violation of law, criminal conspiracy to conduct a violation of law, or solicitation to conduct a violation of law.

(2) Diminution of surrounding property value.

(3) Unsanitary health conditions resulting from improper disposition of bodily secretions thereby posing a threat of spreading infection or disease.

(4) Those adverse secondary effects found to exist by the Texas Legislature at Tex. Local Government Code Ann. § 243.001.

(5) Those adverse secondary affects described by the United States Fifth Circuit Court in *J&B Entertainment, Inc. v. City of Jackson, Mississippi*, 152 F.3d 362 (5th Cir. 1998) and by the United States Supreme Court in *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000) and by the City of Jackson, Mississippi and the City of Erie, Pennsylvania as described in the legal opinions.

AGENT. The same as the term “duly authorized agent”.

ALCOHOLIC BEVERAGE. The same as that term is defined in Tex. Penal Code Ann. § 1.07, or as may hereafter be amended therein.

AMENDMENT. A document wherein is contained a change to the information provided on an application or renewal application in order to correct a prior statement that was incomplete or inaccurate when made; or, in order to correct a prior statement that is incomplete or inaccurate because of changed circumstances since the filing of the application or renewal application.

APPLICATION. Any request for permit that is completed accurately and filed in compliance with the provisions of this article.

APPLICANT. An individual or duly authorized agent who files an application.

ASSOCIATION. The same as that term is defined in Tex. Penal Code Ann. § 1.07, or as may hereafter be amended therein.

BACKGROUND INVESTIGATION. The review, analysis, and inquiry made by the Chief of Police in response to an application for a permit.

CHIEF or CHIEF OF POLICE. The Chief of the City of Balcones Heights Police Department or any duly authorized agent thereof.

COMMENCE AN ACTION. To file a cause of action with a court of any jurisdiction, to pursue an appeal in any Appellate or Supreme Court and/or to obtain a settlement of a cause of action.

CLOSED CORPORATION. A corporation whose stock is not offered or sold on an exchange.

COMMUNITY SUPERVISION. The same as that term is defined in the Tex. Criminal Procedure Code Ann. Art. 42.12, § 2, or as may hereafter be amended therein.

CONFIGURATION or CONFIGURED. The interior layout or interior construction design of a human display establishment and said layout must include each of the following:

(1) At least one on-site manager's station per floor shall be located within the interior of the human display establishment from which an on-site manager has an unobstructed view of the entire floor to which a customer or patron on the premises of the human display establishment is allowed access, but excepting a view inside a lavatory, and if applicable, a stairway or elevator between floors.

(2) If more than one on-site manager's station is located within the interior of the human display establishment per floor, then the interior layout shall be in such a manner so that there exists from at least one of the on-site manager's stations an unobstructed view of the entire floor to which a customer or patron is allowed access, but excepting a view inside a lavatory, and if applicable, a stairway or elevator between floors.

(3) The view required from an on-site manager's station is direct line of sight without the aid of mirrors, video equipment or other similar devices.

(4) The light fixtures shall be of sufficient intensity to illuminate by not less than three foot-candles as measured at four feet above the level of the floor and at every area where customers or patrons are allowed.

(5) Excepting a door that may serve as an entrance or exit to the building of the human display establishment for each area to which a customer or patron on the premises is allowed access, excepting the interior of lavatories:

(a) Each interior door must be made of clear glass that is no thicker than one-half inch or of wood that is no thicker than one and a half inches;

(b) Excepting the doorknob, no interior door may be made of metal, reinforced by metal, or be thicker than allowed herein;

(c) No interior door may have more than one throw from the doorknob or in any other manner latch from more than one place into a striker plate whenever the door is closed; and

(d) Excepting one lock that forms part of the doorknob and is neither a deadbolt nor chain, no interior door may have a dead bolt, chain, and any type of lock.

(6) For each area to which a customer or patron is allowed access, excepting a doorframe that may serve as an entrance or exit to the human display establishment, each interior doorframe to a wooden door may not be reinforced with any type of metal, excepting a cubic area that is part of the striker plate in the dimensions of not more than six inches long by two inches wide by six inches high.

(7) Excepting conduits for plumbing, heating, air conditioning, ventilation, electrical service or food service, no opening is allowed:

(a) In any wall;

(b) Partition;

(c) Screen;

- (d) Lavatory stall;
- (e) Dressing room; or
- (f) Any other barrier between viewing areas or toilettes.

(8) The conduits for plumbing, heating, air conditioning, ventilation, and electrical service must be so screened or otherwise configured to prevent their use as openings that would allow any portion of an individual to penetrate the wall or barrier between the viewing areas or toilettes.

CONTESTED CASE. This term is intended to comply with Tex. Local Government Code Ann. § 54.044, and shall mean the following:

(1) A **CONTESTED CASE** is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the hearing officer after an opportunity for an adjudicative hearing. Each party with standing to contest is entitled to an opportunity.

(a) For a hearing after reasonable notice of not less than ten calendar days from the date of receipt of a notice of intention to revoke permit; and

(b) To respond and to present evidence and argument on each violation alleged in the notice of intention to revoke permit.

(2) Notice of a hearing in a contested case must include that information required in a Notice of Intention to Revoke Permit, and a statement of the time, place, and nature of the hearing and shall be sent to the individual holding the permit via personal delivery or sent to said individual's address via United States Postal Service, certified mail, return receipt requested. Each party to a contested case is entitled to:

(a) The assistance of counsel, at the party's expense, before the hearing officer; or

(b) Expressly waive the right to assistance of counsel in writing or on the record before the hearing officer.

(3) In each contested case before the hearing officer, the City Attorney, or his or her designated representative shall represent the Chief of Police.

(4) While a contested case is pending, and prior to the final decision of the hearing officer regarding revocation or suspension, a permit remains valid unless:

(a) It expires without timely application for renewal;

(b) It is voluntarily withdrawn or surrendered by the permit holder; or

(c) The permit holder commits an act or omission contrary to the provisions of this article which otherwise invalidates the permit.

(5) A contested case may not be continued, except upon express written agreement of all parties to the contested case, wherein said agreement constitutes a waiver by the permit holder of any appeal, cause of action, or other available remedy at law or in equity while said continuance remains in effect. The record in a contested case shall include the following:

(a) Notice of intention to revoke permit;

- (b) Response to notice of intention to revoke permit;
- (c) Oral and documentary evidence received or considered at the hearing;
- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof objections, and rulings on them;
- (f) Each decision, opinion, or report prepared by the hearing officer at the hearing;
- (g) All documents or data submitted to or considered by the hearing officer used in making his or her decision; and
- (h) The record shall be filed with the Municipal Court for the city.

(6) Ex parte communications in connection with any issue of fact or law between any party and the hearing officer are strictly prohibited, except on notice and opportunity for each party to participate. The Texas Rules of Evidence and Procedure shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

- (a) Necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (b) Not precluded by state or federal law; and
- (c) Of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(7) In a contested case, evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded. All testimony shall be sworn under oath in all contested cases. In a contested case, the party requesting a transcript of the hearing shall bear the cost for production of the transcript.

- (8) All final decisions or orders in a contested case must be in writing and:
 - (a) Must include findings of fact and conclusions of law, separately stated;
 - (b) Contain a concise and explicit statement of the underlying facts supporting the findings;and
 - (c) If a party submits proposed findings of fact, the decision or order shall include a ruling on each proposed finding.

(9) A decision or order by the hearing officer on a contested case shall either deny revocation or suspension, or suspend or revoke a permit, as appropriate under the terms of this article, and:

- (a) Be rendered not later than five calendar days after the date on which the hearing is finally closed;
- (b) Be provided to all parties via personal delivery or via United States Postal Service, certified mail, return receipt requested; and
- (c) Be considered timely if:
 - (i) For personal delivery, a party receives notice not later than five calendar days from the date on which the hearing is finally closed; or

(ii) For postal delivery, the decision or order is postmarked not later than five calendar days from the date on which the hearing is finally closed.

(d) A party whose permit is suspended or revoked under the provisions of this article may petition to any lawfully established court having jurisdiction on the subject matter, as provided in the terms of this article or other applicable law.

CONVICTION. The written declaration of a court, signed by the trial judge, that the defendant has been adjudged guilty of the offense in question, regardless of the punishment assessed.

CORPORATION. A business entity created pursuant to statute and capable of issuing common or preferred stock. It shall include a closed corporation. In addition, the term shall also mean the same as that term is defined in Tex. Penal Code Ann. § 1.07, or as may hereafter be amended therein.

CULPABLE MENTAL STATE. Unless specifically stated otherwise, the **CULPABLE MENTAL STATE** for a violation of this article is recklessness, as that term is defined by Tex. Penal Code Ann. § 6.03.

CUSTOMER. Any individual who:

(1) Enters a human display establishment or any portion thereof by the payment of an admission fee, membership fee or any other form of consideration or gratuity;

(2) Enters a human display establishment or any portion thereof and purchases, rents, or otherwise partakes of any merchandise, goods, food, drink, entertainment or other services offered therein; or

(3) Enters a human display establishment or any portion thereof based upon a private to a club or as a guest of an owner, operator, manager, on-site manager, employee, dancer, entertainer, or model.

DANCER. This term has the same meaning as the term “entertainer.”

DENIAL OF REVOCATION/SUSPENSION. A document wherein is contained the refusal of the hearing officer to revoke a permit and the reasons for the refusal.

DIAGRAM. This term shall mean:

(1) A licensed engineer’s or licensed architect’s blueprint of the interior of a human display establishment, oriented to true north and to some designated street or object;

(2) The blueprint drawn to a designated scale and sufficient to depict each open area, closed area, entrance, exit, wall, stairs, room, bar, kitchen, lavatory, fixture and on-site manager’s station to an accuracy of plus or minus six inches;

(3) The blueprint contains a certification by the individual who drew the blueprint that it is a true and correct representation of the human display establishment as of a particular calendar date; and

(4) The blueprint contains the date executed by the individual who drew the blueprint.

DRESSING ROOM. An enclosed area where entertainers are allowed to change clothes and where customers or patrons shall be prohibited from viewing or entering.

DULY AUTHORIZED AGENT. An individual who has actual authority to file an application with the Chief of Police for a human display permit on behalf of any association, corporation, individual, owner,

operator, or person. To be a **DULY AUTHORIZED AGENT**, the individual must file an accurate and complete sworn affidavit at the time of filing an application for a human display permit in which the individual declares:

- (1) The individual's identity;
- (2) The identity of the association, corporation, individual, owner, operator, or person on whose behalf said individual seeks a human display permit;
- (3) The identity of the human display establishment;
- (4) The identity of each association, corporation, individual, owner, operator or person with an ownership interest in the human display establishment;
- (5) The basis for the actual authority as being one of the following:
 - (a) The individual is the sole owner or operator;
 - (b) The individual is the president, chief executive officer, or equivalent of a corporation that is an owner or operator and said individual also owns a majority of the issued voting stock for the corporation;
 - (c) The individual is the president, chief executive officer, or equivalent of a corporation that is an owner or operator and the individual attaches a corporate resolution from the corporation's Board of Directors or from a majority of said corporation's voting stockholders wherein is authorized the application for the permit;
 - (d) The individual is a general partner of a partnership that is an owner or operator; or
 - (e) The individual is a manager (as defined by the Texas Limited Liability Company Act) of a Texas limited liability company that is an owner or operator.
- (6) State that all information is on the basis of personal knowledge; and
- (7) State that all information is true and correct and acknowledge that a false statement is subject to criminal penalty, including but not limited to charges of perjury.

EMPLOYEE. Any person who renders any service whatsoever to any customer of a human display establishment, works in or about a human display establishment, or conducts any business in and for a human display establishment; and, either receives or expects to receive compensation from the operator, owner, manager, on-site manager, or customers of the human display establishment. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, security personnel, and cashiers. This definition is intended to include the conventional employer-employee relationships, independent contractor relationships, agency relationships, and any other scheme or system whereby the **EMPLOYEE** has an expectation of receiving compensation, tips, or other benefits from the human display establishment, operator, owner, manager, on-site manager, or customers in exchange for services provided.

ENTERTAIN or ENTERTAINING. The act of knowingly or intentionally posing, dancing, or appearing for the purpose of being observed or viewed for any reason while in a state of nudity, semi-nudity or while engaging in specified sexual activities. The term shall also include the above acts if the person posing, dancing, or appearing would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

ENTERTAINMENT. The noun of the term “entertain”.

ENTERTAINER. Any individual, male or female, who poses, dances, or knowingly or intentionally appears for the purpose of being observed or viewed for any reason by any individual while in a state of nudity, semi-nudity, or while engaging in specified sexual activities. The term shall also include an individual who would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

FILE or FILED or FILING. Personal delivery to the Chief of Police at the Balcones Heights Police Headquarters or personal delivery to the clerk of a court.

FORM. One or more pages wherein exist a uniform method of eliciting from an applicant the information required for an application in accordance with the provisions of this article. The referenced pages shall include a verification or jurat where the applicant can affirm under oath and on the basis of personal knowledge that the information provided is accurate and complete; however, the referenced pages shall specifically exclude the affidavit required of a duly authorized agent.

HEARING OFFICER. The judge of the Municipal Court assigned to preside over environmental and code enforcement matters. The term **HEARING OFFICER** as used herein is intended to comply with Tex. Local Government Code Ann. § 54.044, and the **HEARING OFFICER** shall exercise those powers authorized under the Texas Local Government Code, and the municipal code of the city, as appropriate in the furtherance of his or her duties.

HUMAN DISPLAY ESTABLISHMENT. This term has the same meaning as “adult store”.

HUMAN DISPLAY PERMIT. A license issued to a duly authorized agent of an owner or operator of a human display establishment as lawful authority to so operate a human display establishment. Only those premises designated as a “human display establishment” shall authorize live entertainment, as defined by the terms of this article.

IDENTIFY. The act of stating or declaring an identity.

IDENTITY. The true and correct name, address, telephone number, and facsimile number of the pertinent association, corporation, individual, operator, person, or owner.

INDIVIDUAL. This term shall mean the same as that term is defined in Tex. Penal Code Ann. § 1.07, or as may hereafter be amended therein.

INTERIOR DOOR. Any opening between interior rooms through which foot traffic may occur and which serves as an entrance or an exit between the rooms, excluding electrically cooled rooms used as food storage devices, liquor cabinets, and food pantries.

INVEST. To provide money, bartering, or in-kind services toward a human display establishment in anticipation or expectation of generating a profit or incurring a tax benefit at some time in the future.

INVESTMENT. The noun of the term “invest”.

LAVATORY. A room where exists a sink for washing hands and a toilet.

MANAGER. Any individual who supervises or directs any employee, on-site manager, contractor, subcontractor, or agent of a human display establishment.

MANAGER'S PERMIT. A license issued to an individual as lawful authority to supervise or direct any employee, on-site manager, contractor, subcontractor, or agent of a human display establishment.

MODEL. This term shall have the same meaning as the term "entertainer".

NOTICE or NOTICE OF REJECTION. A document wherein the Chief of Police informs an individual that an application or renewal application is denied and also specifies therein the reasons for the rejection.

NOTICE OF INTENTION TO REVOKE/SUSPEND PERMIT. A document wherein the Chief of Police details the following: the factual basis for an intention to revoke/suspend a permit, the provisions of this article alleged to be violated, and the calendar date by which a request for contested case hearing is due.

NOTICE OF REVOCATION/SUSPENSION. A document wherein is contained the decision of the hearing officer to revoke/suspend a permit based upon the allegations contained in a notice of intention to revoke/suspend permit.

NUDE or NUDITY or STATE OF NUDITY. A state of dress which fails to fully and opaquely cover the anus, crevice of the buttocks, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human breast are exposed.

ON-SITE MANAGER. Any individual charged by an owner or operator of a human display establishment with the responsibility for direct supervision of the operation of the human display establishment and with monitoring and observing all areas of the human display establishment to which customers or patrons are admitted at all times during which the human display establishment is open for business; or, at all times during which customers or patrons are on the premises of the human display establishment.

ON-SITE MANAGER'S PERMIT. A license issued to an individual as lawful authority to be charged by an owner or operator of a human display establishment with the responsibility for direct supervision of the operation of the human display establishment. and with monitoring and observing all areas of the human display establishment to which customers or patrons are admitted at all times during which the human display establishment is open for business; or, at all times during which customers or patrons are on the premises of the human display establishment.

ON-SITE MANAGER'S STATION. A specified location within the interior of any human display establishment from which an on-site manager can view all areas to which customers and patrons may be admitted, but excepting a lavatory and if applicable, a stairway or elevator between floors, as specifically detailed at the definition for the term "configuration" and the term "on-site manager's permit".

OPERATOR. This term shall mean:

(1) An individual who owns a human display establishment, if the establishment is a sole proprietorship or if the establishment is an assumed name of an individual;

(2) Each individual of a general partnership, if said partnership owns any interest in a human display establishment;

(3) Each individual who is a general partner and a limited partner of a limited partnership, if said partnership owns any interest in a human display establishment;

(4) Each individual who is an officer or director of a corporation, if the corporation owns any interest in a human display establishment;

(5) Each association, individual, or person who is a stockholder of a closed corporation, if the closed corporation owns any interest in a human display establishment;

(6) Each manager, as defined in the Texas Limited Liability Company Act, of a limited liability company, if the company owns any interest in a human display establishment; and

(7) Each association, if the association owns any interest in a human display establishment.

OWNER. Each association, individual, person, partner, closed corporation, corporation, business entity, or manager (as defined by the Texas Limited Liability Company Act) who owns an interest in a human display establishment.

PATRON. This term shall have the same meaning as the term “customer”.

PERMIT. Either a “human display permit”, a “manager’s permit”, or an “on-site manager’s permit”, depending upon the context used.

PERSON. This term shall mean the same as that term is defined in Tex. Penal Code Ann. § 1.07, or as may hereafter be amended therein.

PUBLIC PLACE. All locations owned by or open to the general public inclusive of the sheds, enclosures, buildings, improvements, and fixtures upon said location. This term includes but is not limited to any human display establishment, restaurant, tavern, bar, club or other establishment. This term also includes those locations that are restricted to specific members, restricted to adults, or restricted to patrons invited to the location, whether or not an admission charge is levied.

RENEWAL APPLICATION. An application to re-establish a valid and existing permit for another term.

RENEWAL PERMIT. A valid and existing permit that is re-established for another term.

RESPONDENT. This term shall mean:

- (1) The individual or duly authorized agent who holds:
 - (a) A human display permit;
 - (b) A manager’s permit; or
 - (c) An on-site manager’s permit; and
- (2) Defends his or her own permit in a revocation proceeding or appeal thereof.

REVOCATION/SUSPENSION PROCEEDING. This term shall mean:

(1) The Chief of Police, after sufficient evidence is presented, issues a notice of intention to revoke/suspend permit.

(2) The notice of intention to revoke/suspend permit shall be sent to the individual holding a permit via personal delivery or sent to the individual’s address via United States Postal Service, certified mail, return receipt requested, and filed with the Municipal Court to which the hearing officer is assigned. A file stamped copy Of the notice of intention to revoke/suspend shall be made part of the record of any revocation/suspension hearing.

(3) The individual holding a permit shall have ten calendar days from the date of receipt of a notice of intention to revoke permit in which to file request for a contested case hearing with the hearing officer, wherein the request is sent via United States Postal Service, certified mail, return receipt requested, or filed via personal delivery. If the permit holder chooses personal delivery, he or she must obtain a file stamped copy of their request for a hearing.

(4) If no request for contested case hearing is timely filed, the hearing officer shall issue a notice of revocation/suspension, as appropriate.

(5) If a request for contested case hearing is timely filed, the hearing officer shall conduct a contested case hearing in accordance with the provisions of this article.

(6) This term is intended to comply with Tex. Local Government Code Ann. § 54.044.

SEMI-NUDE or **SEMI-NUDITY** or **STATE OF SEMI-NUDITY**. The exposure of the post puberty female breast so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term **SEMI-NUDE** shall also mean the exposure of the post puberty female breast if any device is worn as a cover over only the nipples and/or areola of the post puberty female breast so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body.

SPECIFIED CRIMINAL ACT. Any of the following offenses:

- (1) As described in Tex. Penal Code Ann. Ch. 21, or as may hereafter be amended therein:
 - (a) Public lewdness;
 - (b) Indecent exposure; or
 - (c) Indecency with a child.
- (2) As described in Tex. Penal Code Ann. Ch. 22, or as may hereafter be amended therein:
 - (a) Sexual assault; or
 - (b) Aggravated sexual assault.
- (3) As described in Tex. Penal Code Ann. Ch. 43, or as may hereafter be amended therein:
 - (a) Prostitution;
 - (b) Promotion of prostitution;
 - (c) Aggravated promotion of prostitution;
 - (d) Compelling prostitution;
 - (e) Obscenity;
 - (f) Sale, distribution or display of material harmful to a minor;
 - (g) Sexual performance by a child;

- (h) Employment harmful to a child; or
 - (i) Possession or promotion of child pornography.
- (4) As described in Tex. Penal Code Ann. Ch. 481, or as may hereafter be amended therein.
- (5) As described in Tex. Penal Code Ann. Ch. 15, or as may hereafter be amended therein:
- (a) Criminal attempt to conduct any of the aforementioned offenses;
 - (b) Criminal conspiracy to conduct any of the aforementioned offenses;
 - (c) Criminal solicitation to conduct any of the aforementioned offenses; or
 - (d) Criminal solicitation of a minor to conduct any of the aforementioned offenses that are also identified in Tex. Penal Code Ann. § 15.031.

SPECIFIED SEXUAL ACTIVITIES. An actual or simulated sexual stimulation or arousal of an individual's genitals, an actual or simulated masturbation of an individual, an actual or simulated sexual intercourse between individuals, an actual or simulated sodomy, an actual or simulated fellatio, an actual or simulated cunnilingus, an actual or simulated bestiality, fondling or other erotic touching of the anus, genitals, pubic region, or the post puberty female breast, or excretory functions performed in conjunction with any of the preceding acts.

STAGE NAME. An alias used by an entertainer during the course and scope of entertaining.

SUBSTANTIAL EVIDENCE. This term shall mean the same as that term is defined by Texan courts or in Texan jurisprudence regarding the standard of proof used in administrative proceedings. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.2. ZONING MATTERS; REMEDIAL AND SUPPLEMENTAL EFFECT.

(1) The definitions contained in the zoning code shall control in all zoning matters, but the definitions contained in this article shall control in prohibiting the conduct proscribed by the provisions of this article and shall control in the licensing scheme contained in this article. Any conflict in definition(s) between the zoning code and this article shall be construed in favor of this article.

(2) The provisions of this article are remedial and they shall, notwithstanding any other provision of the city's code, be construed to apply to each association, corporation, individual, operator, owner, person, or human display establishment, now existing and as hereafter shall exist.

(3) The provisions of this article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to an association, corporation, individual, operator, owner, person, or human display establishment, now existing and as hereafter shall exist. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.3. NUDITY AND SEMI-NUDITY IN A PUBLIC PLACE.

(1) It shall be unlawful for an individual to recklessly or negligently appear in a state of nudity in a public place.

(2) It shall be unlawful for an individual to recklessly or negligently appear in a state of semi-nudity in a public place.

(3) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a public place to recklessly or negligently allow an individual to appear at the public place in a state of nudity.

(4) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a public place to recklessly or negligently allow an individual to appear at the public place in a state of semi-nudity.

(5) It shall be unlawful for an individual, person, corporation, or association that owns, but does not manage or operate, a public place to intentionally or knowingly allow an individual to appear at the public place in a state of nudity.

(6) It shall be unlawful for an individual, person, corporation, or association that owns, but does not manage or operate, a public place to intentionally or knowingly allow an individual to appear at the public place in a state of semi-nudity.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.4. PERMITS REQUIRED.

(1) It shall be unlawful for an individual, person, corporation, operator, owner, or association to operate a human display establishment within the city, unless the Chief of Police has issued a human display permit to the human display establishment's duly authorized agent.

(2) It shall be unlawful for an individual to act as a manager of a human display establishment, unless the Chief of Police has issued a manager's permit to the individual.

(3) It shall be unlawful for an individual to act as an on-site manager of a human display establishment, unless the Chief of Police has issued an on-site manager's permit to the individual.

(4) It shall be unlawful to offer live entertainment at a human display establishment within the city, unless the Chief of Police has issued a human display permit to the human display establishment's duly authorized agent.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.5. EXCEPTIONS.

(1) It is an exception to the application of § 9.3 that at the time of the state of nudity the actor was:

(a) A person engaged in expressing a matter of serious literary, artistic, scientific, political or social value;

(b) An individual, person, or association who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;

(c) An individual, person, or association who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts; or

(d) An individual, person, or association who owns, manages, operates or appears nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.

(2) It is an exception to the application of § 9.3 that at the time of the state of semi-nudity the actor was:

(a) A person engaged in expressing a matter of serious literary, artistic, scientific, political or social value;

(b) An individual exposing a breast for the purpose of breast feeding an infant or child;

(c) An individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;

(d) An individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts;

(e) An individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license; or

(f) A dancer, entertainer, or model who is entertaining at a lawfully permitted human display establishment.

(3) It is an exception to the application of § 9.3 that at the time of the state of semi-nudity the individual, person, or association who owns, manages or operates the public place lawfully possessed a human display permit, and, the individual who appeared in a state of semi-nudity was a dancer, entertainer, or model who was entertaining in the human display establishment.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.6. PERMIT IS A PRIVILEGE.

(1) A permit issued under the provisions of this article is not a property interest but shall be a purely personal privilege that is subject to revocation if the respondent is found to have violated a provision of this article.

(2) Pursuant to Tex. Local Government Code Ann. § 243.008 and by authority of this article, by accepting a permit, the holder of the permit consents that the Chief of Police or a peace officer may detain the individual on the premises of a human display establishment for the purpose of verifying identity and permit.

(3) Any owner or operator that enjoys the benefit of a human display permit or has accepted a permit through a duly authorized agent consents, pursuant to Tex. Local Government Code Ann. § 243.008 and by authority of this article, that the Chief of Police or peace officer may enter the premises of the human display establishment at any time an owner, operator, manager, on-site manager, employee, customer or patron is on the premises to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this article or state law.

(4) All peace officers shall have the duty to enforce the provisions of this article.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.7. USE OF PERMIT.

It shall be unlawful for an individual to use the permit of another. It shall be unlawful for an individual holding a permit to transfer that permit for use by another individual.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.8. AMENDMENTS.

(1) An applicant or permit holder shall file an amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be incomplete or inaccurate because of changed circumstances.

(2) An applicant or permit holder shall file an amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be incomplete or inaccurate because the statement was incomplete or inaccurate at the time of filing.

(3) The time in which to file an amendment is:

(a) Thirty calendar days from the date of changed circumstances; or

(b) Thirty calendar days from the date that applicant knows that a prior statement was incomplete or inaccurate.

(4) It shall be unlawful for an applicant or permit holder to fail to comply with this section.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.9. NONREFUNDABLE FEES.

All fees required in this article are nonrefundable. Payment of the fees shall be by cashier's check or money order and made payable to the city.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.10. AUTHORITY TO FILE SUIT.

The City Attorney is authorized, at his discretion, in addition to or in lieu of any other remedies set forth in this article, or under any other applicable state statute, to commence an action to enjoin the violation of this article or to enjoin any person, corporation, or association from establishing, operating, or maintaining a public place or human display establishment contrary to the provisions herein, or in any other statute or doctrine.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.11. TYPES OF PERMITS; CALCULATION OF DEADLINES, TIME AND DELIVERY.

(1) By 2:00 p.m. on the thirtieth business day after receipt of an application, the Chief of Police shall issue the following types of permits to an applicant so long as the applicant qualifies under the provisions of this article:

(a) A human display permit;

(b) A manager's permit; or

(c) An on-site manager's permit.

(2) By 2:00 p.m. on the thirtieth business day after receipt of an application, the Chief of Police shall issue a notice of rejection to an applicant who fails to qualify under the provisions of this article.

(3) Unless the applicant requests in writing and at the time of filing an application that the permit or notice of rejection be kept at the Police Headquarters for personal retrieval, the Chief of Police shall send it to the applicant's address, as listed in the application, via United States Postal Service, certified mail, return receipt requested. The mail shall be deposited with United States Postal Service not later than 2:15 p.m. on the thirtieth business day after receipt of an application.

(4) If personal retrieval was properly requested for a permit or notice of rejection, the Chief of Police shall retain the permit or notice of rejection only between the hours of 2:00 p.m. and 4:00 p.m. on the thirtieth business day after receipt of an application. If the applicant fails to retrieve either the permit or notice of rejection by 4:00 p.m., the Chief of Police shall then send the permit or the notice of rejection to the applicant's address, as listed in the application. The means of sending the permit or notice of rejection shall be via the United States Postal Service, certified mail, return receipt requested. The mail shall be deposited with the United States Postal Service not later than 4:30 p.m. on the same day that personal retrieval was scheduled.

(5) When determining a date upon which a deadline exists in this article, calculate the specified number of days as follows:

(a) The day the act or event was performed or scheduled to occur after which the designated period of time begins to run is not to be included. The designated period of time begins on the next day; and

(b) The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(6) In this article, delivery of a notice of revocation shall be by personal delivery at the applicant's address, as listed in the application, or by sending it to the applicant's address, as listed in the application, via the United State Postal Service, certified mail, return receipt requested.

(7) In this article, delivery by the United States Postal Service shall be presumed to be on the third calendar day after depositing the mail with the United States Postal Service, unless the applicant has proof to the contrary.

(8) In this article, the last known address of an applicant, contained in an application or an amendment, is presumed as the correct address. Whenever delivery to an address is authorized or mandated under the provisions of this article, delivery to the presumed correct address is sufficient to comply under this article.

(9) Personal delivery or delivery by mail as prescribed in this article, shall be prima facie evidence that the Chief of Police has fulfilled his duty to deliver a permit, notice of rejection, notice of intention to revoke permit, notice of revocation, or denial of revocation.

(10) The Chief of Police shall issue the requested permit if the Chief of Police fails to deliver notice of rejection and does not have prima facie proof of delivery or deposit, and if the applicant files a written request for issuance of the permit not later than 2:00 p.m. on the tenth calendar day following the deadline to issue a permit or notice. If the applicant fails to timely file a request for said permit upon the failure of the Chief of Police to issue the notice, then the applicant shall waive any appeal or cause of action that he may have herein.

(11) The deadlines imposed by this article may be extended by the mutual agreement of the Chief of Police and the pertinent individual, except as follows:

(a) The Chief of Police shall not agree to shorten any deadline;

(b) The Chief of Police shall not agree to extend any deadline wherein there is an express provision in this article that a failure to comply with the deadline shall result in an applicant's waiver of appeal or cause of action; or

(c) As otherwise prohibited within this article.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.12. QUALIFICATIONS AND SPECIFICATIONS.

(1) *Manager's permit.*

(a) Unless an individual is disqualified under one or more of the provisions of this article, an individual who performs the following acts shall be qualified for a manager's permit:

(i) Pay a \$100 nonrefundable processing fee to the city;

(ii) Answer under oath accurately and completely the requests for information contained on the form for the permit;

(iii) Provide proof of identity by presenting to the Chief of Police a valid and lawful photographic identification card that was issued to said individual by a governmental authority of the United States of America or any state, possession, commonwealth, or territory thereof; and

(iv) Appear at the place designated by the Chief of Police and submit to being photographed and fingerprinted by the Chief of Police.

(b) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then an individual shall be disqualified from receiving the manager's permit if:

(i) The individual is convicted of a felony in any jurisdiction;

(ii) The individual is convicted of a specified criminal act in any jurisdiction;

(iii) The individual has submitted false information on a form for the permit or the individual has responded falsely to inquiries in a background investigation; or

(iv) At the time of application, said individual is disqualified from receiving or holding a permit pursuant to § 9.15.

(c) An individual who applies for a manager's permit shall provide the following information:

(i) The information contained in a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any state, possession, commonwealth, or territory thereof;

(ii) The name and address of the human display establishment for which the individual requests the permit;

(iii) A list of each misdemeanor or felony for which the individual has been convicted, excluding traffic offenses;

(iv) A list of each misdemeanor or felony for which the individual is under community supervision at the time of application, excluding traffic offenses;

(v) The name and address of each court and jurisdiction for those offenses which resulted in convictions in response to division (1)(c)(iii) of this section;

(vi) The name and address of each court and jurisdiction for those offenses that the individual is under community supervision at the time of application in response to division (1)(c)(iv) of this section; and

(vii) A signed waiver and authorization allowing the Chief of Police to request criminal history reports from pertinent federal, state, and local law enforcement for the individual submitting an application.

(d) A manager's permit shall consist of one photographic identification card that contains the following information: a photograph of the manager, the name and address of the human display establishment at which the manager's permit is valid, the full name of the manager, the date of issuance, the effective date, and the date of expiration.

(2) *On-site manager's permit.*

(a) Unless an individual is disqualified under one or more of the provisions of this article, an individual who performs the following acts shall be qualified for an on-site manager's permit: perform those acts detailed in division (1)(a) of this section.

(b) The following conditions shall disqualify an individual from obtaining an on-site manager's permit: those conditions specified in division (1)(b) of this section.

(c) An individual who applies for an on-site manager's permit shall provide the following information: that information specified in division (1)(c) of this section.

(d) An on-site manager's permit shall consist of one photographic identification card that contains the following information: a photograph of the on-site manager; the name and address of the human display establishment at which the on-site manager's permit is valid; the full name of the on-site manager, the date of issuance; the effective date; and the date of expiration.

(3) *Human display permit.*

(a) It shall be unlawful to apply for a human display permit, unless the individual who applies is a duly authorized agent and complies with the requirements for a duly authorized agent.

(b) Unless a duly authorized agent is disqualified under one or more provisions of this article, an agent who performs the following acts shall be qualified to receive on behalf of an owner or operator a human display permit:

(i) The duly authorized agent pays a \$750 nonrefundable processing fee to the city;

(ii) The duly authorized agent submits a diagram;

(iii) Allows an inspection of the premises as directed in § 9.14; and

(iv) The duly authorized agent performs those acts detailed in division (1) of this section if the duly authorized agent is also applying for a manager's permit or on-site manager's permit.

(c) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then a duly authorized agent shall be disqualified from receiving a human display permit:

(i) If any owner or operator identified by the duly authorized agent in the agent's affidavit is convicted of a felony in any jurisdiction;

(ii) If any owner or operator identified by the duly authorized agent in the agent's affidavit is convicted of a specified criminal act in any jurisdiction;

(iii) If the duly authorized agent, owner, or operator has refused to allow an inspection of the premises of the human display establishment by at least three calendar days prior to a deadline to issue a permit or notice of rejection;

(iv) If the duly authorized agent, owner, or operator has failed to submit to the Department of Development Services a diagram by at least ten calendar days prior to the deadline to issue a permit or notice of rejection;

(v) If the duly authorized agent or any individual, owner, or operator identified in the agent's affidavit has submitted false information on an application form for the permit or has falsely responded to inquiries in a background investigation; or

(vi) If the duly authorized agent or any individual, owner or operator identified in the agent's affidavit has previously had two human display permits revoked pursuant to § 9.15. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.13. RATIFICATION AND TERM OF PERMIT.

(1) The City Council accepts, ratifies, and endorses the following acts of the Chief of Police:

(a) All acts performed by the Chief of Police between the date of this article's passage and the effective date of this article so long as the acts are consistent with the duties, powers, and provisions of this article;

(b) All permits issued by the Chief of Police between the date of this article's passage and the effective date of this article so long as the permits contain the following:

(i) The actual date of issuance;

(ii) An effective date of permit that coincides with the effective date of this article; and

(iii) An expiration date of permit that is one calendar year from the effective date of permit.

(2) Each permit issued shall be valid for a period of one calendar year from the date of issuance at which time it shall expire, unless the permit is sooner revoked or surrendered.

(3) Each permit shall be subject to renewal as of its expiration date by filing a renewal application.

(4) Each renewal application must be filed at least 45 calendar days prior to the date of expiration.

(5) Except as expressly indicated herein, all of the deadlines, fees, and procedures applicable to any application and permit shall also be applicable to each renewal application and renewal permit.

(6) The Chief of Police shall not require another photograph for a renewal application unless he or she cannot verify the identity of the applicant who filed a renewal application; or, unless the applicant filing a renewal application is different from the individual who filed the original application.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.14. INSPECTIONS AND BACKGROUND CHECKS; DEADLINES.

(1) The Chief of Police shall conduct all necessary background investigations prior to the expiration of 30 calendar days from the receipt of an application for a human display permit, manager's permit, or on-site manager's permit for the purpose of determining whether each applicant is in compliance with the provisions of this article, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in § 9.11.

(2) The Chief of Police, the City Administrator or their designated representatives, and any other pertinent city department or the department's designated representatives, shall complete all inspections required under this article prior to the expiration of 30 calendar days from receipt of an application for a human display permit, manager's permit, or on-site manager's permit, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in § 9.11.

(3) If an application is rejected based on an inspection of the premises only, the Chief of Police shall provide to the duly authorized agent a notice of rejection within ten calendar days following the deadline to issue a permit or notice.

(4) An applicant may request a re-inspection only if the duly authorized agent:

(a) Submits the request, by certified mail, return receipt requested, within ten calendar days subsequent to the receipt of the decision of the Chief of Police; and

(b) Pays to the city a nonrefundable processing fee of \$150 with the submission of the request.

(5) The Chief of Police, City Administrator, or their designated representatives, and any other pertinent city department or the department's designated representatives, shall complete a reinspection and either issue or reject a permit based upon a request for reinspection not more than 15 calendar days from the date of receipt of the request for re-inspection. If upon re-inspection the Chief of Police concludes the noted problems have not been remedied, the Chief of Police shall issue a Notice of Rejection and notify applicant in accordance with § 9.11.

(6) An applicant for a human display permit shall be entitled to only one request for re-inspection per permit application.

(7) Notwithstanding the provisions of this section, an applicant whose application is rejected under the provisions of this article may petition to any lawfully established court having jurisdiction on the subject matter without first applying for a re-inspection.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.15. STANDING IN ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARINGS; REVOCATION OR SUSPENSION OF PERMITS.

(1) Regarding a manager's permit, or an on-site manager's permit, only an applicant and the Chief of Police, as the city representative, shall have standing in an administrative revocation/suspension proceeding or in any appeal thereof.

(2) Regarding a human display permit, an owner, operator, and the Chief of Police, as the city representative, shall have standing in an administrative revocation/suspension proceeding or any appeal thereof.

(3) If on the basis of verified information and after the issuance of a human display permit, manager's permit, or on-site manager's permit, the Chief of Police concludes that a permit holder has been convicted of a felony or specified criminal act, the Chief of Police shall initiate a revocation proceeding.

(4) If on the basis of verified information and after the issuance of a human display permit, the Chief of Police concludes that an employee not otherwise required to hold a manager's permit or on-site manager's permit has been convicted of a felony or specified criminal act that occurred on the licensed premises, the Chief of Police shall initiate a revocation proceeding if there exists a cumulative total of three or more convictions of employees for a felony or specified criminal act wherein the acts occurred within a consecutive 12 months period on the licensed premises in an area to which customers and patrons are allowed and within the direct line of sight of an on-site manager's station.

(5) If on the basis of information and belief and after the issuance of a human display permit, manager's permit, or on-site manager's permit, the Chief of Police concludes that the permit holder has been convicted of violating § 9.20, the Chief of Police shall initiate a revocation/suspension proceeding if:

(a) For the revocation/suspension of a human display permit, a cumulative total of three or more convictions for violations of any of the following sections have occurred within a consecutive six month period on the licensed premises: §§ 9.3, 9.4, and 9.20.

(b) For the revocation/suspension of a manager's permit or on-site manager's permit, a cumulative total of three or more convictions in the name of the permit holder for violations of any of the following sections have occurred within a consecutive 12 month period: §§ 9.3, 9.4, and 9.20.

(6) If on the basis of substantial evidence, the hearing officer finds that a permit holder holds a permit in violation of divisions (3), (4) of this section or within the previous 12 calendar months had the permit suspended pursuant to division (7) of this section, the hearing officer shall revoke the permit.

(7) If on the basis of substantial evidence, the hearing officer finds that a permit holder holds a permit in violation of division (5) of this section, the hearing officer shall suspend the permit for a period of 60 calendar days.

(8) An individual who has had a permit in his or her name revoked may not reapply for any permit under this article for a period of one calendar year from the effective date of the revocation of the permit. (Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.16. APPEAL AND JUDICIAL REVIEW.

(1) If a respondent is entitled to receive a permit under the provisions of § 9.12, and if after timely filing a request for the permit pursuant to the provisions of § 9.11(10), the Chief of Police refuses or fails to issue the permit, then the respondent:

(a) Shall have 45 calendar days from the expiration of the deadline in § 9.11(J) in which he or she may file suit for a writ of mandamus or other available remedy in a Judicial District Court of Bexar County, Texas; and

(b) Shall waive any appeal or cause of action if suit is not filed within the time specified herein.

(2) If an application is denied or a permit revoked or suspended, then:

(a) A respondent shall have 45 calendar days from the date of receipt of notice of rejection or notice of revocation in which to file suit for writ of mandamus or other available remedy in a Judicial District Court of Bexar County, Texas; and

(b) The respondent shall waive any appeal or cause of action if suit is not filed within the time specified herein.

(3) The notice of revocation/suspension is final on the date of delivery.

(4) Any act authorized by a permit shall be unauthorized and in violation of this article once a notice of revocation/suspension regarding the permit is final.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.17. PROCESS FOR REQUESTING PERMIT.

(1) The Chief of Police shall create a form for each type of permit consistent with the provisions of this article.

(2) An applicant may obtain a form during any business day at the Police Headquarters. The Chief of Police shall accept applications for filing only on a business Monday or business Tuesday between the hours of 9:00 a.m. and 4:00 p.m. at the City's Justice Center. Applications shall not be accepted at any other time or on any other day.

(3) At the time that the Chief of Police receives an application, the applicant shall submit and the Chief of Police shall take the photograph of the applicant at the City's Justice Center.

(4) All photographs shall be used to perform a background investigation and for the purpose of photographic identification of permit holders, and shall be kept on record with the Chief of Police while the applicant possesses a valid permit, and for a period of not less than five years after the expiration, revocation, or denial of the permit.

(5) All photographs of applicants shall be destroyed at the expiration of five years after the expiration, revocation, or denial of the permit, but all applicants submitting new applications shall be required to comply with photograph and fingerprint requirements in this section.

(6) All applicants shall submit to a criminal background check for the purpose of verifying the information requested in § 9.12.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

§ 9.18. HUMAN DISPLAY ESTABLISHMENTS; HOURS, POSTING OF PERMIT AND RECORDS.

(1) *Hours of operation.*

(a) A human display establishment shall not allow customers or patrons onto the premises during the following hours of any day: 2:15 a.m. through 7:00 a.m.

(b) It shall be unlawful for a human display establishment to allow customers or patrons onto the premises during the proscribed hours as provided in division (1).

(2) *Posting of permit.*

(a) The human display permit shall be framed and posted six feet above the floor on an interior wall of the human display establishment that allows for the permit to be no more than two feet from the doorframe of the front entrance. It shall be unlawful to obstruct from plain view a posted human display permit.

(b) It shall be unlawful to fail or refuse to post the human display permit as mandated in this article. It shall be unlawful for an individual to destroy, move, relocate or remove a posted notice of revocation.

(c) If a notice of revocation is delivered, the Chief of Police shall remove the human display permit from the wall of the human display establishment; post the notice of revocation on the exterior wall next to the front entrance of the human display establishment; and, post the notice of revocation on the exterior side of each door that may serve as an entrance or exit to the human display establishment.

(3) *Records.*

(a) The owner, operator, manager, or on-site manager of any human display establishment shall keep on the premises a register of all employees of the human display establishment that includes all information detailed at § 9.12(1) for each employee plus a copy of a photographic identification card issued by governmental authority of the United States of America or any state, commonwealth, or territory thereof to the employee and:

- (i) Each employee's true name;
- (ii) Aliases;
- (iii) Gender;
- (iv) Height;
- (v) Weight;
- (vi) Color of hair and eyes;
- (vi) Date of birth;
- (vii) Date of initial employment;
- (ix) Date of termination, if applicable; and
- (x) Specific job or employment duties.

(b) The register shall be maintained for all current employees and ex-employees employed at any time during the preceding 36 months.

(c) It shall be unlawful to fail to maintain said register, or, fail or refuse to present the register to a peace officer upon request.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.19. HOLDER OF MANAGER'S OR ON-SITE MANAGER'S PERMIT.

(1) Each individual who holds a manager's or on-site manager's permit shall display his or her valid permit to a peace officer upon request while upon the premises of the human display establishment for which the permit is authorized.

(2) In prosecuting a violation of § 9.3, it shall be presumed that the actor did not have a valid permit unless a valid permit was displayed in accordance with division (1) of this section.

(3) It shall be unlawful for a manager or on-site manager to fail to display his or her valid permit upon request of a peace officer while upon the premises of the human display establishment for which the permit is authorized.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.20. DUTIES OF OWNERS, EMPLOYEES AND CUSTOMERS.

(1) Each manager, on-site manager, owner, and operator shall comply with the provisions of this article.

(2) Each employee, customer, and patron shall comply with the provisions of this article.

(3) Each manager, on-site manager, owner, and operator shall ensure that each employee, customer, and patron complies with the provisions of this article.

(4) It shall be unlawful for a manager, on-site manager, operator, or owner to allow the conduct described in divisions (5), (6) or (7) of this section. Whenever an employee, customer, or patron fails to comply divisions (5), (6) or (7), it shall be presumed that a manager or on-site manager, operator, or owner allowed the prohibited conduct if the manager, on-site manager, operator or owner was present on the premises at the time of the violation, and the conduct occurred in an area to which customers or patrons are allowed access, excluding a lavatory.

(5) It shall be unlawful for any dancer, entertainer, or model to intentionally or knowingly touch another person, or the clothing of another person while entertaining or while in a state of semi-nudity.

(6) It shall be unlawful for a customer to intentionally or knowingly touch a dancer, entertainer, or model while the entertainer is entertaining or while in a state of semi-nudity.

(7) It shall be unlawful for any dancer, entertainer, or model to entertain while in a state of nudity.

(8) It shall be unlawful for any employee to be in a state of nudity, semi-nudity, or to perform specified sexual activities while in the presence of any customer or patron and while in an area within the human display establishment not subject to the direct line of site requirement.

(9) It shall be unlawful for any employee to entertain while in a lavatory, or in a stairway or elevator used as access between floors.

(10) It shall be unlawful for a manager, on-site manager, owner, or operator on the premises of any human display establishment to allow an obstruction into the line of sight view required under § 9.1 at the definition of the term "configuration". It shall be presumed that a manager, on-site manager, operator or owner allowed the obstruction if the manager, on-site manager, operator or owner was present on the premises at the time of the obstruction.

(11) It shall be unlawful for any on-site manager's station to be without an on-site manager during any time that a customer or patron is allowed on the premises of any human display establishment.

(12) It shall be unlawful for a manager, on-site manager, owner, or operator on the premises of any human display establishment to allow any individual to be on the premises of a human display establishment who is younger than 18 years of age. It shall be presumed that a manager, on-site manager, owner or operator allowed said individual to be on the premises if the manager, on-site manager, operator or owner was present on the premises at the time the underage individual was present.

(13) It shall be unlawful for any individual to be on the premises of any human display establishment who is younger than 18 years of age.

(14) It shall be the duty of the duly authorized agent, owner or operator of any human display establishment to conform the interior of the premises to the specifications provided in this article.

(15) It shall be the duty of the duly authorized agent, owner or operator of any human display establishment to notify the Chief of Police and the Director of Development Services, or his or her duly authorized representative that the location is ready for the inspections required under this article prior to the expiration of any applicable deadline contained herein.

(16) It shall be the duty of the duly authorized agent, owner or operator of a human display establishment to post, and maintain free of obstruction, the following notices in all capital letters with red type on a white background in typeface no less than one inch in length per letter, no more than two feet from each door used as an entrance or exit into or from the human display establishment, and at a height of no less than four feet and no more than six feet from the ground:

(a) "No Touch Rule - It is violation of the city code for a dancer, entertainer, model, customer or patron to intentionally or knowingly touch while entertaining or while in a state of semi-nudity."

(b) "No Minors - No individual under the age of 18 is allowed inside the premises."

(3) "Patrons conduct is being observed by management. Illegal conduct will not be permitted."

(c) The notices shall include the appropriate City of Balcones Heights ordinance number.

(d) It shall be unlawful to fail to post the notices required by this division.

(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11) Penalty, see § 9.21

§ 9.21. PENALTY.

(1) Whoever violates any provision of this appendix for which no other penalty is provided shall be punished by a fine not exceeding \$2,000. Each day any violation of this appendix shall continue shall constitute a separate offense.

(2) The violation of any provision of §§ 9.1 *et seq.*, including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein, shall be punishable as a Class C Misdemeanor with a fine not to exceed \$2,000, as provided by Tex. Local Government Code Ann. § 54.001.

(3) Upon proof of two prior convictions of §§ 9.1 *et seq.*, a third offense shall be punishable as a Class A Misdemeanor, as provided by Tex. Local Government Code Ann. § 243.010(b).

(4) Each day of any violation shall constitute and be punishable as a separate offense.

(5) The refusal to issue a permit based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a permit based on ineligibility.

(6) The revocation or suspension of a permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.
(Ord. 2011-06, passed 4-11-11; Am. Ord. 2011-22, passed 11-14-11)

City of Balcones Heights Master Plan 2009 Zoning Map

