AGENDA

PLANNING & ZONING COMMISSION

REGULAR MEETING

MONDAY, FEBRUARY 27, 2023, 6:30 P.M.

PUBLIC LIBRARY ANNEX, CIVIC CENTER

404 NORTH MAIN STREET

1. CALL TO ORDER

2. PUBLIC COMMENTS FOR NON-AGENDA RELATED ITEMS

Individuals may request to speak on items not on the agenda. Speaker comments are limited to three (3) minutes and no formal action can be taken. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from personal attacks or derogatory comments directed at any Commissioner, Staff, or others.

3. CONSENT AGENDA

All matters listed below are to be considered routine by the Commission and will be enacted in one motion. There will not be separate discussion on the items. If discussion is desired, that items can be removed from the consent agenda and will be considered separately as a new business item.

<!--[if !supportLists]-->1. Consider approval of the following Minutes:

3.I. January 23, 2023 Minutes

Documents:

JANUARY 23, 2023 MINUTES.PDF

4. NEW BUSINESS

4.I. An Ordinance Amending Ch. 46 Zoning, Sec. 46-1, Sec. 46-87, Sec. 46-203, Sec. 46-231, Sec. 46-233, Sec. 46-264, Sec. 46-265, Sec. 46-267, Sec. 46-300 Thru 304, Sec. 46-331 Thru 332, Sec. 46-334 Thru 335, Sec. 46-362, Sec. 46-365, Sec. 46-390, Sec. 46-393, Sec. 46-416, Sec. 46-419, Sec. 46-440, Sec.46-510, Sec. 46-533 Thru 536, Sec. 46-542, Sec. 46-596, Sec. 46-631, Sec. 46-634 Thru 635, Sec. 46-692 Thru 693, Sec.46-739; Revised Code Of Ordinances, City Of Elgin, TX & Deleting In Their Entirety Sec. 46-394 & Article VI Historic Preservation & Adding In Its Their Entirety Sec. 46-10 Thru Sec. 46-12, Sec. 46-500, Division 14 Downtown Overlay District; Repealing All Other Ordinances And Parts Of Ordinances In Conflict Therewith; And Providing For A Savings Clause.

A. Staff Presentation

B. Open Public Hearing

C. Close Public Hearing

D. Discussion

E. Recommendation

Documents:

ZONING CODE WORKSHOP COMBINED PACKET.PDF

5. ANNOUNCEMENTS

6. ADJOURNMENT

The Commission may adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code. The Commission will return to an open session for possible discussion and action as a result of the Executive Session.

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512) 281-5724. Please provide a forty-eight (48) hour notice when feasible.

Para informacion en espanol favor de llamar (512) 281-0119. Servicios de traduccion disponible en la reunion.

MINUTES
CITY OF ELGIN PLANNING AND ZONING COMMISSION
REGULAR MEETING
MONDAY, JANUARY 23, 2023

I. CALL TO ORDER – ROLL CALL: The Chair called the meeting to order at 6:30 P.M. at the Library Annex (Civic Center) located at 404 N. Main St., Elgin, TX U.S.A.

COMMISSION PRESENT: Chair Antonio Prete, Vice-Chair Ronnie Creppon, Berney Williams, Scott Mackay, Dorothy McCarther, Jason Tatum, and David Lanford.

COMMISSION ABSENT: None.

STAFF PRESENT: David Harrell, Development Services Director; Melissa Lipiec, Secretary; Beau Perry, TRC Engineers (3rd Party City Engineers).

II. PUBLIC COMMENT FOR NON-AGENDA RELATED ITEMS: No members of the public desired to speak on this item.

III. CONSENT AGENDA

1. November 21, 2022, Minutes.
2. December 19, 2022, Minutes.

Scott Mackay moved that the Commission approve the consent agenda, Jason Tatum seconded the motion. The motion passed unanimously with a vote of seven (7) for and zero (0) against.

IV. NEW BUSINESS

1. Project #: 202200135: A final plat for "Elm Creek NW Phase 2" located on a parcel of land known by the Travis County Appraisal District as Parcel 248253, located adjacent to Elm Creek NW Phase 1 near U.S. Hwy 290, and for a total of 217 lots on 58.950 acres of land.
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Applicant Presentation – Applicant was not present for presentation.

    C. Open Public Hearing –The public hearing was opened at 6:34 P.M., with no members of the public desiring to speak.

    D. Close Public Hearing – The public hearing was closed at 6:34 P.M.

    E. Discussion – There was discussion between the Commission and City Staff regarding general notes, fill, waterway setbacks, phases, benchmarks, sidewalks, and tangents.

    F. Consideration – Jason Tatum, made a motion to approve the item with the following conditions: 1) On Sheet 2, clarify location of benchmarks; 2) Sheet 7, Plat Note 25 indicates dotted lines for sidewalks, there are no dotted lines on the plat, correct to add dotted lines; 3) On Sheet 7, Plat Note 26 this note is incomplete and needs to be filled in; 4) Fill in remaining blanks on Plat;, seconded by Dorothy McCarther. The motion passed unanimously by a vote of seven (7) to zero (0).

IV. NEW BUSINESS (Cont.)

2. An Ordinance amending Ch. 16, Article II Weeds, Wild Growth, & Unsanitary Conditions; revised Code of Ordinances, City of Elgin, TX; repealing all other ordinances and parts of Ordinances in conflict therewith; and providing for a savings clause.
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Open Public Hearing – The public hearing was opened at 7:10 P.M. with no members of the public desiring to speak on the item.

    C. Close Public Hearing – The public hearing was closed at 7:10 P.M.

    D. Discussion – There was discussion between the Commission and City Staff regarding changes between the appeal to the Board of Adjustment, changing verbiage in existing Code, and how the Code overall worked regarding Department response.

    E. Recommendation – Jason Tatum made a motion to recommend approval the item with the following conditions: 1) The Board of Adjustment be kept the appeal authority; 2) the word "real estate" be changed to "owner" in Code, seconded by Scott Mackay. The motion passed unanimously by a vote of seven (7) to zero (0).

V. WORKSHOP

1. Review, discuss, and provide input on proposed Ch. 46 Zoning Code Changes.

    The Chair opened the item and then moved to the tables to conduct the workshop. David Harrell and the Commission went though, in full detail, all the proposed Zoning Code changes. He indicated these items would come back to the Commission on February 27th for a recommendation and go to the City Council on March 6th for a consideration.

VI. ANNOUNCEMENTS
None.

VII. ADJOURNMENT
The meeting was adjourned by the Chair at 8:37 P.M.

_____
Antonio Prete, Chair

ATTEST:_____
Melissa Lipiec, Secretary

On a motion by _____, seconded by _____
the foregoing instrument was passed and approved on this 27th day of February 2023.

Development Services Department

STAFF REPORT

Ch. 46 Zoning Code Changes

Date: February 12, 2023

Hearing Dates: Planning & Zoning Commission – February 27, 2023
City Council – March 7, 2023

CODE CHANGE SUMMARY

These zoning code changes are being heard by the Commission for a recommendation and Council for consideration per the above dates. These Code changes are being completed to provide the Commission more power in certain circumstances, strengthen Codes regarding certain approvals, modernize the code, eliminate code redundancy, and move portions of non-zoning code related items from the zoning code to new portions of the City Code.

CHANGE/DISCUSSION SUMMARY

From the Jan. workshop, the Commission heard proposed Staff changes to the Zoning Code in a line-by-line format through a workshop. From that meeting the following has been modified per the discussion:

1. Under Section 46-87, subsection 4, the use of the word "frustrated" had an unclear understanding, the wording has been changed, see below:
   A. Orig. change: "The development objectives of the property owner are or shall be frustrated".

   B. New change: "The development objectives of the property owner are or shall be diminished by not allowing the proposed development".

2. Under Sections 46-390 (C-2 zoning), 46-416 (C-3 zoning), & 46-440 (I-zoning) incidental uses in relation to principal uses (floor area) has been increased from 25% to 40%. This matches the standard percentage in effect currently under Section. 46-362 (C-1 zoning).

3. Under Section 46-233 (R-1 zoning), 46-265 (R-2 zoning), 46-303 (R-3 zoning), and the subsection involving driveways and sidewalks there was discussion in keeping the word "dwelling unit" versus "lot. Staff changed back to the original language of "dwelling unit".

The items above are all that have been changed from the January workshop. *Be aware the Code has been printed double sided to save on paper.*

Chapter 46 ZONING[1]

ARTICLE I. IN GENERAL

Sec. 46-1. Definitions.

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

Accessory building means a subordinate building or a portion of the main building located on the same lot as the main building, the use of which is incidental to that of the dominate use of the building or premises.

Accessory use means a use customarily incidental, appropriate and subordinate to the principal use of land or buildings and located upon the same lot therewith.

Advertising sign or structure.

(1) The term "advertising sign or structure" means any cloth, card, paper, metal, glass, wooden, plastic, stone sign or other sign, device or structure of any character whatsoever, including a statuary, place for outdoor advertising purposed on the ground or on any tree, wall, bush, rock, post, fence, erecting, constructing, posting, painting, tacking, nailing or making visible in any manner whatsoever. The area of an advertising structure shall be determined as the area of the largest cross section of such structure.

(2) The term "advertising sign or structure" does not include either directional, warning or other signs posted by public officials in the course of their public duties nor merchandise or materials being offered for sale.

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

Apartment house. See *Multiple-family dwelling.*

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

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

Bed and breakfast means single-family dwelling in which the principal use is permanent residential quarters; and in which, as an accessory use, no more than three bedrooms are made available for transient occupancy, generally for not more than seven days, by no more than five guests for compensation.

[1]State law reference(s)—Zoning, V.T.C.A., Local Government Code § 211.001 et seq.

Boardinghouse means a dwelling other than a hotel where for compensation and by prearrangement for definite periods, meals or lodging and meals are provided for three or more, but not exceeding 20 persons on a weekly or monthly basis.

Brick means and includes fired clay or shale brick manufactured to ASTM C216 or C652. Grade WS, can include concrete brick if the coloration is integral, shall not be painted, and is manufactured to ASTM C1634 with a minimum thickness of 2¼ inches when applied as a veneer, and shall not be included under fired clay or shale brick.

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

Building height means the vertical distance from the ~~average line~~finished floor ~~of the highest and lowest points of that portion of the lot covered by the building~~ to the highest point of coping of a flat roof, or the deck line of the mansard roof or to the average height of the highest gable of a pitch or hip roof.

Building, main, means a building in which is conducted the principal use of the lot on which it is situated. In a residential district any dwelling shall be deemed to be a main building on the lot on which it is situated, and shall be located upon a street approved and accepted by the city.

Building setback line means the distance that a building must be placed back from a designated boundary, such as street, alley or property line (also called a building line).

Business shall be as defined in the City adopted International Building Code~~, 2006 edition,~~ or other building code as adopted by the city and additionally shall be defined as the use of any building or structure, or any portion thereof, including residences, wherein any merchandise, including goods, wares or merchandise incidental to such purpose, is sold or displayed for the purpose of being sold on more than eight days during any 12-month period.

Child care center.

(1) The term "child care center" means any place, home or institution which receives three or more children under the age of 16 years, and not of common parentage, or care apart from their natural parents, legal guardians or custodians, when received for regular periods of time for compensation.

(2) The term "child care center" does not include public and private schools organized, operated or approved under the laws of this state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage within the third degree to the custodial person, or the churches or other religious or public institutions caring for children within the institutional building while their parents or legal guardians are attending services or meetings or classes or other church activities.

Coverage means the lot area covered by all buildings located thereon, including the area covered by all overhanging roofs.

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

Duplex. See definition of *Dwelling, two-family.*

Dwelling means any building or portion thereof, which is designed or used as living quarters for one or more families, but not including trailer homes. All dwellings shall comply with the requirements in masonry construction. See *Trailer home.*

Dwelling, multiple-family, means detached dwelling designed to be occupied by three or more families living independently of each other, exclusive of hotels or motels.

Dwelling, single-family, means a detached dwelling designed to be occupied by one family. See *Family.*

Dwelling, two-family, means a detached dwelling designed to be occupied by two families living independently of each other.

Earth tone colors are subdued colors that are commonly observed in nature such as sea, sky, vegetation, and land. Any subdued tint or shade commonly found in nature including black, browns, greens, reds, blues, yellows, oranges, greys, and whites. This shall not include the following:

(1) Colors not described in this definition.

(2) Any non-subdued colors from this definition which include but are not limited to neon or overly bright colors as determined by the city.

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

Family group use means one or more persons related by blood, marriage, or adoption, or a group of not exceeding five persons not all related by blood or marriage, occupying a boarding or lodging house, hotel, club or similar dwelling for group use.

Fence means a barrier intended to prevent escape or intrusion or to mark a boundary. Types of fences include but are not limited to the following:

(1) *Ornamental fence* shall mean a fence designed in such a manner, and of such material, that a key feature of the fence is to decorate or enhance the appearance of the front or side yard setback in a residential area. Ornamental fences are usually metal and can be simple or curved into intricate designs. Fences consisting of chain link mesh, welded or woven wire or sheet metal are excluded under this definition.

(2) *Privacy fence* shall mean a sight-obscuring fence used to block the area enclosed by the fence from view from neighboring properties or public rights-of-way.

(3) *Chain link* (also referred to as wire netting, wire-mesh fence, chain-wire fence, cyclone fence, hurricane fence, or diamond-mesh fence) means a type of woven fence usually made from galvanized or LLDPE-coated steel wire.

(4) *Picket* means a fence made of spaced uprights connected by two or more horizontal rails.

(5) *Hedges* are a fence or boundary formed by closely growing bushes, shrubs or other woody, ornamental landscape plants whose natural form is generally maintained at a height and spread of no more than three feet.

Garage apartment means a dwelling unit for one family erected above a private garage or a multifamily dwelling unit, with not more than three stories. The building has private outdoor space, either on grade, or a private balcony.

Garage, parking, means any building, or portion thereof, used for the storage of four or more automobiles in which any servicing which may be provided is incidental to the primary use for storage purposes, and where repair facilities are not provided.

Garage, private, means an accessory building or part of a main building used for storage purposes and for automobiles used solely by the occupants and their guests of the building to which it is accessory.

Garage, repair, means a building in which are provided facilities for the care, services, repair, or equipping of automobiles.

Gasoline service or filling station means any area of land, including structures thereon, that is used for the retail sale of gasoline or oil fuels, or other automobile accessories, and incidental services including facilities for lubricating, hand washing and cleaning, or otherwise servicing automobiles, but not including painting, major repair or automatic washing or the sale of butane or propane fuels.

Home occupation.

(1) The term "home occupation" means any occupation carried on solely by the inhabitants of a dwelling which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the character thereof, and which is conducted entirely within the main or accessory buildings; provided, that no trading in merchandise is carried on and in connection with which there is no display of merchandise or advertising sign other than one nonilluminated nameplate not more than two square feet in area attached to the main or accessory building, and no mechanical equipment is used except such as is customary for purely domestic or household purposes.

(2) The term "home occupation" does not include a beauty or barbershop, tea room or restaurant, rest home, doctor's or dentist's office, child care center, or cabinet, metal or auto repair shop.

Hotel means a building or group of buildings (not apartments) contain six or more sleeping rooms occupied as the more or less temporary abiding place of persons who are lodged with or without meals for compensation, but not including trailer court or camp, sanatorium, hospital, asylum, orphanage or building where persons are housed under restraint.

HUD-CODE manufactured home.

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

(2) The term "HUD-CODE manufactured home" does not include a recreational vehicle as that term is defined by 24 CFR 3282.8(g).

Impervious cover means roads, driveways, decking, patios, sidewalks, parking areas, buildings, mechanical equipment, swimming pools, rooftop landscapes and other construction limiting the absorption of water by covering the natural land surface.

Industrialized building.

(1) The term "industrialized building" means a commercial structure that is constructed in one or more modules using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air conditioning, and electrical system.

(2) The term "industrialized building" does not include any commercial structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof.

Industrialized housing.

(1) The term "industrialized housing" means a residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air conditioning, and electrical system.

(2) The term "industrialized housing" does not include any residential structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. The term "industrialized housing" does not mean nor apply to:

a. Housing constructed of sectional or panelized systems not utilizing modular components; or

b. Any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location.

Kennel means any lot or premises on which three or more dogs, cats, or other domestic animals at least four months of age, are housed or accepted for boarding, trimming, grooming, bathing and/or treatment for which compensation is received.

Key lot means a lot having frontage on two intersecting streets, such lot being adjacent to that intersection, and having adjacent lots on both streets fronting on those streets.

Lot means any plot of land occupied or intended to be occupied by one main building, or a group of main buildings, and accessory buildings and uses, including such open spaces as are required by this section, and other laws or ordinances, and having its principal frontage on a street publicly approved and accepted by the city.

Lot, area, means total area measured on a horizontal plane, included within lot lines.

Lot, corner, means a lot which at least at two adjacent sides abutting for their full lengths on a street, provided that the angle at the intersection of such two sides is less than 135 degrees.

Lot, depth, means the horizontal distance between the front and rear lot lines.

Lot, double frontage, means a lot having a frontage on two nonintersecting streets, as distinguished from a corner lot.

Lot, frontage, means that dimension of a lot or portion of a lot abutting on a street, excluding the side dimension of a corner lot.

Lot, interior, means a lot other than corner lot.

Lot lines means the property lines bounding a lot.

Masonry construction means the building of structures from individual units laid in and bound together with mortar, the term masonry may refer to the units themselves. The common materials used in masonry are brick, stone, stucco and plaster, marble, granite, travertine, limestone, concrete block, glass block, tile and other built up/tilt panels or walls. Concrete tilt wall construction. (Stucco and plaster shall only be considered a masonry material when applied using a three-step method over diamond metal lath mesh to a seven-eighths-inch thickness or by other processes producing comparable cement stucco finish with equal or greater strength and durability specifications. Synthetic products e.g., EIFS-exterior insulation and finish systems shall not be considered a masonry material, Hardiplank or other materials of similar characteristics shall be considered a masonry material.

Medical facilities.

(1) *Convalescent, rest or nursing home* means a health facility where persons are housed and furnished meals and continuing nursing care for compensation.

(2) *Dental clinic* or *medical clinic* means a facility for the examination and treatment of ill and afflicted human out-patients provided they are not kept overnight except under emergency conditions.

(3) *Dental office* or *doctor's office* means the same as dental or medical clinic.

(4) *Hospital* means an institution 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 which are an integral part of the facilities.

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

(6) *Sanatorium* means an institution providing health facilities for in-patient medical treatment and recuperation making use of natural therapeutic agents.

Parking space means a permanently surfaced area, enclosed or unenclosed, sufficient in size to store one automobile together with a permanently surfaced driveway connecting the parking space with a street or alley and permitting ingress of an automobile.

Parking, tandem means 2 parking spaces, one located behind the other one where one space must be driven across in order to access the other space.

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

Post-secondary institution means a public or private educational institution or other institutions of higher learning that offer courses of general or specialized study leading to a degree. This definition includes community college, college, university, vocational, technical or trade schools, language school, art school, business school, training center, beauty school, culinary school, and comparable advanced or continuing education facilities. This phrase does not include fitness centers, sports instruction, swimming instruction, or martial arts instruction.

Private school, primary means a private, parochial or charter school offering instruction at the elementary and middle (junior high) level in the branches of learning and study required to be taught in the public schools of the state.

Private school, secondary means a private, parochial or charter school offering instruction at the high school level in the branches of learning and study required to be taught in the public schools of the state.

Property line describes the legal boundary of a parcel of land that divides one parcel from another or from a street or any other public or private space. See *Lot line.*

Public school, elementary or middle means a public school offering instruction at the elementary or middle school level in the branches of learning and study required to be taught in the public schools of the state.

Public school, high means a public school offering instruction at the senior high school level in the branches of learning and study required to be taught in the public schools of the state.

Recreational vehicle means a unit designed as temporary living quarters for recreational, camping or travel use that has a body width not exceeding eight feet and a body length not exceeding 40 feet. Units may have their own power, or be designed to be drawn or mounted on an automotive vehicle. The term "recreational vehicle" includes motor homes, travel trailers, truck campers, camping trailers, converted buses, house boats or other similar units as determined by the building official or such other person as may be designed by the city council. A recreational vehicle may or may not include an individual toilet and bath.

Restaurant means a building or premises, the primary use of which is the preparation and serving of food for on-premises consumption. The incidental sale of beer at such location for on-premises consumption shall be considered an accessory use of said building and premises.

Roominghouse means a building where lodging only is provided for compensation to three or more, but not exceeding 20 persons. A building which has accommodation for more than 20 persons shall be defined as a hotel under the terms of this section.

Self-service laundry or dry cleaning establishment means attended or unattended place, building or portion thereof, available to the general public for the purpose of washing, drying, extracting moisture from or dry cleaning wearing apparel, cloth, fabrics and textiles of any kind by means of a mechanical appliance which is operated primarily by the customer.

Stable, private, means a stable with a capacity for not more than two horses or mules.

Stable, public, means a stable, other than a private stable, with a capacity for more than two horses or mules.

Store selling beer means a building or premises, the primary use which is the selling of beer for on-premises consumption. The incidental preparation and serving of food at location for on-premises consumption shall be considered an accessory use of said building or premises.

Story means that portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

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

Street means any public or private thoroughfare which affords the principal means of access to abutting property.

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

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

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

Tandem See *Parking, tandem*

Tourist court means an area containing one or more buildings designed or intended to be used as temporary sleeping facilities of one or more transient families and intended primarily for automobile transients.

Tourist home means a dwelling occupied as a permanent residence by an owner or renter in which sleeping accommodations in not than four rooms are provided or offered for transient guests for compensation.

Trailer court or *mobile home park* means a parcel of land which has been designed or improved or intended to be used or rented for occupancy by one or more trailer homes, mobile homes, or recreational vehicle, as authorized under the ordinances of the city.

Trailer, hauling, means a vehicle to be pulled behind an automobile or truck which is designed for hauling animals, produce, goods or commodities, including boats/watercraft, and barbeque pits.

Trailer home or *mobile home* means a portable or mobile living unit used or designed for human occupancy on a permanent basis, is defined as a structure that was constructed before June 15, 1976, transportable in one or more sections; which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems.

Trailer or mobile home space means a plot of ground within a trailer court designed for the accommodation of one mobile home.

Trailer, travel or camping, means a portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants, and containing less than 175 square feet of floor area.

Veterinary hospital means an establishment offering veterinary services and clinics for pets, small and /or large animals. Typical uses include pet clinics, care, treatment and temporary housing of livestock and large animals, with temporary housing of large animals permitted in an attached or adjacent roofed building, with three or more sides having walls or a solid fence extending from the foundation to at least three-fourths of the distance to the roofline and at all times shall comply with the city's animal control ordinance.

Wireless communication facility (WCF) means an antenna and associated equipment intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

Wireless communication facility, attached means a wireless communication facility that is attached to a building or other permanent structure.

Wireless communication facility, co-location means locating of wireless communications equipment from more than one provider on a single mount or support structure.

Wireless communication facility, monopole means a wireless communication facility constructed as a freestanding structure which consists of a single vertical pole, fixed into the ground and/or attached to a foundation with no guy wires, containing one or more antennas and associated equipment at any given point with externally mounted or visible antennae.

Wireless communication facility, self-enclosed monopole means a wireless communication facility constructed as a freestanding structure which consists of a single vertical pole, fixed into the ground and/or attached to a foundation with no guy wires, containing one or more antennas and associated equipment no larger than 36 inches in diameter at any given point with no externally mounted or visible antennae.

Wireless communication facility, stealth means a wireless communication facility that is screened, disguised, concealed or otherwise camouflaged as a natural structure, or part of a structure, such that the WCF is indistinguishable from other natural structures, or the structure that it is attached to or within.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except where otherwise specifically provided in this chapter that the building or structure may be located in a portion of a yard required for a main building. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of the side yard, the depth of a front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the main building shall be used.

Yard, front, means a yard located in front of the front elevation of a building and extending across a lot between the side yard lines and being the minimum horizontal distance between the front property line and the outside wall of the main building.

Yard, rear, means a yard extending across the rear of a lot measured between the lot lines and being the minimum horizontal distance between the rear lot line and the rear of the outside wall of the main building. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from front yard.

Yard, side, means a yard between the building and the side of the lot and extending from the front lot to the rear lot line and being the minimum horizontal distance between a side lot line and the outside wall of the main building.

Sec. 46-2. Purpose.

(a) It is hereby directed to be the purpose and intent of the city council in enacting this chapter that the zoning regulations and districts as herein established have been made in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals and general welfare of the city.

(b) They have been designed to lessen the congestion in the streets to;

(1) Secure safety from fire, panic and other dangers;

(2) Provide adequate light and air;

(3) Prevent the overcrowding of land;

(4) Avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

(c) They have been made with reasonable consideration, among other things, for the character of the district, and its peculiar suitability for the particular uses specified; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city consistent with a comprehensive plan.

Sec. 46-3. Zoning district map.

(a) *Boundaries of zoning districts delineated upon.* The boundaries of zoning districts set out herein are delineated upon a zoning district map of the city adopted as part of this section as fully as if the same were set forth herein detail.

(b) *Original map to be filed with city secretary.* One original of the zoning district map shall be filed in the office of the city secretary. This copy shall be the official zoning district map and shall bear the signature of the mayor and attestation of the city secretary. This copy shall not be changed in any manner. In case of any question, this copy, together with amending ordinances, shall be controlling.

(c) *Additional copy to be placed with the planning director.* An additional copy of the original zoning district map shall be placed in the office of the building inspector. The copy shall be used for reference and shall be maintained up-to-date by posting thereon all subsequent amendments.

Sec. 46-4. Zoning district boundaries.

(a) *Centerlines.* Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

(b) *Platted lot lines.* Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(c) *City limits.* Boundaries indicated as approximately following city limits shall be construed as following city limits.

(d) *Railroad lines.* Boundaries indicated as approximately following railroad lines shall be construed to be the established centerline of the right-of-way or, if no centerline is established, the boundary shall be interpreted to be midway between the right-of-way lines.

Sec. 46-5. Compliance required.

All land, buildings, structures or appurtenances thereon located within the city or hereafter occupied, used, erected, altered or converted shall be used, placed and erected in conformance with the zoning regulations prescribed for the zoning district in which such land or building is located except as hereinafter provided. Land used in meeting the requirements of this section with respect to a particular use or building shall not be used to meet the requirements for any other use or building.

Sec. 46-6. Preserving rights and continuity in enforcement, pending litigation, and violations under zoning regulations and amendments thereto.

By the passage of the ordinance from which this zoning chapter is derived, no presently illegal use or building shall be deemed to have been legalized unless such use falls within a use district where the actual use and standards under the terms of this chapter would be conforming. Any use which does not conform to provisions of this chapter shall be a nonconforming use or structure, as the case may be. It is further the intent and declared purpose of this chapter that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time the previous zoning ordinance was repealed and the ordinance from which this zoning chapter is derived adopted shall be discharged or affected by such repeal; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending proceeded within all respects as if such prior ordinance had not been repealed.

Sec. 46-7. Newly annexed areas.

(a) *Classified as R-1 district.* All territory hereafter annexed to the city, shall be classified in the R-1 district until permanent zoning classifications are given the area by the city council.

(b) *Procedure for establishing permanent zoning.* The procedure for establishing the permanent zoning on any annexed territory shall be the same as is provided by law for the amendment of this chapter.

Sec. 46-8. Enforcement.

The provisions of this chapter shall be administered and enforced by the city manager, city secretary, building official, or such other person as may be designated by the city council. All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building to be erected, the use of the property and such other information as may be necessary to provide for the enforcement of these regulations. A careful record of such application and plats shall be kept in the office of the city secretary, or such other person as may be designated by the city council.

Sec. 46-9. Penalty for violation.

Any person or corporation who shall violate any of the provisions of this chapter or fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building or use in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and shall be liable to the penalty provisions of this Code set forth in section 1-15. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner of any building or premises or part thereof, where anything in violation of this chapter shall be placed or shall exist, and any architect, builder, contractor, agent, person or corporation employed in connection therewith who may have assisted in the commission of any such violations, shall be guilty of a separate offense and upon conviction, shall be fined as herein provided.

Sec. 46-10. Delay of new similar application in cases of denial by approval authority.

No applications for a change of zoning classification, variance, special exception, or specific use shall be accepted if a similar application for the same property has been denied by the applicable approval authority within the preceding twelve (12) month period.

Sec. 46-11. City Council action on zoning map amendment if the Planning & Zoning Commission has recommended denial.

If the planning and zoning commission has recommended that the city council disapprove a potential zoning map amendment, the amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the city council.

Sec. 46-12. City Council action on zoning map amendment for written protest by affected or area property owners.

In accordance with V.T.C.A., Local Government Code § 211.006, if a written protest that meets the conditions in this subsection is presented to the city secretary prior to the public hearing for the map amendment, the amendment shall become effective only with the favorable vote of three-fourths (3/4) of all members of the city council. The valid protest must be written 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.

In computing the percentage of land area under this subsection, the area of streets and alleys shall be included.

Secs. 46-~~10~~13—46-36. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION 1. GENERALLY

Secs. 46-37—46-60. Reserved.

DIVISION 2. PLANNING AND ZONING COMMISSION

Sec. 46-61. Membership; terms of office; vacancies; compensation.

There is hereby created and established for the city, a planning and zoning commission, which shall be composed of seven members. The members shall be resident citizens, taxpayers and qualified voters of the city, all of whom shall be appointed by the mayor subject to confirmation by the city council, to serve for terms of two years. All vacancies shall be filled for the unexpired terms in the same manner as provided for the original

appointments. All expired terms shall be filled for terms as provided for the original appointments and in the same manner. Members of the commission may be removed by the mayor, with the consent of the city council after public hearing and for cause assigned in writing. The members of the commission shall serve without compensation.

Sec. 46-62. Officers; bylaws.

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

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

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

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

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

Sec. 46-63. Powers and duties.

The planning and zoning commission shall have the power and it shall be its duty to make and recommend for adoption of a master plan, as a whole or in parts, for the future development and redevelopment of the municipality and its environs and shall have the power and it shall be its duty to prepare a comprehensive plan and ordinance for zoning the city in accordance with V.T.C.A., Local Government Code §§ 211.001—211.021. The commission shall perform such other duties as may be prescribed by ordinance or state law.

Secs. 46-64—46-84. Reserved.

DIVISION 3. BOARD OF ADJUSTMENT

Sec. 46-85. Membership, appointments, general powers, etc.

(a) There is hereby created a board of adjustment consisting of five regular members, one senior alternate member, and one junior alternate member. Each to be appointed by a majority of the city council for a term of two years and removable for cause by the city council. Vacancies shall be filled by the appointment by the city council of a suitable person to serve out the unexpired term of any member whose place on the board has become vacant for any cause. The board of adjustment shall name one member as chairperson and one member vice-chairperson.

(b) The board is hereby vested with power and authority, in appropriate cases and subject to appropriate conditions and safeguards to make such exceptions to the terms of this chapter in harmony with its general purpose and intent and in accordance with general or special rules therein continued for the purpose of rendering full justice and equity to the general public. The board may adopt rules to govern its proceedings; provided, however, that such rules are not inconsistent with this chapter. Meetings of the board shall be held at the call of the chairperson, who may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing

the vote of each member upon each question, or, if absent or failing to vote, indicate such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(c) In situations where there is a lack of quorum for a board meeting, the senior alternate member and then the junior alternate member is automatically elevated to regular member(s), in that order, only to satisfy quorum requirements.

(d) Regular members can vote on any item. However, the alternate members shall only have the authority to cast a vote on an item when they are automatically elevated in accordance with subsection (c).

Sec. 46-86. Appeals to the board of adjustment to stay all proceedings; exception.

Appeals to the board of adjustment can be taken by any person aggrieved or by any officer, department, board or department of the municipality affected by any decision of the administrative office. Such appeals shall be taken within 15 days' time after the decision has been rendered by the administrative office, by filing with the officer from whom the appeal is taken and with the board of adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appeals were taken. An action appealed from shall stay all proceedings upon the action appealed, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts, stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record or application on notice to the officer from whom the appeal is taken and on due cause shown.

Sec. 46-87. Specific powers & zoning variance criteria.

The board of adjustment shall have the following powers:

(~~1~~a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter.

(~~2~~b) To hear and decide special exceptions to the terms of this chapter upon which the board is required to pass under this chapter.

(~~3~~c) To authorize, upon appeal in special cases, such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, the literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(d) The following types of findings are insufficient findings and do not constitute sufficient grounds for granting of a variance:

(1) The property cannot be used for its highest and best use.

(2) There is a financial or economic hardship.

(3) There is a self-created hardship by the property owner or agent.

(4) The development objectives of the property owner are or shall be diminished by not allowing the proposed development.

Sec. 46-88. Board may reverse any order.

In exercising its powers, the board may, in conformity with the provision of V.T.C.A., Local Government Code §§ 211.008—211.011, revise or reform, wholly or partly, or may modify the order, requirements, decision or determination as ought to be made and shall have all the powers of the officer from whom the appeal is taken.

Sec. 46-89. Votes necessary to reverse decision of administrative official.

The concurring vote of four members of the board shall be necessary to revise any order, requirements, decision or determination of any such administrative official, or to decide in favor of the application on any matter upon which it is required to pass under this chapter or to affect any variance in this chapter.

Sec. 46-90. Appeals from action of the board of adjustment.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board and not thereafter.

Sec. 46-91. Filing fee.

Any appeal to the board of adjustment from an adverse ruling by the administrative official shall be accompanied by the amount of which is on file in the city secretary's office, plus the cost of postage in cash to be paid by the person making the appeal to cover the cost of such appeal.

Secs. 46-92—46-110. Reserved.

DIVISION 4. CHANGES AND AMENDMENTS

Sec. 46-111. City council may amend regulations.

(a) The city council may, from time to time, on its own motion or on a proper application or petition amend, supplement, change, modify or repeal the regulations, restrictions and boundaries herein established.

(b) Any person, firm or corporation petitioning the city council for a change in the regulations or the zoning district map, shall do so upon forms provided for such purposes by the office of the city secretary. All petitions or applications for changes in the regulations or zoning district map shall be filed with the office of the planning director.

(c) Each such application shall be accompanied by:

  (1) Plats (one reproducible and three copies) and the plans necessary to show the detail of the proposed change requested as well as the relation of said property to that of all property lying within 200 feet thereof; and

  (2) The street address and suitable legal description of the property proposed to be changed.

(d) Each application shall be accompanied, at the time of filing, by a fee, the amount of which is on file in the city secretary's office, plus postage.

Sec. 46-112. Changes and amendments to districts.

(a) *City council may change zoning district boundaries.* The city council may from time to time amend, supplement, or change by ordinance the boundaries of the districts or the regulations herein established.

(b) *Planning and zoning commission to make recommendations prior to council action.* Before taking action on any proposed amendment, supplement or change, the city council shall submit same to the planning and zoning commission for its recommendation and report.

(c) *Public hearings to be conducted.* Public hearings shall be held only after notices required by the laws of the state shall have been given in the manner required by law.

(d) *Zoning filing fee.* Any request for a proposed amendment, supplement, or change to article III of this chapter submitted to the city council shall be accompanied by a fee, the amount of which is on file in the city secretary's office, in cash to be paid by the applicant as cost in connection therewith.

Secs. 46-113—46-137. Reserved.

DIVISION 5. SPECIFIC USE PERMITS

Sec. 46-138. General description.

(a) A specific use permit for any of the following uses in any use district may be granted and may contain such requirements, conditions and safeguards as are needed to protect adjacent property, and in any case a site plan may be required by the planning and zoning commission or the city council which may be made a part of the regulations granting such specific use permit:

(1) College, university or private boarding school.

(2) Library, museum or art gallery.

(3) Golf course, driving range or putting course.

(4) Radio, microwave relay tower or television tower.

(5) Private aboveground water storage tank.

(6) Gas or petroleum drilling or storage.

(7) Rock quarries: sand, gravel or earth excavation for off-site use.

(8) Airports or landing fields for public or private use. A specific use permit will not become effective until the site is approved by the Civil Aeronautics Administration. When located in the R-1, R-2, R-3 or A residential districts, the site shall contain not less than 20 acres.

(9) Hospitals intended for the care of insane, liquor or narcotics patients. When located in the R-1, R-2, R-3 or A residential districts, the site shall contain not less than 20 acres.

(10) HUD Code Manufactured Home Park in the R-3 zoning district.

(11) Dry board storage.

(12) Dog kennels and veterinary hospitals.

(13) Greenhouses and nurseries.

(14) Private club, community or civic club.

(15) Day nursery or child care center.

(16) Kindergarten.

(17) Home beauty shop.

(18) Institutions of a religious, education, recreation or philanthropic nature which are not listed in this division.

(19) Sororities, fraternities and lodges.

(20) Medical facility.

(21) Off-street parking lot.

(22) Bait sales.

(23) Electric transmission station.

(24) Roller skating rink.

(25) Temporary structures for religious or public gatherings.

(26) Carnivals or amusement parks.

(27) Zoo.

(28) Temporary produce stand.

(29) Motor raceways.

(30) Feed lot.

(31) Athletic fields or stadiums.

(32) Christmas tree sales.

(33) Fireworks sales.

(34) Sewage collection and/or treatment utility installation, public or private, not listed in this division.

(35) Animal pound.

(36) Home tropical fish sales.

(37) Store selling beer.

(38) Bed and breakfast.

(39) Boardinghouse.

(40) Public stable.

(41) Private stable.

(42) Roominghouse.

(43) Tourist house.

(44) Industrialized housing.

(45) Industrialized building.

(46) Wireless communication facility, self-enclosed monopole within a residential zoning district.

Sec. 46-139. Restricted uses.

A specific use permit may be granted for the following uses in the I-Industrial District only:

(1) Cement, lime or gypsum manufacture.

(2) Natural gas, production and distribution.

(3) Petroleum production and refining.

(4) Wholesale or bulk storage of gasoline, propane or butane, or other petroleum products.

(5) Disposal plants of all types including trash and garbage, sewage treatment, including lagoons and compost plants.

(6) Salvage yards for automobiles, building materials, scrap metal, junk, or for any other kind of salvage; provided, however, that all salvage operations shall be so screened by ornamental walls, fences, or evergreen planting that it cannot be seen by a person standing at ground level at any place immediately adjacent to the lot on which the salvage operation is located.

Sec. 46-140. Site plan.

Whenever the city council or the city planning and zoning commission shall require a site plan for a specific use permit, such site plan shall show existing improvements on the land and proposed development of the property and shall give the following information:

(1) Date, scale, north point, title, name of owner and the name of person preparing plan;

(2) Location of existing boundary lines and dimensions of the tract;

(3) Centerline of existing watercourses, drainage features, and location and size of existing and proposed streets and alleys;

(4) Location and size to the nearest one-half foot of all proposed buildings and land improvements;

(5) Clear designation of areas reserved for off-street parking and for off-street loading; the location and size of points of ingress and egress; and

(6) The ratio of parking space to floor space.

Secs. 46-141—46-163. Reserved.

DIVISION 6. BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY

Sec. 46-164. Required.

It shall be unlawful for any person, firm, or corporation to commence the construction, enlargement or structural alteration of any building in the city, or use or occupy the same without first applying for and securing a building permit, or to use or occupy the same without first securing a certificate of occupancy and compliance from the building official or such other official designated by the city council. Application shall be made on forms furnished by the building official.

Secs. 46-165—46-181. Reserved.

ARTICLE III. NONCONFORMING USES

Sec. 46-182. Lawful nonconforming uses and procedures for continuance.

Any lawful use of property existing on March 28, 1973, which does not conform to the regulations prescribed herein shall be deemed a nonconforming use and may be continued subject to such regulations as to the maintenance of premises and conditions of operations as may, in the judgment of the board of adjustment, be reasonably required for the protection of adjacent property. A nonconforming use may be extended through an existing building provided no structural alterations, except those required by law or ordinance, shall be made therein, and if no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to any nonconforming use. If a nonconforming use is discontinued for a period exceeding six months, such nonconforming use shall be deemed to have been abandoned and any future use thereof shall conform to the terms of this chapter.

Sec. 46-183. Wireless communication facility (WCF) combination with nonconforming buildings, uses, and land.

A WCF is permitted on a nonconforming building, on a lot with an existing nonconforming use, or in combination with a nonconforming use of land, provided that the WCF shall cease to operate if and when nonconforming building, structure, use or use of land be removed, if the nonconforming use is not able to be brought into compliance with the required provisions of this section.

Sec. 46-184. Wireless communication facility (WCF) antenna on nonconforming towers.

Additional WCF antennas are permitted on a nonconforming tower.

Secs. 46-185—46-202. Reserved.

ARTICLE IV. ZONING DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 46-203. Establishment of zoning districts.

For the purpose of this section the following districts are hereby established for the city:

(1) *Residential districts.*

a. R-1 Single-Family Dwelling District.

b. R-2 Single-Family and ~~Garage Apartment~~ Duplex Dwelling District.

c. R-3 Single-Family, ~~Two-Family~~Duplex, -and ~~Industrialized Housing~~ Zero Lot Line Two Family District.

d. ~~A~~ R-4 Multiple-Family Residential District.

(2) *Commercial districts.*

a. C-1 Neighborhood Shopping District.

b. C-2 General Commercial District.

c. C-3 Highway Commercial District.

(3) *Industrial district.* I-General Industrial District.

Secs. 46-204—46-229. Reserved.

DIVISION 2. R-1 SINGLE-FAMILY DWELLING DISTRICT~~S~~

Sec. 46-230. General description.

The R-1 Single-Family Dwelling District is the most restrictive residential district. The principal use is the single-family dwelling and related recreational, religious and educational facilities normally required to provide an orderly and attractive residential area. These residential areas are appropriate to the residential environment. Internal stability, attractiveness, order and efficiency are encouraged by providing for adequate light, air, and open space for dwelling and related facilities and through consideration of the proper functional relationship of the different uses.

Sec. 46-231. Uses permitted.

Property and buildings in an R-1 Single-Family Dwelling District shall be used only for the following purposes:

(1) Detached single-family dwelling.

(2) Churches, but not including revival tents or arbors.

(3) Public school offering general educational courses the same as ordinarily given in public schools and having no rooms regularly used for housing and sleeping.

(4) Public park and playground.

(5) Library.

(6) Growing of farm products.

(7) Municipal use.

(8) Telephone exchanges.

(9) Home occupations.

(10) Transportation and utility easements, alleys and rights-of-way.

(11) Accessory building which is not a part of a main building, including one private garage, or accessory building which is a part of a main building, including one private garage.

(12) Uses customarily incidental to any of the uses set forth in subsection (a) of this section when located upon the same lot and not involving the conduct of a business.

~~(13) Fence. A fence, hedge or enclosure wall provided:~~

~~a. No solid fence or enclosure shall exceed a height of six feet;~~

~~b. An ornamental fence may exceed six feet in height but shall have a ratio of solid portion to open portion not in excess of one to four and shall not extend closer to any front street than 40 feet;~~

~~c. Reserved.~~

~~d. Any fence, hedge or enclosure wall on a corner lot, and situated within 15 feet of the intersections of the two property lines, shall be prohibited.~~

~~All wooden privacy fences shall have metal posts of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden privacy fence posts will not be allowed for construction after July 31, 2011.~~

~~(14) A temporary bulletin board or sign, not exceeding 12 square feet in area appertaining to the lease, hire or sales of a single building or premises, which board or sign shall be removed as soon as the premises are leased, hired, or sold.~~

~~(15) A church bulletin board or sign not exceeding 50 square feet in area, located on the same lot with the church building.~~

~~(16) One unlighted sign not to exceed one square foot in area and attached flat-wise to the building, such sign to advertise only an accessory use allowed by this section and being conducted on the same property upon which such sign is located.~~

(~~17~~13) Temporary building of the construction industry which is incidental to the erection of buildings permitted in this district and which shall be removed when construction work is completed.

(~~18~~14) Accessory uses, which shall include the following where the primary use is residential: Customary home occupations, if done inside of building, such as dressmaking, babysitting, seamstress, tailoring, millinery, tutoring, when engaged in by members of the resident family and employing not more than one person, not a member of the resident family, but not including beauty culture, barbering or appliance repairing.

Sec. 46-232. Height regulations.

No building in the R-1 Single-Family Dwelling District shall exceed 2½ stories or 35 in height except as provided in article V, division 3 of this chapter.

Sec. 46-233. Area regulations.

The area regulations in the R-1 Single-Family Dwelling District are as follows:

(1) *Front yard.* The minimum depth of the front yard shall be 25 feet. If 25 percent or more of the lots on one side of the street between two intersecting streets are improved with buildings, all of which have observed an average setback line of greater than 25 feet, then no building shall be erected closer to the building line than the minimum setback so established by the existing building; but this regulation shall not require a front yard of greater depth than 40 feet. When a yard has double frontage, the front yard requirements shall be complied with on both streets.

(2) *Side yard.*

a. For dwelling located on interior lots there shall be a side yard on each side of the main building of not less than seven and one-half feet for dwellings of one story, and of not less than ten feet for dwellings or more than one story except as hereinafter provided in this subsection.

b. For unattached buildings of accessory use there shall be a side yard of not less than five feet; provided, however, that unattached one story buildings of accessory use shall not be required to set back more than three feet from an interior side line when all parts of the accessory building are located more than 90 feet behind the front lot lines. In cases where the accessory building is 100 square feet or less in size there is no side setback.

c. For dwelling and accessory buildings located on corner lots there shall be a side yard from the intersecting street of not less than 15 feet in case such lot is back to back with another corner lot, and 25 feet in every other case. The interior side yard of a corner lot shall be the same as for dwellings and accessory buildings on an interior lot.

d. Churches and main accessory buildings, other than dwellings, and buildings accessory to dwellings, shall set back from all exterior and interior side lot lines a distance of not less than 25 feet.

(3) *Rear yard.* There shall be a rear yard for a main building of not less than ten feet. Unattached buildings of accessory use are located in the rear yard of a main building.

(4) *Lot width.* For dwellings there shall be a minimum lot width of 75 feet at the front building line, and such lot shall abut on a street for a distance of not less than 35 feet.

(5) *Lot area.* For each dwelling, and building accessory thereto, there shall be lot area of not less than 9,000 square feet. For churches and main and accessory buildings, other than dwellings and accessory to buildings, the lot area shall be adequate to provide the yard areas required by this subsection and the off-street parking areas required; provided, however, that the lot area for a church shall not be less than 21,000 square feet.

(6) *Impervious coverage.* Main and accessory buildings and other impervious cover shall not cover more than 45 percent of lot area on interior lots, and 50 percent of the lot area on corner lots. Accessory buildings shall not cover more than ten percent of the impervious cover requirements.

(7) ~~*Fencing.* Permanent six-foot fences shall be erected along all rear and side property lot lines which abut another residential lot or land use. Except in situations where the lot is 100 feet or more in width or is 0.50 acres or more in size. Placement of any fencing along the side property lines shall start at the rear elevation of the dwelling and proceed to the rear property line. All wooden fences shall have metal post of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden fence post will not be allowed after July 31, 2011.~~ *Separation between all buildings* There shall be a 5-foot separation between all buildings on a lot.

~~(8) *Fence beautification standards:*~~

~~a. Newly installed fencing constructed with untreated wood lumber or other materials shall:~~

~~1. Be painted with a clear coat, excluding metal posts,~~

~~2. Be painted in earth tone colors, excluding metal posts, or~~

~~3. Be prefabricated in earth tone colors excluding metal posts.~~

~~b. Newly installed fencing constructed with pressure treated wood lumber is not required to meet any standard in subsection (a).~~

~~c. All fences shall be constructed with the attractive portions facing outwards from the property if bordering on a public street, excluding alleys.~~

(~~9~~7) *Driveways and sidewalks.* An improved impervious driveway shall be constructed for each dwelling unit, and each driveway shall include enough area for two parking spaces. Sidewalks shall be constructed ~~as specified in section 36-140~~. In addition, a fee in lieu of sidewalks may be required ~~as specified in section 36-143~~.

~~**Sec. 46-234. Reserved.**~~

Secs. 46-235—46-261. Reserved.

DIVISION 3. R-2 SINGLE-FAMILY AND DUPLEX DWELLING DISTRICT

Sec. 46-262. General description.

The R-2 Single-Family and Duplex Dwelling District is slightly less restrictive than the R-1 district. The principal use of land is for single-family and related recreational, religious, and educational facilities normally required to provide an orderly and attractive residential area. These residential areas are intended to be defined and protected from the encroachment of uses which are not appropriate to residential environment. Internal stability, attractiveness, order and efficiency are encouraged by providing for adequate light, air and open space for dwellings and related facilities and through consideration of, the proper functional relationship of the different uses.

Sec. 46-263. Uses permitted.

The following uses are permitted in the R-2 Single-Family and Duplex Dwelling District:

(1) Any use permitted in an R-1 residential district.

(2) Garage apartments.

(3) Duplex.

Sec. 46-264. Height regulations.

No building in the R-2 Single-Family and Duplex Dwelling District shall exceed ~~two standard~~2 1/2 ~~-~~stories or 35 feet in height except as provided in article V, division 3 of this chapter.

Sec. 46-265. Area regulations.

The area regulations in the R-2 Single-Family and Duplex Dwelling District are as follows:

(1) *Front yard.* The minimum depth of the front yard shall be 25 feet. If 25 percent or more of the lots on one side of the street between two intersecting streets are improved with buildings, all of which have observed an average setback line of greater than 25 feet, and no building varies more [than] six feet from this average setback line, then no building shall be erected closer to the street line than the minimum setback so established by the existing buildings; but this regulation shall not require a front yard of greater depth than 40 feet. When a yard has double frontage the front yard requirements shall be complied with on both streets.

(2) *Side yard.*

a. For dwellings located on interior lots there shall be a side yard on each of the main building of not less than five feet for dwellings of one story, and of not less than ten feet for dwellings of more than one story, except as hereafter as provided in article V, division 2 of this chapter.

b. For unattached buildings of accessory use there shall be a side yard of not less five feet; provided, however, that unattached one story buildings of accessory use shall not be required to set back

more than three feet from an interior side lot line when all parts of the accessory building are located more than 90 feet behind the lot lines. In cases where the accessory building is 100 square feet or less in size there is no side setback.

c. For dwellings and accessory buildings located on corner lots there shall be a side yard setback from the intersecting street of not less than 15 feet in case such lot is back with another corner lot, and 25 feet in every other case. The interior side yard of a corner lot shall be the same as for dwellings and accessory buildings on an interior lot.

d. Churches, main and accessory buildings, other than dwellings, and buildings accessory to dwellings, shall set back from all exterior and interior side lot lines a distance of not less than 25 feet.

(3) *Rear yard.* There shall be a rear yard for a main building of not less than ten feet. Unattached buildings of accessory use may be located in the rear yard of a main building.

(4) *Lot width.* For dwellings there shall be a minimum lot width of 60 feet at the front building line, and such lot shall abut on a street for a distance of not less than 35 feet.

(5) *Lot area.*

a. For each dwelling, and building accessory thereto, there shall be a lot area of not less than 7,500 square feet.

b. For churches and main and accessory buildings, other than dwelling and buildings accessory to dwellings, the lot area shall be adequate to provide the yard areas required by this subsection and the off-street parking areas that the lot area for a church shall not be less than 21,000 square feet.

(6) *Impervious coverage.* Main and accessory buildings and other impervious cover shall not cover more than 45 percent of the lot area on interior lots, and 50 percent of the area on corner lots. Accessory buildings shall not cover more than ten percent of the impervious cover requirements.

(7) ~~*Fencing.* Permanent six-foot fences shall be erected along all rear and side property lot lines which abut another residential lot or land use. Except in situations where the lot is 100 feet or more in width or is 0.50 acres or more in size. Placement of any fencing along the side property lines shall start at the rear elevation of the dwelling and proceed to the rear property line. All wooden fences shall have metal post of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden fence post will not be allowed after July 31, 2011.~~ *Separation between all buildings.* There shall be a 5-foot separation between all buildings on a lot.

~~(8) *Fence beautification standards:*~~

~~a. Newly installed fencing constructed with untreated wood lumber or other materials shall:~~

~~1. Be painted with a clear coat, excluding metal posts,~~

~~2. Be painted in earth tone colors, excluding metal posts, or~~

~~3. Be prefabricated in earth tone colors excluding metal posts.~~

~~b. Newly installed fencing constructed with pressure treated wood lumber is not required to meet any standard in subsection (a).~~

~~c. All fences shall be constructed with the attractive portions facing outwards from the property if bordering on a public street, excluding alleys.~~

(~~9~~8) *Driveways and sidewalks.* An improved impervious driveway shall be constructed for each dwelling unit, and each driveway shall include enough area for two parking spaces. Sidewalks shall be

constructed as specified ~~in section 36-140~~. In addition, a fee in lieu of sidewalks may be required. ~~as specified in section 36-143.~~

Sec. 46-266. Reserved.

Sec. 46-267. ~~Zero lot line duplexes.~~ Reserved.

~~A duplex in the R-2 Single-Family and Duplex Dwelling District may be subdivided through the common wall for the sole purpose of creating a separate fee simple title for each dwelling unit provided that the parcel containing each dwelling unit shall not be less than 3,000 square feet and provided each parcel had access to a public street and meets all applicable ordinances.~~

Sec. 46-268. Minimum criteria for development.

The following items are established as minimum criteria for development within the R-2 Single-Family and Duplex Dwelling District:

(1) Front yards shall have a minimum of 60 percent landscaped area.

(2) Front yards and side street yards shall be sodded and landscaped prior to an issuance of a certificate of occupancy.

(3) Permanent six-foot privacy fences shall be erected along all property lines which abut a single-family residential lot line prior to the acceptance of subdivision improvements by the city.

Secs. 46-269—46-299. Reserved.

DIVISION 4. R-3 SINGLE-FAMILY, DUPLEX, AND ZERO LOT LINE TWO FAMILY DWELLING DISTRICT

Sec. 46-300. General description.

The R-3 Single-Family, Duplex, and Townhouse Dwelling District is slightly less restrictive than the R-2 district. The principal use of land is for single-family and two-family dwellings and related recreational, religious and educational facilities area. These provide an orderly and attractive residential area. These residential areas are intended to be defined and protected from the encroachment of uses which are not appropriate to residential environment and include internal stability, attractiveness, light, air and open space for dwellings and related facilities and through consideration of the proper functional relationship of the different uses.

Sec. 46-301. Uses permitted.

The following uses are permitted in the R-3 Single-Family, Two-Family and Industrialized District:

(1) Any use permitted in an R-2 Single-Family and Duplex Dwelling District.

(2) Zero lot line two-family dwelling.

~~(3) Industrialized housing.~~

Sec. 46-302. Height regulations.

The following are the height regulations in R-3 Single-Family Dwelling District: No building shall exceed ~~two standard~~2 1/2 ~~-~~stories or 35 feet in height.

Sec. 46-303. Area regulations.

The following are the area regulations in R-3 Single-Family Dwelling District:

(1) *Front yard.* The minimum depth of the front yard shall be 15 feet. If 25 percent or more of the lots on one side of the street between two intersecting streets are improved with buildings, all of which have observed an average setback line of greater than 15 feet, and no building varies more than six feet from this average setback line, then no building shall be erected closer to the street line, than the minimum setback so established by the existing buildings; but this regulation shall not require a front yard of greater depth than 25 feet. When a yard has double frontage the front yard requirements shall be complied with on both streets.

(2) *Side yard.*

a. For dwellings located on interior lots there shall be a side yard on each side of the main building of not less than five feet for dwellings of one story, and not less than seven and one-half feet for dwellings of more than one story, except as hereinafter provided in article V, division 2 of this chapter.

b. For unattached buildings of accessory use there shall be a side yard of not less than five feet; provided, however, that unattached one story buildings of accessory use shall not be required to set back more than three feet from an interior side lot line when all parts of the accessory building are located more than 50 feet behind the front line. In cases where the accessory building is 100 square feet or less in size there is no side setback.

c. For dwelling and accessory buildings located on corner lots there shall be a side yard setback from the intersecting street of not less ten feet in case such lot is back to back with another lot, and 15 feet in every other case. The interior side yard of a corner lot shall be the same as for dwellings and accessory buildings on an interior lot.

d. Churches and main and accessory buildings, other than dwellings, and buildings accessory to dwellings, shall set back from all exterior and interior side lines a distance of not less than 15 feet.

(3) *Rear yard.* There shall be a rear yard for a main building of not less than ten feet. Unattached buildings of accessory use may be located in the rear yard of a main building.

(4) *Lot width.* For dwellings there shall be a minimum lot width of 50 feet at the building line, and such lot shall abut on a street for a distance of not less than 25 feet.

(5) *Lot area.*

a. For each dwelling, and building accessory thereto, there shall be lot area of not less than 6,000 square feet.

b. For churches and main and accessory buildings, other than dwellings and buildings accessory to dwellings, the lot area shall be adequate to provide the yard areas required in this subsection; provided, however, that the lot area for a church shall not be less than 10,000 square feet.

(6) *Impervious coverage.* Main and accessory buildings and other impervious cover shall not cover more than 45 percent of the lot area on interior lots, and 50 percent of the area on corner lots. Accessory buildings shall not cover more than ten percent of the impervious cover requirements.

(7) ~~*Fencing.* Permanent six-foot fences shall be erected along all rear and side property lot lines which abut another residential lot or land use. Except in situations where the lot is 100 feet or more in width or is 0.50 acres or more in size. Placement of any fencing along the side property lines shall start at the rear elevation of the dwelling and proceed to the rear property line. All wooden fences shall have metal post of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden fence post will not be allowed after July 31, 2011.~~ *Separation between all buildings.* There shall be a 5-foot separation between all buildings on a lot.

~~(8) *Fence beautification standards:*~~

~~a. Newly installed fencing constructed with untreated wood lumber or other materials shall:~~

~~1. Be painted with a clear coat, excluding metal posts,~~

~~2. Be painted in earth tone colors, excluding metal posts, or~~

~~3. Be prefabricated in earth tone colors excluding metal posts.~~

~~b. Newly installed fencing constructed with pressure treated wood lumber is not required to meet any standard in subsection (a).~~

~~c. All fences shall be constructed with the attractive portions facing outwards from the property if bordering on a public street, excluding alleys.~~

(~~9~~8) *Driveways and sidewalks.* An improved impervious driveway shall be constructed for each dwelling unit, and each driveway shall include enough area for two parking spaces. Sidewalks shall be constructed as specified in section 36-140. In addition, a fee in lieu of sidewalks may be required as specified in section 36-143.

Sec. 46-304. Zero lot line two-family dwellings.

(a) *Subdivision for separate title.* A two-family dwelling may be subdivided through the common wall for the sole purpose of creating a separate fee simple title for each dwelling unit provided that the parcel containing each dwelling unit shall not be less than 3,000 square feet and provided each parcel had access to a public street and meets all applicable ordinances.

(b) *Minimum criteria for development.* The following items are established as minimum criteria for development within the zero lot line two-family dwellings:

(1) Front yards shall have a minimum of 60 percent landscaped area.

~~(2) Front yards and side street yards shall be sodded and landscaped prior to an issuance of a certificate of occupancy.~~

~~(c) *Privacy fencing.* Permanent six-foot fences shall be erected along all rear and side property lot lines which abut another residential lot or land use. Except in situations where the lot is 100 feet or more in width or is 0.50 acres or more in size. Placement of any fencing along the side property lines shall start at the rear elevation of the dwelling and proceed to the rear property line. All wooden fences shall have metal post of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden fence post will not be allowed after July 31, 2011.~~

~~(d) *Impervious coverage.* Main and accessory buildings shall not cover more than 45 percent of the lot area on interior lots, and 50 percent of the area on corner lots. Accessory buildings shall not cover more than ten percent of the impervious cover requirements.~~

Secs. 46-305—46-330. Reserved.

DIVISION 5. ~~A~~R-4-MULTIPLE-FAMILY RESIDENTIAL DISTRICT

Sec. 46-331. General description.

The ~~A~~R-4-Multiple-Family Residential District is a residential district to provide for medium and high population density. ~~The principal use of land may range from single-family to multiple-family and garden apartment uses.~~ Certain uses which are more compatible functionally with intense residential uses than with commercial uses are permitted. The recreational, religious and educational facilities normally required to provide an orderly and attractive residential area are permitted and including internal stability, attractiveness, order and efficiency are encouraged by providing for adequate light, air, and open space for dwellings and relationship of each use permitted in the district.

Sec. 46-332. Uses permitted.

The following are permitted uses ~~A~~R-4-Multiple-Family Residential District:

~~(1) Any use permitted in the R-3 residential district, except individual owned mobile homes, located on owner occupied lots.~~

(~~2~~1) Multiple-family dwellings ~~and garden apartments~~.

(~~3~~2) Accessory buildings and uses customarily incidental to the uses in this section when located on the same lot.

Sec. 46-333. Area regulations.

All buildings shall be set back from street right-of-way lines or lot lines to comply with following yard requirements:

(1) *Front yard.* There shall be a front yard having a minimum depth of not less than 25 feet. Where lots have double frontage running through from one street to another, the required front yard shall be provided on both streets.

(2) *Side yard.* For multiple-family dwellings the side yard shall be ten feet where no windows or other openings for light face the side yard. In all other cases the minimum depth shall be not less than 12 feet, plus one foot for each 15 feet in length (L).

$$D = 12 + L/15$$

In all cases, where the side yard is adjacent to a side street, the side yard shall not be less than ten feet. Where the corner lot is a key lot, the required front yard shall be provided in both streets.

(3) *Rear yard.* For multiple-family dwellings, same as side yard except where property backs up to residentially zoned property the rear yard must have a depth of 50 feet including parking areas. In addition, a brick, stone or acceptable masonry or other cementitious material wall not less than six feet high must be provided along rear property line.

(4) *Distances.* The distance between buildings within an apartment development shall in no case be less than the sum of the required minimum depth of the yard requirements set forth in this section. One windowless wall, where window wall faces a windowless wall, the required distance between the two buildings shall be computed as if both walls contained windows.

(5) *Lot coverage.* A lot on which there is erected or converted a multiple-family dwelling shall contain a total lot area according to the following schedule:

Each efficiency unit	525 square feet
Each one-bedroom unit	675 square feet
Each two-bedroom unit	1,000 square feet
More than two-bedroom unit	1,000 square feet, plus 200 square feet for each bedroom over two

Any room other than a living room, bathroom, dining room and kitchen shall be counted as a bedroom.

(6) *Livability open space.* No less than 30 percent of the total gross land area used for people, planting and visual appeal.

(7) *Front exterior walls.* There shall be a minimum of 75 percent brick, stone or stucco construction on all front exterior walls.

Sec. 46-334. Height regulations.

The following are height regulations for the ~~A~~R-4-Multiple-Family Residential District: no buildings shall exceed 50 feet in height.

Sec. 46-335. ~~Parking requirements~~Minimum parking stall coverage requirements.

~~A minimum of two parking spaces per unit on an improved impervious driveway.~~ With a minimum of 25 percent of said parking spaces being covered in a manner approved by the city prior to construction of said cover.

~~Sec. 46-336. Reserved.~~

Secs. 46-~~337~~336—46-360. Reserved.

DIVISION 6. C-1 NEIGHBORHOOD SHOPPING DISTRICT

Sec. 46-361. General description.

The C-1 Neighborhood Shopping District, a commercial district, is for the conduct of retail trade and personal service enterprises to meet the regular needs and for the convenience of the people of adjacent residential areas. Because these shops and stores may be an integral part of the neighborhood closely associated with residential, religious, recreational and educational uses, more restrictive requirements for light, air, open space and off-street parking are made than are provided in other commercial districts.

Sec. 46-362. Uses permitted.

(a) Property and building in a C-1 Neighborhood Shopping District shall be used only for the following purposes: Retail stores and shops which do not exceed 5,000 square feet of gross floor area and which supply the regular and customary needs of the residents of the neighborhood and which are primarily for their convenience, as follows:

(1) Antique shop.

(2) Appliance shop.

(3) Arts school, gallery or museum.

(4) Artists materials, supply studio.

(5) Automobile parking lot.

(6) Baby shop.

(7) Bakery goods store.

(8) Bank.

(9) Barbershop.

(10) Beauty shop.

(11) Book or stationery store.

(12) Camera shop.

(13) Candy store.

(14) Catering establishment.

(15) Cleaning, pressing, laundry collection agency.

(16) Curio or gift shop.

(17) Drug store or fountain.

(18) Dry goods store.

(19) Dairy products or ice cream store.

(20) Delicatessen.

(21) Dress shop.

(22) Florist shop, greenhouse, nursery.

(23) Furniture store.

(24) Grocery store or supermarket.

(25) Hardware store.

(26) Jewelry or notion store.

(27) Lodge hall.

(28) Meat market.

(29) Medical facility.

(30) Messenger or telegraph service.

(31) Musical instrument sales.

(32) Newspaper or magazine sales.

(33) Office business.

(34) Optometrists sales and service.

(35) Photographer studio.

(36) Pharmacy.

(37) Radio and television sales and service.

(38) Restaurant.

(39) Self-service laundry or dry cleaning.

(40) Sewing machine sales, instruction.

(41) Sporting goods sales.

(42) Shoe repair shop.

(43) Tailor shop.

(44) Toy store.

(45) Variety store.

~~(b) Nameplate and sign relating to the use of the store and premises or to products sold on the premises, not to exceed 40 percent of the face of the building and conform to chapter 32, signs.~~

(~~c~~b) Accessory buildings and uses customarily incidental to the uses set forth in this section.

(~~d~~c) A building used for any of the previously listed uses may not have more than 40 percent of its floor area devoted to purposes incidental to the primary use. No material or goods offered for sale or stored in connection with the uses previously listed shall be displayed or stored outside of a building.

Sec. 46-363. Area regulations.

The following requirements shall apply to all uses permitted in this district:

(1) *Front yard.* All buildings shall set back from the street right-of-way line to provide a front yard having not less than 25 feet in depth.

(2) *Side yard.* On the side of a lot adjoining a dwelling district there shall be a side yard of not less than ten feet. There shall be a side yard setback from an intersecting street of not less than 25 feet.

(3) *Rear yard.* The rear of a lot adjoining a dwelling district there shall be a rear yard of not less than ten feet, same as the requirements for a side yard.

Sec. 46-364. Height requirements.

In the C-1 Neighborhood Shopping District no building shall exceed 50 feet in height.

Sec. 46-365. Masonry requirements within a locally designated historic district.

In the C-1 Neighborhood Shopping District, when property is located within a locally designated historic district, all buildings shall have all exterior walls constructed using a masonry material covering at least 80 percent of said walls, exclusive of all windows, doors, roofs, glass construction materials or sidewalk and walkway covers.

Secs. 46-366—46-388. Reserved.

DIVISION 7. C-2 GENERAL COMMERCIAL DISTRICT

Sec. 46-389. General description.

The C-2 General Commercial District is intended for the conduct of personal and business services and the general retail business of the community. Persons living in the community and in the surrounding trade territory require direct and frequent access. Traffic generated by the uses will be primarily passenger vehicles and only those trucks and commercial vehicles required for stocking and delivery of retail goods.

Sec. 46-390. Uses permitted.

(a) Property and buildings in a C-2 General Commercial District shall be used only for the following purposes:

(1) Any use permitted in a C-1 Neighborhood Shopping District.

(2) Amusement enterprises.

(3) Advertising signs or structures.

(4) Ambulance service, office or garage.

(5) Automobile retail gasoline service station.

(6) Bakery.

(7) Bathhouse.

(8) Boat sales.

(9) Billiard hall.

(10) Bus terminal.

(11) Cleaning plant, commercial laundry or dry cleaning.

(12) Clothing or apparel store.

(13) Commercial school or hall.

(14) Cafe.

(15) Department store.

(16) Hotel.

(17) Feed and fuel store.

(18) Frozen food locker.

(19) Furniture repair and upholstery.

(20) Funeral parlor or mortuary.

(21) Golf course, miniature or practice range.

(22) Heating, ventilating or plumbing supplies, sales and service.

(23) Interior decorating store.

(24) Ice storage locker plant, or storage house for food.

(25) Key shop.

(26) Laboratories, testing and experimental.

(27) Laundry.

(28) Leather goods shop.

(29) Museums.

(30) Novelty club.

(31) Novelty shop.

(32) Nursery or garden supply store.

(33) Outdoor advertising signs.

(34) Pawn shop.

(35) Pet shop.

(36) Printing plant.

(37) Recreation center.

(38) Research laboratories.

(39) Restaurant.

(40) Sign painting shop.

(41) Hospital for small animals.

(42) Sporting goods store.

(43) Stocks and bonds broker.

(44) Storage warehouse.

(45) Sale of beer for off-premises consumption.

(46) Theater.

(47) Toy store.

(48) Travel store.

(49) Travel trailer park.

(50) Used automobile sales.

(51) Wholesale distributing center.

(52) Buildings, structures, and uses accessory and customarily incidental to any of the uses set forth in this subsection (a), provided that there shall be no manufacture, processing, or compounding of products other than such as are customarily incidental and essential to retail establishments.

(53) Any other store or shop for retail trade or for rendering personal, professional or business service which does not produce more noise, odor, dust, vibration or traffic than those listed in this subsection (a).

(b) No article or material stored or offered for sale in connection with uses permitted under this section shall be stored or displayed outside of a building unless it is so screened by permanent ornamental walls, fences or planting that it cannot be seen from adjoining streets or lots when viewed by a person standing on ground level; provided, however, that no screening in excess of seven feet in height shall be required.

(c) A building used for any of the previously listed uses may not have more than 40 percent of its floor area devoted to purposes incidental to the primary use.

Sec. 46-391. Area regulations.

The area regulations for dwellings in the C-2 General Commercial District shall be the same as the requirements of the A-Multiple-Family Residential District. The following requirements shall apply to all other uses permitted in the district:

(1) *Front, side and rear yards.* There are no specific front, side or rear yard requirements for uses other than dwellings, except where the property is adjacent to residential property, then the yard requirements shall be the same as in the C-1 Neighborhood Shopping District.

(2) *Area for off-street parking.* Buildings shall be provided with a yard area adequate to meet the off-street parking requirements set forth in this section.

Sec. 46-392. Height regulations.

No building in the C-2 General Commercial District shall exceed 50 feet in height.

Sec. 46-393. Masonry requirements within a locally designated historic district.

All buildings in the C-2 General Commercial District, on property located in a locally designated historic district, shall have all exterior walls constructed using a masonry material covering at least 80 percent of said walls, exclusive of all windows, doors, roofs, glass construction materials or sidewalk and walkway covers.

~~Sec. 46-394. Downtown Overlay.~~

~~(a) For the section only, the Downtown Overlay is an area shown on the map attached hereto and incorporated herein as Exhibit "A."~~

~~(b) Within the Downtown Overlay only, in addition to the other uses allowed in the C-2 General Commercial District, the following uses are permitted:~~

~~(1) Winery;~~

~~(2) Brewery;~~

~~(3) Food processing;~~

~~(4) Meadery;~~

~~(5) Metal smithing;~~

~~(6) Pottery making;~~

~~(7) Cabinetry making;~~

~~(8) Bicycle sales and repair;~~

~~(9) Soap making;~~

~~(10) Fiber processing;~~

~~(11) Woodworking;~~

~~(12) Automotive repair;~~

~~(13) Leather works and boot making;~~

~~(14) Distillery;~~

(15) Light manufacturing similar to the uses described above, as determined by the planning and development director or his designee.

(c) Within the Downtown Overlay only, in addition to the other uses prohibited in the underlying C-2 General Commercial zoning district, the following uses are also prohibited:

(1) New or used automobile sales;

(2) Storage units, warehouses or mini-warehouses, leased or rented as individual units.

(d) Within the Downtown Overlay only, incidental residential uses, also known as "work/live units" are permitted.

(1) A "work/live unit" means a structure or a portion of a structure that combines a business use, as permitted in the Downtown Overlay, with a residential living use.

(2) Any structure containing a "work/live unit" shall satisfy the following requisites:

a. Any structure or portion of structure must comply with all applicable City of Elgin ordinances, including all building codes,

b. The living area of each "work/live unit" shall provide at least one exit which does not require persons to exit through the work area,

c. All residential areas in a "work/live unit" shall be at least 150 square feet, exclusive of kitchen, bath, closets and hallways in the "work/live unit," and

d. A minimum of the front 50 percent of the square footage of a street-level floor must be dedicated exclusively to commercial uses as allowed in a C-2 General Commercial District and this overlay.

(e) One hundred percent residential uses shall be allowed only within the area defined as Zone 2 within the Downtown Overlay. C-2 General Commercial District is hereby amended to reflect this change.

(f) Only the following paving materials may be used in the Downtown Overlay for parking areas, rear lot space adjacent to alleys, sidewalks, and driveways:

(1) Crushed granite with a border of concrete;

(2) Permeable pavers;

(3) Paving stones;

(4) Concrete;

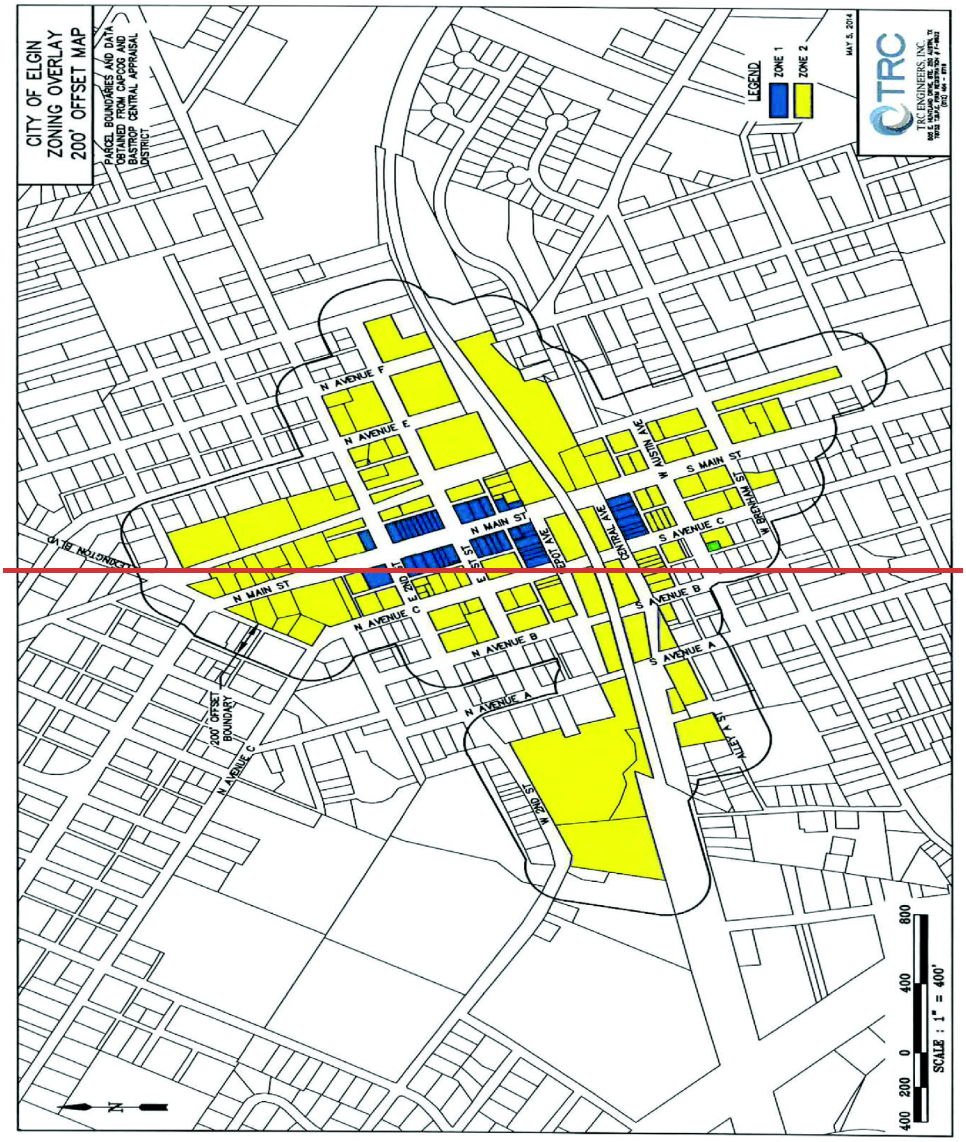
(5) Cut stone;

(6) Natural rock;

(7) Permeable asphalt;

(8) Permeable gravel grids;

(9) Permeable grass grids.



Secs. 46-~~395~~394—46-414. Reserved.

DIVISION 8. C-3 HIGHWAY COMMERCIAL DISTRICT

Sec. 46-415. General description.

The C-3 Highway Commercial District is intended for the conduct of personal business services and the general retail businesses of the community having space and land requirements not commonly available or compatible in central business districts.

Sec. 46-416. Uses permitted.

(a) Property and buildings in a C-3 Highway Commercial District shall be used only for the following purposes:

(1) Any use permitted in a C-2 General Commercial District.

(2) Boat sales and service.

(3) Farm implement and machinery, new and used, sales.

(4) Metal and wood fencing, ornamental grillwork and decorative wrought iron work and play equipment sales.

(5) Mobile home and travel trailer sales.

(6) Monument sales.

(7) New and used automobile sales and service.

(8) Prefabricated house sales.

(9) Trailers for hauling, rental and sales.

(10) Motels or tourist courts.

(11) Drive-in theater or restaurant.

(12) Billboards.

(b) A building used for any of the previously listed uses may not have more than 40 percent of its floor area devoted to purposes incidental to the primary use.

Sec. 46-417. Area regulations.

The area regulations for dwellings in the C-3 Highway Commercial District shall be the same as the requirements of the A-Multiple-Family Residential District. The following requirements shall apply to all other uses permitted in this district:

(1) *Front yard.* All buildings shall be setback from the street right-of-way line to provide a front yard having not less than 25 feet in depth.

(2) *Side yard.* On the side of a lot adjoining a dwelling district there shall be a side yard of not less than ten feet. There shall be a side yard setback from an intersecting street of not less than 25 feet.

(3) *Rear yard.* On the rear yard of a lot adjoining a dwelling district there shall be a rear yard of not less than ten feet. There shall be a side yard setback from an intersecting street of not less than 25 feet. In all other cases requirement will be the same as side yards.

Sec. 46-418. Height regulations.

No building in the C-3 Highway Commercial District shall exceed 50 feet in height.

Sec. 46-419. Masonry requirements in a locally designated historic district.

All buildings, located in a locally designated historic district, in the C-3 Highway Commercial District shall have all exterior walls constructed using a masonry material covering at least 80 percent of said walls, exclusive of all windows, doors, roofs, glass construction materials or sidewalk and walkway covers.

Sec. 46-420. Special parking and circulation requirements.

All parking areas and drives in the C-3 Highway Commercial District shall be designed so that adequate space is provided on the premises for the turning around of motor vehicles, preventing the need for vehicles to back onto the street or highway.

Secs. 46-421—46-438. Reserved.

DIVISION 9. I GENERAL INDUSTRIAL DISTRICT

Sec. 46-439. General description.

The I General Industrial District is intended primarily for the conduct of manufacturing, assembling and fabrication. These uses do not depend primarily on frequent personal visits of customers or clients, but usually require good accessibility to major rail, air or street transportation facilities.

Sec. 46-440. Uses permitted.

(a) Property and buildings in an I General Industrial District shall be used only for the following purposes:

(1) Bottling works;

(2) Book bindery;

(3) Candy manufacturing;

(4) Engraving plant;

(5) Electrical equipment assembly;

(6) Electronic equipment assembly and manufacture;

(7) Food products processing and packing;

(8) Furniture manufacturing;

(9) Instrument and meter manufacturing;

(10) Jewelry and watch manufacturing;

(11) Laundry and cleaning establishment;

(12) Leather goods fabrication;

(13) Optical goods manufacturing;

(14) Paper products manufacturing wholesale or warehousing enterprise;

(15) Building material sales yard and lumberyard, including the sale of rock, sand, gravel and the like as an incidental part of the main business;

(16) Contractor's equipment storage yard or plant, or rental equipment commonly used by contractors;

(17) Freighting or trucking yard or terminal;

(18) Oil field equipment storage yard;

(19) Public utility service yard or electrical receiving yard;

provided, however, that all yard operations shall be so screened by ornamental walls, fences or evergreen planting that it cannot be seen by a person standing at ground level at any place immediately adjacent to the lot on which the use is located; provided, however, that screening shall not be required in excess of seven feet in height.

(b) The following uses when conducted within a completely enclosed building:

(1) The manufacture, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries and food products;

(2) The manufacture, compounding, assembling or treatment of articles or merchandise from the following previously prepared materials: Bond, cellophane, canvas, cloth, cork feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stone, shell, textiles, tobacco, wood, yarn and paint not employing a boiling process;

(3) The manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay and kilns fired only by electricity or gas;

(4) The manufacture and maintenance of electric and neon signs, commercial advertising structure, light sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves and the like;

(5) Manufacture of musical instruments, toys, novelties and rubber and metal stamps;

(6) Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender works, truck repairing and overhauling, tire retreading or recapping and battery manufacturing;

(7) Machine shop;

(8) Foundry casting lightweight nonferrous metal not causing noxious fumes or odors;

(9) Assembly of electrical appliances, electronic instruments and devices, radios and phonographs, including the manufacturing of small parts only, such as coils, condensers, transformers, crystal holders and the like;

(10) Buildings, structures and uses accessory and customarily incidental to any of the uses in this subsection.

(c) The uses permitted under this section shall be conducted in such a manner that no noxious odor, fumes or dust will be emitted beyond the property line of the lot on which the use is located.

(d)

A building used for any of the previously listed uses may not have more than 40 percent of its floor area devoted to purposes incidental to the primary use.

Sec. 46-441. Area regulations.

(a) *Front and side yards.* There are no specific front or side yard requirements for uses in the I General Industrial District; however, that a building shall set back a distance of not less than 25 feet from the side lot line that adjoins a dwelling district.

(b) *Rear yard.* Where a building is to be serviced from the rear there shall be provided an alley, service court, rear yard or combination thereof of not less than 30 feet in width or of adequate area and width to provide for maneuver of service vehicles, whichever is greater. In all other cases no rear yard is required; provided, however, that a building shall set back a distance of not less than 25 feet from the rear lot line that adjoins a dwelling district.

(c) *Yard area.* Buildings shall be provided with a yard area adequate to meet the off-street parking requirements set forth in this section.

Sec. 46-442. Height regulations.

No building in the I General Industrial District shall exceed 90 feet in height.

Secs. 46-443—46-467. Reserved.

DIVISION 10. PLANNED DEVELOPMENT DISTRICT

Sec. 46-468. General description.

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

Sec. 46-469. Creation.

The city council, after public hearing and proper notice to all affected property owners and after recommendation by the planning and zoning commission, may authorize the creation of a Planned Development District on sites of any size to accommodate various types of development and conditions of development for any use or combination of uses permitted by this article. The uses to be permitted in any specific Planned Development District shall be enumerated in the ordinance establishing such district and shown on the approved plan for development which becomes part of said ordinance.

Sec. 46-470. Design standards.

In approving the development plan and the ordinance establishing the Planned Development District, the city council shall, after recommendation by the planning and zoning commission, specify such maximum height, floor area ratio density and minimum off-street parking and loading standards within the limits of those specified in the districts listed for the specific uses involved as is appropriate for the development. The city council shall, after receiving the recommendations of the planning and zoning commission, establish the standards for yards, signs, building spacing, site coverage, access, screening or landscaping, building streets and alleys to be observed in a Planned Development District and such standards shall be specified in the ordinance establishing the district.

Sec. 46-471. Development schedule.

An application for a Planned Development District shall, if the applicant desires, or the planning and zoning commission or city council requires, be accompanied by a development schedule indicating the appropriate date on which construction is expected to begin and the rate of anticipated development to completion. The development schedule, if adopted and approved by the city council, shall become part of the development plan and shall be adhered to by the owner, developer and his successors in interest.

Sec. 46-472. Annual development report.

Annually, where a development schedule has been require, the building inspector shall report to the city planning and zoning commission the actual development accomplished in the various Planned Development Districts as compared with the development schedule.

Sec. 46-473. Failure to meet development schedule.

The city planning and zoning commission may if in its opinion the owner or owners of property are failing or have failed to meet the approved schedule, initiate proceedings to amend the zoning district map or the Planned Development District by removing all or part of the Planned Development District from the zoning district map and placing the area involved in another appropriate zoning district. Upon the recommendation of the city planning and zoning commission and for good cause shown by the owner and developer, the city council may also extend the development schedule or adopt such new development schedule as may be indicated by the facts and conditions of the case.

Sec. 46-474. Development plan required.

An application for a Planned Development District shall include and be accompanied by a development plan which shall become a part of the amending ordinance and shall be referenced on the zoning district map. Changes in the development plan shall be considered the same as changes on the zoning district map and shall be processed as required, except that changes of detail which do not alter the basic relationship of the proposed development to adjacent property and which do not alter the uses permitted or increase the density, floor area ratio, height or coverage of the site, or which do not decrease the off-street parking ratio, or reduce the yards provided at the boundary of the site as indicated on the approved development plan may be authorized by the city planning and zoning commission. Any applicant may appeal the decision of the city planning and zoning commission to the city council for review and decision as to whether an amendment to the Planned Development District shall be required. All uses shown on the development plan shall be mutually exclusive.

Sec. 46-475. Requirements of development plan.

The development plan shall include:

(1) A scale drawing showing any proposed:

   a. Public or private streets and alleys;

   b. Building sites or building lots;

   c. Any areas proposed for dedication or reserve as parks, parkways, playgrounds, utility and garbage easements, school sites, street widening, street changes;

   d. The points of ingress and egress from existing public streets on an accurate survey of the boundary of tract and topography with a contour interval of not less than five feet, or spot grades where the relief is limited.

(2) Where multiple types of land uses are proposed, a land use plan delineating the specific areas to be devoted to various uses shall be required.

(3) Where building complexes are proposed, a site plan showing the location of each building and the minimum distance between buildings, and between buildings and the property line, street line and/or alley line shall be submitted. For buildings more than one story in height, except single-family and two-family residences, elevations and/or perspective drawings may be required in order that the

relationship of the building to adjacent property, open spaces and to other features of the development plan may be determined. Such drawings need only indicate the height, number of floors, and exposures for access, light and air.

(4) A plan indicating the arrangement and provision of off-street parking and off-street loading where required. Such plan may be presented as a ratio of off-street loading area to building area when accompanied by typical example indicating the feasibility of the arrangement proposed and when the areas where the example would be applied are dimensioned on the drawing of the entire site. Any special traffic regulation facilities proposed or required to ensure the safe function of the circulation plan shall also be shown.

(5) A designation of the maximum building coverage of the site shall be indicated upon the site plan.

(6) Screening and landscaping plan shall be required where such treatment is essential to the proper arrangement of the development in relation to adjacent property. Such plan shall, when required, include screening walls, ornamental planting, playgrounds, wooded areas to be retained, lawns and gardens if such are determined to be necessary by city council.

(7) Any or all of the required features may be incorporated on a single drawing if such drawing is clear and capable of evaluation by the city manager and interpretation of the building inspector, building official or other authorized official.

Sec. 46-476. Development conditions.

Every Planned Development District approved under the provisions of this chapter shall be considered as an amendment to the zoning ordinance, as applicable to the property involved. In carrying out the development of a Planned Development District, the development conditions and the development schedule, if required, shall be complied with and such conditions specified for the development of a Planned Development District shall not be construed as conditions precedent to the approval of the zoning amendment, but shall be construed as conditions precedent to the granting of a certificate of occupancy and compliance as required in this chapter.

Sec. 46-477. Description of different Planned Development District arrangements.

(a) In a Planned Development District, with residential uses, one-family attached dwelling defined as a dwelling unit on a separately platted lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate wall, served by separate utilities and not occupied by more than one family shall be permitted. The requirements prescribed in the community development may be adopted to residential developments planned as planned developments with variable housing wherein the types of dwelling structure may vary from those permitted in the district in which the development is proposed, as attached single-family or apartments in a single-family area.

(b) One-family attached dwellings need not provide a side yard except that a minimum required side yard adjacent to a side street of ten feet shall be provided. A minimum required side yard of five feet shall be provided at the end of each one family attached dwelling complex so that the ends of any two adjacent building complexes shall be at least ten feet apart. The required side yards for complexes of one-family attached dwellings may be designated upon a plat approved by the planning and zoning commission. A complex of attached one-family dwellings shall have a minimum length of three dwelling units and shall not exceed 300 feet in length or width of a cluster module.

(c) A single-family attached dwelling shall be located on a platted lot with a minimum width of 25 feet, a minimum depth of 75 feet and contain a minimum area of 3,000 square feet. Two off-street parking spaces or a two-car garage or carport shall be provided for each living unit. A front setback of 20 feet shall be provided on the side of the structure facing a street, drive or common open area.

(d) A Planned Development District with residential uses may also be approved for special apartment designs such as a fourplex, a structure with four living units, or a sixplex, a structure with six living units, all of which must comply with the minimum requirements of the A-Multiple-Family Residential District.

Secs. 46-478—46-~~507~~499. Reserved.

DIVISION 11. DOWNTOWN OVERLAY DISTRICT

Sec. 46-500. Downtown Overlay.

(a) In addition to the uses allowed in the specific zoning district, the following additional uses are permitted:

(1) Winery;

(2) Brewery;

(3) Food processing;

(4) Meadery;

(5) Metal smithing;

(6) Pottery making;

(7) Cabinetry making;

(8) Bicycle sales and repair;

(9) Soap making;

(10) Fiber processing;

(11) Woodworking;

(12) Automotive repair;

(13) Leather works and boot-making;

(14) Distillery;

(15) Light manufacturing similar to the uses described above.

(16) Residential uses

(b) The following uses are prohibited:

(1) New or used automobile sales;

(2) Storage units, warehouses or mini-warehouses, leased or rented as individual units.

(c) Uses defined under the applicable zoning category and uses under subsection (a) are allowed at 100% of the square footage on a street level floor in Zone 1.

(d) Residential uses are also allowed on the street floor level in Zone 1 with the following conditions:

(1) Each dwelling unit shall be at least 150 sq. ft., exclusive of kitchen, bath, closets, and hallways.

(2) Each dwelling unit shall provide at least one exit which does not require persons to exit through the non-residential areas of the street level floor.

(3) A minimum of the front 50% of the square footage of a street-level floor must be dedicated to uses defined under the applicable zoning category and uses under subsection (a).

(e) Residential uses, uses defined under the applicable zoning category, and uses under subsection (a) are allowed on the additional floors in Zone 1 in any combination thereof.

(f) Residential uses, uses defined under the applicable zoning category, and uses under subsection (a) are allowed on any floor, including a street level floor, in any combination thereof in Zone 2.

(g) Only the following paving materials may be used for parking areas, rear lot space adjacent to alleys, sidewalks, and driveways:

(1) Crushed granite with a border of concrete;

(2) Permeable pavers;

(3) Paving stones;

(4) Concrete;

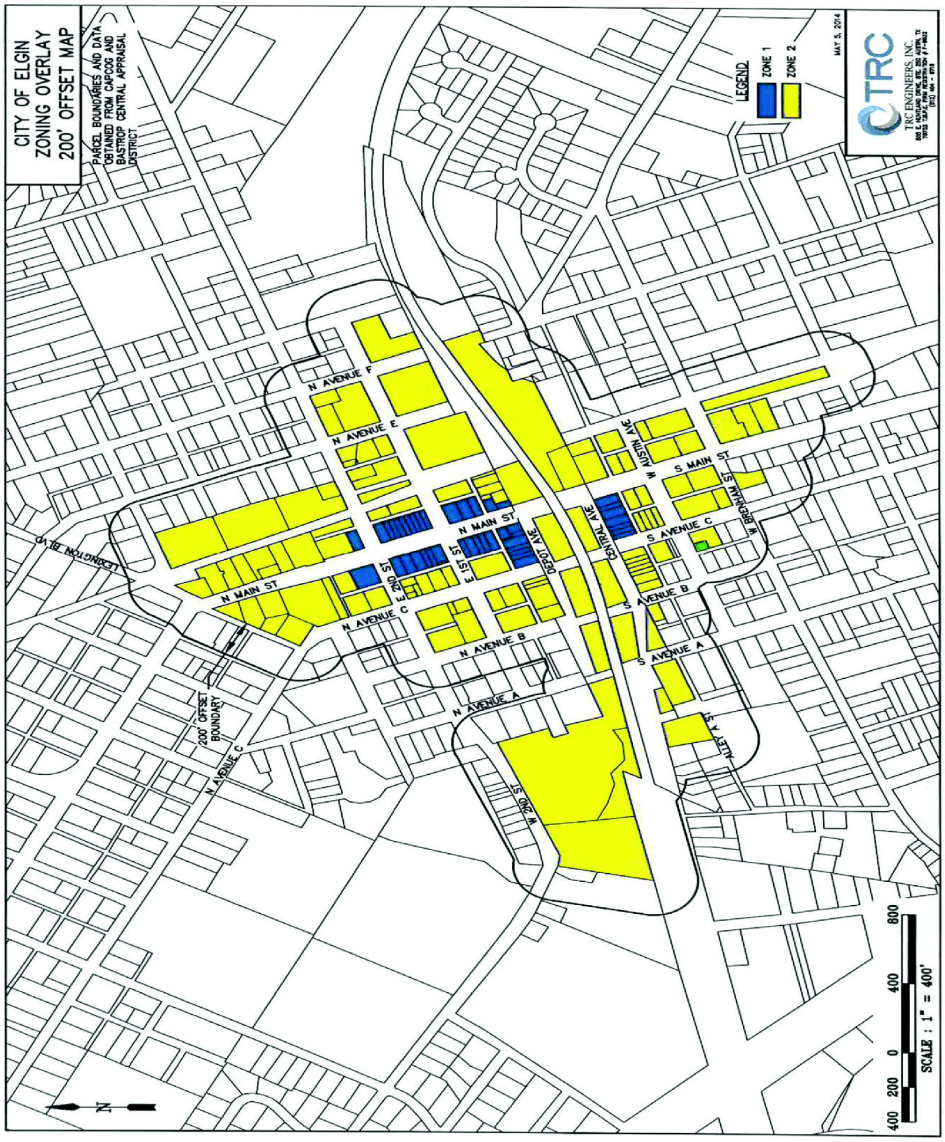
(5) Cut stone;

(6) Natural rock;

(7) Permeable asphalt;

(8) Permeable gravel grids;

(9) Permeable grass grids.



Secs. 46-501—46-507. Reserved.

ARTICLE V. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 46-508. General provisions applying to all or to several districts.

Application of regulation to the uses of a more restricted district are applicable. Whenever the specific district regulations pertaining to one district permit the uses of a more restricted district, such uses shall be subject to the conditions as set forth in the regulations of the more restricted district, unless otherwise specified.

Sec. 46-509. Dwelling units prohibited when nonresidential purposes intended.

It is intended that these regulations be interpreted as not permitting a dwelling unit to be located on the same lot with or within a structure used or intended to be used primarily for nonresidential purposes.

~~**Sec. 46-510. Residential uses within commercial zone.**~~

~~Residential uses shall not be permitted on the grade level of any building or structure within a commercial zone. Residential use shall be permitted only on or above the second level of any building or structure within a commercial zone if said residential use fully complies with the most current version of the International Building Code or other building code as adopted by the city.~~

Sec. 46-~~511~~510. ~~All single- and two-family districts~~Impervious driveway required; minimum square footage of dwellings.

(a) All ~~single- and two-family~~ dwellings shall have an ~~area for two parking spaces on~~ approved impervious driveway accessible to a public city approved and accepted street or alley, except as otherwise noted in Division 10. ~~All single- or two-family dwellings having garages shall not be enclosed without first obtaining the required building permits and meeting all city ordinances effective July 31, 2011.~~

(b) The minimum single-family dwelling size shall be 800 square feet of living area.

(c) The minimum two-family dwelling size shall be 800 square feet for each living unit.

Secs. 46-~~512~~511—46-530. Reserved.

DIVISION 2. OPEN SPACE

Sec. 46-531. Purpose.

The requirements of this division are intended to provide exceptions or qualify and supplement, as the case may be, the specific district regulations set forth in section article IV of this chapter.

Sec. 46-532. Existing building or structure.

An open space or lot area required for an existing building or structure shall not be counted as open space for any other building or structure.

Sec. 46-533. Projections into yards.

Open eaves, cornices, window sills, covered porches, and belt courses may project into any required yard a distance not to exceed three feet. Open uncovered porches or open fire escapes may project into a front or rear

yard a distance not to exceed five feet. Fences, walls and hedges in residential districts may be erected in any required yard, or along the edge of any yard~~, provided that no fence, wall or hedge located in front of the dwelling shall exceed four feet in height, and no other wall or fence shall exceed seven feet in height~~.

Sec. 46-534. Fence~~, hedge~~ or enclosure wall.

(a) A fence~~, hedge~~ or enclosure wall provided:

(1) No solid fence or enclosure wall shall exceed a height of six feet and no such six-foot fence or enclosure shall extend beyond the front of a dwelling exclusive of porches in a residential zoning district, excluding the R-4 Multiple Family District. (See illustration.)

(2) An ornamental fence may not exceed four feet in height but shall have a ratio of solid material to open space not in excess of one-to-four and shall be allowed to extend to the front property line in a residential zoning district, excluding the R-4 Multiple Family District.

(3) Any fence, hedge or enclosure wall on a corner lot, and situated within 15 feet of the intersections of the two street lines shall not extend all the way to the corner of the property and shall not create any visual obstruction to traffic on a public street or highway in any zoning district. (See illustration of corner lot.)

~~(4) A privacy fence shall be at least six feet in height on the sides of the dwelling and no more than seven feet in height at the rear property line.~~

(b) All wooden privacy fences shall have metal post of sufficient gauge and diameter, embedded in concrete to support the weight and wind load of the fence. Wooden privacy fence posts will not be allowed for construction after July 31, 2011.

(c) Fences shall be maintained in a safe condition and in good repair, with all components free from deterioration, dilapidation, rot, and rust, loosening, or leaning.

(d) Common fences between properties will be the responsibly of all owners to maintain.

(e) Fence beautification standards:

(1) Newly installed fencing constructed with ~~untreated~~ wood lumber or other materials shall:

a. Be painted or stained with a clear coat, excluding metal posts, or

b. Be painted or stained in earth tone colors, excluding metal posts, or

c. Be prefabricated in earth tone colors excluding metal posts.

~~(2) Newly installed fencing constructed with pressure treated wood lumber is not required to meet any standard in subsection (1).~~

(~~3~~2) All fences shall be constructed with the attractive portions facing outwards from the property if bordering on a public street, excluding alleys.

(f) Permanent six-foot fences or enclosure walls in all residential zoning districts shall be erected along all rear and side property lot lines which abut another residential lot or land use. Except in situations where the lot is 100 feet or more in width or is 0.50 acres or more in size. Placement of any fencing along the side property lines shall start at the rear elevation of the dwelling and proceed to the rear property line.

Sec. 46-535. ~~Street right-of-way widths less than 50 feet.~~ Reserved.

~~Where the dedicated street right-of-way is less than 50 feet, the front yard depth shall be determined by measuring 50 feet back from the centerline of the street easement.~~

Sec. 46-536. ~~Ingress and egress to be provided~~Placement of dwelling in relation to existing right-of-way sizes; exemptions.

No dwelling shall be erected on a lot which does not abut on at least one street at least 50 feet in width, if a through street, and at least 30 feet in width if a dead-end street, for at least 35 feet, unless the lot existed and has remained unchanged in lot width and lot area since March 28, 1973 or the lot was platted with smaller streets through a development agreement. A street shall form the direct and primary means of ingress or egress for all dwelling units. Alleys, where they exist, shall form only a secondary means of ingress or egress. ~~A garage apartment may be built to the rear of a main dwelling if there is compliance with all other provisions of this chapter. Accessory buildings which are not a part of the main building may be built in the rear yard but shall not cover more than 30 percent of the rear yard.~~

Sec. 46-537. Commercial and industrial uses.

No minimum lot sizes and open spaces are prescribed for commercial and industrial uses. It is the intent of this chapter that lots of sufficient size be used by any business or industry to provide adequate parking and unloading and loading space required for operation of the enterprise.

Sec. 46-538. Obstructions on corner lots prohibited.

On any corner lot on which a front and side yard is required, no wall, fence, sign, structure or any plant growth which obstructs sight lines at elevations between 2½ feet and six feet above any portion of the crown of the adjacent roadway shall be maintained in a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 25 feet along the established to form a right triangle on the area of the lot adjacent to the street intersection.

Sec. 46-539. Private garage setback.

An attached or detached private garage which faces on a street shall not be located closer than 25 feet to the front property line.

Sec. 46-540. Accessory building restrictions.

No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced, and no accessory building shall be used unless the main building on the lot is also being used.

Sec. 46-541. Building in a cluster arrangement.

Whenever one or more residential, institutional, commercial, or industrial buildings are proposed to be located in a cluster or grouping which has a different arrangement, orientation, or other site planning variation from that of other buildings, structures, or uses in the area or on adjacent properties, the architectural design, location, orientation, service and parking areas of such buildings shall be planned so as not to adversely affect the use of adjacent or other properties in the area, as determined by the planning and zoning commission.

Sec. 46-542. Commercial and industrial uses in, or adjacent to residential districts.

In all cases when a side or rear yard of a commercial or industrial use is adjacent to a residential ~~property~~ use a wall of not less than six-foot shall be constructed of brick, stone, masonry or other cementitious material along that property line.

Sec. 46-543. Fencing illustrations.

The following are illustrations related to fencing:

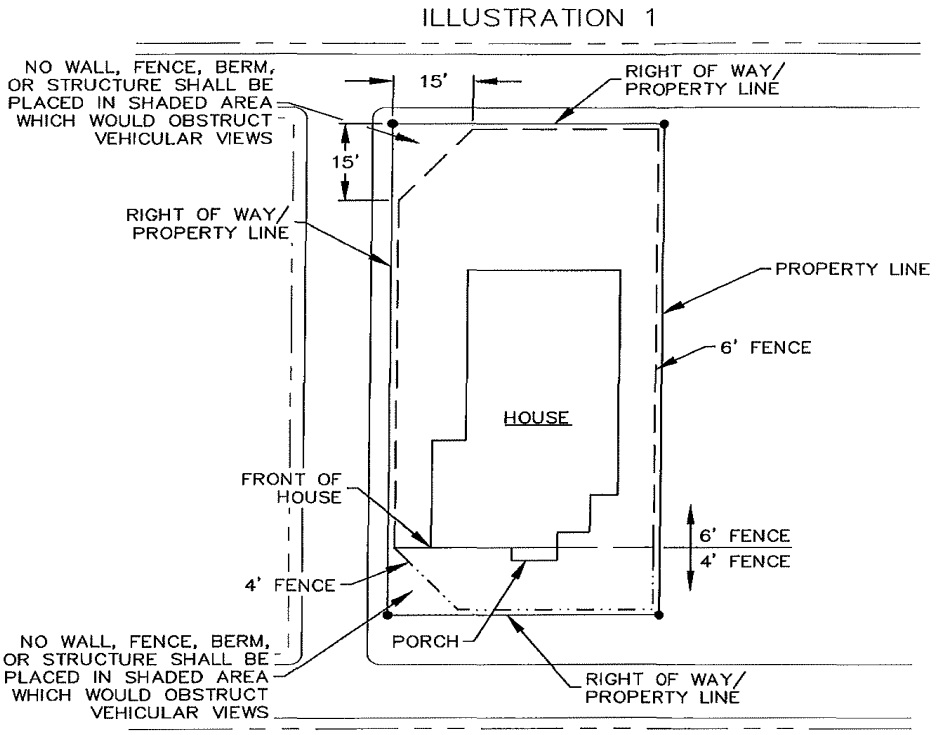
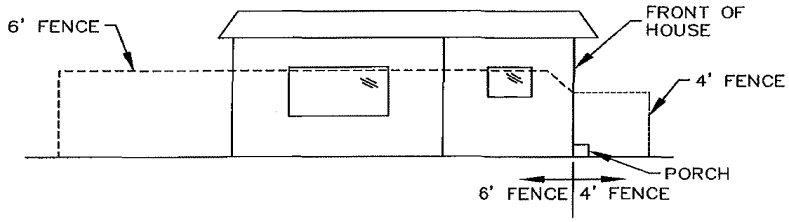
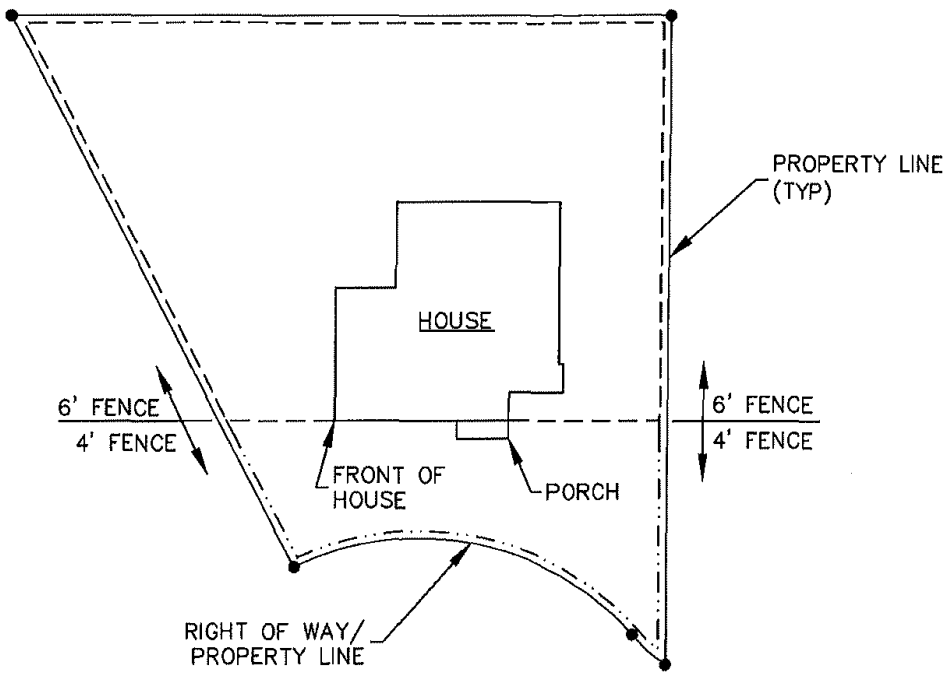


ILLUSTRATION 1 FENCE, HEDGE, OR ENCLOSURE WALL



FENCE HEIGHT TRANSITION

ILLUSTRATION 2



FENCE, HEDGE, OR ENCLOSURE WALL
CUL-DE-SAC

Secs. 46-544—46-562. Reserved.

DIVISION 3. HEIGHT

Sec. 46-563. Purpose.

The requirements of this division are intended to provide exceptions or qualify and supplement, as the case may be, the specific district regulations set forth in article IV of this chapter.

Sec. 46-564. Habitable basement or attic counted as a story.

In measuring heights, a habitable basement or attic shall be counted as a story. A story in a sloping roof, the area of which story at a height of four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it and which does not contain an independent apartment, shall be counted as a half story.

Sec. 46-565. Projections not used for occupancy.

Chimneys, elevators, poles, spires, tanks, towers and other projections not used for human occupancy may extend above the height limit.

Sec. 46-566. Public and semi-public buildings.

Churches, schools, hospitals, sanatoriums, and other public and semi-public buildings may exceed the height limitation of the district if the minimum depth of rear yards and the minimum width of the side yards required in the district are increased one foot for each two feet by which the height of such public or semi-public structure exceeds the prescribed height limit.

Secs. 46-567—46-595. Reserved.

DIVISION 4. STORAGE AND PARKING OF TRAILERS, RECREATIONAL, COMMERCIAL VEHICLES AND MOTOR HOMES

Sec. 46-596. Purpose.

Commercial vehicles and trailers of all types, including travel, recreational vehicles, watercraft, camping and hauling shall not be parked or stored on any lot occupied by a dwelling or on any lot in any residential zoning district except in accordance with the provisions set forth in this division.

Sec. 46-597. Commercial vehicle restrictions.

Not more than one commercial vehicle, which does not exceed two tons rated capacity, per family living on the premises, shall be permitted; and in no case shall a commercial vehicle used for hauling explosives, gasoline, or other liquefied petroleum products be permitted.

Sec. 46-598. Camping, recreational vehicle, motor home, travel trailer and other trailer restrictions.

Not more than one camping, recreational vehicle, motor home, travel trailer, hauling trailer, boat or jet ski trailer, or similar equipment per family living on the premises shall be permitted, and said trailer shall not exceed 40 feet in length, or eight feet in width; and further provided that said trailer shall not be parked or stored for more than 48 hours unless it is located behind the front yard building line. A camping, recreational vehicle, motor home or travel trailer or mobile home park shall not be occupied either temporarily or permanently while it is parked or stored in any area within the incorporated limits except in a trailer court authorized under the ordinances of the city. When a recreational vehicle or trailer is parked in a driveway temporarily, at no time shall it encroach or block any public sidewalk.

Secs. 46-599—46-629. Reserved.

DIVISION 5. OFF-STREET AUTOMOBILE AND VEHICLE PARKING AND LOADING

Sec. 46-630. General intent and application.

It is the intent of these requirements that adequate parking and loading facilities be provided off the street easement for each use of land within the city. Requirements are intended to be based on the demand created by each use. These requirements shall apply to all uses in all districts.

Sec. 46-631. Parking and loading spaces part of open space.

(a) Off-street parking or loading spaces shall be a part of the required open space associated with the permitted use and shall not be reduced or encroached upon in any manner.

~~(b) The area required for off-street parking shall be in addition to the yard areas herein required; except that the front yard required in a C-1 Neighborhood Shopping District or an I General Industrial District may be used for uncovered parking area; and further provided that the front drive in a residential district may be used for the uncovered parking area for vehicles associated with a residential use.~~

Sec. 46-632. Location.

The off-street parking lot shall be located within 200 feet, exclusive of street and alley widths, of the principal use and shall have direct access to a street or alley.

Sec. 46-633. Joint parking facilities.

Whenever two or more uses are located together in a common building, shopping center or other integrated building complex, the parking requirements may be complied with by providing a permanent common parking facility, cooperatively established and operated, which contains the requisite number of spaces for each use. The total number of spaces provided shall not be less than the sum of the individual requirements.

Sec. 46-634. Size of off-street parking space.

The size of a parking space for one vehicle shall consist of a rectangular area having dimensions of not less than nine feet by ~~20~~18 feet, plus adequate area for ingress and egress.

Sec. 46-635. Amount of off-street parking and loading required.

(a) Off-street parking and loading facilities shall be provided in all zoning districts, except within the Downtown Historic District, in accordance with the following schedule:

(1) Dwelling, single-family or two-family: Two parking spaces for each separate dwelling unit within a garage and two separate parking spaces within a driveway for each dwelling unit; parking may only be in tandem for a single-family dwelling unit. ~~the structure.~~

(2) Dwelling, multiple family: ~~Two parking spaces shall be provided upon the lot for each dwelling unit. No parking shall be permitted in the required front yard. No parking shall be allowed within four feet of any building, nor closer than two feet to the side yard lines. No parking space shall be used for storage of any trucks, truck-trailer or van, except panel and pickup trucks not exceeding one-ton capacity and boat and travel trailers may be parked in a required parking space when the operator or owner of such vehicle resides upon the premises.~~ 1.5 spaces per one bedroom unit; 2 spaces per two bedroom unit; 2.5 spaces per 3+ bedroom unit; guest parking at a ratio of 5% of the required spaces. At least 25% of all overall parking spaces shall be covered parking. All parking spaces shall be so arranged as to permit vehicles to be parked and removed without moving one car to facilitate the movement of the other. All

parking areas shall be paved according to the city's standard specifications. ~~Travel trailers, recreational vehicles and other trailers as defined in this section shall not exceed eight feet in width or 40 feet in length. At no time shall any such vehicle, recreational vehicle, motor home or trailer be parked so as to block a sidewalk.~~

(3) Boardinghouse, rooming house, tourist home, bed and breakfast or hotel: ~~One parking space for each two guests provided overnight accommodations.~~ 1 parking space per room + 1 parking space per 200 sq. ft. of commercial gross floor area or + 4 parking spaces for a use that doesn't have a commercial gross floor area.

(4) Hospitals: One space for each four patient beds, exclusive of bassinets, ~~plus one space for each staff or visiting doctor, plus one space for each three employees including nurses,~~ plus adequate area for the parking of emergency vehicles.

(5) Medical or dental clinics or offices: ~~Six spaces per doctor plus one space for each two employees.~~ 1 parking space per 200 sq. ft. of gross floor area.

(6) Sanatoriums, convalescent or nursing homes: ~~One space for each six patient beds, plus one space for each staff or visiting doctor plus one space for each two employees including nurses.~~ 1 parking space per one bedroom unit + 4 additional parking spaces.

(7) Community center, theater, auditorium, church sanctuary: One parking space for each four seats, based on maximum seating capacity.

(8) Convention hall, lodge, club, library, museum, place of amusement or recreations: One parking space for each 50 square feet of floor area used for assembly or recreation in the building.

(9) Office building: One parking space for each 300 square feet of gross floor area in the building, exclusive of the area used for storage, utilities and building service.

(10) Restaurants, cafes, dinners, clubs, bars and other establishments which provide tables and/or bar seating: ~~One parking space for each four seats and one space for each two employees.~~ 1 parking space per 100 sq.ft. of gross floor area (includes outdoor seating, outdoor smoking areas, and waiting areas).

(11) Commercial establishments not otherwise classified: One parking space for each ~~150~~ 200 square feet of floor space used for retail trade in the building and including all areas used by the public.

(12) Industrial establishments: -1 parking space per 600 sq. ft. of gross floor area for indoor facility; and 1 parking space per additional 1,000 sq. ft. gross floor area for outdoor facility; and 1 parking space per 2,500 sq. ft. indoor storage area.~~Adequate area to park all employees and customers' vehicles at all times and adequate space for loading, unloading and storing all vehicles used incidental to or as a part of the primary operation of the establishment.~~

(13) Public elementary school and middle school (junior high): One space per 300 square feet of classrooms.

(14) Private school, primary: One space per 300 square feet of classrooms.

(15) Private school, secondary: One space per 200 square feet of classrooms.

(16) Public high school: One space per 200 square feet of classrooms.

(17) Post-secondary institution: One space for each two residents for dormitories or other residences; one space for each 500 square feet of gymnasium and classrooms; one space for each 300 square feet of administrative and office space.

(b) For all uses not covered by the uses listed in subsection (a) of this section, the planning and zoning commission shall make a determination of the parking demand to be created by the proposed use, and the amount of parking thus determined shall be the off-street parking requirement for the permitted use.

(c) Property located within the below map boundaries shall not have any minimum parking requirements or loading zone requirements as denoted in subsection (a) or (b). Any off-street parking constructed voluntarily within the below map boundaries shall be limited to a maximum of six parking spaces, this standard shall not be applicable to any government or transit authority created off-street parking spaces. Creation of voluntary on-site loading zones shall also be prohibited within the below map boundaries, however this standard shall not be applicable to any government or transit authority created on-site loading zones.

Sec. 46-636. Paved surface required.

All parking spaces shall be paved with a sealed surface pavement and maintained in a manner that no dust will result from continued use.

Sec. 46-637. Off-street parking lots in residential districts.

Whenever off-street parking lots for more than six vehicles are to be located within or adjacent to a residential district, the following provisions shall apply:

(1) All sides of the lot within or abutting the residential district shall be enclosed with an opaque ornamental fence, wall or dense evergreen hedge having a height of not less than five feet nor more than six feet. Such fence, wall or hedge shall be maintained in good condition yearround.

(2) No parking shall be permitted within a front yard setback line established 15 feet back of the property line of interior and corner lots wherever the parking lot is located in a residential district or immediately abuts the front yard of a residential unit. In all other cases no setback shall be required.

(3) Driveways used for ingress and egress shall be confined to and shall not exceed 25 feet in width exclusive of curb returns.

(4) All of the lot used for parking and driveway purposes shall be paved with a sealed surface pavement and maintained in such a manner that no dust will be produced by continued use.

(5) Whenever lighting is provided, the intensity of light and arrangement of reflectors shall be such as not to interfere with residential district uses.

(6) No sign of any kind shall be erected except information signs used to guide traffic and to state the condition and terms of the use of the lots. Only nonintermittent white lighting of signs shall be permitted.

All yards shall be landscaped with grass and shrubs and maintained in good condition yearround.

Secs. 46-638—46-662. Reserved.

DIVISION 6. LOT AREA REQUIREMENTS FOR SEPTIC TANKS

Sec. 46-663. Purpose.

Whenever connection with sanitary sewer system will require unreasonable expenditure and septic tanks are to be installed for residential lots, the requirements of this division shall be met.

Sec. 46-664. Minimum lot area.

Residential lots shall have an area of at least 12,000 square feet, shall be at least 80 feet wide, and shall be at least 120 feet deep.

Sec. 46-665. Additional lot area may be necessary.

Where, as the result of necessary percolation tests as required by the city, the city's engineer deems the minimum lot area insufficient, the city shall require additional lot area sufficient to accommodate the sanitary facilities deemed necessary by the city's engineer.

Secs. 46-666—46-688. Reserved.

DIVISION 7. SPECIAL PARKING AND AREA REGULATIONS AND EXCEPTIONS

Sec. 46-689. Vision clearance.

On any corner lot on which front and side yards are required, no wall, fence, structure, sign, tree, shrub, or hedge may be maintained as to cause danger to traffic by obstructing the view and when topography prevents a clear view, this obstruction shall be removed.

Sec. 46-690. Building lines.

(a) *Front.* The front building line of the main dwelling hereafter constructed in residence districts, or altered in such a manner as to change the position of such front building line, shall be located the distance required from the front lot line as may be required in the residential district in which such dwellings are located.

(b) *Extensions into front yard.* Open porches of dwellings may extend into the front yard a distance of ten feet from the main line of the building. Cornices and eaves of the main building may project not more than three feet into the front yard.

Sec. 46-691. Lot area.

On any lot separately owned on March 28, 1973, a single-family dwelling may be erected even though such lot has less area than required by these regulations.

Sec. 46-692. Location of dwellings and buildings.

Only one main building for single-family~~,~~ or two-family~~, or multiple-family~~ use, with permitted accessory buildings, may be located upon a lot or unplatted tract. Every dwelling shall ~~face or~~ front upon a street or officially approved place, other than an alley~~, which means of access shall have a minimum width of 30 feet~~. Where a lot or tract of land is used for l~~ocal retail~~ multifamily, commercial, or industrial purposes, more than one main building may be located upon the lot but only when such buildings conform to all the open space, parking and density requirements applicable to the uses and district, and when all such main buildings face upon a street or officially approved place, other than an alley. ~~Whenever two or more main buildings, or portions thereof, are placed upon a single lot or tract and such development is approved by the city planning and zoning commission, said buildings shall comply with normal requirements for platting.~~

Sec. 46-693. Special exception approval.

(a) The board of adjustments (B.O.A.) may grant a special exception from the requirements of certain provisions of this Code if the special exceptions are not contrary to public interest and the spirit of this Code is preserved and substantial fairness is accomplished. The only special exceptions that may be granted are:

(1) Front and back setback requirements;

(2) Building size requirements;

(3) Building height requirements;

(4) Vehicle parking requirements;

(5) Screening and buffering requirements;

~~(6) Building construction materials;~~

~~(7) Roof pitch.~~

(b) In granting the special exception, the (B.O.A.) may impose conditions for which the applicant or his successors shall be in compliance before a certificate of occupation may be issued by the building official. Any special exceptions shall be included on a preliminary and final plat, site plan or, if necessary, through a separate recordable document approved by the (B.O.A.).

(c) In no event can a special exception exceed ten percent over or under the requirements of this Code for which a special exception is granted.

~~(d) Any lot of record existing prior to December 31, 1990, may be allowed to have a minimum living area of 800 square feet of living area with an area for two parking spaces on an approved impervious driveway and meet all of the property setback requirements.~~

~~(e) Any single- or two-family dwelling built after March 28, 1973, having garages shall not be enclosed or converted into living area, removing garage doors or changing the intended purpose of general storage and parking and storage of vehicles without first building an approved replacement two-car garage accessible to a public city-approved and accepted street or alley, or provide off-street parking on city-approved impervious driveways for at least two vehicles and meeting all city ordinances effective July 31, 2011.~~

~~(f) The building size and type of construction shall be as defined in each residential zoning district unless 25 percent of the dwellings on one side of the street do not meet the restrictions in place, then the size and construction materials used may meet the type and size "based on living area" as on that established side of the street with approval of the building official.~~

Secs. 46-694—46-714. Reserved.

DIVISION 8. UNPLATTED PROPERTY

Sec. 46-715. City council to permanently zone all plats.

The planning and zoning commission shall not approve any plat of any subdivision within the city limits until the area covered by the proposed plat shall have been permanently zoned by the city council.

Sec. 46-716. Pending annexations.

The planning and zoning commission shall not approve any plat of any subdivision within any area where a petition or ordinance for annexation or a recommendation for annexation to the city is pending before the city council.

Sec. 46-717. Commission may make zoning and annexation recommendation to city council.

In the event the planning and zoning commission holds a hearing on a proposed annexation, it may, at its discretion, at the same time hold a hearing upon the permanent zoning that is to be given to the area or tract to be annexed, and make a recommendation on both matters to the city council so that the city council can, if it desires, act on the matter of permanent zoning and annexation at the same time.

Secs. 46-718—46-737. Reserved.

DIVISION 9. WIRELESS COMMUNICATION FACILITIES (WCF)

Sec. 46-738. General standards.

(a) *Public government exemption.* A public governmental entity shall be exempt from the requirements of this division.

(b) *Prohibited in historic districts and placement on signs.* Any WCFs shall be prohibited in any local designated historic district and on placement of any signs.

(c) *Automation.* Except as provided in subsection (d) and during construction or an emergency, a WCF shall be fully automated and unattended on a daily basis and shall be visited only for periodic and necessary maintenance.

(d) *Maintenance and repair.* All WCFs and associated equipment shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person. Routine testing and maintenance shall be limited to weekdays between sunrise and sunset. Emergency repairs shall be allowed at all times.

(e) *Removal.* Any WCF that is not operated for a continuous period of six months shall be considered abandoned and shall be removed within 60 days of receipt of notice from the city of such abandonment. Each property owner and person in control of the site is responsible for removal, jointly and severally. If such facility is not removed within said 60 days, the city may remove such facility at their expense. If there are two or more users of a single WCF, then this provision shall not become effective until all users cease operations on the facility housing the users.

(f) *Improvement and replacement.* An existing WCF may be improved or replaced with a new WCF provided the improvements or replacement comply with the provisions of this section.

(g) *Easements and approvals.* The applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the WCF and that access is provided to the facility or the owner of the building or structure to which the WCF will be attached has granted permission for the proposed facility to be attached and maintained.

(h) *Engineer's certification for roof-mounted WCF and/or equipment.* Any WCF mounted to a roof must receive engineer's certification that the roof will support the proposed WCF and associated roof-mounted equipment.

(i) *Landscaping and irrigation for WCFs.* Any required landscaping must be shown on a landscape plan and an irrigation plan must be concurrently provided which shows an underground or above ground drip irrigation system adequate enough to water landscaping. Any irrigation system shall be required to have rain sensor.

(j) *Application.* An application packet will need to be completed by an applicant and approved by the city. Information shall be provided as indicated within the application packet and this division. The applicant is responsible for full completion of the application packet.

(k) *As-built letter.* After the WCF has been constructed the project engineer or project architect, as applicable, shall provide a letter certifying that the WCF was constructed in accordance with the approved plans.

Sec. 46-739. ~~Wireless communication facilities (WCF).~~Physical Standards.

(a) *Exemption.* WCFs associated with a television or radio stations shall be exempt from this section.

(b) *Monopoles and self-enclosed monopoles.*

(1) *Permitted locations.*

a. Monopoles may only be in any commercial zoning district, industrial zoning district, or in any Planned Development District (PDD) with commercial or industrial uses unless otherwise prohibited in the PDD provided the location of the monopole is at least 200 feet from any residential zoning district, residential land uses in a PDD, or a residential land use on five acres of land or less for properties without a zoning category, or is at least 200 feet from the edge of the right-of-way of U.S. Hwy 290 or State Road 95, subject to the following conditions:

1. Only one monopole is permitted for every ten acres on the lot. Poles may be clustered together.

b. Self-enclosed monopoles may be in any commercial zoning district or industrial zoning districts or in any Planned Development District (PDD) with commercial or industrial uses unless otherwise prohibited in the PDD, subject to the following conditions:

1. Only one self-enclosed monopole is permitted for every five acres on the lot. Poles may be clustered together.

c. Self-enclosed monopoles may be in any residential zoning districts, excluding PDDs, in accordance with section 46-138, subject to the following conditions:

1. WCFs must be separated by a distance of one-quarter of a mile from each other.

2. Documentation from an engineer that an attached WCF or stealth WCF cannot accommodate the proposed improvement.

(2) *Setbacks.* The standard setbacks for each zoning district, including setbacks within the Planned Development District (PDD), shall apply to the poles and any associated equipment.

(3) *Maximum height.*

a. *Commercial zoning districts, industrial zoning districts, or Planned Development Districts (PDD) with commercial or industrial uses.* The maximum height of a pole shall be 150 feet.

b. *Residential zoning districts or Planned Development Districts (PDD) with residential uses.* The maximum height of a pole shall be 80 feet.

c. The maximum height of associated equipment located at the base of a monopole or self-enclosed monopole shall be no more than ten feet.

(4) *Color.* Monopoles and self-enclosed monopoles shall be painted a non-contrasting gray, beige or similar neutral color minimizing its visibility, unless otherwise required by the Federal Communications Commission or Federal Aviation Administration.

(5) *Lighting.* No pole shall be artificially lighted except as required by the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) or their predecessors. Security lighting around the equipment shelter is permitted provided it is not visible from neighboring properties. Lighting for maintenance purposes is permitted, provided the lights are not used at any other time.

(6) *Screening.* The equipment shelter at the base of a pole shall be screened from public view by an unpainted split-face decorative masonry wall with a minimum height of one foot greater than the height of the equipment shelter.

(7) *Collocation requirements.* New monopoles and self-enclosed monopoles shall be designed to accommodate at a minimum three antennae and any associated ground-mounted equipment, unless an engineer demonstrates that such a design is not feasible for technical or physical reasons. Service providers shall allow the collocation of antenna by competing service providers.

(8) *Mandatory co-location required.* An applicant shall be required to co-locate, as feasible, on an existing tower if it is within one-quarter mile of the proposed new monopole or self-enclosed monopole tower. The applicant shall inquire about potential collocation opportunities at all technically feasible locations.

(c) *Attached WCF.*

(1) *Permitted locations.*

a. An attached WCF may be placed on a building or structure in the residential zoning district that only allows for multi-family development, commercial zoning district, or industrial zoning districts.

b. An attached WCF may be placed on a building or structure on a lot that has schools, religious institutions, facilities or buildings or structures owned by a utility, multi-family land uses, commercial land uses, or industrial land uses in a Planned Development District (PDD), unless otherwise prohibited in the PDD.

c. An attached WCF may also be attached to a building with non-residential uses that is in a residential zoning district. This includes schools, religious institutions, facilities or buildings or structures owned by a utility, subject to the conditions of this section.

(2) *Mounting and setbacks.*

a. The support structure or equipment for an attached WCF that is mounted flush with the vertical exterior of the building or structure to which it is attached or shall project no more than 24 inches from the surface of the building or structure to which it is attached, and shall not violate the building setback requirements of the zoning district in which the building or structure is located.

b. Support structure or equipment for an attached WCF may be placed on the roof of a building in accordance with this section.

c. Support structure or equipment for an attached WCF must be placed underground if not located on the side of a building or on the roof. Placement on the ground may be allowed so long as it cannot be visible from the street in accordance with this section.

(3) *Maximum height.* An attached WCF shall not extend more than ten feet above the building or structure to which it is attached and shall not violate the maximum height restriction of the zoning district in which the building or structure is located.

(4) *Visibility.*

a. Equipment associated with roof-mounted WCFs shall be screened from public view. Screening shall utilize the same or similar materials as the principal structure or building. If roof decks with mechanical equipment are visible from any level of adjacent buildings, the mechanical equipment must be painted to match the finished roof material.

b. Attached WCFs that are side-mounted shall blend with the existing building's architecture and shall be painted or shielded with material that is consistent with the design features and materials of the building.

c. All cabinets, boxes, and WCF associated equipment that is not roof-mounted or side-mounted shall be located underground, unless it is so designed and located that it is not visible from a street.

(d) *Stealth WCP.*

(1) *Permitted locations.*

a. A stealth WCF can be located in all zoning districts or all uses in a Planned Development District (PDD), unless otherwise prohibited by the PDD.

b. A stealth WCF can be attached to any building or structure or be freestanding.

(2) *Setbacks.* The standard setbacks for each zoning district or Planned Development District (PDD) shall apply to all stealth WCFs. To protect citizens in their homes, freestanding stealth WCFs shall be placed a minimum distance equal to the height of the freestanding stealth WCF away from any residential structure. No guy wires may be used.

(3) *Maximum height.* The maximum height of a stealth WCF shall be determined by the height limitations for the type of structure the WCF resembles, the zoning district maximum height, or the required setback distance whichever results in less height.

(4) *Visibility.* The antenna and associated equipment of a stealth WCF shall be screened, disguised, concealed or otherwise camouflaged as part of a structure such that the antenna and associated equipment of the WCF are indistinguishable from the structure that it is attached to or within. If freestanding it shall resemble natural elements such as a flagpole, tree, or shrub, including colors. If the city determines that the associated equipment cannot be feasibly or adequately camouflaged due to the unique circumstances of the proposed location, it shall be placed underground; or it may be screened from view from a street and adjacent properties by an unpainted decorative masonry wall with a minimum height of one foot greater than the height of the equipment shelter. In residential zoning districts the required masonry wall shall be screened by planting one five-gallon or larger size shrub for every three linear feet around the boundary of the wall.

~~**Secs. 46-740—46-747. Reserved.**~~

~~*ARTICLE VI. HISTORIC PRESERVATION*~~

~~*DIVISION 1. GENERALLY*~~

Sec. 46-748. Purpose.

(a) The city council of the city, recognizes the historical, cultural and aesthetic importance of certain buildings, structures or districts within the city.

(b) The council desires to protect and preserve such landmarks and districts, and such protection and preservation is in the best interests of both historical preservation and the city's economic well-being.

Sec. 46-749. Appeal to city council.

Any person aggrieved by an action of the historic review board or building official relative to the acceptance or denial of an application shall have the right to appeal to the city council by giving notice of appeal within 15 days of such action. The council shall sit as a review board. An appeal hearing shall be set within 30 days of notice. The council ruling may uphold, overrule or modify the building official's decision.

Sec. 46-750. Annual report.

(a) The historic review board shall make an annual report to the city council on the state of historic preservations in the city and shall include in the report a summary of its activities for the past year and a proposed program for the next year.

(b) The board shall have the further responsibility of recommending to the city council, planning and zoning commissions and city departments the adoption of policies, the sources of funds, and designation of historic districts and historic landmarks that may further the city's preservation effort.

Secs. 46-751—46-768. Reserved.

DIVISION 2. DESIGNATION OF HISTORIC DISTRICTS AND LANDMARKS

Sec. 46-769. Historic districts and historic landmarks.

The city council may from time to time designate certain areas in the city as historic districts or certain places as historic landmarks. Those provisions pertaining to the designation of historic districts or historic landmarks constitute a part of this chapter. Such designation shall be in addition to any other zoning district designation established in article III of this chapter. All zoning maps shall reflect the historic district and landmark designation by the letter "H" as a suffix to the use designation.

Sec. 46-770. Criteria.

In making the designation of an area or place as an historic district or landmark, the city council shall consider one or more of the following criteria:

(1) Character, interest or value as part of the development, heritage or cultural characteristics of the city;

(2) Location as the site of an historical event;

(3) Embodiment of distinguishing characteristics of an architectural type or specimen;

(4) Relationship to other distinctive building, sites, districts or structures which are historically significant and preserved, or which are eligible for preservation;

(5) Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community or the city;

(6) Value as an aspect of community sentiment or public pride;

(7) Identification with a person who significantly contributed to the development or culture of the city;

(8) In the case of landmark designation; the designation must be supported by the complete written consent of the property owners.

Sec. 46-771. Downtown Historic District.

(a) The city's downtown area more specifically described below meets several of the aforesaid criteria and is hereby designated an historic district within the city:

Beginning at the northeast corner of the Heine Neidig property locally known as the Elgin Lumber Company, the district boundary follows the easement boundary of the MKT railroad line south southeast to a point directly in line with the centerline of Austin Street;

Thence southwest along the centerline of Austin Street to its junction with South Avenue B;

Thence northwest along the centerline of South Avenue B and North Avenue B until its junction with a public alley way behind Depot Avenue;

Thence northeast along the centerline of said alley until its junction with a public alley running parallel to North Main Street behind Main Street to the west;

Thence northwestward to a point directly across North Main Street from the point of origin and thence across North Main Street to the point of origin.

(b) Future designation of additional areas or places as historic districts and/or landmarks shall be governed by the further provisions of this article.

Sec. 46-772. Submission to planning and zoning commission for future designations.

Formal recommendations to the city or by the city for any additional area or location for district or landmark designation shall be submitted to the planning and zoning commission of the city within 30 days. The commission shall give notice and conduct its hearing on the proposed designation. Such hearing shall be in the same manner and according to the same procedures as specifically provided for in the provisions of this chapter.

Sec. 46-773. Uses.

Nothing contained in this article or in the designation of property as being in an historic district or being an historic landmark shall affect the present legal use of property. Use classifications as to all property which may be included in an historic district or historic landmark shall continue to be governed by the general zoning provisions of this chapter and the procedures therein established. In no case, however, shall any use be permitted which requires the demolition, razing, remodeling, or alteration of any buildings or structures in such an historic district or historic landmark so as to adversely affect the character of the district or historic landmark, except upon compliance with the terms of this article.

Secs. 46-774—46-799. Reserved.

DIVISION 3. HISTORIC REVIEW BOARD

Sec. 46-800. Created.

There is hereby created an historic review board of the city, hereinafter called the "board," consisting of nine members appointed by the city council. The board shall be comprised of the following:

(1) At least five citizens of the city;

(2) At least two members of the Main Street Board so long as such board is a functioning entity;

(3) At least two owners of property within the designated historic district;

(4) At least two members of the Elgin Historical Association so long as such association is a functioning entity;

(5) The building official or his representative shall serve as secretary and ex officio member of the board.

Sec. 46-801. Term of appointment.

Each member of the historic review board shall be appointed for a term of three years, except that of the members of the first board to be appointed, two shall be appointed to serve for two years, and two for one year. The term shall expire on January 1 of the appropriate year. Any vacancy on the board shall be filled by the city council for the remainder of the unexpired term. Any member of the board who fails to attend at least 75 percent of all regular meetings of the board within any 12-month period shall be removed from the board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the city council.

Sec. 46-802. Chairperson and vice-chairperson of the board.

The chairperson and vice-chairperson of the historic review board shall be elected annually by a majority of the members of the board, and shall serve a term of one year or until their successors are elected.

Sec. 46-803. Duties of board.

The historic review board shall act in an advisory capacity only, and shall have no power to bind the city by contract or otherwise. Through the review procedure provided herein, it shall be the function of the board to advise the building official concerning all applications for review in historic districts or historic landmarks and perform any other advisory functions delegated by the city council.

Sec. 46-804. Meetings.

The historic review board shall meet monthly at a regularly scheduled time, unless no necessary business needs to be conducted. Special meetings may be called upon request of the chairperson, or the vice-chairperson, or upon written request of four members, or upon notice from the building official that a matter requires the consideration of the board. All meetings shall have advance notice posted in accordance with the Texas Open Meetings Law. Five members shall constitute a quorum and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such meeting.

Secs. 46-805—46-831. Reserved.

DIVISION 4. REVIEW AND PERMIT

~~Sec. 46-832. Required.~~

~~(a) No person shall proceed to make alterations, changes, restorations, demolitions or removals of or upon any historic landmark or of or upon any building or improvement within an historic district without first submitting his plans to the building official as hereinafter provided and after securing a permit to proceed.~~

~~(b) An historic preservation review is necessary for any proposed alteration, change, restoration or removal of any architectural feature of a building or structure, (including exterior signage and painting) for any historically designated property under the provisions of this section. Application for historic preservation review shall be made to the building official through the regular building permit procedure of the city.~~

~~(c) Application shall be deemed complete when submitted upon city forms complete with drawings, plans and specifications or when submitted upon a form and in a form otherwise acceptable to the building official.~~

~~(d) No charge or fee will be required for an historic preservation review but the review process, while in conjunction with the building permit process, does not relieve or take the place of building permit and fee requirements provided for elsewhere in this Code.~~

~~(e) Historic preservation review acceptance; however, shall be a prerequisite to the issuance of a building permit.~~

~~(f) Any person violating this procedure or any other provision of this article shall be subject to the penalty provisions of this chapter set forth in section 46-9 and to the general penalty provisions of this Code set forth in section 1-15.~~

~~Sec. 46-833. Review process.~~

~~(a) If the building official determines that the application involves ordinary repair or maintenance, or alteration, change, restoration or removal of any exterior architectural feature of a building, structure, or sign which does not involve significant changes in the architectural or historic value, style, general design or appearance, he shall within seven days forward a copy of the application indicating the determination to the chairperson of the historic review board, or to the vice-chairperson of the board if the chairperson is not available. The chairperson or vice-chairperson of the board shall within five business days either approve the building official's determination or call for a meeting of the board to consider the application as provided in subsection (c) of this section. If the chairperson or vice-chairperson of the board do not take any action within five business days, it shall be deemed that the board shall take no action and the building official shall indicate the application's acceptance for historic review purposes on the building permit.~~

~~(b) If the building official determines that the application involves an alteration, change, restoration, removal or demolition of an external architectural feature of a building or structure which involves a significant change in the architectural or historic value, style, general design or appearance, he shall refer the application to the historic review board and call for a meeting of the board to consider the application.~~

~~(c) The historic review board shall hold a meeting to consider the application within 15 business days after the building official's receipt of a completed application. The applicant shall be given written notice of the time and place of the meeting. The board may hold any additional meetings it considers necessary to carry out its responsibilities under this section. The board shall make its recommendation to the building official within 30 days after receipt of a completed application unless the board and the applicant mutually agree to extend the period of review.~~

~~(d) Notwithstanding any other provision of this section, the historic review board shall make its recommendation to the building official within 90 days after receipt of complete application for a permit to demolish an historic landmark or a building within an historic district, or to move an historic landmark, or to move a building into or out of an historic district.~~

(c) The board shall forward its recommendation to the building official. While the building official is not bound by such recommendation, he shall within five business days of its receipt give written notice of the application's acceptance or denial. Such notice shall be deemed complete once filed with the city secretary or by issuance of a permit showing acceptance.

(1) In the case of applications that do not involve demolition of an historic building or landmark, an application shall be deemed accepted if no notice of action by the building official is given within 60 days after the receipt of a completed application unless time has been mutually extended as provided in subsection (c) of this section.

(2) In the case of applications that involve demolition of an historic building or landmark, an application shall be deemed accepted if no notice of action by the building official is given within 100 days after the receipt of a completed application unless time has been mutually extended as provided in subsection (c) of this section.

Secs. 46-834—46-859. Reserved.

DIVISION 5. CRITERIA TO BE USED

Sec. 46-860. Criteria enumerated.

In determining the recommendation and action on acceptance of an application for historic preservation review, the building official and historic review board shall consider the following:

(1) The effect of the proposed change upon the general historic, cultural and architectural nature of the district or landmark.

(2) The appropriateness of exterior architectural features which can be seen from a public street, alley or walkway.

(3) The general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings or structures in the district. The criteria shall not be the aesthetic appeal to the board of the structure or the proposed remodeling but rather its conformity to the general character of the particular historic area involved.

(4) All signs shall be in keeping with the character of the historic district or landmark.

(5) The value of the historic district or landmark as an area of unique interest and character shall be impaired.

(6) The general and specific Secretary of the Interior's Standards for Rehabilitation and Guidelines for applying the standards for rehabilitation.

(7) The importance of finding a way to meet the current needs of the property owner, and the importance of approving plans that will be economically feasible for the property owner.